

# Consortium Agreement

Lyon, 08/12/2022

**ASCEND – Accelerate poSitive Clean ENergy Districts**  
Project Number 101096571

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# Consortium Agreement

THIS CONSORTIUM AGREEMENT is based upon

Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing “Horizon Europe – the Framework Programme for Research and Innovation (2021-2027)” (hereinafter referred to as “the Rules”), and the European Commission Multi-Beneficiary General Model Grant Agreement and its Annexes, and enters into effect on the starting date of the Project as set out in Grant Agreement Art. 4 in combination with the Grant Agreement Data Sheet Point 1, hereinafter referred to as the Effective Date.

BETWEEN THE FOLLOWING PARTIES:

1. SPL LYON CONFLUENCE, the Coordinator  
Established in RUE DELANDINE 98, 69002, LYON, FR  
Represented by \_\_\_\_\_ as \_\_\_\_\_.

AND

2. METROPOLE DE LYON  
Established in RUE DU LAC 20, 69003, LYON, FR  
Represented by \_\_\_\_\_
3. COMMUNE DE LYON  
Established in PLACE DE LA COMEDIE 1, 69205, LYON CEDEX 01, FR  
Represented by \_\_\_\_\_
4. HESPUL ASSOCIATION  
Established in PLACE JULES FERRY 14, 69006, LYON, FR  
Represented by \_\_\_\_\_
5. URBAN PRACTICES  
Established in 3 COURS CHARLEMAGNE, 69002, LYON, FR  
Represented by \_\_\_\_\_
6. ENERTECH  
Established in 65 LES BALCONS DE L'AMOURIER, 26160, PONT DE BARRET, FR  
Represented by \_\_\_\_\_
7. LANDESHAUPTSTADT MUNCHEN  
Established in BURGSTRASSE 4, 80331, MUNCHEN, DE  
Represented by \_\_\_\_\_
8. UNICORN GMBH  
Established in AM FORLENWALD 3, 69251, GAIBERG, DE  
Represented by \_\_\_\_\_
9. TECHNISCHE UNIVERSITAET MUENCHEN  
Acting here through its Chair of Building Technology and Climate Responsive Design Chair, Prof.  
  
established in ARCISSTRASSE 21, 80333, MUENCHEN, DE  
Represented by \_\_\_\_\_
10. ISARWATT EG  
Established in ARNULFSTR 114, 80636, MUNCHEN, DE

Represented

11. AVANCIS GMBH  
Established in SOLARSTRASSE 3, 04860, TORGAU, DE  
Represented
12. SPECTRUM MOBIL GMBH  
Established in AIDENBACHSTRASSE 36, 81379, MUNCHEN, DE  
Represented by
13. UNTERNEHMERTUM GMBH  
Established in LICHTENBERGSTRASSE 6, 85748, GARCHING, DE  
Represented by
14. MUNICIPALITY OF ALBA IULIA - PRIMARIA MUNICIPIULUI ALBA IULIA  
Established in CALEA MOTILOR 5 A, 510134, ALBA IULIA, RO  
Represented by
15. VILLE DE CHARLEROI  
Established in PLACE CHARLES II, 6000, CHARLEROI, BE  
Represented by
16. AGÊNCIA DE ENERGIA DO PORTO  
Established in RUA GONCALO CRISTOVAO 347 SALA 218, 4000 270, PORTO, PT  
Represented by
17. CMPEAE – EMPRESA DE ÁGUAS E ENERGIA DO MUNICÍPIO DO PORTO, EM  
Established in RUA BARAO NOVA SINTRA 285, 4300 367, PORTO, PT  
Represented
18. FUNDACAO DE SERRALVES  
Established in RUA JOAO DE CASTRO 210, 4150 417, PORTO, PT  
Represented
19. ASSOCIACAO PORTO DIGITAL  
Established in LARGO DO DR. TITO FONTES, 15, 4000 538, PORTO, PT  
Represented
20. CESKE VYSOKE UCENI TECHNICKE V PRAZE  
Established in JUGOSLAVSKYCH PARTYZANU 1580/3, 160 00, PRAHA, CZ  
Represented
21. OPERATOR ICT AS  
Established in DELNICKA 213/12, 170 00, PRAHA, CZ  
Represented by
22. PRAZSKA DEVELOPERSKA SPOLECNOST  
Established in U RADNICE 10/2 STARE MESTO, 110 00, PRAHA 1, CZ  
Represented by
23. BUDAPEST FOVAROS ONKORMANYZATA - MUNICIPALITY OF BUDAPEST  
Established in VAROSHAZ UTCA 9-11, 1052, BUDAPEST, HU  
Represented by
24. BKK BUDAPESTI KOZLEKEDESI KOZPONT ZARTKORUEN MUKODO RESZVENYTARSASAG  
Established in RUMBACH SEBESTYEN UTCA 19-21, 1075, BUDAPEST, HU

Represented by

25. ENERGY CITIES  
Established in CHEMIN DE PALENTE 2, 25000, BESANCON, FR  
Represented by
26. STOCKHOLMS STAD – CITY OF STOCKHOLM  
Established in STADSHUSET/REDOVISNINGSENHETEN, 105 35, STOCKHOLM, SE  
Represented by
27. AUSTRIAN INSTITUTE OF TECHNOLOGY GMBH  
Established in GIEFINGGASSE 4, 1210, WIEN, AT  
Represented
28. FUNDACION CARTIF  
Established in PQ TECNOLOGICO BOECILLO 205, 47151, BOECILLO, ES  
Represented b
29. UNIVERSITE DU LUXEMBOURG  
Established in 2 AVENUE DE L'UNIVERSITE, 4365, ESCH-SUR-ALZETTE, LU  
Represented b
30. BLUE-SIGHT CONSEIL  
Established in 12 PLACE JULES FERRY, 69006, LYON, FR  
Represented by
31. DATEN-KOMPETENZZENTRUM STÄDTE UND REGIONEN DKSR GMBH  
Established in AM KARLSBAD 16, 10785, BERLIN, DE  
Represented by
32. CIVIESCO SRL  
Established in VIA VITTORIO VENETO 24, 33100, UDINE, IT  
Represented by
33. TWENTY COMMUNICATIONS SRO  
Established in DOLEZALOVA 2923/35, 909 01, SKALICA, SK  
Represented by
34. FOUCHAULT THOMAS ILKKA - ODYSSEES  
Established in 7 RUE DU DOYENNE, 69005, LYON, FR  
Represented by

Hereinafter, jointly or individually, referred to as “Beneficiaries”,

AND

35. UNIVERSITY OF ST.GALLEN  
Established in DUFOURSTRASSE 50, 9000, ST GALLEN, CH  
Represented by Pr.

Hereinafter, jointly or individually, referred to as “Beneficiaries”,

hereinafter, Beneficiaries and Associated Partner, jointly or individually, referred to as “Parties” or “Party”



Supported by the following entities contributing to the Project:

7.1. STADTWERKE MUENCHEN GMBH

Established in EMMY NOETHER STRASSE 2, 80992, MUNICH, DE

7.2. MUENCHNER GESELLSCHAFT FUER STADTERNEUERUNG MBH

Established in HAAGERSTRASSE 5, 81671, MUNICH, DE

7.3. GWG Gemeinnützige Wohnstätten – und Siedlungsgesellschaft mbH

Established in HEIMERANSTRASSE 31, 80339, MUNICH, DE

15.1. IGRETEC

Established in BOULEVARD MAYENCE 1, 6000, CHARLEROI, BE

Hereinafter, jointly or individually, referred as “Affiliated Entities”.

(the full and exhaustive list of Affiliated Entities is included in Attachment 4 of the present CA).

relating to the Action entitled

*Accelerate 9 Positive Clean Energy Districts*

in short

ASCEND

Hereinafter referred to as “Project”

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Granting Authority as part of the Horizon Europe – the Framework Programme for Research and Innovation (2021-2027)

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 European Commission (hereinafter “Grant Agreement”)

The Parties are aware that this Consortium Agreement is based upon the updated DESCA<sup>1</sup> model Consortium Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

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<sup>1</sup> See: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>

## Section 1 Definitions

### 1.1 Definitions

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

### 1.2 Additional Definitions

#### *“Consortium Plan”*

Consortium Plan means the Description of the Action (DoA) and the related agreed budget as first defined in the Grant Agreement and which may be updated by the Steering Committee.

#### *“Granting Authority”*

Granting Authority means the European Commission that is funding the Project.

