

CONSORTIUM AGREEMENT

Related to FP7 ANDES

Accurate Nuclear Data for nuclear Energy Sustainability

FP7 - 249671

This Consortium Agreement is based on the DESCA model



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THIS CONSORTIUM AGREEMENT is based upon REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) hereinafter referred to as Rules for Participation and the European Commission Grant Agreement, adopted on 2009-04-01 hereinafter referred to as the Grant Agreement or EC-GA and Annex II adopted on 2009-04-01 hereinafter referred to as Annex II of the EC-GA and is made 2010-05-01, hereinafter referred to as “Effective Date”

BETWEEN:

1. Centro de Investigaciones Energéticas Medioambientales y Tecnológicas, hereinafter referred to as CIEMAT, whose registered office is at Avenida Complutense 22, 28040, Madrid, Spain, represented for the purpose of this Agreement by Dr. Cayetano López Martínez, Director-General, duly authorised for the purposes hereof, the Coordinator,
2. Commissariat à l’Energie Atomique, hereinafter referred to as CEA, whose registered office is at Rue Leblanc 25, 75015, Paris, France, represented for the purpose of this Agreement by Dr. Yves Caristan, Director of DSM, and by Dr. Jean-Paul Duraud, Deputy-Director of DSM,
3. Centre national de la recherche scientifique (CNRS), whose registered office is at 3, rue Michel-Ange, 75016 Paris, France, represented for the purpose of this Agreement by Dr. Jacques Martino,
4. GSI Helmholtzzentrum für Schwerionenforschung GmbH, hereinafter referred to as GSI, whose registered office is at Planckstr. 1, 64291 Darmstadt, Germany, represented for the purpose of this Agreement by Ms. Christiane Neumann and by Prof. Horst Stöcker, Managing Directors,
5. Institutul National de Cercetare –Dezvoltare Pentru Fizica si Inginerie Nucleara “Horia Hulubei”, hereinafter referred to as IFIN-HH, whose registered office is at Atomistilor Street 407, RO 077125 Magurele, Romania, represented for the purpose of this Agreement by Prof. Nicolae Victor Zamfir, General Director and by Mr. Alexandru Popescu, Economic Director,
6. Istituto Nazionale di Fisica Nucleare, hereinafter referred to as INFN, whose registered office is at Via Enrico Fermi 40, 00044 Frascati, Italy, represented for the purpose of this Agreement by Prof. Roberto Petronzio, President.
7. Instituto Tecnológico e Nuclear, hereinafter referred to as ITN, whose registered office is at Estrada Nacional 10, 2686-953 Sacavem, Portugal, represented for the purpose of this Agreement by Prof. Julio Montalvao e Silva, President,
8. Commission of the European Union – Joint Research Centre, hereinafter referred to as JRC-IRMM, whose registered office is at Rue de la Loi 200, 1049 Brussels, Belgium, represented for the purpose of this Agreement by Dr. Krzysztof Maruszewski, Director,
9. Institut Jozef Stefan, hereinafter referred to as JSI, whose registered office is at Jamova 39, 1000 Ljubljana, Slovenia, represented for the purpose of this Agreement by Prof. Jadran Lenarcic, Director,
10. Jyväskylän Yliopisto, hereinafter referred to as JYU, whose registered office is at Seminaarinkatu 15, 40100 Jyväskylä, Finland, represented for the

- purpose of this Agreement by Prof. Aino Sallinen, Rector, and by Prof. Matti Manninen, Vice-Rector,
11. National Nuclear Laboratory Limited, hereinafter referred to as NNL, whose registered office is at Daresbury Park – Daresbury 1100, WA4 4GB Warrington, United Kingdom, represented for the purpose of this Agreement by Dr. Huw G Morgan, Head of Contracts, and by Mr. Robin A Gomme, Bid and Contracts Manager,
 12. Nuclear Research and Consultancy Group, hereinafter referred to as NRG, whose registered office is at Westerduinweg 3, 1755 LE Petten, The Netherlands, represented for the purpose of this Agreement by Mr. Robert J. Stol, Managing Director,
 13. Paul Scherrer Institut, hereinafter referred to as PSI, whose registered office is at 5232 Villigen PSI, Switzerland, represented for the purpose of this Agreement by Prof. Dr. Gebhard Schertler, Head of the Biology and Chemistry Department, and Dr. Dorothea Schumann, Project Manager.
 14. Studiecentrum voor Kernenergie/Centre d'Etude de l'Energie Nucléaire [also known as the Belgian Nuclear Research Centre], hereinafter referred to as SCK•CEN, whose registered office is at Avenue Herrmann-Debroux 40, BE-1160 Brussels, Belgium, represented for the purpose of this Agreement by Prof. Frank Deconinck, Chairman of the Board of Governors, and by Prof. Eric van Walle, Director General,
 15. Technische Universitaet Wien, hereinafter referred to as TUW, whose registered office is at Karlsplatz 13, 1040 Wien, Austria, represented for the purpose of this Agreement by Prof. Hannes-Jörg Schmiedmayer, Head of the Atominstitut, and by Prof. Gerald Badurek, Dean of the Faculty of Physics,
 16. Universitatea din Bucuresti, hereinafter referred to as UB, whose registered office is at Mihail Kogalniceanu 36-46, 050107 Bucuresti, Romania, represented for the purpose of this Agreement by Prof. Ioan Panzaru, Rector,
 17. Université de Liege, hereinafter referred to as ULG, whose registered office is at Place du 20 août 7, 4000 Liege, Belgium, represented for the purpose of this Agreement by Prof. Bernard Rentier, Rector, and by Prof. Albert Corthay, Vice-Rector,
 18. Universidad Politécnica de Madrid, hereinafter referred to as UPM, whose registered office is at Calle Ramiro de Maeztu 7, 28040 Madrid, Spain, represented for the purpose of this Agreement by Prof. Gonzalo León, Vice-Rector for Research,
 19. Universidade de Santiago de Compostela, hereinafter referred to as USC, whose registered office is at Pazo de San Xerome, Praza do Obradoiro s/n, 15782 Santiago de Compostela, Spain, represented for the purpose of this Agreement by Prof. María José Alonso Fernández, Vice-Rector of Research and Innovation, and by Prof. Senen Barro Ameneiro, Rector,
 20. Uppsala universitet, hereinafter referred to as UU, whose registered office is at St Olofs gatan 10B, 75105 Uppsala, Sweden, represented for the purpose of this Agreement by Ms. Ann Fust, University Director, and by Prof. Göran Possnert, Head of the Department of Physics and Astronomy,

