

## 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 EC Grant Agreement, adopted on 10 April 2007 hereinafter referred to as  
the Grant Agreement and Annex II adopted on 10 April 2007 hereinafter referred to as Annex II  
of the Grant Agreement and is made on 1 May 2008, hereinafter referred to as "Effective Date"

### BETWEEN:

- (1) Stichting Centrum voor Wiskunde en Informatica (CWI),  
the Coordinator
- (2) Kentro Erevnas Technologias Kai Anaptyxis Thessalias (CERETETH),
- (3) Technische Universiteit Delft (TUD),
- (4) Technische Universiteit Eindhoven, Department of Mechanical Engineering, (TUE),
- (5) University of Cyprus (UCY),
- (6) Universiteit Gent,
- (7) Faculdade de Engenharia da Universidade do Porto (FEUP),
- (8) Università degli Studi di Verona (UVR),
- (9) Hesse-Noord Natie NV (HNN),
- (10) Oceanscan – Marine Systems & Technology LDA (MST),
- (11) OCE Technologies B.V. (OCE),
- (12) Trinite Automatisering B.V. (TRI),

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

relating to the Project entitled

Control for coordination of distributed systems

in short

CON4COORD

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 binding commitments among themselves in addition to the provisions of the Grant Agreement.

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 General Assembly.

#### “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 General 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.

#### “Needed”

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

### **Section 3: Entry into force, duration and termination**

#### **3.1 Entry into force**

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

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

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 Grant Agreement and under this Consortium Agreement.

However, this Consortium Agreement may be terminated in accordance with the terms of this Consortium Agreement and Annex II of the Grant Agreement (Grant Agreement Article II.37. and II.38.).

#### **3.3 Survival of rights and obligations**

The provisions relating to Access Rights, Confidentiality, Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this Consortium Agreement as agreed in respective articles.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the General Assembly 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 Grant Agreement and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by law of the Netherlands.

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 provide promptly 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 the responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement, the Coordinator will give written notice requiring that such breach be remedied within 30 calendar days.

If this does not occur, the General Assembly may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof.

#### 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 Grant Agreement. It has to ensure that the use of third parties does not affect the rights and obligations of the other Parties regarding Background and Foreground.

### **Section 5: Liability towards each other**

#### 5.1 No warranties

In respect of any information or materials 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.

The recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials.

#### 5.2 Limitations of contractual liability

No Party shall be responsible to any other Party for punitive damages, indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts.

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.

The exclusions and limitations of liability stated above shall not apply in the case of damage caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any non-contractual 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 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 as soon as possible. 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 for Small Collaborative Projects**

### **6.1 General structure**

The General Assembly is the decision-making body of the Consortium. Where in Annex 1 of the Grant Agreement is written 'Project Coordination Committee' it will for this consortium agreement be regarded as identical to the General Assembly.

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 Grant Agreement and this Consortium Agreement.

The Management Support Team assists the General Assembly and the Coordinator.

### **6.2 Members**

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

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 6.3.6 of this Consortium Agreement.

The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise by the General Assembly.

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 of this Consortium Agreement.

### **6.3 Operational procedures for the General Assembly**

#### **6.3.1 Representation in meetings**

Any Member:

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

#### **6.3.2 Preparation and organisation of meetings**

Convening meetings:

The Coordinator shall convene ordinary meetings of the General Assembly at least once every six months and shall also convene extraordinary meetings at any time upon written request of any Member.

Notice of a meeting:

The Coordinator shall give notice in writing of a meeting to each Member as soon as possible and within at least 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

Sending the agenda:

The Coordinator shall send each Member a written original agenda within at least 14 calendar days preceding the meeting.

Adding agenda items:

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

Any Member may add an item to the original agenda by written notification to all of the other Members within at least 7 calendar days preceding the meeting.

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

Any decision may also be taken without a meeting by circulating to all Members a written document which is then signed by the defined majority of Members (see Article 6.3.3 of this Consortium Agreement).