#### *« Party »*

An entity which is a direct signatory of this Consortium Agreement (this specifically excludes subcontractor, Affiliate to a Party and other Affiliated Entity).

#### *“Associated Partner”*

Associated Partners are entities which participate in the Project, implementing parts of the action but without receiving EU funding. They are not Grant Agreement signatories; they cannot charge costs or contributions to the Project and the costs for their tasks are not eligible.

#### *“Affiliate”*

Affiliate of a Party means any legal entity that is:

- Under the direct or indirect control of a Party, or
- Under the same direct or indirect control as the Party, or
- Directly or indirectly controlling a Party

“Control” may take any of the following forms:

- The direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
- the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

However, the following relationships between legal entities shall not in themselves constitute controlling relationships:

- the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50% of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
- the legal entities concerned are owned or supervised by the same public body.

#### *“Affiliated Entity”*

Means a legal entity which has a legal link to a Party implying collaboration that is not limited to the action. The following entities are included:

- Any Affiliate of the above-mentioned Party performing certain action tasks of the Project directly, and is responsible for them towards the respective Party they are linked to
- Any other entity with a legal link to the Party performing certain action tasks of the Project directly and which is responsible for them towards the respective Party they are linked to. Such a link should:
  - Have not been created solely for the purpose of the present Consortium, and

- Be of a binding nature: i.e. allow the above-mentioned Party to Control the Affiliated Entity.

### ***“Member”***

A Member is a party which is in a specific Consortium Body apart from Parties which are only part of the General Assembly and the Advisory Board.

### ***“Third Party”***

Means any entity which is not a signatory to this Consortium Agreement.

### ***“Defaulting Party”***

Defaulting Party means a Party which the Steering Committee has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Section 4.4.3 *Breach* of this Consortium Agreement.

### ***“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 impossible, significantly delayed, or require significant additional financial or human resources.

*For exploitation of own Results:*

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

### ***“Software”***

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

### ***“Background”***

Background means any data, intellectual property, know-how, software or information - whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights - that:

- a. is held by the beneficiaries before they acceded to the Agreement, and
- b. is needed to implement the action or exploit the Results.

### ***“Results”***

Results means any outcome, data, know-how or information – whatever its form or nature (tangible or intangible) including any right such as intellectual property rights – that is created as part of, and during the Project.

Thus, Result includes the tangible (e.g. prototypes, micro-organisms, source code and processed earth observation images) and intangible IP outcomes of the Project. Anything generated outside the Project (i.e. before, after or in parallel with the Project) do not constitute Result.

### ***“Access Rights”***

Access Rights means rights to use Results or Background under the terms and conditions laid down in this Agreement.

### ***“Indirect Utilisation”***

Indirect Utilisation means that Access Rights for Exploitation granted pursuant to this Consortium Agreement and the Grant Agreement shall include the right for a Party and its Affiliates to whom such Access Rights are granted to have a Third Party make, only for the account of and for the use, sale or other disposal by the Party and such Affiliates, products and/or services, provided that the substantial

portion of the specifications of such products and/or services has been designed by or for such Party and such Affiliates.

#### *“Dissemination”*

Dissemination means the act of disclosing Results to the public by appropriate means (other than those resulting from protecting or exploiting the Results), including, but not limited to, scientific publications (in any medium).

#### *“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 standardising activities.

#### *“Fair and Reasonable Condition”*

Fair and Reasonable Conditions means appropriate conditions, including possible financial terms or royalty free conditions, considering the specific circumstances of the request for access, for example the actual or potential value of the Results or Background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged.

#### *“Coordination Team”*

Coordination Team means the Project Coordinator (SPL LYON CONFLUENCE), the Innovation Manager (BLUE-SIGHT CONSEIL) and the Administrative & Quality Manager (ODYSSEES).

#### *“Consortium Body”*

Means any of the following: General Assembly, Advisory Board, Steering Committee, Core Group, City Board.

#### *“Legitimate Interest”*

Legitimate Interest means a Party's interest of any kind, for instance but not limited to an important commercial interest which may be claimed in the cases provided for in this Consortium Agreement such as:

- (i) for Protection the Party must show that failure to take account of its interest would result in its suffering disproportionately high level of harm,
- (ii) for Dissemination the Party must declare it considers that its legitimate interests in relation to its Results or Background could suffer disproportionately great harm, or
- (iii) for Access Rights the Party must declare that granting any Access Rights to Background could infringe third party rights.

#### *“Force Majeure”*

Force majeure means any situation or event that:

- a. prevents either party from fulfilling their obligations under the Agreement,
- b. was unforeseeable, exceptional situation and beyond the parties' control,
- c. was not due to error or negligence on their part (or on the part of other participants involved in the action), and
- d. proves to be inevitable in spite of exercising all due diligence.

#### *“Mutual Insurance Mechanism”*

The Mutual Insurance Mechanism is a compulsory insurance scheme to cover the risk associated with non-recovery of sums due by the beneficiaries.

## 1.3 Common Acronyms

CB: City Board

CG: Core Group  
EC: European Commission  
LHC: Lighthouse City  
MC: Multiplier City  
GA: Grant Agreement  
PC: Project Coordinator  
SC: Steering Committee  
SP: Solution Packages  
WPL: Work Package Leader  
WP1: Project Management  
WP2: Lyon PCED Demonstrator  
WP3: Munich PCED Demonstrator  
WP4: Amplifying PCED Results for LHCs & MCs  
WP5: Scaling up Solution Packages  
WP6: Monitoring, Impact Assessment & Evaluation  
WP7: Collaboration with Projects, Cities, Networks  
WP8: Communication, Dissemination & Engagement

## 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.

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

### 3.2 *Duration and termination*

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

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

If the Grant Agreement

- is not signed by the Granting Authority or a Beneficiary, or
- is terminated,
- or if a Beneficiary'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 3.3 *Survival of rights and obligations* of this Consortium Agreement.

If an Associated Partner's participation in the Project is terminated, its participation in this Consortium Agreement may be terminated subject to the provisions surviving the expiration or termination under this Consortium Agreement.

### 3.3 *Survival of rights and obligations*

The provisions relating to Results, Access Rights and confidentiality, for the time period mentioned therein, as well as for liability, Dissemination, 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 Project incurred prior to the date of termination, unless otherwise agreed between the Steering Committee and the leaving Party. This includes the obligation to provide all necessary input, deliverables and documents for the period of its participation.

## Section 4 Responsibilities of Parties

### 4.1 General Principles

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

Each Party undertakes to notify promptly the Granting Authority and the other Parties, 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 responsibly manage the access of its employees to the EU Funding & Tenders Portal.

Each Party shall make its best endeavour to ensure the accuracy of any information or materials it supplies to the other Parties.

If several Parties perform certain action tasks of the Project together, such Parties shall in good faith agree on respective cooperation principles (including relevant Affiliated Entities as the case may be) with respect to the relevant action tasks including, their respective scope of work, the relevant Background, the dealing with relevant Results.

### 4.2 Specific responsibilities for Associated Partner(s)

Associated Partner(s) shall ensure its/their own funding or the implementation of the Project. For the avoidance of doubt, Associated Partner(s) shall not be subject to the financial provisions set out in the Grant Agreement and Section 7 (Financial provisions) of this Consortium Agreement.

However, certain terms and conditions of the Grant Agreement and its Annexes are applicable to the Associated Partner(s), as indicated below:

The Coordinator shall share a copy of the signed Grant Agreement and information on any amendments with the Associated Partner(s).

The Associated Partner(s) hereby commit(s) to implement the Project tasks attributed to it/them in Annex 1 of the Grant Agreement.

In addition, the Associated Partner(s) hereby commit(s) especially to the following articles of the Grant Agreement and related regulations of Annex 5:

- Proper implementation of the action tasks (Article 11)
- Conflicts of interest (Article 12)
- Confidentiality and security (Article 13)
- Ethics and values (Article 14)
- Visibility (Article 17.2)
- Specific rules for carrying out the action (Article 18)
- Information obligations (Article 19)
- Record-keeping (Article 20)

The Associated Partner(s) support(s) the Parties regarding their exploitation, dissemination and Open Science obligations and commit(s) to contribute to the technical and continuous reporting during and after the implementation of the Project.



Furthermore, the Associated Partner(s) hereby explicitly agree to cooperate with and grant access to their premises and information to the bodies according to Article 25 of the Grant Agreement (the Granting Authority, the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO), the European Court of Auditors (ECA)), so that these bodies can carry out checks, reviews, audits and investigations also towards the Associated Partner(s).