hereinafter, jointly or individually, referred to as "Parties" or "Party" relating to the Project FP7 Accurate Nuclear Data for nuclear Energy Sustainability, in short ANDES, 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 European Community has decided to grant a financial contribution for the implementation of the Project and consequently will sign the EC-GA with the Coordinator;

the work to be carried out by the Parties under the Project is described in the Annex I Description of Work of the EC-GA ;

The Project will develop a program of specifically targeted actions to address the most critical points of the knowledge of nuclear data for its application to the development of the new nuclear systems and their fuel cycles required to enhance the nuclear energy sustainability, with the aim of achieving significant improvements on the simulation capacity for the European nuclear industry and supporting research, remaining realistically coherent with the available resources.

Very few organizations in Europe possess knowledge, technical competences, and tools required by this technical challenge, and that none of them covers the full spectrum; therefore the consortium brings together the major stakeholders in this domain from industry, research institutions and universities in a well-balanced share of contribution.

The knowledge, technical competences and tools possessed by these organizations are partially overlapping but mainly complementary, so that integrating these capabilities presents a strong added value.

Gathering a critical mass of European human skill on this topic in a time-limited project will allow optimising European efforts to achieve the required level of accuracy and reliability about the most critical points of the knowledge of nuclear data .

The Project will allow a significant exchange of knowledge and in this way optimises the European efforts in the development of sustainable nuclear energy.

The Parties are European Organizations involved in the nuclear field and they are willing to establish a collaborative project in order to join their capabilities and resources.

The Parties have decided and agreed to execute and perform the Agreement (as such term is defined in the Rules for Participation) awarded by the European Community for the Project.

The Parties wish to specify binding commitments among themselves according to the provisions of the EC Grant Agreement.

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

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS :

Section 1 - DEFINITIONS

1.1. Definitions

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

1.2. Additional Definitions

“**Access Rights**” means licences and user rights to foreground or background;

“**Background**” means information which is held by beneficiaries prior to their accession to this agreement, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to this agreement, and which is needed for carrying out the project or for using foreground;

“**Commercial Use**” means the direct or indirect (via licences) utilisation of Foreground for developing, creating and marketing a product or a process or for creating and providing a service;

“**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;

“**Consortium Plan**” means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the Governing Board;

“**Defaulting Party**” means a Party which the Governing Board 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;

“**Deliverable**” means reports and information, including progress reports and certified audit reports, referred to in the EC-GA and this Consortium Agreement that have to be delivered by the Parties via the Coordinator to the European Commission.

“**Dissemination**” means the disclosure of foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of foreground in any medium;

“**Fair and Reasonable Conditions**” means appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the foreground or background to which access is requested and/or the scope, duration or other characteristics of the use envisaged;

“**Force Majeure**” means any unforeseeable and exceptional event affecting the fulfilment of any obligation under this grant agreement by the parties, which is beyond their control and cannot be overcome despite their reasonable endeavours.

Any default of a product or service or delays in making them available for the purpose of performing this grant agreement and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute force majeure;

“Foreground” means the results, including information, whether or not they can be protected, which are generated under the project. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection;

“Use” means the direct or indirect utilisation of foreground in further research activities other than those covered by the project, or for developing, creating and marketing a product or process, or for creating and providing a service;

“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.

“Nuclear Incident” means any occurrence or succession of occurrences having the same origin which causes damage, provided that such occurrence or succession of occurrences, or any of the damage caused, arises out or results either from the radioactive properties, or a combination of radioactive properties with toxic, explosive, or other hazardous properties of nuclear fuel or radioactive products or waste or with any of them, or from ionizing radiations emitted by any other source of radiation inside a nuclear installation.

