

DESCA

The Simplified FP7 Model
Consortium Agreement
www.DESCA-FP7.eu



Final version, 31 August 2011

NORS Consortium Agreement

Project Title:

Demonstration **N**etwork **O**f ground-based **R**emote **S**ensing
observations in support of the GMES Atmospheric Service

Project Number:

284421

Final version
31 August 2011

Table of Content

Section 1: Definitions	4
Section 2: Purpose	5
Section 3: Entry into force, duration and termination	5
Section 4: Responsibilities of Parties	6
Section 5: Liability towards each other.....	7
Section 6: Governance structure	8
Section 7: Financial provisions.....	14
Section 8: Foreground	16
Section 9: Access Rights.....	17
Section 10: Non-disclosure of information.....	20
Section 11: Miscellaneous	21
Section 12: Signatures	24
[Attachment 1: Background included]	35
[Attachment 2: Background excluded]	36
[Attachment 3: Accession document].....	38
[Attachment 4: List of Third Parties]	39

CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon
REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings,
research centres and universities in actions under the Seventh Framework Programme and for
the dissemination of research results (2007-2013) hereinafter referred to as Rules for
Participation and the European Commission Grant Agreement, adopted on 10 April 2007,
hereinafter referred to as the Grant Agreement or EC-GA and Annex II adopted on 10 April 2007
Version 6 adopted on 24 January 2011, hereinafter referred to as Annex II of the EC-GA, and is
made on 2011-08-31 hereinafter referred to as "Effective Date"

BETWEEN:

INSTITUT D'AERONOMIE SPATIALE DE BELGIQUE
- the Coordinator -

EIDGENOESSISCHE MATERIALPRUEFUNGS- UND FORSCHUNGSANSTALT,

INSTITUTO NACIONAL DE TECNICA AEROESPACIAL,

UNIVERSITAET BERN,

KARLSRUHER INSTITUT FUER TECHNOLOGIE,

CENTRE NATIONAL DE RECHERCHE SCIENTIFIQUE,

UNIVERSITAET BREMEN,

UNIVERSITE DE LIEGE,

MAX PLANCK GESELLSCHAFT ZUR FOERDERUNG DER WISSENSCHAFTEN E.V.,

RUPRECHT-KARLS-UNIVERSITAET HEIDELBERG,

SCIENCE AND TECHNOLOGIE B.V.

- hereinafter, jointly or individually, referred to as "Parties" or "Party" -

relating to the Project entitled

"Demonstration Network Of ground-based Remote Sensing observations in support of the GMES
Atmospheric Service"

in short

"NORS"

hereinafter referred to as "Project".

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the European Commission as part of the Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration Activities under the funding scheme of "Collaborative Project".

The Parties wish to specify or supplement, between themselves, the provisions of the EU Grant Agreement in line with Article 1.4 of the EC Grant Agreement and wish to lay down general rules related to the management of the Project, and their agreements with respect to, including but not limited to, ownership of the Intellectual Property Rights (IPR) and liability.

The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium agreement and that explanations to the DESCA model are available at www.DESCA-FP7.eu.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Definitions

1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules for Participation or in the Grant Agreement including its Annexes without the need to replicate said terms herein.

1.2 Additional Definitions

"Consortium Plan"

Consortium Plan means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the Project Management Team.

"Consortium Budget"

Consortium Budget means the allocation of all the resources in cash or in kind for the activities as defined in Annex I of the Grant Agreement and in the Consortium Plan thereafter.

"Defaulting Party"

Defaulting Party means a Party which the Project Management Team has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Article 4.2 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 Use of own Foreground:

Access Rights are Needed if, without the grant of such Access Rights, the Use of own Foreground 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.

Section 2: Purpose

The Parties agree to cooperate pursuant to the terms of this Consortium Agreement in order to execute and fulfil the Grant Agreement and perform the tasks set forth therein, including the Description of Work in Annex I of the Grant Agreement.

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 of said Party.