Any Associated Partner from a non EU-country undertakes to comply additionally with any other obligation arising from Art. 10.1 of the Grant Agreement.

In case of termination or being declared a Defaulting Party, an Associated Partner shall, within the limits specified in Section 5.2 of this Consortium Agreement, bear any reasonable and justifiable costs occurring to the other Parties for performing this Associated Partners tasks and the costs for additional efforts necessary to implement the Project.

Should the Associated Partner(s) be obliged to sign a separate agreement concerning its funding for the Project, it is the responsibility of the Associated Partner to ensure such agreement is not in conflict with this Consortium Agreement and/or the Grant Agreement.

### **4.3 Breach**

In the event that the Steering Committee 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 Steering Committee, will give formal notice 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 substantial and is not remedied within that period or is not capable of remedy, the Steering Committee may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

The evaluation of the nature of the breach, particularly if it could be qualified as a substantial breach or not, is up to the SC. The SC shall execute such evaluation in good faith.

### **4.4 Involvement of Third Parties**

A Party that enters a subcontract or otherwise involves Third Parties (including but not limited to Affiliates) 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. It must 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.

Any Parties involving Third Parties must ensure that Access Rights of the other Parties regarding Background and Results are not impacted.

### **4.5 Specific responsibilities regarding data protection**

Where necessary, the Parties shall cooperate in order to enable one another to fulfil legal obligations arising under applicable data protection laws (the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and relevant national data protection law applicable to said Party) within the scope of the performance and administration of the Project and of this Consortium Agreement.

In particular, the Parties shall, where necessary, conclude a separate data processing, data sharing and/or joint controller agreement before any data processing or data sharing takes place.

## 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.

Therefore:

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- 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 Affiliates) exercising its Access Rights.

### 5.2 Limitations of contractual liability

#### 5.2.1 GENERAL PRINCIPLES

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, income, interest, savings, production and business opportunities; lost contracts, goodwill, and anticipated savings; loss of or damage to reputation or to data; costs of recall of products; or any type of indirect, incidental or special loss or damage, provided such loss or damage was not caused by a wilful act.

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 and in case of Associated Partners to once or the total estimated costs as budgeted in the projects proposal for the individual Associated Partner.

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

In case of termination or being declared a Defaulting Party, Associated Partner shall, within the limits specified in section 5.2 of this Consortium Agreement, bear any reasonable and justifiable costs occurring to the other Parties for performing this Associated Partner's tasks and the costs for additional efforts necessary to implement the Project, mutatis mutandis as if the Associated Partner was Beneficiary in the Grant Agreement.

Moreover, an Associated Partner is obliged to hold harmless the other Parties for any claim of the Granting Authority against them, as far as a loss has been caused by this Associated Partner's actions or omissions by wilful act or gross negligence during Grant Agreement preparation, Project implementation or after Project end. Regarding such claims the Associated Partner's special liability is limited to once the amount of its total budget as indicated in Annex 1 of the Grant Agreement, mutatis mutandis as if the Associated Partner was a Beneficiary in the Grant Agreement.

#### 5.2.2 EXCEPTIONS TO LIMITATIONS OF CONTRACTUAL LIABILITY

The exclusions and limitations of liability stated in Section 5.2.1 shall not apply in respect of any death, injury to natural persons caused by the gross negligence or wilful act of such Party, its directors, employees, agents and subcontractors or wilful breach by a Party of any obligation accepted under the Grant Agreement and this Consortium Agreement, or otherwise insofar as mandatory applicable law overrides such exclusions and limitations.

### **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 prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure.

Each Party will notify the Steering Committee 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 Steering Committee. Compensation claims shall be excluded in case of Force Majeure.

## Section 6 Governance structure

### 6.1 General structure

#### 6.1.1 GENERAL ORGANISATION PRINCIPLES

The project organisation principles aim to describe how the Project will be managed to achieve the planned objectives by considering the relations with various stakeholders at different steps of the Project.

The role and tasks of the mentioned bodies and organisations, as well as the specific project management roles are described below.

The key organisation levels identified within the ASCEND project are described below:

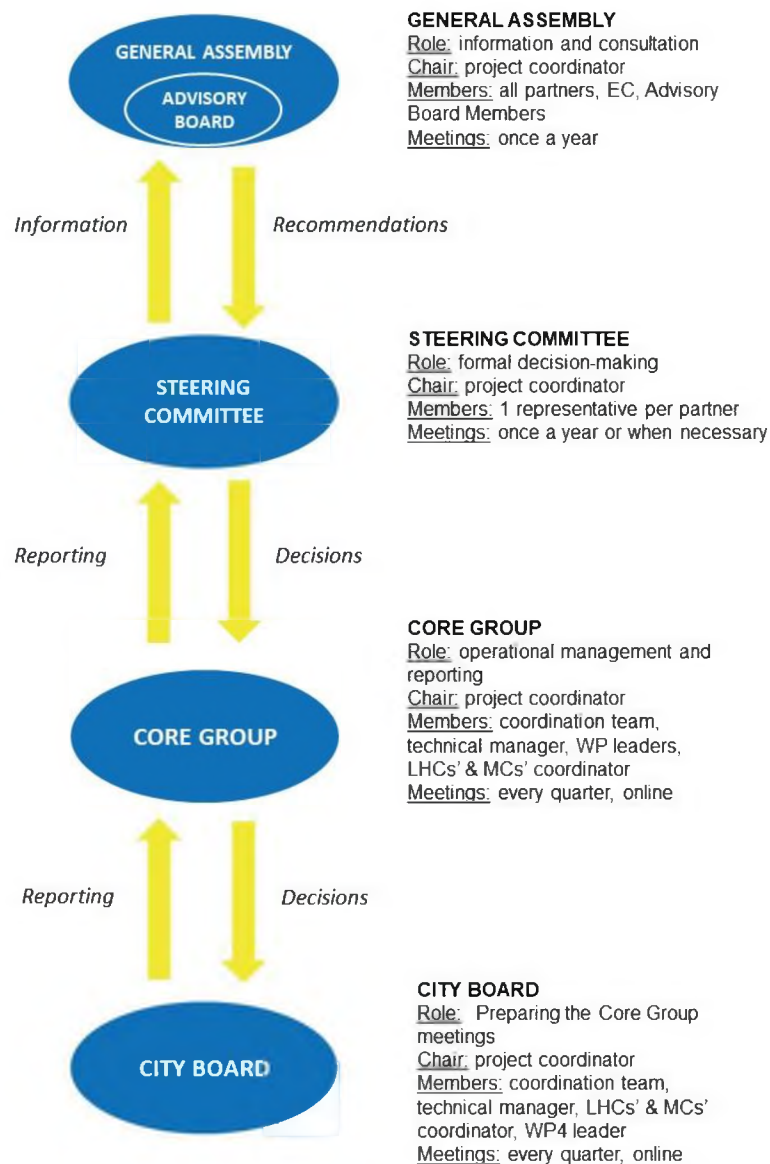


Figure 1 - ASCEND Governance structure

#### 6.1.1.1 *General Assembly*

The General Assembly is a structure dedicated to information exchange at Project level. The General Assembly is chaired by the Project Coordinator. All Parties and Affiliated Entities and the Advisory Board are members of the General Assembly, as well as associated stakeholder and they can be represented by more than one person.

The Project Officer (CINEA contact point who accompanies the consortium throughout the project implementation) shall be invited to attend the General Assembly.

The General Assembly provides Parties the opportunity to share views and progress across cities, topics and activities. This approach is crucial for such an innovative project.

It will meet once a year back-to-back with a Steering Committee meeting. During this meeting, progress within WPs and main achievements will be presented.

#### 6.1.1.2 *Steering Committee (SC)*

The Steering Committee is the decision-making body of the Consortium gathering all Parties. The objective of the SC is to make decisions on the main issues of the Project, especially regarding financial matters, resources, intellectual property rights, changes to the management plan, the identification of a breaching Party and evolution of the Consortium. The SC can be consulted all along the Project for important decisions (one vote per Party).

All proposals made by the Core Group that require voting shall be considered and decided upon by the SC.

The voting rules, quorum and process are detailed in Section 6.2.3 *Voting rules and quorum*.

At least once a year, a SC meeting will be organised and moderated by the PC. An internal review of the project regarding milestones, deliverables, budget and risks will be carried out. An action list will be issued following the SC meeting.

