



**Project Acronym: RDI**

**Grant Agreement number: 325150**

**Project Title: Rights Data Integration**

## **D1.1: Project Management**

**Revision: Final**

**February 15<sup>th</sup>, 2016**

**Authors:**

**Godfrey Rust (Rightscom Ltd)**

Project co-funded by the European Commission within the ICT Policy Support Programme

Dissemination Level

<b>P</b>	<b>Public</b>	<b>X</b>
<b>C</b>	<b>Confidential, only for members of the consortium and the Commission Services</b>	
<b>RE</b>	<b>Restricted to a group specified by the consortium</b>	

## REVISION HISTORY AND STATEMENT OF ORIGINALITY

### Revision History

Revision	Date	Author	Organisation	Description
1.0	15 February 2016	Godfrey Rust	Rightscom	Final

### Statement of originality:

This deliverable contains original unpublished work except where clearly indicated otherwise. Acknowledgement of previously published material and of the work of others has been made through appropriate citation, quotation or both.

## Objective

The deliverables for D1.1, Project Management, were to establish a framework for the management of the project, to establish an IP agreement, to manage the interim and final reports to the Commission and to manage payment requests.

## Project Co-ordination

The Consortium Agreement entered into by the Partners in December 2014 sets out a meeting structure which was originally conceived as:

- A 3 monthly Partner Assembly
- A monthly Management Board, alternating every two weeks with
- A monthly Technical Sub-Committee.

As the project moved into its main development phase in September 2014 the Management Board and Technical Sub-Committee were replaced with weekly calls which generally involved the main development partners but which were expanded as required to involve other project partners, in particular the dissemination team.

Partner Assemblies were not held in the latter part of the project partly due to the summer break and the timing of the final conference: the partners active in development or dissemination were meeting weekly, and those who were acting as Sources had generally fulfilled their obligations and had little or no reason for active engagement until the project results were completed.

## Technical Co-ordination

Technical co-ordination of the project generally worked well, especially once the pattern of weekly, typically hour-long phone calls was established. In hindsight the amount of resource required for overall technical co-ordination was perhaps underestimated, and it may have been better if the two co-ordinators for data and technology were not at the same time responsible for delivery of specific technical workpackages within it, as this could occasionally lead to a conflict, not so much of interest, but more of priority. Had an independent technical co-ordinator been in place to hold everyone to account equally a little more rigour may have been enforced and minor mishaps avoided. The most obvious of these was a lack of co-ordination in the final phase between Rightscom and RightsDirect over an ontology update, which left the RightsDirect Exchange out of synch with the RDI Hub and unable to execute all of its queries. The situation was remedied once the problem was analysed. On the other hand, in the nature of a prototyping project where only one partner (Rightscom) began it with a deep knowledge of the underlying data architecture, it is hard to see that another arrangement would necessarily have been any more effective, but it is a lesson learned for any future similar collaboration.

The Project hit two potential technical crises. The first was the withdrawal of NTUA, in the shadow of Greece's economic crisis, very early on. CINECA and Rightscom quickly reconfigured their approach to cover mapping and transformation development between them without an intermediary. Although this

caused some early disruption to CINECA's schedule (with the knock-on effect described below) in the final analysis it seems likely that it resulted in a more effective solution and a simpler development process. It is unfortunate that a potential point of integration with Europeana was lost, but again that was recovered by another and potentially more productive route later on.

The second issue arose mid-project. Hub work was always the potential "bottleneck" in terms of project dependency. The challenge was this: in period 2 we defined a set of general query use cases ("find creation", "find licensor", "find license terms" etc) for Exchanges to able to query on the Hub. CINECA needed to implement the Hub database and the interface sufficiently to allow the Exchanges to implement and test their technology in time, which was done.

However, the work on transformation and Hub design (including close liaison with Rightscom) had taken longer than originally planned, in part because of CINECA's extra workload, which meant that a number of features of the Transformer Hub were not in place as early as they had been expected. Accordingly in period 2 it was agreed that CINECA would reschedule its work to make sure that the Exchanges could be supported, and then return in period 3 to complete the necessary work on the Transformer and Hub which should not impact the interface with the Exchanges, whose work by then would be largely complete.