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

A new Party enters the Consortium upon signature of the accession document Attachment 3 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 complete fulfilment of all obligations undertaken by the Parties under the EC-GA 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 and Annex II of the EC-GA (Article II.37. and II.38.).

If the Commission does not award the EC-GA or terminates the EC-GA or a Party's participation in the EC-GA, this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Art. 3.3 of this Consortium Agreement.

3.3 Survival of rights and obligations

The provisions relating to Access Rights and Confidentiality, for the time period mentioned therein, as well as for Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this Consortium Agreement, or, in relation to any Party, the termination of such Party's participation as a party of this Consortium Agreement.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Project Management Team

and the leaving Party. This includes the obligation to provide all 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 of its obligations under the EC-GA and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Belgian law.

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

Each Party shall promptly provide all information reasonably required by a Work Package leader, or by the Coordinator to carry out its tasks.

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

Each Party shall be individually responsible to ensure compliance of its Affiliated Entities with the Grant Agreement and this Consortium Agreement.

Upon, as the case may be, advance payment by the Commission, submission of relevant Project Deliverables or validation of the cost statements by the Commission, the Coordinator shall proceed with the corresponding payment set forth in Article 7 to the said Party within 45 days.

4.2 Breach

In the event a responsible Work Package leader identifies a breach by a Party of its obligations under this Consortium Agreement or the EC-GA (e.g.: a partner producing poor quality work), the Coordinator or the Party appointed by the Project Management Team if the Coordinator is in breach of its obligations under this Consortium Agreement or the EC-GA will give written notice to such Party requiring that such breach 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 Project Management Team 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.

4.3 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains solely 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 EC-GA. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the EC-GA.

Section 5: Liability towards each other

5.1 No warranties

In respect of any information or materials (incl. Foreground and Background) supplied by one Party to another (or its affiliates) 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

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

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 I of the EC-GA provided such damage was not caused by a wilful act or gross negligence.

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

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 Foreground or Background.

5.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure. Each Party will notify the competent Consortium Bodies (Coordinator and Project Management team) of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies (Coordinator and Project Management team).

Section 6: Governance structure

6.1 General structure

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

The Coordinator is the legal entity acting as the intermediary between the Parties and the European Commission. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the EC-GA and this Consortium Agreement.

The Project Management Team (PMT) is the body that monitors and monitors and steers the progress of the project, on a regular basis. The chairperson of the Project Management Team is the Project Coordinator.

The General Assembly (GA) acts as the ultimate decision-making body of the Consortium. The Project Coordinator will be the chairperson of the General Assembly.

The Steering Committee (SC) acts as an advisory body for the execution of the Project, in support of the Project Management Team. The chairperson of the Steering Committee shall be designated among the members during the first meeting of this Body.

6.2 General operational procedures for all Consortium Bodies

6.2.1 Representation in meetings

Under meeting, one understands either a live meeting, or a tele- or videoconference.

Any member of a Consortium Body (hereinafter referred to as "Member"):

- may appoint a substitute or a proxy to attend and vote at any meeting;
- and shall participate in a cooperative manner in the meetings.

If a member cannot be present and can't designate a representative for whatever reason, he/she must inform the chair of the meeting about his/her absence at least 5 working days in advance of the meeting.

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.

	<u>Ordinary meeting</u>	<u>Extraordinary meeting</u>
PMT	Every 2 months	
GA	once per year, nominally at the occasion of the annual project meeting	At any time upon request of any Member of the Consortium
SC	twice per year	At any time upon request of any Member of the SC

Requests can be made by letter, Email or telephone.

6.2.2.2 Notice of a meeting:

The chairperson of a Consortium Body shall give notice by Email 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.

	<u>Ordinary meeting</u>	<u>Extraordinary meeting</u>
PMT	15 calendar days	7 calendar days
GA	15 calendar days	7 calendar days
SC	1 month	15 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 by Email, no later than the minimum number of days preceding the meeting as indicated below.

PMT	5 calendar days
GA	10 calendar days
SC	10 calendar days

6.2.2.4 Adding agenda items:

Any agenda 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 (by Email) notification to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.