#### 6.1.1.3 *Core Group (CG)*

The Core Group (CG) will be the supervisory body for the execution of the Project which shall report to and be accountable to the SC. The CG will be chaired by the PC and gather all Work Package Leaders (WPLs), the Technical Manager, the Innovation Manager, and the Administrative & Quality Manager. The CG will mainly deal with technical matters or any issues directly related to the progress in WPs. The CG has the responsibility to alert the SC in case of divergence in the performance of work programme. The CG will take decisions related to day-to-day management but shall report all other matters requesting position from Parties, strategic analysis, formal decision-making, etc. to the SC. In particular, the CG will:

- Propose issues to be handled by the SC and be responsible for the proper execution and implementation of the SC's decisions.
- Monitor the implementation of the Project and collect information on its progress.
- Help the Parties identify intellectual property issues arising from the tasks carried out during the Project.

CG meetings will be organised every quarter.

#### 6.1.1.4 *City Board (CB)*

The City Board (CB) will meet to present the implementations and progress, the challenges faced and the results in MCs and LHCs. The City Board will enable the Project to reflect the views of local policy makers and public authorities.

The CB will be chaired by the Project Coordinator. It will gather the Technical Manager, the Innovation Manager, the Administrative & Quality Manager, the local coordinators of both LHCs and MCs, and the WP4 leader.

City Board meetings will be organised every quarter.

#### 6.1.1.5 *Advisory Board (AB)*

The Advisory Board (AB) is meant to make the link between the Solution Packages' creators and the cities. It will gather external experts, especially financial ones, and aims at creating and testing innovative solutions.

The AB will be led by the Innovation Manager.

The Advisory Board will be constituted at the beginning of the Project with invitations to targeted external experts. During the lifetime of ASCEND, the Project Coordinator or Innovation Manager may require a physical and/or online meeting with the Advisory Board, managed by the Innovation Manager, to which the Technical Manager, the Administrative & Quality Manager, the Project Coordinator will be invited; as well as relevant WP Leaders and other Parties depending on the agenda. The AB members will participate, upon invitation, in the General Assembly meetings to get information on the Project progress and achievements and provide recommendations.

The Coordinator will ensure that a non-disclosure agreement is executed between all Parties and each AB member.

Its terms shall be not less stringent than those stipulated in this Consortium Agreement, and it shall be concluded no later than 30 days after their nomination or before any confidential information will be exchanged/disclosed, whichever date is earlier.

By way of exception to Section 6.1.2.1.2 below, the Parties hereby mandate the Coordinator to execute, in their name and on their behalf, a non-disclosure agreement (hereafter "NDA") with each member of the AB, in order to protect Confidential Information disclosed by any of the Parties to any member of the AB. The NDA for the AB members is enclosed in Attachment 5. The mandate of the Coordinator comprises solely the execution of the NDA in Attachment 5.

The Innovation Manager shall write the minutes of each AB meeting.

The Project Coordinator shall monitor the implementation of the AB's suggestions.

#### 6.1.2 BREAKDOWN OF PROJECT STRUCTURE AND RESPONSIBILITIES

The Project organisation breakdown structures and responsibilities between the Parties are described below:

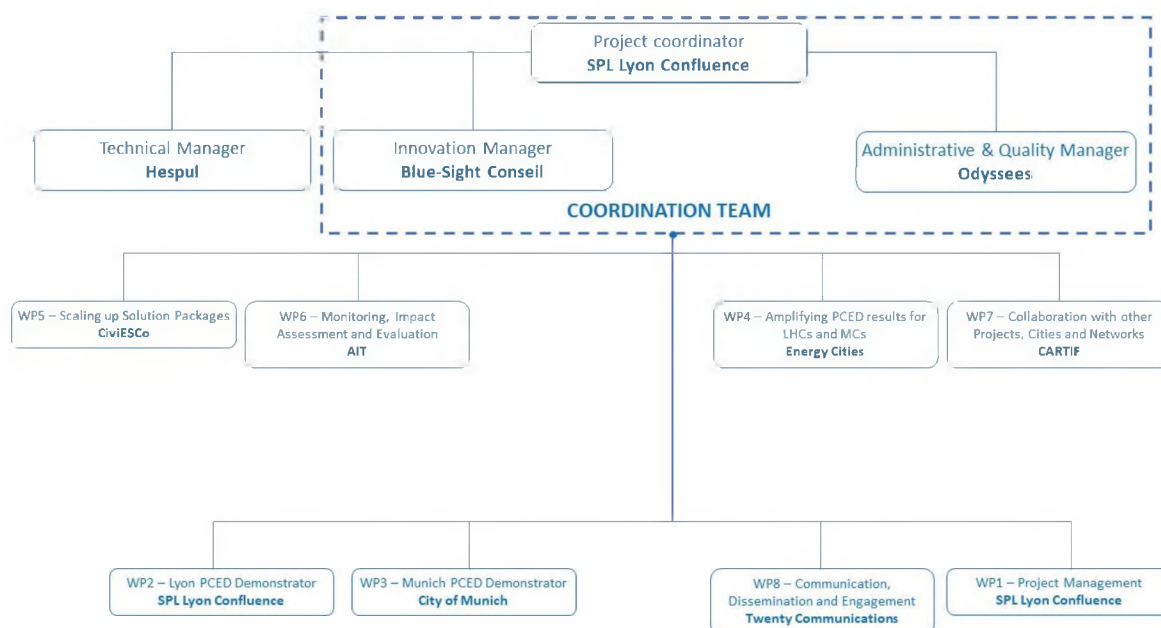


Figure 2 - ASCEND Organisation Breakdown Structure

#### 6.1.2.1 Project Coordinator (PC)

##### 6.1.2.1.1 DEFINITION AND GENERAL RESPONSIBILITIES

The Project Coordinator (SPL LYON CONFLUENCE) is the legal entity acting as the intermediary between the Parties and the Granting Authority. The PC 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 PC will be responsible for the coordination of the Parties and will act as the final validation instance for outputs and deliverables.

The Project Coordinator will lead the Project. This means that it will organise and chair the General Assembly, the Steering Committee, the Core Group and the City Board meetings. It will be responsible for the dissemination of information, Results and feedbacks towards the Parties.

It will be the interface to the European Commission (Project Officer and Financial Officer/Legal Officer when necessary) for which it will be the main contact point, including the distribution of funds to the Parties, and answering all formal requests.

The Project Coordinator is in regular contact with the Work Package leaders (via emails or phone calls) and is kept informed of the status of the work progress and is warned of any deviations or risks, which may occur.

For administrative tasks regarding reporting, budget management, and implementation of administrative rules & procedures, the Project Coordinator is supported by the Administrative & Quality Manager (ODYSSEES). Both will oversee the day-to-day management of the Project and shall work closely with the Work Package Leaders.

##### 6.1.2.1.2 SPECIFIC TASKS

As such the Project Coordinator is responsible for the following tasks or shall be responsible for ensuring that the following tasks are done under his supervision:

- monitoring compliance by the Parties with their obligations set forth this Consortium Agreement and the Grant Agreement.

- keeping the contact list of Members and other contact persons updated and available.
- collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Granting Authority.
- transmitting documents and information connected with the Project to any other Parties concerned.
- administering the financial contribution of the Granting Authority and fulfilling the financial tasks described in Section 7.3 *Payments*.
- providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.
- organising and managing the relation with external stakeholders with the help of the Innovation Manager as well as the WP7 leader (CARTIF) and the WP8 leader (TWENTY COMMUNICATIONS).
- elaborating, updating and making good use of the elements needed for the management procedures of the work, including and not limited to: Project management plan, master schedule and monitoring tools, Project quality plan, risk register, etc.

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 Granting Authority in time.

If the Coordinator fails in its coordination tasks, the Steering Committee may propose to the Granting Authority to change the Coordinator in a request for amendment.

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.

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

#### 6.1.2.2 *Technical Manager*

The Technical Management, a **complementary** role to general project coordination, will be ensured by HESPUL ASSOCIATION. The Technical Manager will provide the Parties with an overarching scientific and technical approach on the Project. It will support synergies in the activities as well as a coherent approach to the execution of the tasks involved. The role of the Technical Manager will include:

- The overview of progress within Work Packages including monitoring of technical indicators, verification of the quality, capacity to meet deadlines.
- The technical review of the work performed by the Parties including deliverables.
- The evaluation of risks related to the technical WPs.
- The coordination of the technical sections of the reports and deliverables to be submitted to the EC.
- The resolving of conflicts relating to technical issues.
- The activities related to reporting on technical progress during project meetings such as the General Assembly, Steering Committee and Core Group meetings.