“Third party linked to a beneficiary” means the entity linked to a Beneficiary and listed in Special Clause 10 of the Grant Agreement.

In case of inconsistency between the Consortium Agreement definitions and the Grant Agreement definitions, the latter prevails.

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 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 EC-GA and under this Consortium Agreement.

However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement and Annex II of the EC-GA(Article II.37. and II.38.).

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

3.3. Survival of rights and obligations

The provisions relating to Confidentiality, for the time period mentioned therein, as well as for Liability, Applicable law, Access Rights 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 Governing Board and the leaving Party. This includes the obligation to provide all input, Deliverables and documents for the period of its participation.

Section 4 - RESPONSIBILITIES OF PARTIES

4.1. General principles

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

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

Each Party shall promptly provide all information reasonably required by a 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 Governing Board identifies a breach by a Party of its obligations under this Consortium Agreement or the EC-GA, the Coordinator 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 Governing Board 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.

In the case that the Coordinator is the Defaulting Party, the remaining members of the Governing Board will give written notice requiring that such breach be remedied within 30 calendar days.

4.3. Involvement of third parties

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

4.4. 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 have not been overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

Section 5 - LIABILITY TOWARDS EACH OTHER

5.1. General Principles

5.1.1. 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 Affiliated Entities) exercising its Access Rights.

5.1.2. Damages caused to personnel of a Party

Each Party is responsible for its own personnel involved in the agreed work, in particular the liabilities related to all damages or injury resulting from an accident during the work or an occupational disease, and agree to take up insurance contracts to cover these risks.

Each Party is in charge of its own personnel insurance coverage according to the applicable law including social security law and accident at work and occupational diseases regulations.

However, each Party is liable, in accordance with the applicable law, for any damages caused by its personnel to the personnel of the other Party.

5.1.3. Damages caused to property of a Party

Each Party will bear the liability without any right of claim against the other Party, except in cases of deliberate misconduct, for any damage to its own properties, whether owned or leased from third parties, resulting from or in the course of the performance of this Consortium Agreement. Therefore, whenever a claim is made or threatened against a Party in respect of any loss or damage to property whatsoever for which another Party is liable under this article, this other Party shall defend, indemnify and hold harmless the former Party.

Whenever a Party shall have been forced to pay, pursuant to a judgment or an arbitration award, a sum for which another Party is wholly or partly liable under the provision of this article this other Party shall reimburse and indemnify the former Party by bank transfer at the latest thirty (30) days after receipt of a notification informing said other Party of the payment of the said sum by said former Party.

5.2. Limitations of contractual liability

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

A Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's share of the EC requested Contribution of the Project as identified in Annex I of the EC-GA provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's 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 by it or on its behalf under this Consortium Agreement or from its use of Foreground or Background.

5.4. Nuclear third party Liability

The operator of a nuclear installation where the work will be carried out shall be solely liable for damage caused by a nuclear accident issuing from its installations, according to the provisions of the Paris Convention on Third Liability in the Field of

Nuclear Energy of July 29, 1960, the Complementary Brussels Convention of January 31, 1963, and their Additional Protocols, as implemented by the law of the country where the nuclear installation is located.

Section 6 - GOVERNANCE STRUCTURE

6.1. General structure

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

Governing Board, is the uppermost decision-making and arbitration body of the Consortium. Each Party has one voting representative to the Governing Board. The Chairperson will be elected during the kick-off meeting which will take place at the latest one month after start of the project. The Coordinator will not stand for election of the chair person.

Executive Committee, as the supervisory body for the project execution will have the responsibilities for implementing the general policy and strategic orientations decided on by the Governing Board, for establishing the Project Deliverables for the Commission, and for preparing progress reports of the Project for the Commission and the Governing Board. The Executive committee will guarantee the integration of the activities and the coordination of the technical activities. It is composed of the Work Package leaders, the responsible for the monitoring of international initiatives, and the responsible for the interface with the End-Users group and is chaired by the project Coordinator. The Executive Committee will directly follow the progress and quality of the training activities organized by WP5 as defined in Annex 1 of the grant Agreement.

End-Users group, is a body composed by design specialists of industry, of current EC and national projects on Gen IV and transmutation systems, by representatives of the international organizations involved in the nuclear data distribution like NEA/OECD and IAEA and other nuclear data groups. The End-Users group will benefit early from the project results, formulates specific requirements on the distributed nuclear data and provides scientific and technical advice on specific areas of interest. In this way it will ensure the exploitation of results and contribute to the dissemination of knowledge within the involved organizations and beyond. The Agreement with the End-Users group participants will be specified during the first year of the project, and this agreement will be previously approved by the Governing 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 EC-GA 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 represented at any meeting of such Consortium Body ;
- may appoint a substitute or a proxy to attend and vote at any meeting ;

- and shall participate in a cooperative manner in the meetings.

6.2.2. Preparation and organisation of meetings

6.2.2.1. Convening meetings

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

	Ordinary meeting	Extraordinary meeting
Governing Board	At least once every 18 months	At any time upon written request of the Executive Committee or 1/3 of the members of the Governing Board.
Executive Committee	At least once every 6 months	At any time upon written request of any member of the Executive Committee.
End-User Group	At least once every year	At any time upon agreement of the Executive Committee.

