

CONSORTIUM AGREEMENT

Ref: The EC Grant Agreement for an action with multiple beneficiaries number 245658

Project

European Cluster Management Excellence Consortium "ClusterExcellence.EU"

European Cluster Excellence Initiative (ECEI)



Table of Content

Section 1: Definitions.....	5
Section 2: Purpose.....	6
Section 3: Entry into force, duration and termination.....	7
Section 4: Responsibilities of Parties	8
Section 5: Liability towards each other	8
Section 6: Governance structure.....	10
Section 7: Financial provisions	17
Section 8: Foreground.....	19
Section 9: Access Rights.....	20
Section 10: Non-disclosure of information.....	23
Section 11: Miscellaneous.....	25
Section 12: Signatures	28
Attachment 1: Background included.....	50
Attachment 2: Background excluded.....	50
Attachment 3: Accession document.....	51
Attachment 4: Listed Affiliated Entities	52
Attachment 5: Initial list of Members and other contact persons.....	53

CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon

© DESCA - The simplified FP7 Model Consortium Agreement (www.DESCA-FP7.eu) Version 2.0, May 2008 and the European Commission (EC) Grant Agreement (GA) for an action with multiple beneficiaries number 245658, signed on December 1, 2009 hereinafter referred to as the Grant Agreement or EC-GA

BETWEEN:

IESE, Universidad de Navarra, hereinafter called "the co-ordinator", ("beneficiary no. 1"),

and the following "co-beneficiaries" who have conferred powers of attorney for the purposes of the signature of the agreement to the representative of the co-ordinator,

- **Clusterland Oberosterreich Gmbh**, established in Austria ("*beneficiary no. 2*"),
- **VDI/VDE Innovation + Technik Gmbh**, established in Germany ("*beneficiary no. 3*"),
- **MFG Medien-und filmgesellschaft baden-wuerttemberg Mbh**, established in Germany ("*beneficiary no. 4*"),
- **Association Club des Districts Industriels Français**, established in France ("*beneficiary no. 5*"),
- **Europa InterCluster**, established in France ("*beneficiary no. 6*"),
- **Syddansk Universitet**, established in Denmark ("*beneficiary no. 7*"),
- **B.I.A OÜ**, established in Estonia ("*beneficiary no. 8*"),
- **Croatian Employers' Association**, established in Croatia ("*beneficiary no. 9*"),
- **Ecoplus. Niederösterreichs Wirtschaftsagentur GmbH**, established in Austria ("*beneficiary no. 10*"),
- **Departament d'Empresa i Ocupació de la Generalitat de Catalunya**, established in Spain ("*beneficiary no. 11*"),
- **Munkaadók és Gyáriparosok Országos Szövetsége**, established in Hungary ("*beneficiary no. 12*"),
- **Innovasjon Norge**, established in Norway ("*beneficiary no. 13*"),
- **Agència de Suport a l'Empresa Catalana (ACC1Ó)**, established in Spain ("*beneficiary no. 14*")

collectively "the beneficiaries", and each individually identified as "beneficiary" for the purposes of this agreement where a provision applies without distinction to the co-ordinator or a co-beneficiary

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

relating to the Project entitled

European Cluster Management Excellence Consortium "ClusterManagers.EU"

in short

European Cluster Excellence Initiative (ECEI)

hereinafter referred to as "Project"

WHEREAS:

The beneficiaries, having considerable experience in the field concerned, have submitted a proposal for the Project to the European Commission as part of the Competitiveness and Innovation Programme, CIP-EIP Work Programme 2009 (call for proposals PROINNO Europe-ENT-CIP-09).

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

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

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Definitions

1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the relevant CIP programme EC documents without the need to replicate said terms herein.

1.2 Additional Definitions

"Access Rights"

Access Rights means licences and user rights to Foreground or Background;

"Background"

Background means information which is held by beneficiaries prior to their accession to the EC-GA, 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;

"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.

"The Effective date" is the date indicated as "the starting date of the action" in article I.2.2 of the EC-GA (September 1, 2009)

"Foreground"

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.

"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.

"Use"

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.

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 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.11.4 and II.11.5.).

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

3.3 Survival of rights and obligations

The provisions relating to Access Rights and Confidentiality, for the time period mentioned therein, as well as for Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

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 EC-GA and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Spanish law.

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

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

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

4.2 Breach

In the event a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the EC-GA (e.g.: a partner producing poor quality work), 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 General Assembly may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

4.3 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (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.