#### 6.1.2.3 *Administrative & Quality Manager*

The Administrative & Quality Manager will support the Project Coordinator for all administrative aspects (see above) and will oversee the Project's implementation control and quality procedures. This role will be taken by ODYSSEES. The WPLs will then monitor the correct implementation of the quality procedures in each WP.

The role of the Administrative & Quality Manager will include:



- Contribution to the preparation and delivery of the quality plan; the quality plan will be the reference for the Project quality monitoring and control. It will describe in detail the internal procedures for decision process, documents reviewing, etc. It includes templates for minutes of meeting, deliverables, periodic reports, costs statements, etc.
- The creation and maintenance of the Project's collaborative platform and other tools, in order to provide the electronic services for storing and exchanging all information, documents, news, etc.
- Contribution to the definition of the deliverable reviewing method and procedure; a peer-review process will be implemented, with a table containing the organisations and names responsible for reviewing each strategic deliverable. The reviewers' table will be included in the Project quality plan.
- Ensuring quality check of each deliverable before submission to the EC.

#### 6.1.2.4 *Innovation Manager*

The Innovation Manager will ensure that the innovations implemented in the target districts will be scaled up and replicate. The Innovation Manager will also manage the Advisory Board and steer the development of the exploitation plan. This role will be taken by BLUE-SIGHT CONSEIL.

The role of the Innovation Manager will include:

- Setting-up of the innovation management team with key partners.
- Responsibility for all innovation and exploitation tasks: IP management, market forecast and analysis, risk management, potential plan of use for dissemination of the foreground.
- Organisation of the knowledge flow between the Solution Packages' owners and the cities.

#### 6.1.2.5 *Work Package Leaders*

WP Leaders will be responsible for managing Parties and activities within their allocated scope, and for coordinating the work between the different tasks of the WP. They are also in charge of mitigating and reporting all potential risks affecting the Project, solving technical issues and actions allocated to their WP towards the Core Group. WP Leaders will also ensure the interfaces between their WP and other WPs where and when necessary.

#### 6.1.2.6 *Task Leaders*

Task leaders will be responsible for managing Parties and activities within a specific task. They will be in charge of mitigating and reporting all potential risks affecting the Project, solving technical issues and actions allocated to their task towards the WP Leader (and Core Group if necessary).

## 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:

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

### 6.2.2 PREPARATION AND ORGANISATION OF MEETINGS

#### 6.2.2.1 *Convening meetings*

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

|  |                         |                              |
|--|-------------------------|------------------------------|
|  | <b>Ordinary meeting</b> | <b>Extraordinary meeting</b> |
|--|-------------------------|------------------------------|

|                           |                                       |  |
|---------------------------|---------------------------------------|--|
| <b>General Assembly</b>   | Once a year, face-to-face or remotely | At any time upon written request of the SC or 1/3 of the Members of the General Assembly |
| <b>Steering Committee</b> | Once a year, face-to-face or remotely | At any time upon written request of any Member of the SC                                 |
| <b>Core Group</b>         | Quarterly, face-to-face or remotely   | At any time upon written request of any Member of the CG                                 |
| <b>City Board</b>         | Quarterly, face-to-face or remotely   | At any time upon written request of any Member of the CB                                 |
| <b>Advisory Board</b>     | Once a year, face-to-face or remotely | At any time upon written request of the PC or Innovation Manager                         |

#### 6.2.2.2 Notice of a meeting

The chairperson of a Consortium Body shall give notice in writing form, including but not limited to e-mail, 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:

|                           | <b>Ordinary meeting</b> | <b>Extraordinary meeting</b> |
|---------------------------|-------------------------|------------------------------|
| <b>General Assembly</b>   | 90 calendar days        | 30 calendar days             |
| <b>Steering Committee</b> | 14 calendar days        | 7 calendar days              |
| <b>Core Group</b>         | 21 calendar days        | 10 calendar days             |
| <b>City Board</b>         | 21 calendar days        | 10 calendar days             |
| <b>Advisory Board</b>     | 21 calendar days        | 10 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 agenda no later than the minimum number of days preceding the meeting as indicated below:

|                    |   |
|--------------------|---|
| General Assembly   | 21 calendar days, 10 calendar days for an extraordinary meeting |
| Steering Committee | 30 calendar days  |
| Core Group         | 7 calendar days   |
| City Board         | 7 calendar days   |
| Advisory Board     | 7 calendar days   |

#### 6.2.2.4 Adding agenda items

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

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

|                    |  |
|--------------------|--|
| General Assembly   | 14 calendar days, 7 calendar days for an extraordinary meeting |
| Steering Committee | 7 calendar days  |
| Core Group         | 2 calendar days  |
| City Board         | 2 calendar days  |
| Advisory Board     | 2 calendar days  |

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

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 *Voting rules*)

and *quorum* below) of all Members of the Consortium Body. Such document shall include the deadline for responses.

Meetings of each Consortium Body may also be held by teleconference or other telecommunication means. In such event, it is understood between the Parties that an electronic voting shall be governed under the terms and provisions as set forth in this Consortium Agreement, including, but not limited to *Voting rules and quorum* and *Veto rights* section below.

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

### 6.2.3 VOTING RULES AND QUORUM

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 with a period of fourteen (14) calendar days an extraordinary meeting which shall be entitled to decide even if less than the *quorum* of Members is present or represented.

Each Member of a Consortium Body present or represented in the meeting shall have one vote. Abstention votes cannot be assimilated as votes against.

In the event of split vote, Project Coordinator's vote always prevails.

Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast on the first round of voting. In the second round of voting, simple majority vote shall be sufficient. The voting members can cast a vote of "Approve", "Not Approve" or "Abstain".

Defaulting Parties can not vote.

The Associated Partner(s) is/are excluded from voting on and vetoing the following decisions of the Steering Committee and therefore are not counted towards any respective *quorum*:

- Financial changes to the Consortium Plan
- Distribution of EU contribution among the Beneficiaries
- Proposals for changes to Annex 2 of the Grant Agreement to be agreed by the Granting Authority
- Decisions related to Section 7.1.4 of this Consortium Agreement

### 6.2.4 VETO RIGHTS

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

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

When a decision has been taken on a new item added to the agenda before or during the meeting, a Party may veto such decision during the meeting and within 15 calendar days after receipt of the draft minutes of the meeting. This will also apply for Parties which cannot attend the respective meeting.

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.

A Party may not 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 Project or the consequences of them.

A Party requesting to leave the Project cannot veto decisions relating thereto.

#### 6.2.5 MINUTES OF MEETINGS

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

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

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 without any delay.

### 6.3 *Specific operational procedures for the Consortium Bodies*

#### 6.3.1 STEERING COMMITTEE

In addition to the rules described in Section 6.2 *General operational procedures for all Consortium Bodies*, the following rules apply:

- The SC shall consist of one representative of each Party (hereinafter Steering Committee Member).
- Each Steering Committee Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.1.2 *Decisions* below.

##### 6.3.1.1 *Members*

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

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

##### 6.3.1.2 *Decisions*

The SC 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 Core Group shall also be considered and decided upon by the SC.

The following decisions shall be taken by the SC:

##### Content, finances and intellectual property rights

- Proposals for changes to Annexes 1 (Description of the Action) and 2 (Estimated budget) of the Grant Agreement to be agreed by the Granting Authority.
- Changes to the Consortium Plan.
- Modifications to Attachment 1 (Background Included) upon approval by the Owner of the Background (except when stated otherwise in the present Consortium Agreement).

- Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3 *Transfer of Results*).
- Additions to Attachment 4 (Identified Affiliated Entities according to Section 9.5).

#### Evolution of the Consortium:

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

In the case of abolished tasks, as a result of a decision of the SC, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

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

### 6.3.2 CORE GROUP

In addition to the rules in Section 6.2 *General operational procedures for all Consortium Bodies*, the following rules apply:

#### 6.3.2.1 *Members*

The CG shall consist of the PC, the Technical Manager, the Innovation Manager, the Administrative & Quality Manager, the WPLs, the LHCs' and MCs' coordinators.  
(hereinafter CG Members).

The Coordinator shall chair all meetings of the CG, unless decided otherwise by a majority of two-thirds (2/3).

#### 6.3.2.2 *Minutes of meetings*

Minutes of CG meetings, once accepted, shall be sent by the Coordinator to the SC Members for information.