PMT	2 working days
GA	2 working days
SC	5 working days

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

6.2.2.6 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 signed by the defined majority (see Article 6.2.3.) of all Members of the Consortium Body.

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

6.2.3 Voting rules and quorum

6.2.3.1 The PMT cannot take any decisions that would affect the costs, liability, intellectual property rights or other legitimate interests of any Member of the Project Consortium. Only the GA can take decisions affecting the Parties' interests. The SC is an advisory body.

6.2.3.1 The PMT and GA shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).

6.2.3.2 Each Member of the PMT and GA present or represented in the meeting shall have one vote.

6.2.3.3 Defaulting Parties may not vote.
Decisions shall be taken by a majority of two-thirds (2/3) of the votes.

6.2.4 Veto rights

6.2.4.1 A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be 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 such a decision implies

- additional financial or other contribution by the Member, to which this Member has not otherwise previously agreed, or
- the Member's commercial or strategic interests are substantially impaired by such Implementation Plan.

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

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

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

6.2.4.5 A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.

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

6.2.5 Minutes of meetings

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

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

6.2.5.3 The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Coordinator, who shall safeguard them and make them available to all Members of the Consortium in electronic format, on the internal Web pages of the project. If requested the Coordinator shall provide authenticated duplicates to Parties.

6.3 Specific operational procedures for the Consortium Bodies

6.3.1 General Assembly

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

6.3.1.1 Members

6.3.1.1.1 The General Assembly shall consist of a representative of each Member of the Consortium

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

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

6.3.1.1.4 The Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Article 11.8.

6.3.1.2 Decisions

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

The following decisions shall be taken by the General Assembly:

Content, finances and intellectual property rights

- Proposals for changes to Annex I of the EC-GA to be agreed by the European Commission
- Changes to the Consortium Plan (including the Consortium Budget)
- Modifications to Attachment 1 (Background included)

The GA shall confirm the modifications of Attachment 1 (Background included) and Attachment 2 (Background excluded) as proposed by the entitled owner.

Evolution of the Consortium

- Entry of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party

- Withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal
- 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 European Commission for a change of the Coordinator
- Proposal to the European Commission for suspension of all or part of the Project
- Proposal to the European Commission for termination of the Project and the Consortium Agreement

Appointments

On the basis of Annex I, the appointment if necessary of:

- Program Management Team Members or Steering Committee Members

6.3.2 Project Management Team

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

6.3.2.1 Members

The Project Management Team (PMT) shall consist of all Workpackage leaders
The Coordinator shall chair all meetings of the PMT, unless decided otherwise.

6.3.2.2 Minutes of meetings

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

6.3.2.3 Tasks

6.3.2.3.1 The Project Management Team shall prepare the meetings, propose decisions and prepare the agenda of the General Assembly according to Article 6.3.1.2.

6.3.2.3.2 It shall seek a consensus among the Parties.

6.3.2.3.3 The Project Management Team shall be responsible for the proper execution and implementation of the decisions of the General Assembly.

6.3.2.3.4 The Project Management Team shall monitor the effective and efficient implementation of the Project.

6.3.2.3.5 In addition, the Project Management Team shall collect information at least every 2 months on the progress of the Project, examine that information to assess the compliance of the Project with the Consortium Plan and, if necessary, propose modifications of the Consortium Plan to the General Assembly.

6.3.2.3.6 The Project Management Team shall:

- Support the Coordinator in preparing meetings with the European Commission 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 European Commission in respect of the procedures of the EC-GA Article II 30.3.

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

6.3.3 Steering Committee

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

6.3.3.1 Members

The Steering Committee's composition is the one agreed in the Description of Work of the Project (Annex I of the Grant Agreement).

6.3.3.2 Tasks

The Steering Committee shall follow the progress of the Project and shall advise on the links and exchanges with other running projects in the same thematic area (GMES Services in the Atmosphere area). It shall care for the overall integration of project activities and results in the GMES Atmosphere Service in-situ component, and for the sustainability of the Project developments beyond the Project end date.