This plan worked mostly, but not completely, with two resulting negative impacts. First, the later work from CINECA also impacted on the work from Rightscom, who could not complete final versions of mappings and transformations until the CINECA work was also complete and both were securely in synch. This had no negative impact on the final outcomes, but formally both CINECA and Rightscom's Deliverables ran some months late. The second impact was the one described above: Rightscom and RightsDirect got out of synch with one another because the Exchange development was completed while Hub and transformation was continuing, and testing wasn't done soon enough. Crises were averted but not niggles: though in the final analysis this was a prototyping project, and was not expected to end up bug-free.

## IP Rights

Section 9 of the Consortium Agreement sets out the management of IP between consortium members. This document is attached as an appendix.

## Project reporting

Two periodic reports were held in Brussels on 1<sup>st</sup> October 2014 and 30<sup>th</sup> June 2015 and a final review which included the third periodic report was held on 3rd February 2016. The publishable summaries of the first two reports are being published on the Project website and the final publishable report will be made available once agreed with the Commission.

There was some discontinuity after the end of the project when due to illness there was a change of project manager for the final reporting period, leading to some delay in completing the final reports.

## Payment requests

Two payments have been made to Consortium Partners, a pre payment in December 2013/January 2014 and the first interim payment in August 2015.

## Appendix: Consortium Agreement

RIGHTS DATA INTEGRATION

CONSORTIUM AGREEMENT

Version control

Version number	Date issued	Issued by	Commentary

<b>0.1</b>	<b>19/03/13</b>	<b>AJF</b>	<b>Variation on DESCA simplified FP7 Model Consortium Agreement v 3.0 to reflect terms of ICT PSP and previous consortium agreements regarding management structure and IP management.</b>
<b>0.2</b>	<b>15/03/13</b>	<b>AJF</b>	<b>Updated to take account of discussions on 4<sup>th</sup> April and input from NTUA regarding IP.</b>
<b>0.3</b>	<b>25/09/13</b>	<b>AJF</b>	<b>Change of terminology from “Consortium Plan” to “Description of Work. Addition of annex describing consortium budget.</b>
<b>1.0</b>	<b>18/12/13</b>	<b>AJF</b>	<b>Changes to the liability cap and ownership of foreground. The withdrawal of NTUA and Axel Springer. Inclusion of pre-financing distribution.</b>

## Table of Content

<b>SECTION 1: DEFINITIONS.....</b>	<b>10</b>
<b>SECTION 2: PURPOSE .....</b>	<b>11</b>
<b>SECTION 3: ENTRY INTO FORCE, DURATION AND TERMINATION.....</b>	<b>11</b>
<b>SECTION 4: RESPONSIBILITIES OF PARTIES .....</b>	<b>11</b>
<b>SECTION 5: LIABILITY TOWARDS EACH OTHER.....</b>	<b>12</b>
<b>SECTION 6: GOVERNANCE STRUCTURE .....</b>	<b>13</b>
<b>SECTION 7: FINANCIAL PROVISIONS .....</b>	<b>17</b>
<b>SECTION 8: FOREGROUND.....</b>	<b>19</b>
<b>SECTION 9: ACCESS RIGHTS .....</b>	<b>19</b>
<b>SECTION 10: NONDISCLOSURE OF INFORMATION.....</b>	<b>21</b>
<b>SECTION 11: MISCELLANEOUS.....</b>	<b>22</b>
<b>SECTION 12: SIGNATURES.....</b>	<b>23</b>
<b>ATTACHMENT 1: BACKGROUND INCLUDED .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>ATTACHMENT 2: BACKGROUND EXCLUDED .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>ATTACHMENT 3: ACCESSION DOCUMENT.....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>APPENDIX A – CONSORTIUM BUDGET .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>APPENDIX B – DISTRIBUTION OF PRE-FINANCING .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>



## CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon the Grant Agreement issued by the European Union represented by the European Commission (the “ECGA”) in respect of a financial contribution for the implementation of the project specified in Annex 1 of the ECGA called Rights Data Integration (the “Project”) under the Information and Communications Technologies (“ICT”) Policy Support Programme (the “ICT PSP”), and Annex II of the ECGA, and is made on 18th December 2013 hereinafter referred to as the “Effective Date”.