The CG shall be responsible for the proper execution and implementation of the decisions of the SC.

The CG shall prepare the meetings, propose decisions and prepare the agenda of the SC according to Section 6.3.1.2 *Decisions*.

It shall seek a consensus among the Parties.

#### 6.3.2.3 *Tasks*

The CG shall monitor the effective and efficient implementation of the Project. Therefore, the CG shall collect information at least every six (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 SC.

The Core Group Members shall also:

- support the Coordinator in preparing meetings with the Granting 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 Granting Authority in respect of the procedures of the GA Article 17.

In the case of abolished tasks as a result of a decision of the SC, the CG shall advise the SC 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.

## Section 7 Financial provisions

The regulations under Section 7 *Financial Provisions* do not apply to the Associated Partner(s).

### 7.1 General principles

#### 7.1.1 DISTRIBUTION OF FINANCIAL CONTRIBUTION

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

- The Consortium Plan,
- The approval of reports by the Granting Authority, and
- The provisions of payment in Section 7.3 *Payments*.

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

#### 7.1.2 JUSTIFYING COSTS

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs (and those of its Affiliated Entities, if any) with respect to the Project towards the Granting 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 Granting Authority.

#### 7.1.3 FUNDING PRINCIPLES

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

A Party may receive an additional contribution if, at the end of the project, the total eligible costs claimed allow a reallocation of unspent EU contribution among the Consortium Parties. This has to be decided at the Steering Committee.

#### 7.1.4 EXCESS PAYMENTS

A Party has received excess payment:

- (a) if the payment received from the Coordinator exceeds the amount declared or
- (b) if a Party has received payments but, within the last year of the Project, its real Project costs fall significantly behind the costs it would be entitled to according to the Consortium Plan.

In case a Party has received excess payment, the Party has to inform the Coordinator and return the relevant amount to the Coordinator without undue delay. In case no refund takes place within 30 days upon request for return of excess payment from the Coordinator, the Party is in substantial breach of the Consortium Agreement.

Amounts which are not refunded by a breaching Party and which are not due to the Granting Authority, shall be apportioned by the Coordinator to the remaining Parties pro rata according to their share of total costs of the Project as identified in the Consortium Budget, until recovery from the breaching Party is possible.

### 7.1.5 REVENUE

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

### 7.1.6 FINANCIAL CONSEQUENCES OF THE TERMINATION OF THE PARTICIPATION OF A PARTY

A Party leaving the consortium shall refund to the Coordinator any payments it has received except the amount of contribution accepted by the Granting Authority or another contributor.

In addition, a Defaulting Party shall, within the limits specified in Section 5.2 *Limitations of contractual liability* of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform the leaving Party's task and necessary additional efforts to fulfil them as a consequence of the Party leaving the consortium. The SC should agree on a procedure regarding additional costs which are not covered by the Defaulting Party or the Mutual Insurance Mechanism.

## 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 THE 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 Granting 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 Article 22 of the GA, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount less the amounts retained by the Granting Authority for the Mutual Insurance Mechanism and for the final payment.

### 7.3.2 PAYMENT SCHEDULE

The transfer of the initial pre-financing, the additional pre-financings (if any) and interim payments to Parties will be handled in accordance with Article 21.2. and Article 7 of the Grant Agreement following this payment schedule:

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

The Coordinator is entitled to withhold any payments due to a Party identified by the Steering Committee 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 except the costs already claimed by the Defaulting Party and accepted by the Granting Authority. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Granting Authority.

## Section 8 Results

### 8.1 Ownership of Results

Results are owned by the Party who carried out the work generating the Results or on whose behalf such work was carried out by subcontractors.

If an external researcher or a Third-Party is entitled to claim rights to the Results pursuant to applicable law, the Party concerned shall ensure that it complies with its obligations under the Grant Agreement and this Consortium Agreement, in particular, but not limited to Joint Ownership, Dissemination and Access Rights to Results. In particular, such Party shall ensure that the rights of the other Parties under the Consortium Agreement and the Grant Agreement will not be affected by such claims.

### 8.2 Joint ownership

Joint ownership is governed by Grant Agreement Article 16.4 and its Annex 5, Section Ownership of results, with the following additions:

Unless otherwise agreed:

- each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research and teaching 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 licenses to third parties (without any right to sub-license), if the other joint owners are given:
  - (a) at least 45 calendar days advance notice; and
  - (b) Fair and Reasonable compensation.

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

### 8.3 Transfer of Results

Each Party may transfer ownership of its Results following the procedures of the Grant Agreement Article 16.4 and its Annex 5 Section Transfer and licensing of results, sub-section “Transfer of ownership”.

Transfer of Results to Affiliates should be in any case notified without delay to the SC.

Each Party may identify in Attachment 3 to this Consortium Agreement specific Affiliated Entity/ies and Affiliates it intends to transfer the ownership of any of its own Results with no need for further notification to the SC.

Each Party may transfer ownership of its own Results to any Affiliated Entity/ies and Affiliates it has identified prior to signature of this CA in Attachment 3 without prior notification to any other Party (including without limitation its share in Results that it owns jointly with another Party or Parties and all rights and obligations attaching to it, if not contradictory to any specific joint ownership agreement established regarding those joint result.)

(See Section 8.2 Joint ownership).

The transferring Party shall, however, inform the other Parties of such transfer at the time of the transfer, and shall ensure that the rights of the other Parties under the Consortium Agreement and the Grant Agreement will not be affected by such transfer.

Any addition to Attachment 3 after signature of this Agreement requires a decision of the Steering Committee.

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

Any transfer of ownership of Results made under this Section 8.3 *Transfer of Results* shall be made subject to the Access Rights, the rights to obtain Access Rights and the right to Disseminate Results that are granted to the other Parties and their Affiliates in the Grant Agreement and/or this Consortium Agreement. Therefore, each transferor shall ensure that such transfer does not prejudice such rights of the other Parties or their Affiliates, and the transferor shall pass on its obligations regarding the transferred Results to the transferee, including the obligation to pass them on to any subsequent transferee. The obligations under this Section 8.3 *Transfer of Results* apply for as long as other Parties have - or may request - Access Rights to Results, as provided in Section 9 *Access Rights* of this Consortium Agreement.

Each Party hereby waives any right to prior notification and to object to any transfer that is made in compliance with this Section 8.3 *Transfer of Results* and the Grant Agreement Article 16.4 and its Annex 5, Section Transfer of licensing of results, sub-section “Transfer of ownership”, 3rd paragraph.

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

For the avoidance of doubt, the confidentiality obligations set out in Section 10 apply to all dissemination activities described in this Section 8.4 as far as Confidential Information is involved.

### 8.4.1 DISSEMINATION AND OWNERS OF RESULTS

During the Project and for a period of one (1) year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 17.4 of the Grant Agreement and its Annex 5, Section Dissemination, subject to the following provisions.

Prior notice of any planned publication shall be given to the Steering Committee at least 15 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the GA in writing to the Coordinator and to the Party or Parties proposing the dissemination within 10 calendar days after receipt of the written notice. If no objection is made within the time limit stated above, the publication is permitted.

An objection is justified if:

- the protection of the objecting Party's Results or Background would be adversely affected
- the objecting Party's legitimate academic or commercial interests in relation to the Results or Background would be significantly harmed, or
- the proposed publication includes Confidential Information of the objecting Party.

The objection must include a precise request for necessary modifications.

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 30 calendar days from the time it raises such an objection. After 30 calendar days the publication is permitted, provided that the objections of the objecting Party have been resolved from the Publication as indicated by the objecting Party.

#### 8.4.2 DISSEMINATION OF ANOTHER PARTY'S UNPUBLISHED RESULTS OR BACKGROUND

A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published in accordance with the terms of this Consortium Agreement and the Grant Agreement.

#### 8.4.3 REUSE AND EXCERPT OF PERMITTED PUBLICATIONS

Section 8.4 *Dissemination* and owners of Results shall not apply for the reuse of publications already permitted at a prior time according to the terms of such section and the publication of excerpts of such publications.

Section *Dissemination of another Party's unpublished Results or Background* above shall also not apply for publications providing only basic information regarding the consortium and the main objectives of the scientific work of the consortium.

#### 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 which includes their Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

In accordance with Section 8.4.1 *Dissemination and owners of Results* of this CA, prior to notifying any planned publication and/or any planned Dissemination activity of Results, Parties shall undertake reasonable efforts to refrain from including in such planned publication and/or such planned Dissemination activity of any other Party's Confidential Information.