6.2.2.2. Notice of a meeting

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

	Ordinary meeting	Extraordinary meeting
Governing Board	45 calendar days	15 calendar days
Executive Committee	14 calendar days	7 calendar days
End-Users Group	45 calendar days	15 calendar days

6.2.2.3. Sending the agenda

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

Governing Board	21 calendar days, 10 calendar days for an extraordinary meeting
Executive Committee	7 calendar days
End-Users Group	15 calendar days

6.2.2.4. Adding agenda items

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

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

Governing Board	14 calendar days, 7 calendar days for an extraordinary meeting
Executive Committee	4 working days
End-Users Group	7 working days

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

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

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

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

Each Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of its members are present or represented (quorum).

Defaulting Parties may not vote.

Each Party shall hold voting rights proportional to its contribution to the Project.

Abstention is not considered as a vote.

Decisions shall be taken by a majority of two-thirds (2/3) of the voting rights, providing that these represent at least 50% of the contribution of the present Parts in the meeting and that, at least is represented 50% of the contributions to the Project.

6.2.4. Veto rights

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

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

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

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

A Party may not veto decisions relating to its identification 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.

6.2.5. Minutes of meetings

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

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

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

6.3. Specific operational procedures for the Consortium Bodies

6.3.1. Governing Board

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

6.3.1.1. Members

The Governing Board shall consist of one representative of each Party (hereinafter Governing Board Member).

Each Governing Board 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.

The chairman will be elected during the kick-off meeting which will take place at the latest one month after the signature of this Consortium Agreement. The Coordinator shall not stand for election as the chairman of the Governing Board. His responsibilities are the following :

- Setting the agenda for meetings of the Governing Board ;
- Chairing the meetings of the Governing Board. In his absence, the Governing Board will appoint an acting chairperson ;
- Ensuring that the Executive Committee (as described at article 6.3.2.4 of this Agreement) implements the decisions taken by the Governing Board.

The Parties agree to abide by all decisions of the Governing Board.

This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Article 11.8.

6.3.1.2. Voting Rules

Each Party shall hold voting rights proportional to the EU financial support to the Project contribution. The voting Rights based on the initial budget of the Project for its whole duration, are as follows :

CIEMAT	13.0%
CEA	20.0 %
CNRS	9.5%
GSI	2.5%
IFIN-HH	2.3 %
INFN	4.0 %
ITN	1.3 %
JRC-IRMM	9.5 %
JSI	2.5 %
JYU	2.0 %
NNL	3.0 %
NRG	8.5 %
PSI	2.8 %
SCK-CEN	2.5 %
TUW	2.8 %
UB	1.7 %
ULG	2.5 %
UPM	4.0%
USC	3.0%
UU	2.3 %

6.3.1.3. Decisions

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

The following decisions shall be taken by the Governing Board:

- Content, finances and intellectual property rights:
 - (a) Proposals for changes to Annex I of the EC-GA to be agreed by the European Commission,
 - (b) Changes to the Consortium Plan (including the Consortium Budget),
 - (c) Consortium Policy on Intellectual Property Rights, in particular about the Foregrounds,
 - (d) Withdrawals from Attachment 1 (Background included),

- (e) Additions to Attachment 2 (Background excluded),
 - (f) Additions to Attachment 5 (List of Affiliated Entities),
 - (g) Additions to Attachment 6 (List of Third Parties).
- Evolution of the Consortium:
- (h) Entry of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party,
 - (i) Withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal,
 - (j) Declaration of a Party to be a Defaulting Party,
 - (k) Remedies to be performed by a Defaulting Party,
 - (l) Termination of a Defaulting Party's participation in the Consortium and measures relating thereto,
 - (m) Proposal to the European Commission for a change of the Coordinator,
 - (n) Proposal to the European Commission for suspension of all or part of the Project,
 - (o) Proposal to the European Commission for termination of the Project and the Consortium Agreement.
- Appointments:
- On the basis of Annex I of the EC-GA, the appointment or the substitution if necessary of:
- (p) Work package leaders,
 - (q) Members of the Executive Committee such as the person responsible for the monitoring of international initiatives and the one responsible for the interface with the End-Users group.

6.3.2. Executive Committee (EXC)

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

6.3.2.1. Members

The members of the Executive Committee are the Coordinator (who also acts as the chairman) and the Work-Packages leaders (JRC, NRG, CEA/DEN, CEA/DSM, and CIEMAT), the responsible for the monitoring of international initiatives, and the responsible for the interface with the End-Users group. Some other persons may be invited as observers for specific meetings, if appropriate.

The Coordinator shall chair all meetings of the Executive Committee, unless decided otherwise.

6.3.2.2. Voting Rules

Each Member present or represented shall have voting rights proportional to its contribution to the Project.

6.3.2.3. Minutes of meetings

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

6.3.2.4. Tasks

The Executive Committee shall prepare the meetings, propose decisions and prepare the agenda of the Governing Board according to Article 6.3.1 .2.