6.4 Coordinator

6.4.1 The Coordinator shall be the intermediary between the Parties and the European Commission and shall perform all tasks assigned to it as described in the EC-GA and in this Consortium Agreement.

6.4.2 In particular, the Coordinator shall be responsible for:

- Monitoring compliance by the Parties with their obligations
- Keeping the address list of Members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting reports and other deliverables (including financial statements and related certifications) to the European Commission
- Transmitting documents and information connected with the Project to any other Parties concerned

- Administering the financial contribution of the Union and fulfilling the financial tasks described in Article 7.3
- 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.

6.4.3 If the Coordinator fails in its coordination tasks, the General Assembly may propose to the European Commission to change the Coordinator.

6.4.4 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party.

6.4.5 The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the EC-GA.

Section 7: Financial provisions

7.1 General Principles

7.1.1 Distribution of Financial Contribution

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

- the Consortium Budget as included in the Consortium Plan
- the approval of reports by the European Commission, and
- the provisions of payment in Article 7.3.

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 with respect to the Project towards the European Commission. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the European Commission.

7.1.3 Funding Principles

A Party which spends less than its allocated share of the Consortium Budget will be funded in accordance with its actual duly justified eligible costs only.

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

7.1.4 Financial Consequences of the termination of the participation of a Party

A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by the European Commission or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Article 5.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks. Any additional costs which are not covered by the Defaulting Party shall in principle be apportioned to the remaining Parties pro rata to their share in the total costs of the Project as identified in the Consortium Budget.

7.2 Budgeting

The Consortium Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

7.2.1 Budgeted costs eligible for 100% reimbursement

These costs shall be budgeted in the Consortium Budget in the following order of priority:

- Banking and transaction costs related to the handling of any financial resources made available for the Project by the Coordinator
- Costs of Parties related to calls for new Beneficiaries
- Costs related to updating this Agreement

- Management costs of the Coordinator
- Costs related to the tasks of the Steering Committee
- Intellectual property protection costs
- Costs for publications
- Costs for the tasks of chairpersons
- any other costs eligible for 100% reimbursement

7.3 Payments

7.3.1 Payments to Parties are the exclusive tasks of the Coordinator

In particular, the Coordinator shall:

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

7.3.2

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

All payments shall be made by the Coordinator after receipt of funds from the European Commission in accordance with the payment schedule set up in the EC-GA.

Pre-financing is limited to the pre-financing already transferred by the European Commission to the Project. As set out in the Grant Agreement, the pre-financing will be paid by the European Commission to the Coordinator at the beginning of the Project. The amount will be as stated in Article 6 of the Core GA.

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

The Coordinator is entitled to recover any payments already paid to a Defaulting Party.

The Parties agree that the Community's financial contribution shall be distributed to the Parties once the following conditions are fulfilled:

- o except for the first year, upon the Commission's approval of the new implementation plan budget submitted in the periodic report;
- o upon receipt by the Coordinator of a substantial enough advance payment from the Commission;
- o upon receipt by the Coordinator of all earlier due deliverables (at the date when all abovementioned conditions to issue the payments are met).

Section 8: Foreground

Regarding Foreground, EC-GA Article II.26. - Article II.29. shall apply with the following additions:

8.1 Joint ownership

Where no joint ownership agreement has yet been concluded:

- each of the joint owners shall be entitled to use their jointly owned Foreground on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), for internal research purposes, not including research services for third parties,
- each of the joint owners shall be entitled to use and grant non-exclusive licenses to third parties, without any right to sub-licenses, provided that at least 45 days prior notice is given to the other joint owner(s) and that fair and reasonable compensation shall be provided to the other joint owner(s) for any revenue generated from such use or licensing. In this event, the joint owner(s) shall strive to conclude a joint ownership agreement as soon as possible.

8.2 Transfer of Foreground

8.2.1 Each Party may transfer ownership of its own Foreground following the procedures of the EC-GA Article II 27.

8.2.2 It may identify specific third parties it intends to transfer the ownership of its Foreground to in Attachment (4) to this Consortium Agreement. The other Parties hereby waive their right to object to a transfer to listed third parties according to the EC-GA Article II.27.3.