#### 8.4.5 USE OF NAMES, LOGOS OR TRADEMARKS

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

No Party could claim in by any means, any right of ownership or trademarks on the name of the Consortium or any of its elements.

#### 8.4.6 CONTRIBUTION TO STANDARDS

Regarding contribution of the Parties for incorporation of Results in any European or other standards it is recalled that the choice to contribute or not should be made in "good faith", regardless of the effectiveness of the Consortium Agreement over or not, except as explicitly provided in Annex 1 (Description of the action) of the Grant Agreement.

Be it that several Parties cannot reach a "good faith" agreement during the duration of the Consortium Agreement, they shall, prior to any legal action, present their claim before the Steering Committee so that it may act as a trusted mediator as described in Section 11.8 *Settlement of disputes*.

However, as a rule, no Party shall have the right to contribute to a standard or allow the contribution to a standard of any data which constitutes Result, Background or Confidential Information of another Party, even where such data is amalgamated with such first Party's Result, Background, or Confidential Information or other information, document or material. Any such contribution without such other Party's written agreement justifies, in addition to any other available remedies, an objection to the contribution by the Party concerned. If such an objection is raised, the contribution to the standard shall exclude the Results, Background or Confidential Information of the objecting Party.

## Section 9 Access Rights

### 9.1 Background included

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.

The Parties may amend by addition Attachment 1 from time to time due to developments and changes arising out of the Project. Any Party can propose to the Steering Committee to modify or amend its Background in Attachment 1 according to the terms of this Consortium Agreement.

### 9.2 General Principles

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.

Any Access Rights granted expressly by this Consortium Agreement exclude any rights to sublicense unless expressly stated otherwise in this CA or agreed in writing between the Parties concerned.

Access Rights shall be free of any administrative transfer costs.

Access Rights are granted on a non-exclusive basis, if not otherwise agreed between the parties. Access Rights are granted worldwide, if not otherwise agreed between the parties concerned.

Results and Background shall be used only for the purposes for which Access Rights to it have been granted and are subject to the conditions set forth in this CA.

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.

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

The Party requiring the granting of such Access Rights (the “Requesting Party”) shall make a written request to the Party (the “Granting Party”) from which it requires the Access Rights. The written request shall identify the Background and/or Result concerned and shall provide reasons why Access Rights to such Background and/or Result are needed for the Exploitation of such Results. Any such Access Rights shall only be granted upon the signature of a written agreement between the Granting Party and the Receiving Party and shall not be otherwise deemed granted.

Waivers of Access Rights are not valid unless in writing.

Unless agreed otherwise, Access Rights do not include the right to sublicense to Third Parties.

### 9.3 Access Rights for implementation

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

## 9.4 Access Rights for exploitation

### 9.4.1 GENERAL PRINCIPLES TO RESULTS

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

Access rights to Results for internal research activities and educational purposes shall be granted on a royalty-free basis unless otherwise agreed between the concerned Parties.

### 9.4.2 ACCESS RIGHTS TO BACKGROUND

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

### 9.4.3 ACCESS RIGHTS AFTER PROJECT TERMINATION

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

## 9.5 Access Rights for Affiliates

### 9.5.1 AFFILIATED ENTITIES/AFFILIATES ARE DEEMED TO HAVE ACCESS RIGHTS AS IF THEY WERE A PARTY

Affiliated Entities have Access Rights under the conditions of the Grant Agreement Article 16.4 and its Annex 5, Section "Access rights to results and background", sub-section "Access rights for entities under the same control", if they are identified in Attachment 4 (Identified Affiliated Entities) to this Consortium Agreement.

Such Access Rights must be requested by the Affiliated Entity from the Party that holds the Background or Results. 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 Fair and Reasonable conditions and upon written bilateral 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 / Affiliate are subject to the continuation of the Access Rights of the Party of which it is an Affiliated Entity / Affiliate, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Further, if an Affiliated Entity / Affiliate fails in any material respect to comply with the undertaking given by it as above and fails to rectify the non-compliance after being given a reasonable opportunity to do so, all Access Rights granted to it based upon that undertaking shall terminate.

The Parties shall provide to any Party requiring it at any moment in time during the Project a list of their Affiliates involved in the Project (to which access rights, access to Confidential Information, rights or

assignment of Background or Results have been granted or are in the process of being granted). Such list should be considered Confidential Information.

#### 9.5.2 CESSATION OF AFFILIATED ENTITIES/AFFILIATES

Any Access Rights granted to an Affiliated Entity/Affiliate terminate automatically at the time the Affiliate ceases to be an Affiliate or an Affiliated Entity ceases to be linked to a Party pursuant to Section 1.2 *Additional Definitions*.

The paragraph above shall not apply, however, in so far as the Background and/or the Results to which the Affiliated Entity/ Affiliate had been granted Access Rights to a) has been incorporated into the products, processes or services of such Affiliated Entity/ Affiliate; or b) has been amalgamated with such Affiliated Entity's/ Affiliate's know how. With respect to such Background and/or Results and upon request of such former Affiliated Entity/Affiliate, the Parties shall grant non-exclusive licenses to such former Affiliated Entity/Affiliate under such Background and/or Result for use in such former Affiliated Entity/ Affiliate products, processes and services upon fair and reasonable conditions.

The licenses or user rights the Affiliated Entity/ Affiliate, at the time of cessation of its Affiliated-Entity-Status/ Affiliate-Status, has already granted to any Party of this Consortium Agreement and/or its Affiliated Entity or Affiliate, shall remain unaffected by this cessation.

### 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

All information regarding Results developed before the accession of the new Party, shall be considered to be Background with regard to said new Party, and said 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 according to the provisions of this Agreement.

It may request Access Rights within the period of time specified in Section 9.4.3 *Access Rights after Project termination*.

### 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.

However, upon request of a leaving Party, the Steering Committee may decide with this Party, that such Access Rights will not be necessary. The Party shall then be exempted of above obligation.

#### **Consequences for sub-licences**

Be it that the Leaving Party may be involved in any sub-licenses agreement, the resulting consequences of said Party leaving the Project should be covered by the license agreement itself and shall not contradict this CA or the rights granted under this CA.

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

### 9.8.1 DEFINITIONS RELATING TO SOFTWARE

“Application Programming Interface” (API)

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

"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:

- (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;
- that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
- 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 Steering Committee to implement such introduction into the Consortium Plan.

However, the Steering Committee's approval is not required in the event either Party's Background (Attachment 1) includes Software, which are governed by Controlled License Terms. To the extent Background is governed by Controlled License Terms (see Attachment 1), such Background shall include references to the original Controlled License Terms. The Parties shall comply with such Controlled License Terms and each Party shall ensure for its Results that is in compliance with the Controlled License Terms.

## 9.8.3 ACCESS TO SOFTWARE

Access Rights to Software which is part of the Results shall comprise:

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

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

## 9.8.4 SOFTWARE LICENCE AND SUBLICENSING RIGHTS

### 9.8.4.1 *Object code*

#### 9.8.4.1.1 RESULTS – RIGHTS OF A PARTY

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

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

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

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

#### 9.8.4.1.2 RESULTS – RIGHTS TO GRANT SUBLICENCES TO END-USERS

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

buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code 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.

#### 9.8.4.2 *Background*

For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API which is Background for Exploitation, Access Rights exclude the right to sublicense (with the exception of sublicenses granted pursuant to Section 9.5 *Access Rights for Affiliates*). Such sublicensing rights may, however, be negotiated between the Parties, pursuant to Fair and Reasonable Conditions. If Background is governed by Controlled License Terms the terms shall apply.

#### 9.8.4.3 *Source code*

##### 9.8.4.3.1 *RESULTS – RIGHT OF A PARTY*

Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code which is Results for Exploitation, Access Rights to such Source Code, as far as Needed for the Exploitation of the Party's own Results, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, 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 Article, 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 *General Principles* of this Consortium Agreement.

##### 9.8.4.3.2 *RESULTS – RIGHTS TO GRANT SUBLICENCES TO END-USERS*

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

Further sublicensing of Source Code is explicitly excluded.

#### 9.8.4.4 *Background*

For the avoidance of doubt, where a Party has Access Rights to Source Code which is Background for Exploitation, Access Rights exclude the right to sublicense (with the exception of sublicenses granted pursuant to Section 9.5.1 *Affiliated Entities/Affiliates are deemed to have Access Rights as if they were a Party*). Such sublicensing rights may, however, be negotiated between the Parties, pursuant to Fair and Reasonable Conditions. If Background is governed by Controlled License Terms the terms shall apply.