It shall seek a consensus among the Parties.

The Executive Committee shall be responsible for the proper execution and implementation of the decisions of the Governing Board.

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

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

The Executive Committee shall :

- (a) support the Coordinator in preparing meetings with the European Commission and in preparing related data and deliverables,
- (b) prepare the content and timing of press releases and joint publications by the Consortium or proposed by the European Commission in respect of the procedures of the EC-GA Article II 30.3.
- (c) Propose the scientific orientations to the Governing Board and implement the agreed orientations
- (d) Ensure the scientific monitoring and review progress of the research work, the training activities, and the initiation of actions in case of failure of individual contractors,
- (e) Approve of the work schedules and technical co-ordination of the work programs within and between the technical Work Packages,
- (f) Prepare, where necessary, of revisions to the detailed work programs or technical options of the progress of the design,
- (g) Identify of technical and scientific problems and/or issues that need to be referred to the Governing Board,
- (h) Review and comment the contractually required interim and progress reports,
- (i) Propose technical workshops, technical meetings.
- (j) Review and approve the contractually required reports and Deliverables,
- (k) Resolve issues referred to the Executive committee by the partners.
- (l) Under the control of, and in compliance with the decisions of the Governing Board, the Executive Committee will coordinate, analyse and approve the results generated under the Work Packages.
- (m) Contribute to management reports,
- (n) Contribute to activity and financial reports
- (o) Make proposals on tasks to be conducted and the arrangements for performance and orientation of the Work Packages,
- (p) Inform the Governing Board concerning contractors presenting financial or technical difficulties within a Work Package,
- (q) Inform of any other difficulty arising in connection with the conduct of the Work Packages,
- (r) Make proposals on any publication/communication.
- (s) Prepare the agreement and establish the link with the End -Users group

In the case of abolished tasks as a result of a decision of the Governing Board, the Executive Committee shall advise the Governing Board on ways to rearrange tasks and

budgets of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

6.4. Coordinator

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. As Coordinator has been appointed the CIEMAT.

In particular, the Coordinator shall be responsible for :

- (a) acting as the coordinator for the European Commission,
- (b) acting as the intermediary between all Parties and the European Commission, since all information related to the Project will be transmitted to the European Commission through the Coordinator,
- (c) identification of problems and/or issues that need to be referred to the Governing Board ,
- (d) preparation and publication of call for tenders in case of competitive calls for new contractors, pre-evaluation of the proposals and negotiations of contracts,
- (e) acting as a focal point for all kinds of Parties external and internal requests,
- (f) monitoring compliance by the Parties with their obligations,
- (g) collecting, reviewing to verify consistency and submitting reports and other deliverables (including financial statements and related certifications) to the European Commission,
- (h) establish and update the project Web site, the contractors' address lists, etc.,
- (i) organize registration and central deposit of all documents prepared under the project,
- (j) prepare and submit the contractually required periodic activity and financial reports; supplementary reports as far as necessary,
- (k) receive all payments made by the European Commission and administering the EC contribution,
- (l) administering the Community financial contribution and fulfilling the financial tasks described in Article 7.3,
- (m) 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 Governing Board 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 EC-GA.

Section 7 - FINANCIAL PROVISIONS

7.1. General Principles

7.1.1. Distribution of the Financial Contribution

The Community financial contribution 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, unless available funds within the project budget allows extra funding. In case more than one Party is entitled to extra funding, this extra funding shall be regulated in direct proportion to the extra allocated budget.

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

A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by the European Commission.

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

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 :

- (a) banking and transaction costs related to the handling of any financial resources made available for the Project by the Coordinator,
- (b) reasonable costs of Parties related to :
 - o the delivery of certificate s of the financial statements according to the EC-GA,
 - o the delivery of the certificate on the methodology, if any, unless the cost of such certification has already been paid to the beneficiary under a previous EC-GA and the methodology has not changed (EC -GA Article II.4.4 and II.14.1)
 - o costs related to calls for new Beneficiaries
- (c) costs related to updating this Agreement,
- (d) management costs of the Coordinator,
- (e) costs related to the tasks of the Executive Committee,
- (f) intellectual property protection costs,
- (g) costs for publications,
- (h) any other costs eligible for 100% reimbursement.

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 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.

All payments shall be made without undue delay by the Coordinator after receipt of funds from the European Commission in accordance with the accepted decisions of the Governing Board on the Consortium Budget.

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

- budgeted costs for future work included in the Consortium Plan will be paid to Parties in separate instalments in conformity with the decisions of the Governing Board. Costs accepted by the Commission will be paid to the Party concerned, taking into account the amounts already paid for such reporting period.

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

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

Because of its particular status as a Commission Directorate-General and in accordance with the special clauses applicable to the Grant Agreement, the Joint Research Centre - participating in this project through its Institute for Reference Materials and Measurements - signs an Administrative Arrangement with DG RTD. This Administrative Arrangement is an annex to the Grant Agreement and regulates relations within the Commission including inter-Commission payments.

Section 8 - FOREGROUND

A Third Party linked to a Beneficiary has the same rights and obligations as a Party regarding the Background, the Foreground and in particular their ownership.