8.2.3 The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment (4) after signature of this Agreement requires a decision of the General Assembly.

8.2.4 The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, a Party may be subject to confidentiality obligations which prevent it from giving the full 45 days prior notice for the transfer as foreseen in the EC-GA, Article II 27.2.

8.3 Dissemination

8.3.1 Publication

8.3.1.1 Dissemination activities including but not restricted to publications and presentations shall be governed by the procedure of Article II.30.3 of the EC-GA subject to the following provisions. Prior notice of any planned publication in the open literature shall be given to the other Parties concerned at least 45 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 any Party concerned within 15 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

8.3.1.2 An objection is justified if

- (a) the objecting Party's legitimate academic or commercial interests are compromised by the publication; or
- (b) the protection of the objecting Party's Foreground or Background is adversely affected.

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

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

8.3.2 Publication of another Party's Foreground or Background

For the avoidance of doubt, a Party shall not publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the Party's Foreground, without the other Party's prior written approval. For the avoidance of doubt, the mere absence of an objection according to article 8.3.1 is not considered as an approval.

8.3.3 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 Foreground or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

8.3.4 Use of names, logos or trademarks

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

Section 9: Access Rights

9.1 Background covered

9.1.1 The Parties shall identify in the Attachment 1 the Background to which they are ready to grant Access Rights, subject to the provisions of this Consortium Agreement and the EC-GA. Such identification may be done by e.g.

- subject matter and possibly in addition by
- naming a specific department of a Party.

9.1.2 The owning Party may add further Background to Attachment 1 during the Project by written notice.

However, only the General Assembly can permit a Party to withdraw any of its Background from Attachment 1.

9.1.3 The Parties agree that all Background not listed in Attachment 1 shall be explicitly excluded from Access Rights. The Parties agree, however, to negotiate in good faith additions to Attachment 1 if a Party asks them to do so and those are needed.

For the avoidance of doubt, the owner is under no obligation to agree to additions of his Background to Attachment 1.

9.1.4 In addition, if a Party wishes to list specific Background as excluded, it shall identify such Background in the Attachment 2.

The owning Party may withdraw any of its Background from Attachment 2 during the Project by written notice.

However, only the General Assembly can permit a Party to add Background to Attachment 2.

9.2 General Principles

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

9.2.2 As provided in the EC-GA Article II.32.3. Parties shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Project).

9.2.3 If the Project management Team or General Assembly considers that the restrictions have such impact, which is not foreseen in the Consortium Plan, it may decide to update the Consortium Plan accordingly, in agreement with the rules defined in Section 6 of this Consortium Agreement.

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

Access Rights shall be free of any administrative transfer costs.

Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties according to the EC-GA Article II.32.7.

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

9.2.6 All requests for Access Rights shall be made in writing.

The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

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

9.3 Access Rights for implementation

Access Rights to Foreground 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.

9.4 Access Rights for Use

9.4.1 Access Rights to Foreground if Needed for Use of a Party's own Foreground including third-party research shall be granted upon written bilateral agreement on fair and reasonable conditions.

Access Rights for internal, non-commercial research purposes shall be granted on a royalty-free basis.

9.4.2 Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted upon written bilateral agreement on Fair and Reasonable conditions.

9.4.3 A request for Access Rights may be made up to six months after the end of the Project or, in the case of Art. 9.6.2.1.2, after the termination of the requesting Party's participation in the Project.

9.5 Additional Access Rights

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

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse. Further arrangements with Affiliated Entities may be negotiated in separate agreements.

For the avoidance of doubt any grant of Access Rights not covered by the EC-GA 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.

9.6 Access Rights for Parties entering or leaving the Consortium

9.6.1 New Parties entering the Consortium

All Foreground developed before the accession of the new Party shall be considered to be Background with regard to said new Party.

9.6.2 Parties leaving the Consortium

Access Rights granted to a leaving Party

9.6.2.1 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.