Meetings of the General Assembly can also be held by teleconference or other telecommunication means.

Decisions may only be executed once the relevant part of the Minutes is accepted according to Article 6.3.5 of this Consortium Agreement.

#### 6.3.3 Voting rules and quorum

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

Each Member shall have one vote.

Defaulting Party Members may not vote.

Decisions shall be taken by a majority of the votes. In case of a tie vote, the coordinator who is the chair of the General Assembly shall discuss the proposal on which was voted but in the end his vote counts as two votes.

#### 6.3.4 Veto rights

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 the General Assembly may exercise a veto with respect to the corresponding decision or relevant part of the decision.

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

When a decision has been taken on a new item added to the agenda before or during the meeting, a member may veto such decision during the meeting and within 21 days after the Minutes of the meeting are sent.

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

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.

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

#### 6.3.5 Minutes of meetings

The Coordinator shall produce written Minutes of each meeting which shall be the formal record of all decisions taken. He shall send these draft to all of its members within 20 calendar days of the meeting.

The Minutes shall be considered as accepted if, within 21 calendar days from sending, no member has objected in writing to the Coordinator with respect to the accuracy of the draft of the Minutes.

The accepted Minutes shall be sent to all of the members of the Consortium Body and the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

#### 6.3.6 Decisions of the General Assembly

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.

The following decisions shall be taken by the General Assembly:

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

- Proposals for changes to Annex I of the Grant Agreement to be agreed by the European Commission
- Changes to the Consortium Plan (including the Consortium Budget)
- Withdrawals from [Attachment 1 (Background included)]
- Additions to [Attachment 2 (Background excluded)]
- Additions to [Attachment 4 (Listed Affiliated Entities)]
- Additions to [Attachment 6 (List of Third Parties)]

##### Evolution of the Consortium

- Entry of a new Party to the Consortium and approval of the settlement on the modalities and conditions of the accession of such a new Party
- Withdrawal of a Party from the Consortium and the approval of the settlement on the modalities and conditions of the withdrawal
- Declaration of a Party to be a Defaulting Party
- Corrective measures to be required from 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
- Suspension of all or part of the Project
- Termination of the Project and/or the Consortium Agreement

##### Appointments

Agree on the members of the Management Support Team, upon a proposal by the Coordinator.

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

#### 6.4 Coordinator

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 Grant Agreement and in this Consortium Agreement.

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 and submitting information on the progress of the Project and reports and other deliverables (including financial statements and related certifications) to the European Commission

- preparing the meetings, proposing decisions and preparing the agenda of General Assembly meetings, chairing the meetings, preparing the Minutes of the meetings and monitoring the implementation of decisions taken at meetings
- transmitting documents and information connected with the Project, including copies of Accession documents and changes of contact information to the Parties
- administering the Community financial contribution and fulfilling the financial tasks described in Article 7.3, including the transfer of financial means to the participants
- 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.

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

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

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

## 6.5 Management Support Team

The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the General Assembly and shall assist and facilitate the work of the General Assembly and of the coordinator.

The Management Support Team shall provide assistance to the Coordinator for executing the decisions of the General Assembly. It shall be responsible for the day-to-day management of the Project.

## Section 7: Financial provisions

### 7.1 General Principles

#### 7.1.1 Distribution of the Financial Contribution

The financial contribution of the European Commission 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 for a leaving Party

A party leaving the Consortium shall refund within six months of leaving the Consortium all advances to it except the amount of expended eligible costs accepted by the European Commission.

Furthermore a Defaulting Party shall, within the limits specified in Article 5.2 of this Consortium Agreement, bear any additional costs occurring to the other Parties in order to perform its and their tasks.

#### 7.2 Budgeting

All resources made available for the Project shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties and shall be budgeted.