Regarding Foreground, EC-GA Article II.26 to 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, subject to the following conditions:

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

The joint owners shall agree on all protection measures (confidentiality, application for a patent) and the division of related costs in advance.

Where such joint Foreground is covered by intellectual property rights, the joint owners shall establish an agreement regarding the allocation and terms of exercising that joint ownership before any Commercial Use.

8.2. Transfer of Foreground

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

It may identify specific third parties it intends to transfer the ownership of its 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 EC-GA 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 Governing Board.

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 the EC-GA, 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 EC-GA subject to the following provisions.

Prior notice of any planned publication shall be made to any Party concerned by this publication thirty (30) calendar days before the said publication. Any objection to the planned publication shall be made in accordance with the EC-GA in writing to the Coordinator and to any Party concerned within fifteen (15) calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

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.

This request may consist :

(a) in modifications, specifically if certain pieces of information contained in the proposed publication or communication are likely to affect the industrial and Commercial Use of Foreground, provided however that the scientific content and conclusions remain unaltered ; or

(b) that the publication or communication be postponed if, in its opinion, real and serious reasons require this, especially if the information contained in the proposed publication or communication should be the subject matter of industrial property protection.

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. None of the Parties may withhold their consent to publication or communication of any piece of information upon the expiry of a period of eighteen (18) calendar months following the first submission of this piece of information in a proposed publication/communication, unless the information to be published/communicated is of an industrial or commercial strategic interest to the activities of one of the Parties.

This process for prior notices does not prevent anyone from sending the material for publication process, provided the material may be withdrawn from the publication process in case objection is made in accordance with Article II.30 of the Grant Agreement.

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. For the avoidance of doubt, the mere absence of an objection according to 8.3.1 is not considered as an approval.

8.3.3. Cooperation obligations

The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Foreground or Background. However, confidentiality and publication clauses have to be respected.

Where a person carrying out work on the Project on behalf of a Party (the "Relevant Party") needs to include Background or Foreground of another Party in a publication to qualify for a degree, dissertation or thesis, prior approval for such Use shall be obtained from the appropriate Party owning such rights or affected by such Use in accordance with the provisions of Section 8.3.1 above, such approval not to be unreasonably withheld.

The Parties undertake to cooperate to resolve disputes as to the contents of such publication in order to ensure timely release of the publication, in any event within 90 days of first notification that a publication will be made.

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 EC-GA.

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

However, only the Governing Board 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 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 if those are Needed for the implementation of the Project.

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 list specific Background as excluded, it shall identify such Background in the Attachment 2.

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

However, only the Governing Board can permit a Party to add Background to Attachment 2.

9.2. General Principles

Each Party is and remains the sole holder of its intellectual property rights over its Background. Unless expressly provided otherwise, trademarks are not part of Background.

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

If the Governing Board 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 right to sublicense unless expressly stated otherwise.

Access Rights shall be free of any administrative transfer costs.

Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties according to the EC-GA Article II.32.7, and only for so long as is necessary for the purposes as defined.

The Access Rights to Background or Foreground are limited to the field of application being identified as pertaining to the objectives, content and goals of the Project, unless otherwise agreed upon by the concerned Parties.

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

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.

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

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 Rights to Foreground generated by other Parties unless those Parties explicitly agree to it.

Access Rights to Foreground for internal research activities of a Party shall be granted on a royalty-free basis.

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.

Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on fair and reasonable conditions in so far the owner Party is free to grant such Access Rights.

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

9.5. Access Rights for Affiliated Entities

Affiliated Entities have Access Rights to Background and Foreground under the conditions of the EC-GA Article II.34.3.

In addition, Affiliate Entities may also enjoy Access Rights if they can show that:

- they hold a license on Foreground developed by a Party they are affiliated to; and
- they Need Access Rights in order to Use such Foreground; and
- they are established in a Member State or an Associated Country;
- and they are listed in [Attachment 5 (List of Affiliated Entities)] to this Consortium Agreement.

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 its Intellectual Property Rights which is Needed to Use Foreground of all Parties and fulfil all confidentiality and other obligations accepted by the Parties under the EC-GA or this Consortium Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliated Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the 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 the EC-GA or this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

9.7. 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 Governing Board to terminate its participation in the Consortium.

9.7.2.1.2. Non-defaulting Party

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Foreground developed until the date of the termination of its participation. It may request Access Rights within the period of time specified in Article 9.4.

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 EC-GA and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

9.8. Specific Provisions for Access Right to Software

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

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 from oral disclosure 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 EC-GA, for a period of five (5) years after the end of the Project, but no longer than 10 years from the receiving of the information:

- (a) not to use Confidential Information otherwise than for the purpose for which it was disclosed,
- (b) not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party,
- (c) to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis, and
- (d) 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:

- (a) the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations ;
- (b) the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential ;
- (c) 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 ;
- (d) the disclosure or communication of the Confidential Information is foreseen by provisions of the EC-GA ;
- (e) the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party ; or
- (f) the Confidential Information was already known to the Recipient prior to disclosure.
- (g) the Confidential Information is required to be disclosed by applicable laws or regulations or court or administrative order.