Agreement and of the EC-GA. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the EC-GA.

Section 5: Liability towards each other

5.1 No warranties

In respect of any information or materials (incl. Foreground and Background) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliates) exercising its Access Rights.

5.2 Limitations of contractual liability (articles II. 12 and II.19 of the EC-GA)

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

A Party's aggregate liability towards the other Parties collectively shall be limited to the Party's share of the total costs of the Project as identified in Annex I of the 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 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

6.1 General structure

6.1.1. The General Assembly is the representative body of all the beneficiaries. Each beneficiary (hereinafter referred to as "Member") will have the right to appoint a representative to the General Assembly. However the Members agree to delegate all consortium management decisions to the Steering Committee below. This does not prevent the Members from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Article 11.8 of this Consortium Agreement.

The Coordinator shall chair all meetings of the General Assembly.

6.1.2. The Steering Committee is the operative decision-making body of the Consortium. Its Members are designated in this Consortium Agreement and can only be changed with approval of the General Assembly.

The Steering Committee will consist of representatives from the following beneficiaries:

- WP1: beneficiary no. 2
- WP2: beneficiary no. 3
- WP3: beneficiary no. 7
- WP4: beneficiary no. 6
- WP5: beneficiary no. 4

The representative of the Coordinator, beneficiary no 1, will be the chair of the Steering Committee.

In case of the replacement of any representatives in the Steering Committee, the General Assembly will have to approve the new candidate proposed by the Steering Committee.

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

The Coordinator will appoint an Internal Communications specialist to help in these functions¹.

6.2 Members

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters of this Consortium Agreement, be as part of the General Assembly or as part of the Steering Committee.

6.3 Operational procedures for the Steering Committee and 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;

shall participate in a cooperative manner in the meetings.

6.3.2 Preparation and organisation of meetings

6.3.2.1 Convening meetings:

The chairperson shall convene ordinary meetings of the Steering Committee every 3 months and of the General Assembly at least once every year and shall also convene extraordinary meetings

¹ The cost of that service shall be invoiced directly to each beneficiary (except VDI/VDE INNOVATION + TECHNIK GMBH, "beneficiary no. 3" and Departament d'Empresa i Ocupació de la Generalitat de Catalunya, ("beneficiary no. 11")) in accordance with the Project management budget

at any time upon written request of at least one third of the Members, that is 2 for the Steering Committee, and 4 for the General Assembly.

6.3.2.2 Notice of a meeting:

The chairperson shall give notice in writing of a meeting to each Member as soon as possible and no later than 28 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

6.3.2.3 Sending the agenda:

The chairperson shall send each Member a written original agenda no later than 14 calendar days preceding an ordinary meeting, or 7 calendar days before an extraordinary meeting.

6.3.2.4 Adding agenda items:

Any agenda item requiring a decision by the Members must be identified as such on the agenda. Any Member and Beneficiary may add an item to the original agenda by written notification to all of the other Members and Beneficiaries no later than 7 calendar days preceding a meeting.

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

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

6.3.2.7 Meetings of the Steering Committee may also be held by teleconference or other telecommunication means. However, the yearly meeting of the General Assembly may not be held in this manner.

6.3.2.8 Decisions will only be binding once the relevant part of the minutes has been accepted according to Article 6.3.5 of this Consortium Agreement.

6.3.3 Voting rules and quorum

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

6.3.3.2 Each Member of the Steering Committee and General Assembly shall have one vote.

6.3.3.3 Defaulting Parties may not vote.

6.3.3.4 Decisions shall be taken by a simple majority of the votes.

6.3.4 Veto rights

6.3.4.1 A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of the Steering Committee may exercise a veto with respect to the corresponding decision or relevant part of the decision.

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

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

6.3.4.4 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 Members and Beneficiaries.

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

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

6.3.5 Minutes of meetings

6.3.5.1 The chairperson shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send draft minutes to all Members within 14 calendar days of the meeting.

6.3.5.2 The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes. : If a member has objections in writing to the minutes, it is the duty of the chairperson to inform all members about these objections.