##### 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
- a reasonable costs of Parties related to
  - o the delivery of certification of financial statements according to the Grant Agreement
  - o the certification of the financial/administrative methodology, unless the methodology has already been used by the Beneficiary in a previous Grant Agreement and has not changed (Grant Agreement Article II.4.4 and II.14.1) and/or
  - o the certification of the simplified method of calculation of a Party's full indirect eligible costs (Grant Agreement Article II.15.2.a), if any
- costs related to calls for new Beneficiaries
- costs related to updating this Agreement
- management costs of the Coordinator and the Management Support Team
- [costs related to the tasks of the Executive Board]
- intellectual property protection costs
- costs for publications
- costs for the tasks of chairpersons
- any other costs eligible for 100% reimbursement

##### 7.2.2 Budgeting of coordination costs

Costs of coordination of research which are not allowed as management cost according to Annex II of the Grant Agreement (Grant Agreement Article II.16.5) have to be budgeted separately.

#### 7.3 Payments

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 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.

All payments shall be made without undue delay but within 30 days by the Coordinator after receipt of funds from the European Commission in accordance with the accepted decisions of the General Assembly on the Consortium Budget, which includes the payment schedule.

Payments to Parties will be handled according to the following modality:

- payments for past performance approved by the European Commission will be compared with the advance payment given to a Party for such past performance; the difference will be balanced directly with the Party concerned though the total amount for all Parties will not exceed the amount received by the coordinator from the European Commission

The Coordinator is entitled to withhold any advances either due to a Defaulting Party or to a Beneficiary not being a Party.

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

## **Section 8: Foreground**

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

### **8.1 Joint ownership**

In case of joint ownership of Foreground each of the joint owners shall be entitled to use the joint Foreground as it sees fit, and to grant non-exclusive licenses to third parties, without any right to sub-license, subject to the following conditions:

at least 45 days prior notice must be given to the other joint owner(s); and  
fair and reasonable compensation must be provided to the other joint owner(s).

### **8.2 Transfer of Foreground**

Each Party may transfer ownership of its own Foreground following the procedures of the Grant Agreement Article II 27.

It may identify specific third parties it intends to transfer Foreground to in Attachment (6) to this Consortium Agreement. The other Parties hereby waive their right to object to a transfer to listed third parties according to the Grant Agreement Article II.27.3.

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 (6) after signature of this Agreement requires a decision of the General Assembly.

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 foreseen in Grant Agreement Article II 27.2.

### **8.3 Dissemination**

#### **8.3.1 Publication**

Dissemination activities including but not restricted to publications and presentations shall be governed by Article II.30 of the Grant Agreement.

The Party objecting a publication has to show that its legitimate interests will suffer disproportionately great harm and shall include a request for necessary modifications.

The parties agree on the following procedure of publication. A Party represented by a Member, intending the publication of a document shall contact 21 days before the planned publication all Members with an explicit request to contact him/her on an interest in the release of the publication. At least seven days before the date of publication a draft of the document is sent to those Members who have expressed an interest in receiving it before publication. At least four days before publication any interested Party represented by a Member, must state whether or not it has objections to publication of the document. In the absence of any objection within the above mentioned period, it is deemed that the Parties agree to the proposed publication. An objection to publication must be communicated to the coordinator by the Member of the General Assembly of the concerned party or its representative.

In the event that an objection is raised on any of the above defined grounds within the above period of 21 days, the Party proposing the publication and the Party objecting shall seek in good faith to agree a solution on a timely basis whereby such objection is resolved and the scientific quality of the proposed publication is maintained. The Party objecting a publication has to show that its legitimate interests will suffer disproportionately great harm and shall include a request for necessary modifications.

### 8.3.2 Publication of another Party's Foreground or Background

For the avoidance of doubt, a Party may **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.

### 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. However, confidentiality and publication clauses have to be respected.

### 8.3.4 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

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 Grant Agreement. Such identification may be done by e.g.

- naming a specific department of a Party
- and/or by subject matter.

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.

The Parties agree that all Background not listed in Attachment 1 shall be explicitly excluded from Access Rights. They 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.