### **BETWEEN:**

RIGHTSCOM LTD

the Coordinator

**AGE FOTOSTOCK SPAIN, S.L**

**ALBUM ARCHIVO FOTOGRAFICO, S.L.**

**CONSOLIDATED INDEPENDENT LIMITED**

**CONSORZIO INTERUNIVERSITARIO CINECA**

**COORDINATION OF EUROPEAN PICTURES AGENCIES PRESS STOCK HERITAGE,**

**EDISER SRL**

**EUROPE ANALYTICA LIMITED**

**EUROPEAN WRITERS' COUNCIL**

**FEDERATION INTERNATIONALE DES ORGANISATIONS DE DROITS DE REPRODUCTION AISBL**

**GETTY IMAGES (UK) LIMITED**

**MEDRA S.R.L.**

**PRODUCENTFORENINGENDANISH PRODUCERS' ASSOCIATION**

**RIGHTSDIRECT BV**

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

relating to the Project entitled

**RIGHTS DATA INTEGRATION**  
Grant Agreement No 325150

in short

**RDI**

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 ICT PSP sixth call for proposals 2012 under the funding scheme "Pilot Type B".

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the ECGA.

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.DESCAFP7.eu](http://www.DESCAFP7.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 ECGA including its Annexes without the need to replicate said terms herein.

### 1.2 Additional Definitions

**"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 Appendix 1 of this Consortium Agreement.

**"Defaulting Party"** means a Party which the Partner Assembly 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.

**"Description of Work"** means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the Partner Assembly

**"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.

## Section 2: Purpose

2.1 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.

2.2 The provisions of this CA do not affect the Beneficiaries' obligations to the European Commission and/or to each other arising from the ECGA.

## 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.

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 ECGA 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 ECGA (Article II.10).

If the Commission does not award the ECGA or terminates the ECGA or a Party's participation in the ECGA, 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.

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 Partner Assembly 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 ECGA and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Belgian Law

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

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.

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

## 4.2 Breach

In the event a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the ECGA (e.g. a partner producing poor quality work), the Coordinator or the Party appointed by the Partner Assembly if the Coordinator is in breach of its obligations under this Consortium Agreement or the ECGA will give written notice to such Party requiring that such breach be remedied within 30 calendar days.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Partner Assembly 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 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 ECGA. 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 ECGA.

# Section 5: Liability towards each other

## 5.1 No warranties

In respect of any information or materials (including Foreground 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

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 the Party's share of the total costs of the Project as identified in Annex I of the ECGA 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 of any Force Majeure without undue delay. If the consequences

of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks if any shall be decided by the competent Consortium Bodies.

## Section 6: Governance structure

### 6.1 General structure

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

**Partner Assembly** as the ultimate decision making body of the Consortium

**Management Board** as the supervisory body for the execution of the Project which shall report to and be accountable to the Partner Assembly.

**Technical subcommittee** to provide coordination between the technical development work undertaken in different work packages and to ensure that dependencies are recognised and monitored which shall report to and be accountable to the Management Board.

**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 ECGA and this Consortium Agreement.

### 6.2 General operational procedures for all Consortium Bodies

#### 6.2.1 Representation in meetings

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

- should be present or be represented at any meeting of such Consortium Body;
- may appoint a substitute or a proxy to attend and vote at any meeting;
- 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.