9.6.2.2 Non-defaulting Party

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Foreground developed until the date of the termination of its participation. It may request Access Rights within the period of time specified in Art. 9.4.3.

9.6.2.3 Access Rights to be granted by any leaving Party

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

9.7 Specific Provisions for Access Rights to Software

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software.

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 respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

Section 10: Non-disclosure of information

10.1 All information in whatever form or mode of transmission, 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 when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the EC-GA, for a period of 5 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 third party without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party 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. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only.

10.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.

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

- the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is 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 EC-GA;
- the Confidential Information, at any time, was developed by the Recipient 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 Art. 10.7 hereunder.

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

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

10.7 If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

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

10.8 The confidentiality obligations under this Consortium Agreement and the EC-GA shall not prevent the communication of Confidential Information to the European Commission.

Section 11: Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and

Attachment 1 (Background included)
Attachment 2 (Background excluded)
Attachment 3 (Accession document)
Attachment 4 (List of Third Parties)

In case the terms of this Consortium Agreement are in conflict with the terms of the EC-GA, 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

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

11.3 Notices and other communication

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

Formal notices:

If it is required in this Consortium Agreement (Article. 9.6.2.1 and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with acknowledgement of receipt.

Other communication:

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

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator and shall not constitute an amendment or modification of this Consortium Agreement. The address list shall be accessible to all concerned.

11.4 Assignment and amendments

No rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Article 6.3.1.2 (LP)/ 6.3.6 (SP) require a separate agreement between all Parties.

11.5 Mandatory national law

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

11.6 Language

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

11.7 Applicable law

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

11.8 Settlement of disputes

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably within the Project Management Team, 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. Arbitration shall be conducted in the English language.

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 or to enforce an arbitration award in any applicable competent court of law.

Section 12: Signatures

Confirmation of Accession to the NORS Consortium Agreement

1. Belgian Institute for Space Aeronomy (BIRA-IASB)

Signature(s) of Authorised representative

Name(s): Martine De Mazière

Title(s): Director General ad interim



Signature(s) of Scientific Contact Person

Name(s): Martine De Mazière

Title(s): Head of Department



Date 12/8/2011

2. Eidgenoessische Materialpruefungs- und Forschungsanstalt (EMPA)

Signature(s) of Authorised representative

Name(s): Alex Sutter

Title(s): MLaw, substitute head of legal service and technology transfer

A. Sutter, 15.8.2011

**Swiss Federal Laboratories
for Materials Science and
Technology**

Signature(s) of Scientific Contact Person

Name(s): Brigitte Buchmann

Title(s): Dr., Head of Laboratory for Air Pollution /Environmental Technology

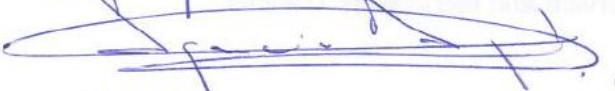
i.v. P. Buchmann

Date *15.8.2011*

3. Instituto Nacional de Tecnica Aeroespacial (INTA)

Signature(s) of Authorised representative

Name(s): IGNACIO AGUIRRE ORTIZ.
Title(s): Deputy General Director



Signature(s) of Scientific Contact Person

Name(s): MANUEL GIL-OJEDA
Title(s): Dr.



Date Aug. 16, 2011

4. Universitaet Bern (UBern)

Signature(s) of Authorised representative

Name(s): Martin Täuber

Title(s): Prof. Dr., rector



Signature(s) of Scientific Contact Person

Name(s): Niklaus Kämpfer

Title(s): Prof. Dr.



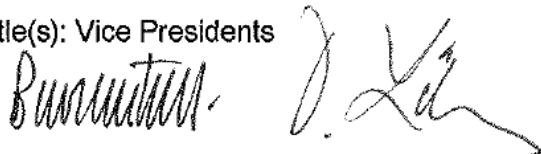
Date 25.8.2011

5. Karlsruher Institut für Technologie (KIT)

Signature(s) of Authorised representative

Name(s): Dr. Elke Luise Barnstedt and Prof. Dr. Detlef Löhe

Title(s): Vice Presidents

Handwritten signatures of Elke Luise Barnstedt and Detlef Löhe.