6.3.5.3 The chairperson, a representative from Coordinator, shall send the accepted minutes to all the Members of the General Assembly. Both the Coordinator and the General Assembly shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

6.3.6 Decisions of the Parties

The Parties 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 Parties represented in the Steering Committee:

Content, finances and intellectual property rights

- Proposals for changes to Annex I of the EC-GA to be agreed by the European Commission
- Changes to the Consortium Plan (including the Consortium Budget)
- 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 conditions of the accession of such a new Party
- Withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal
- Declaration of a Party to be a Defaulting Party
- Remedies to be performed by a Defaulting Party

- Termination of a Defaulting Party's participation in the Consortium and measures relating thereto
- Proposal to the European Commission for a change of the Coordinator
- Proposal to the European Commission for suspension of all or part of the Project
- Proposal to the European Commission for termination of the Project and the Consortium Agreement

In the case of abolished tasks as a result of a decision above, the Steering Committee will 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

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

6.4.2 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 certification) to the European Commission and send an electronic copy of the project reports to all Members and Beneficiaries after its submission
- preparing the meetings, proposing decisions and preparing the agenda of General Assembly meetings, Steering Committee meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings
- transmitting promptly documents and information connected with the Project,
- administering the Community financial contribution and fulfilling the financial tasks described in EC-GA
- providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

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

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

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

6.5 Internal Communications

The Internal Communications Specialist will be appointed by the Coordinator and shall assist and facilitate the work of the Steering Committee and the General Assembly.

The Internal Communications Specialist shall provide assistance to the Coordinator for executing the decisions of the Steering Committee.

Section 7: Financial provisions

7.1 General Principles

7.1.1 Distribution of 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 EC-GA and its annexes
- financial guidelines of the European Commission

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

7.1.2 Justifying Costs

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the European Commission. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the European Commission.

7.1.3 Funding Principles

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

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

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

A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by the European Commission or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Article 5.2 of this Consortium Agreement, bear any 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

Costs should be budgeted in the Consortium Budget in accordance with annex 1 of the EC-GA and financial guidelines of the European Commission

7.2.2 Changes in Consortium budget

Coordinator will have the right to propose to the Steering Committee to redistribute/change the initial budget if such change improves the chances of successful implementation of the Project and meets the requirements of the European Commission.

7.3 Payments

7.3.1 Payments to Parties are the exclusive tasks of the Coordinator.

In particular, the Coordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts
- undertake to keep the Community financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

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".

The Coordinator is entitled to recover any payments already paid to a Defaulting Party, if such a request has been issued by the European Commission.

Section 8: Foreground

The Parties of the Consortium agree and acknowledge that Foreground shall be owned by the Party who carried out the work generating the Foreground, or on whose behalf such work was carried out.

8.1 Joint ownership

Work generating Foreground which has been carried out by more than one Party shall be owned by all the parties contributing thereto.

8.2 Transfer of Foreground

Each Party may transfer ownership of its own Foreground to any organisation or entity it pleases, but will notify the other Parties. Liabilities of the Foreground Transfer between partners for Work Package 3 are special and cleared by separate agreement.

8.3 Dissemination

This clause does not affect dissemination and marketing activities carried out in accordance with the description of Work Package 5 of the EC-GA as the dissemination and marketing activities are described in the application to the European Commission and must be carried out according to that description.

8.3.1 Publication

Liabilities of the Foreground Publication are valid only for partners of Work Package 3 and they are cleared by separate agreement.

8.3.2 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.

8.3.3 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. This notwithstanding, the Parties agree that they will use the PRO INNO Europe® trademark as described in the terms set forth in Article I.11 of the EC-GA when carrying out their activities related to their contractual obligations. This clause does not affect dissemination and marketing activities carried out in accordance with the description of Work Package 5 of the EC-GA

8.3.4 The Quality Label, IPR

Within Work Package 2 of the collaborative project Cluster Excellence Initiative (ECEI) a set of Quality Indicators (QI) as well as an assessment procedure for cluster management quality (Cluster Management Quality Label) shall be jointly developed. It is foreseen to propose a feasible exit strategy to allow that the developed procedures can remain to be implemented after the end of the ECEI project. The parties having actively contributed to the development process of the QI and the Cluster Management Quality Label are willing to conclude a separate agreement stating the remaining duties and rights of every party according to his/her individual contribution to the development of the procedures. This agreement shall be negotiated when the entire procedures and the roles of particular organizations within the procedures is clear.

Section 9: Access Rights

The present section shall be subject to section 8 before and in case of contradictions with section 8 above, the terms of section 8 shall prevail.

9.1 Background covered

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

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

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

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

9.1.3 The Parties agree that all Background not listed in Attachment 1 shall be explicitly excluded from Access Rights. The Parties agree, however, to negotiate in good faith additions to Attachment 1 if a Party asks them to do so and those are needed. For the avoidance of doubt, the owner is under no obligation to agree to additions of his Background to Attachment 1.