In addition, if a Party wishes to exclude specific Background, it shall list 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

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.

As provided in the Grant Agreement 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).

If the 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.

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 Grant Agreement Article II.32.7.

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

All Access Rights shall be granted upon written request.

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

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

## 9.3 Access Rights for implementation

Access Rights to Foreground and Background Needed for the execution of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed in Attachment 1.

## 9.4 Access Rights for Use

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.

A third party shall not be granted direct Access to Foreground generated by other Parties unless those Parties explicitly agree to it.

Access rights for internal research activities shall be granted on a royalty-free basis.

Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on fair and reasonable conditions.

## 9.5 Access Rights for Affiliated Entities

Affiliated Entities have Access Rights under the conditions of the Grant Agreement Article II.34.3.

Such Access Rights to Affiliated Entities shall be granted on fair and reasonable conditions and upon written bilateral agreement.

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

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

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

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

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

#### 9.6 Additional Access Rights

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

#### 9.7 Access Rights for Parties entering or leaving the Consortium

##### 9.7.1 New Parties entering the Consortium

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

##### 9.7.2 Parties leaving the Consortium

###### 9.7.2.1 Access Rights granted to a leaving Party

###### 9.7.2.1.1 Defaulting Party

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

###### 9.7.2.1.2 Non-defaulting Party

A 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. The time limit for its right to request these Access Rights shall start on the same date.

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

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

### 9.8 Specific Provisions for Access Rights to Software

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**

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 at the latest as confidential information by the Disclosing Party, is "Confidential Information".

The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, 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.

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.

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 Grant Agreement;
- 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.

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.

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

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.

The confidentiality obligations under this Consortium Agreement and the Grant Agreement 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 body text and

Attachment 1 (Background included)

Attachment 2 (Background excluded)

Attachment 3 (Accession document)

Attachment 4 (Listed Affiliated Entities)

Attachment 5 (initial list of members and other contact persons)

Attachment 6 (List of Third Parties to which transfer of Foreground is possible without prior notice to other Parties)

In case this Consortium Agreement is in conflict with the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the appendices and the body 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 based on the initial list of members and other contact persons in Attachment 5.

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 e-mail with acknowledgement of receipt (e.g. Minutes).

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 6.3.6 require a separate agreement between all Parties.

#### 11.5 Mandatory statutory 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 and processes relative thereto.

#### 11.7 Applicable law

This Consortium Agreement and all clauses in the Grant Agreement affecting the rights and obligations between the Parties shall be construed in accordance with and governed by the laws of the Netherlands.

#### 11.8 Settlement of disputes

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute.

The place of arbitration shall be Amsterdam or The Hague if not otherwise agreed by the conflicting Parties.

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

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief or to enforce an arbitration award in any applicable competent court of law.

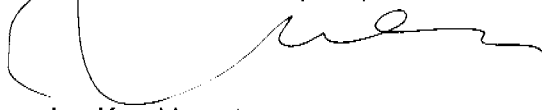
**Section 12: Signatures**

AS WITNESS:

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

Stichting Centrum voor Wiskunde en Informatica (CWI)

Signature:

A handwritten signature in black ink, appearing to be 'J. K. Lenstra', written over a horizontal line.

Name:

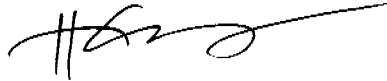
Jan Karel Lenstra

Title:

Director of CWI

Kentro Erevnas Technologias Kai Anaptyxis Thessalias (CERETETH)

Signature:



Name:

Elias Houstis

Title:

President

Technische Universiteit Delft (TUD)

Signature:

A handwritten signature in black ink, appearing to read 'T. Toonen', is written over a horizontal line. The signature is stylized and cursive.