#### 9.8.4.5 *Specific formalities*

Each sublicense granted according to the provisions of Section 9.8.4 (with the exception of sublicenses granted pursuant to Section 9.5.1 *Affiliated Entities/Affiliates are deemed to have Access Rights as if they were a Party*) 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 Disclosed information*

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” or “sensitive” 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 Confidential information after the project*

The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant 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 to any other legal entity 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;
- to apply for the security of Confidential Information at least the same degree of care as it applies for the security of its own Confidential Information (but in any case, shall apply not less than reasonable care); and
- to return to the Disclosing Party or destroy on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine-readable form to the extent practically possible. This shall not apply to copies of the electronically exchanged Confidential Information made as a matter of routine information technology back-up. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations, provided that the Recipient complies with the confidentiality obligations herein contained with respect to such copy.

### *10.3 Confidentiality towards Affiliates*

#### 10.3.1 GENERAL PRINCIPLES

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

- To any Affiliate insofar as strictly required for the proper carrying out of the Grant Agreement and/or this Consortium Agreement; or
- To any Third Party (including the public), insofar as strictly required by law for (i) technical reasons and (ii) permitted Exploitation of Results

With respect to any written permitted disclosure of any of the Confidential Information referred to in this Section above by a Receiving Party to its Affiliates and its subcontractors (if any), the Receiving Party will:

- ensure that appropriate arrangements are in place prior to any such disclosure, to protect the Confidential Information to a similar degree as provided in this Section 10; and
- use reasonable endeavours to ensure compliance with such arrangements.

The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees, Affiliates and/or subcontractor acting on its behalf 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 their contractual relationship.

Nothing in this Consortium Agreement shall prohibit or restrict any Party's right to develop, use or market products or services similar to or competitive with those of the other Party disclosed in the Confidential Information, as long as it shall not thereby breach this Consortium Agreement or the Grant Agreement.

Each Party acknowledges that the other Parties may already possess or have developed products or services similar to or competitive with those of the other Parties disclosed in the Confidential Information.

## 10.4 Applicability

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 in writing the Recipient that the Confidential Information is no longer confidential.
- the Confidential Information is communicated to the Recipient without any obligation of confidence by a Third Party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidence to the Disclosing Party.
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement.
- the Confidential Information, at any time, was developed by the Recipient or its Affiliates completely independently of any such disclosure by the Disclosing Party; or
- the Confidential Information was already known to the Recipient prior to disclosure or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.6 *Disclosure of confidential information* hereunder.

## 10.5 Alert duty

Each Recipient shall promptly inform the 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.

## 10.6 Disclosure of confidential information

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, or - in the case of an Associated Partner - with a reporting requirement from its national funding authority, 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.

## 10.7 Communication of confidential information to the Granting Authority

The confidentiality obligations under this Consortium Agreement and the Grant Agreement shall not prevent the communication of Confidential Information to the Granting Authority for the purposes of the Project.

## 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)
- Attachment 4 (List of Affiliated Entities according to Section 9.5)

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

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

### *11.2 No representation, partnership or agency*

Except as otherwise provided in Section 6.1.2.1 Project Coordinator (PC), 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 Formal and written notices*

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

Any change of persons or contact details shall be immediately communicated to the Coordinator by written notice. The address list shall be accessible to all Parties.

#### **Formal notices:**

If it is required in this Consortium Agreement (such as in (but not limited to)) Sections 4.3 Breach, 9.7 Access Rights for Parties entering or leaving the Consortium and 11.4 Assignment and amendments) 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 with acknowledgement of receipt.

#### **Written notice:**

Where written notice is required by this Consortium Agreement, this is fulfilled also by other means of communication such as e-mail with acknowledgement of receipt.

### *11.4 Assignment and amendments*

Except as otherwise provided under this Consortium Agreement or the Grant Agreement, no Party shall, without the prior written consent of the other Parties, assign or otherwise transfer, in whole or in part, any of its rights and obligations under this Consortium Agreement 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 6.3.1.2 *Decisions* require a separate written agreement to be signed between all Parties.

Such consent shall not be unreasonably conditioned, withheld or delayed when such assignment or transfer is in favour of another Party or an Affiliate of the assigning Party or one of the other Parties. Any Party may require reasonable conditions for giving such consent to prevent such transfer from adversely affecting its or its Affiliates' Access Rights.

### ***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.

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties.

The award of the arbitration will be final and binding upon the Parties.

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.

*12.1 SPL LYON CONFLUENCE*

Title:

Date:

Signature



**12.2 METROPOLE DE LYON**

Name:

Title:

Date:

Signature

**12.3 COMMUNE DE LYON**

Name:

Title:

Date:

Signature

**12.4 HESPUL ASSOCIATION**

Name:

Title:

Date:

Signature

*12.5 URBAN PRACTICES*

Name:

Title:

Date:

Signature

**12.6 ENERTECH**

Title:

Date:

Signature

## ***12.7 LANDESHAUPTSTADT MUNCHEN***

Name:

Title:

Date:

Signature

## ***12.8 UNICCORN GMBH***

Name:

Title:

Date:

Signature

## ***12.9 TECHNISCHE UNIVERSITAET MUENCHEN***

Name:

Title:

Date:

Signature



**12.10 ISARWATT EG**

Name:

Title:

Date:

Signature

### ***12.11 AVANCIS GMBH***

Name:

Title:

Date:

Signature

## ***12.12 SPECTRUM MOBIL GMBH***

Name:

Title:

Date:

Signature

### ***12.13 UNTERNEHMERTUM GMBH***

Name:

Title:

Date:

Signature

***12.14 MUNICIPALITY OF ALBA IULIA - PRIMARIA MUNICIPIULUI ALBA IULIA***

Name:

Title:

Date:

Signature

### ***12.15 VILLE DE CHARLEROI***

Name:

Title:

Date:

Signature

***12.16 AGÊNCIA DE ENERGIA DO PORTO***

Name:

Title:

Date:

Signature

***12.17 CMPEAE – EMPRESA DE ÁGUAS E ENERGIA DO MUNICÍPIO DO PORTO, EM***

Name:

Title:

Date:

Signature



## ***12.18 FUNDACAO DE SERRALVES***

Name:

Title:

Date:

Signature

*12.19 ASSOCIACAO PORTO DIGITAL*

Name:

Title:

Date:

Signature

***12.20 CESKE VYSOKE UCENI TECHNICKE V PRAZE***

Name:

Title:

Date:

Signature

**12.21 OPERATOR ICT AS**

Name:

Title:

Date:

Signature

Name:

Title:

Date:

Signature

## ***12.22 PRAZSKA DEVELOPERSKA SPOLECNOST***

Name:

Title:

Date:

Signature

**12.23 BUDAPEST FOVAROS ONKORMANYZATA - MUNICIPALITY OF BUDAPEST**

Name:

Title:

Date:

Signature

*12.24 BKK BUDAPESTI KOZLEKEDESI KOZPONT ZARTKORUEN MUKODO  
RESZVENYTARSASAG*

Name:

Title:

Date:

Signature

**12.25 ENERGY CITIES**

Name:

Title:

Date:

Signature



***12.26 STOCKHOLMS STAD – CITY OF STOCKHOLM***

Title:

Date:

Signature

***12.27 AUSTRIAN INSTITUTE OF TECHNOLOGY GMBH***

Name:

Date

Signature

Title:

Date

Signature

**12.28 FUNDACION CARTIF**

Name:

Title:

Date:

Signature

***12.29 UNIVERSITE DU LUXEMBOURG***

Name:

Title:

Date:

Signature



**12.30 BLUE-SIGHT CONSEIL**

Name:

Title:

Date:

Signature

### ***12.31 DATEN-KOMPETENZZENTRUM STÄDTE UND REGIONEN DKSR GMBH***

Name:

Title:

Date:

Signature

**12.32 CIVIESCO SRL**

Name:

Title:

Date:

Signature

**12.33 TWENTY COMMUNICATIONS SRO**

Name:

Title:

Date:

Signature



***12.34 FOUCHAULT THOMAS ILKKA - ODYSSEES***

Name:

Title:

Date:

Signature

**12.35 UNIVERSITY OF ST.GALLEN**

Name:

Title:

Date:

Signature

Name:

Title:

Date:

Signature