	<u>Ordinary meeting</u>	<u>Extraordinary meeting</u>
Partner Assembly	At least once a quarter	At any time upon Written request of the Management Board or 1/3 of the Members of the Partner Assembly
Management Board	At least once a month	At any time upon written request of any Member of the Management Board
Technical Subcommittee	At least once a month	At any time upon written request of any Member of the Technical Subcommittee

##### 6.2.2.2 Notice of a meeting:

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

	<u>Ordinary meeting</u>	<u>Extraordinary meeting</u>
Partner Assembly	28 calendar days	14 calendar days
Management Board	14 calendar days	7 calendar days
Technical Subcommittee	14 calendar days	7 calendar days

##### 6.2.2.3 Sending the agenda:

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

	<u>Ordinary meeting</u>	<u>Extraordinary meeting</u>
Partner Assembly	21 calendar days	10 calendar days
Management Board	7 calendar days	2 calendar days
Technical Subcommittee	7 calendar days	2 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 notification to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.

Partner Assembly	14 calendar days, 7 calendar days for an extraordinary meeting
Management Board	2 working days
Technical Subcommittee	2 working days

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

6.2.2.6 Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a document which is then agreed by the defined majority (see Article 6.2.3.) of all Members of the Consortium Body.

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

6.2.2.8 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 Each Consortium Body 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 a Consortium Body present or represented in the meeting shall have one vote.

6.2.3.3 Defaulting Parties may not vote.

6.2.3.4 Decisions of the Partner Assembly shall be taken by a majority of two thirds (2/3) of the votes. Decisions of all other Consortium Bodies shall be taken on a consensus basis using the ISO definition of consensus as follows:

"general agreement, characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments".

### 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.

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 days after the draft minutes of the meeting are sent.

6.2.4.4 In case of the exercise of a 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 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.

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.

If requested the Coordinator shall provide authenticated duplicates to Parties.

## 6.3 Specific operational procedures for the Consortium Bodies

### 6.3.1 Partner 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 Partner Assembly shall consist of one representative of each Party (hereinafter Partner Assembly Member).

6.3.1.1.2 Each Partner 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 Partner Assembly, unless decided otherwise in a meeting of the Partner Assembly.

6.3.1.1.4 The Parties agree to abide by all decisions of the Partner Assembly.

This does not prevent the Parties from submitting a dispute to resolution in accordance with the provisions of Settlement of disputes in Article 11.8. of this Consortium Agreement.

#### 6.3.1.2 Decisions

The Partner 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 Management Board shall also be considered and decided upon by the Partner Assembly.

The following decisions shall be taken by the Partner Assembly:

Content, finances and intellectual property rights

- Proposals for changes to Annex I of the ECGA to be agreed by the European Commission
- Changes to the Description of Work (including the Consortium Budget)
- Withdrawals from Attachment 1 (Background included)
- Additions to Attachment 2 (Background excluded)
- Additions to Attachment 4 (List of Third Parties)

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:

- Management Board Members

### 6.3.2 Management Board

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

#### 6.3.2.1 Members

The Management Board shall consist of the Coordinator and all of the Parties as appointed by the Partner Assembly (hereinafter Management Board Members).

The Coordinator shall chair all meetings of the Management Board, unless decided otherwise.

All Partner Assembly Members have a right to participate in meetings of the Management Board but unless appointed as Management Board Members by the Partner Assembly do not have any of the rights of a Management Board Member.

#### 6.3.2.2 Minutes of meetings

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

#### 6.3.2.3 Tasks

6.3.2.3.1 The Management Board shall prepare the meetings, propose decisions and prepare the agenda of the Partner 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 Management Board shall be responsible for the proper execution and implementation of the decisions of the Partner Assembly.

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

6.3.2.3.5 In addition, the Management Board shall collect information at least every 6 months on the progress of the Project, examine that information to assess the compliance of the Project with the Description of Work and, if necessary, propose modifications of the Description of Work to the Partner Assembly.

6.3.2.3.6 The Management Board shall:

- Support the Coordinator in preparing meetings with the European Commission and in preparing related data and deliverables
- Agree 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 ECGA Article II 30.3.
- Provide coordination between the Technical subcommittee and the Services and Dissemination work streams to ensure that dependencies between those three activities are recognised and monitored
- Monitor overall progress against plan and suggest corrective action where necessary
- Resolve issues which couldn't be resolved for whatever reason within individual work packages or the Technical Subcommittee  
Escalate issues for resolution to the Partner Assembly if the Management Board is unable to resolve them

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

### 6.4 Technical Subcommittee

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



### 6.4.2.1 Members

The Technical subcommittee shall consist of all of the Parties as appointed by the Partner Assembly (hereinafter Technical Subcommittee Members).