Name:

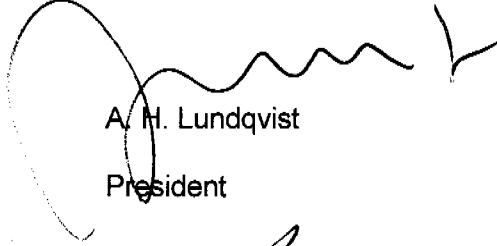
Theo Toonen

Title:

Dean Faculty of Technology, Policy and Management

Technische Universiteit Eindhoven, Department of Mechanical Engineering (TUE)

Signature:



Name:

A. H. Lundqvist

Title:

President

Signature:



Name:

Ir. H.P.J.M. Roumen

Title:


Secretary of the University

**TU/e** technische universiteit eindhoven  

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University of Cyprus (UCY)

Signature:

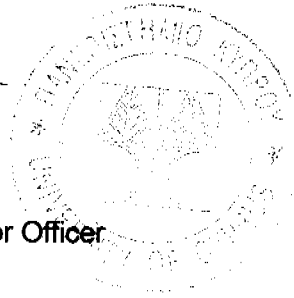


Name:

Gregory Makrides

Title:

Research Administrator Officer



Universiteit Gent

Signature:

Name:

Title:



Paul van Cauwenberge

Rector



Gent, 17 augustus  
2009

*René Boel*

Prof. R. Boel

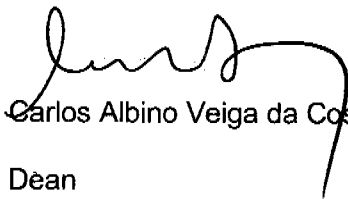
19 AUG. 2009

GEZIEN EN GOEDGEKEURD

*Yannick De Clercq*  
YANNICK DE CLERCQ 5 AUG 2009  
REGERINGSCOMMISSARIS

Faculdade de Engenharia da Universidade do Porto (FEUP)

Signature:



Name:

Carlos Albino Veiga da Costa

Title:

Dean

Universita degli Studi di Verona (UVR)

Signature:

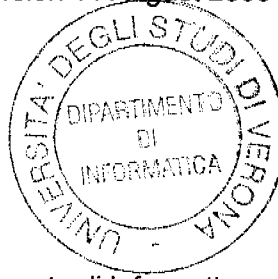


Name:

Carlo Combi

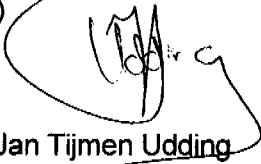
Title:

Head Dipartimento di Informatica



Hesse-Noord Natie NV (HNN)

Signature:

A handwritten signature in black ink, appearing to read 'J. Udding', is enclosed within a hand-drawn oval. The signature is positioned to the right of the 'Signature:' label.

Name:

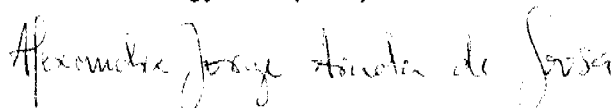
Jan Tijmen Udding

Title:

Director IT

Oceanscan – Marine Systems & Technology LDA (MST)

Signature:



Name:

Alexandre Sousa

Title:

Director

**OCEANSCAN**  
**MARINE SYSTEMS & TECHNOLOGY LDA**

Rua do Actor Ferreira da Silva, 100 - A14  
4200 - 298 Porto, Portugal  
NIPC: 508 459 761



OCE Technologies B.V. (OCE)

Signature:

Name:

Hans Geelen

Title:

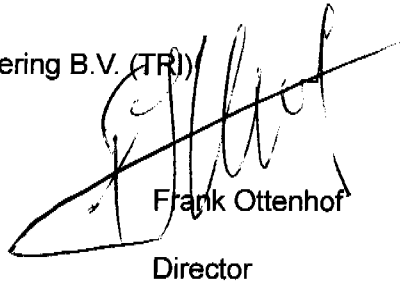
Vice President Software & Electronics

Trinite Automatisering B.V. (TRI)

Signature:

Name:

Title:



Frank Ottenhof  
Director