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 :

- (a) notify the Disclosing Party, and

(b) comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

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

The Parties shall impose the same obligations on their Affiliated Entities and subcontractors.

Section 11 - MISCELLANEOUS

11.1. Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and:

- Attachment 1 (Background included),
- Attachment 2 (Background excluded),
- Attachment 3 (Accession document),
- Attachment 4 (Initial list of Members of the Governing Board ,
- Attachment 5 (List of affiliated entities)
- Attachment 6 (List of Third Parties)

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

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

11.2. No representation, partnership or a gency

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 of the Governing Board in Attachment 4.

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, 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 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 and all clauses in the Grant Agreement affecting the rights and obligations between the Parties shall be constructed with and governed by the laws of Belgium.

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 under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

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

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

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief 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 separate signature pages.

The Coordinator **Centro de Investigaciones Energéticas
Medioambientales y Tecnológicas (CIEMAT)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Commissariat à l'Énergie Atomique (CEA)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Centre National de la Recherche Scientifique (CNRS)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **GSI Helmholtzzentrum für Schwerionenforschung
GmbH (GSI)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Institutul National de Cercetare –Dezvoltare Pentru Fizica si Inginerie Nucleara “Horia Hulubei” (IFIN -HH)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Istituto Nazionale di Fisica Nucleare (INFN)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Instituto Tecnológico e Nuclear (ITN)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Commission of the European Union – Joint Research Centre (JRC–IRMM)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Institut Jozef Stefan (JSI)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Jyvaskylan Yliopisto (JYU)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **National Nuclear Laboratory Limited (NNL)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Nuclear Research and Consultancy Group (NRG)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Paul Scherrer Institut (PSI)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Studiecentrum voor Kernenergie/Centre d'Etude de l'Energie Nucléaire (SCK•CEN)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Technische Universitaet Wien (TUW)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Universitatea din Bucuresti (UB)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Universite de Liege (ULG)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Universidad Politécnica de Madrid (UPM)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Universidade de Santiago de Compostela (USC)**

Signature:

Name:

Position in the organisation:

Data:

The Party: **Uppsala universitet (UU)**

Signature:

Name:

Position in the organisation:

Data:

Attachment 1 : Background included

Note 1 : Background included to the Project means that the entity agrees to grant Access Rights to other Parties for the execution of the Project, and to any Party or Affiliated Entities (as designated in Attachment 5) for Use of Foreground under Article 9 terms.

Note 2 : This represents the status at the time of signature of this Consortium Agreement.

As to CIEMAT:

- See Attachment 2

As to CEA:

CEA agrees to grant Access Right to the Background generated by its research units from CEA/DSM and CEA/DAM of which the members are directly involved in carrying out the Project, as far as Needed to duly perform their work under the Project, subject to third parties' rights.

As to CNRS:

- See Attachment 2

As to GSI

- GSI hereby grants Access Right to Background which has been generated by the members of the research group of Dr. Aleksandra Kelic-Heil, Department of Reactions and Nuclear Astrophysics of GSI, which are directly involved in carrying out the Project, especially Access Rights to the ABLA code.

As to INFN:

- See Attachment 2

As to PSI

- PSI hereby includes all Background which was published in scientific journals by Dr. Dorothea Schumann and her team, and which is needed for carrying out the Project, except for the Background which is excluded in Attachment 2.

As to SCK•CEN:

- all knowledge concerning the results of the measurements of MA and spectral indexes at first GUINEVERE critical core CR0.

As to TUW:

- For Technische Universitaet Wien (TUW) only background created within the Atominstitut E141 working group of Prof. Helmut Leeb will be included.

Attachment 2 : Background excluded

Note 1 : Background excluded from obligations to grant Access Rights means the entity does not agree to grant Access Rights to other Parties for the execution of the Project, nor to any Party or Affiliated Entities (as designated in Attachment 5) for Use of Foreground under Article 9 terms.

Note 2 : This represents the status at the time of signature of this Consortium Agreement.

As to CIEMAT :

- In general, all knowledge, including patents, patents pending, know-how, trademarks, software, designs and models, owned by CIEMAT, other than such developed by the Division of Nuclear Fission, which are directly involved in carrying out this Project; and,
- Any Background of CIEMAT which is not explicitly listed shall be excluded from Access Rights to this Consortium and its Parties

As to CEA :

CEA excludes from its obligation to grant Access Rights:

- any Background of CEA which is not explicitly listed in Attachment 1 of this Consortium Agreement, in particular background generated by CEA/DEN,
- Information which is developed by its research units involved in carrying out the Project, during the term of the Project but outside the scope of it, and which is not included in Attachment 1 ,
- Information which is covered by specific written research or development agreements with third parties for which CEA, due to third party rights, is not able to grant Access Rights to or from whom CEA needs to get permission to grant Access Rights to.