The Technical subcommittee shall be chaired by a Member appointed by the Partner Assembly.

### 6.4.2.2 Minutes of meetings

Minutes of Technical subcommittee meetings, once accepted, shall be sent by the Chair of the Technical subcommittee to the Partner Assembly Members for information.

### 6.4.2.3 Tasks

6.4.2.3.1 It shall seek a consensus among the Parties.

6.4.2.3.2 The Technical subcommittee shall:

- provide coordination between the technical development work in WP2, 3, 4, 5 and 6 to ensure that dependencies between those areas are recognised and monitored
- resolve issues which couldn't be resolved for whatever reason within individual work packages
- escalate issues for resolution to the Management Board if the Technical Subcommittee is unable to resolve them

## 6.5 Coordinator

6.5.1 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 ECGA and in this Consortium Agreement.

6.5.2 In particular, the Coordinator shall be responsible for:

- All responsibilities detailed in ECGA Article II.2
- 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.

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

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

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

## 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 as Appendix A to this Consortium Agreement
- the approval of reports by the European Commission, and
- the provisions of payment in Article 7.3 of this Consortium Agreement

A Party shall be funded only for its tasks carried out in accordance with the Description of Work.

### 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.

## 7.2 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 related to updating this Agreement
- Management costs of the Coordinator
- 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 Payment Schedule

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

- The pre-financing will be paid to Parties as set out in Appendix B.
- Funding of costs included in the Description of Work will be paid to Parties after receipt from the EU Commission without undue delay and in conformity with the provisions of Annex II of the ECGA. Costs accepted by the EU Commission will be paid to the Party concerned, taking into account the amounts already paid for the reporting period concerned.
- The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body to be in breach of its obligations under this Consortium Agreement or the ECGA 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.

## Section 8: Foreground

Regarding Foreground, ECGA Article II.12.Article II.14. shall apply with the following additions:

### 8.1 Dissemination

#### 8.1.1 Publication

8.1.1.1 Dissemination activities including but not restricted to publications and presentations shall be governed by the procedure of Article II.18 of the ECGA subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties concerned at least 30 days before the publication. Any objection-to the planned publication shall be made in accordance with the ECGA in writing to the Coordinator and to any Party concerned within 15 days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

8.1.1.2 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.

8.1.1.3 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.

#### 8.1.2 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 8.3.1 is not considered as an approval.

#### 8.1.3 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.

#### 8.1.4 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.

## 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 ECGA. 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 Partner 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.. All other Background except that listed in Attachment 2 shall be available for the granting of Access Rights in accordance with the provisions of this Consortium Agreement. 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 Description of Work 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 ECGA Article II.15. 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 Partner Assembly considers that the restrictions have such impact, which is not foreseen in the Description of Work, it may decide to update the Description of Work accordingly.

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 nonexclusive basis, if not otherwise agreed in writing by all the Parties according to the ECGA Article II.15.

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 for third party research shall be granted on Fair and Reasonable conditions.

Access rights for internal research activities 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 on Fair and Reasonable conditions.

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

## 9.5 Additional Access Rights

For the avoidance of doubt any grant of Access Rights not covered by the ECGA 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

### 9.6.2.1 Access Rights granted to a leaving Party

#### 9.6.2.1.1 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 Partner Assembly to terminate its participation in the Consortium.

#### 9.6.2.1.2 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.

### 9.6.2.2 Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the ECGA 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: Nondisclosure 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 nondisclosure under the ECGA, 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 ECGA;
- 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 ECGA 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

In case the terms of this Consortium Agreement are in conflict with the terms of the ECGA, 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. 9.7.2.1.1 and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

Other communication:

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

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

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

11.8.2 If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of 60 days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be Brussels unless otherwise agreed upon. The language to be used in the arbitral proceedings shall be English unless otherwise agreed upon.

## 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.