Signature(s) of Scientific Contact Person

Name(s) Dr. Thomas Blumenstock

Title(s) Group Leader

Handwritten signature of T. Blumenstock.

Date

2011-08-18

6. Centre National de la Recherche Scientifique (CNRS)

Signature(s) of Authorised representative

Name(s): Gilles TRAIMOND *Par délégation*

Title(s): Délégué régional du CNRS *Adjointe au Délégué régional*

Gaëlle Bujan
Gaëlle BUJAN

Signature(s) of Scientific Contact Person

Name(s): Sophie Godin-Beekmann

Title(s): Researcher



Date

12 AOUT 2011

7. Universitaet Bremen (UBremen)

Signature(s) of Authorised representative

Name(s): Gerd-Rüdiger Kück

Title(s):

Universität Bremen
Kanzler



Signature(s) of Scientific Contact Person

Name(s): Andreas Richter

Title(s): Senior Scientist

A handwritten signature in blue ink, appearing to read 'ARichter', is written below the official seal.

Date 11.8.2011

8. Université de Liège (ULg)

Signature(s) of Authorised representative

Name(s): Bernard RENTIER

Title(s): Rector

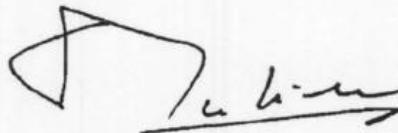


p.o. Albert Corhay
Premier Vice-Recteur

Signature(s) of Scientific Contact Person

Name(s): MAHIEU Emmanuel

Title(s): Dr



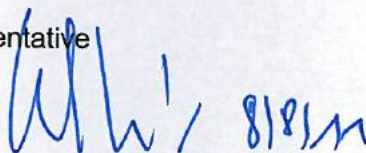
Date 12/08/11

9. Max Planck Gesellschaft zur Foerderung der Wissenschaften E.V. (MPIC)

Signature(s) of Authorised representative

Name(s): Ulrich Müller

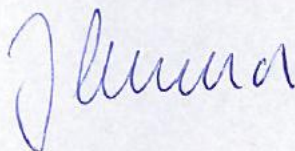
Title(s): Head of administration

Handwritten signature in blue ink, appearing to be 'U. Müller'.

Signature(s) of Scientific Contact Person

Name(s): Prof. Dr. Jos Lelieveld

Title(s): Head of department

Handwritten signature in blue ink, appearing to be 'J. Lelieveld'.

Date

8/8/2011

10. Ruprecht-Karls-Universität Heidelberg (UH)

Signature(s) of Authorised representative

Name(s): Dr. Norbert Huber


Title(s): EC Research Officer



Signature(s) of Scientific Contact Person

Name(s): Prof. Dr. Ulrich Platt

Title(s): Director



Date

11.8.2011

Ruprecht-Karls-Universität Heidelberg
Institut für Umweltphysik
Im Neuenheimer Feld 229
D-69120 Heidelberg
Tel. 06221 / 54 63 50 · Fax: 54 64 05

11. Science and Technology B.V. (S&T)

Signature(s) of Authorised representative

Name(s): Mr. Erik Zoutman

Title(s): Chief Operation Officer

168  A. Bos

Signature(s) of Scientific Contact Person

Name(s): Mr. Sander Niemeijer

Title(s): Project Manager



Date

5/8/2011

[Attachment 1: Background included]

Access Rights to Background made available to the Parties:

7. University of Bremen hereby includes

Only such Background Knowledge which is generated by the members of the research groups that are involved in carrying out the Project. The Access Rights are granted for the purposes of the NORS project only and may be restricted if this results in the infringement of third party rights. Only data, databases, methodologies, software and know-how which are generated in fields related to the objective and activities of the Project, and which University of Bremen is free to provide.