As to CNRS :

For the purpose of the ANDES Project, CNRS hereby excludes from its obligation to grant Access Rights to Background:

- All Background other than that generated and owned in the field of the Project by its own research teams in the research units of IPNO, LPC Caen IPHC, Ganil, CENBG directly involved in the Project;
- All know-how in patents and current patent applications; however access right to know-how in existing patents may be granted in justified cases upon written request to CNRS;
- All Background that has been derived by the research team involved in the Project, but which is not introduced by CNRS into the Project;

- All Background which CNRS, due to existing or future third party rights, is unable to grant access rights to;
- All knowledge, including patents, patents pending, know-how, data, trademarks, software, designs and models resulting from work co-funded by partners outside the Consortium, or whose disclosure and or use is subject to authorization by those partners.

As to GSI

GSI excludes from its obligation to grant Access Rights to Background Knowledge all Background generated by GSI other than that generated by the members of the research group of Dr. Aleksandra Kelic-Heil, Department of Reactions and Nuclear Astrophysics, who are directly involved in carrying out the Project.

GSI also hereby excludes specifically from its obligation to grant Access Rights to Background the following Background:

- All data, materials, methodologies and know-how not generated through the direct participation in the Project or which GSI is not free to provide.
- Databases and software not generated through the direct participation in the Project or which GSI is not free to provide.
- All Background resulting from research carried out by Dr. Aleksandra Kelic-Heil and her team, which was funded in full or in part by industrial, charitable or government sponsors.

GSI also hereby excludes from its obligation to grant Access Rights to Background all Background that has been and/or will be derived outside the Project which GSI due to third party rights is not able to grant Access Rights to or for which GSI needs to get permission to grant Access Rights.

GSI shall only grant access to Background of which it can legally dispose. GSI hereby excludes from its obligation to grant Access Rights to Background all Background whose access is restricted due to licence agreements with a third party.

As to INFN:

INFN Laboratories, Departments, services, facilities, experimental instrumentation or expertise, which are not directly involved in carrying out the Project, shall be excluded from and communication and Access Rights.

Expertise, which is developed by the INFN during the term of the Project outside the scope of it, shall be excluded from any communication and Access Rights.

As to JSI:

For the purpose of the this Project, JSI hereby excludes from its obligation to grant Access Rights to Background:

- All Background other than that generated and owned by research units of the Reactor Physics Department of JSI, which are directly involved in carrying out this Project;
- All know-how in patents and current patent applications; however access right may be granted in justified cases upon written request ;

- All Background that has been or will be derived by the research unit involved in the Project, but which is neither needed for, nor introduced by JSI into, the Project;
- All Background which JSI, due to existing or future third party rights, is unable to grant access rights to;
- All knowledge, including patents, patents pending, know-how, data, trademarks, software, designs and models resulting from work co-funded by industrial partners whose disclosure and or use is subject to authorization by those partners.

As to PSI:

PSI hereby excludes from its obligation to grant Access Rights to Background all Background that Paul Scherrer Institut due to third party rights is not able to grant Access Rights to or for which Paul Scherrer Institut needs to get permission to grant Access Rights.

Paul Scherrer Institut also excludes specifically from its obligation to grant Access Rights to Background the following Background:

a) All data, samples, methodologies, know-how, databases and software which Paul Scherrer Institut is not free to provide.

All Background resulting from research carried out by Dr. Dorothea Schumann and her team which was funded in full or in part by industrial or governmental sponsors.

As to SCK•CEN:

all knowledge - including patents, patents pending, know-how, data, trademarks, software, designs and models - in the field of fast nuclear systems and/or Partitioning and Transmutation which is not related to this project ;

- all knowledge - including patents, patents pending, know-how, data, trademarks, software, designs and models - resulting from work carried out in the framework of national programmes and international/bilateral agreements not related to ANDES;

- all knowledge, including patents, patents pending, know-how, data, trademarks, software, designs and models resulting from work co-funded by industrial partners, be it in the framework of joint national or international projects, whose dissemination is submitted to authorisation by those partners.

- Specifically excluded are:
- SCK•CEN design work on control and safety systems for fast reactors;
- all the specifications of the GUINEVERE concerning subcritical core, including GENEPI-3C details coupling.

As to TUW:

For the avoidance of doubt all Background is excluded other than background created within the Atominstitut E141. Further is excluded all background derived within the working group of Prof. Leeb outside the ANDES project.

As to UPM

For the purpose of the this Project, UPM explicitly excludes from its obligation to grant Access Rights to Background:

- All Background other than such developed by the Department of Nuclear Engineering and the Instituto de Fusion Nuclear of UPM, which are directly involved in carrying out this Project;
- All knowledge, including patents, know-how, data, trademarks, software, designs and models resulting from work co-funded by industrial or public partners whose disclosure and or use is subject to authorization by those partners.

As to UU:

All background generated by employees, agents or representatives of Uppsala University other than those directly involved in the ANDES Project and all background generated by employees, agents or representatives of Uppsala University that are directly involved in the ANDES Project, which is unrelated to the work plan, aims and objectives of the ANDES Project.

Attachment 3 : Accession document

Attachment 4 : Initial list of members of the Governing Board

Recipients for Notices in Accordance with Article 11 of this Consortium Agreement.

The Members of the Governing Board are :

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UU,

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Attachment 5 : List of Affiliated Entities

Attachment 6 : List of Third Parties