10. Ruprecht-Karls-Universität Heidelberg (UH)

Background that has been generated by the researchers participating in the Project on behalf of the UH and which is relevant and needed for the proper implementation of the Project. Access will only be granted as far as UH is legally entitled to do so.

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

[Attachment 2: Background excluded]

Background excluded from Access Rights:

1. BIRA-IASB excludes:

- Background developed outside the supervision of the Principal Investigator(s) involved in the NORS Project.
- Background developed under the supervision of the Principal Investigator(s) involved in the NORS Project which is outside the scope of the NORS Project.
- Background developed in fields unrelated to the objective of the NORS Project.
- Background developed by research groups or research departments of the Belgian Institute for Space Aeronomy other than those involved directly in the carrying out of activities in the NORS Project.
- Background that is covered under specific research agreements and confidentiality agreements and therefore is subject to third party rights.

2. Empa:

Any Pre-Existing Know-How of EMPA about (i) materials, (ii) process, (iii) modelling, (iv) design and (v) manufacturing methods and tools generated by the Laboratory for Air Pollution / Environmental Technology that is not in the public as well as any proprietary information in EMPA's business and related market domain is expressly excluded. This refers in particular to knowledge generated within other EU-funded or national-funded R&D projects, knowledge generated within industry-funded collaborations (research and services) that are not part of the network and knowledge that is confidential due to other reasons

5. KIT:

For the purpose of the Project, the following Background of KIT will be excluded from the requirement to grant Access Rights:

- Background developed by personnel, scientists or students not participating in the Project;
- Background developed by personnel, scientists or students participating in the Project which is outside the scope of jointly executed research activities of the Project as detailed out in Annex I of the Grant Agreement;
- Background in patents and current patent applications;
- Background that is covered under specific research agreements and confidentiality agreements and therefore subject to third party rights.
- All other Background derived outside the Project, to which the Party, due to third party rights, is not able to grant Access Rights.

7. University of Bremen excludes:

- Background developed outside the supervision of the Principal Investigator(s) involved in the NORS Project.
- Background developed under the supervision of the Principal Investigator(s) involved in the NORS Project which is outside the scope of the NORS Project.
- Background developed in fields unrelated to the objective of the NORS Project.
- Background developed by research groups or research departments of the University of Bremen other than those involved directly in the carrying out of activities in the NORS Project.
- Background that is covered under specific research agreements and confidentiality agreements and therefore is subject to third party rights.

10. Ruprecht-Karls-Universität Heidelberg (UH):

Heidelberg University (UH) hereby excludes from its obligation to grant Access Rights for the NORS- Project to all Background IP generated by UH other than that generated by the research of Prof. Dr. Ulrich Platt's group at UH, and Background derived from a non EU-project which UH due to third party rights is not able to grant access rights to or for which Heidelberg University needs to get permission to grant Access Rights.

UH excludes all background that has been and/or will be created by UH other than by those members of the research group of Prof. Dr. Ulrich Platt directly involved in carrying out the Project. UH further excludes all background that has been or will be derived outside the Project by members of Prof. Dr. Ulrich Platt's research group. UH also excludes all background which due to third-party rights it is unable to grant access rights to, or for which UH needs to obtain permission to grant access rights to, including, but not limited to, all background arising from work funded by industry, government or charitable sources.

UH specifically excludes all know-how in patents and current patents applications. UH specifically excludes any unpublished work that has been carried out which is not already in the public domain.

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

[Attachment 3: Accession document]

ACCESSION

of a new Party to

[Acronym of the Project] Consortium Agreement, version [..., YYYY-MM-DD]

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE EC-GA]

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

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE EC-GA]

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

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

Signature(s)

Name(s)

Title(s)

[Attachment 4: List of Third Parties]

List of Third Parties to which transfer of Foreground is possible with prior notice to the other Parties and for which the other Parties have waived their right to object.

Université de Versailles Saint-Quentin-en-Yvelines (UVSQ): Third Party/Special Clause 10 linked to CNRS

Sainte Lorette Company, subcontractor to CNRS

Alfred Wegener Institute, subcontractor to University of Bremen.