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

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

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

9.2 General Principles

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

9.2.2 The Parties shall inform the General Assembly 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.

9.2.3 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.

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

Access Rights shall be free of any administrative transfer costs.

Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties.

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

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

As an exception to the foregoing, the Beneficiaries mutually hereby grant each other a limited, royalty-free right to use and reproduce the Foreground of the other Parties (together with any Background which may be amalgamated with such Foreground) for the purpose of its use in the context of tuition and teaching purposes. In the event any Beneficiary makes use of such rights, it shall notify the Party's whose Foreground and/or Background has been used and shall provide details of the use that has been made.

9.2.7 Except for the limited right to use and reproduce mentioned above, 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 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.

9.5 Access Rights for Parties entering or leaving the Consortium

9.5.1 New Parties entering the Consortium

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

9.5.2 Parties leaving the Consortium

9.5.2.1 Access Rights granted to a leaving Party

9.5.2.1.1 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.

9.5.2.1.2 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.

9.5.2.2 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.

9.6 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.

9.7 General Limitation

The provisions included in this Section shall in all cases be subject to and limited by ~~section 8.3.1~~ and in case of contradictions between the terms of this Section ~~9~~ and the terms of ~~section 8.3.1~~, the latter shall prevail.

Section 10: Non-disclosure of information

10.1 All information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and

designated in writing within 15 days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the EC-GA, for a period of 5 years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only.

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

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

- the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the EC-GA;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
- the Confidential Information was already known to the Recipient prior to disclosure.

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

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

10.7 If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure notify the Disclosing Party, and comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

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

10.9 In case of a breach of the obligations indicated in Art. 10, according the Art. 4.2. of this Consortium Agreement, Members of General Assembly will have the right to impose legal sanctions.

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 (Listed Affiliated Entities)
- Attachment 5 (initial list of Members and other contact persons)

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

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

11.2 No representation, partnership or agency

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

11.3 Notices and other communication

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator based on the initial list of Members and other contact persons in Attachment 5.

Formal notices:

If it is required in this Consortium Agreement 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 not explicitly listed in Article 6.3.6 require a separate agreement between all Parties.

11.5 Mandatory national law

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

11.6 Language

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

11.7 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the laws of Spain.

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 one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (1), **IESE Business School, Universidad de Navarra**

Signature(s)

Title(s) Mr.

Name(s) Jaime Alonso Stuyck

Position General Administrator

Date 27/04/11

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (2), **Clusterland Oberosterreich GMBH**

Title(s) Mr.
Name(s) Werner Pamminger
Position Managing Director

Date Linz, Jan 10, 2011

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (3), **VDI/VDE INNOVATION + TECHNIK GMBH**

Title(s)
Name(s)
Position

Date

28.11

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (4), **MFG MEDIEN-UND FILMGESELLSCHAFT
BADEN-WUERTTEMBERG MBH**

Title(s)
Name(s)
Position

Date *Stuttgart, den 19. Okt. 2011*

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (5), **Association Club des Districts Industriels Français**

Title(s)
Name(s) *Mr Xavier Roy*
Position *Directeur*

Date *09/02/2011*

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (6), **Europa InterCluster**

Title(s)
Name(s) *LEVEL François-Xavier*
Position *Président*

Date *28 Feb 2011*

Stamp of Organisation:



Cluster Excellence. EU Consortium Agreement, version 23-11-2010

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (7), **Syddansk Universitet**

Date:

Title(s) Mr.
Name(s) Lars Stig Møller
Position Head of Office

Date **6 JAN. 2010**

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (R), **B.I.A OÜ**

Title(s) MR.
Name(s) RENE TÖNNISSON
Position MEMBER OF EXECUTIVE BOARD

Date 15.03.2011

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (9), **Croatian Employers' Association**

Title(s) Mr.
Name(s) DAVOR MAJETIC
Position GENERAL DIRECTOR

Date 01/02/2011

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (10), **ecoplus. Niederösterreichs Wirtschaftsagentur**

Title(s)
Name(s)
Position

Date

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (11), **Departament d'Empresa i Ocupació de la Generalitat de Catalunya**

Title(s) Mr.
Name(s) FERRERES XAVIER MANS
Position Director

Date 15 ABR, 2011

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (12), **Munkaadók és Gyáriparosok Országos Szövetsége**

Title(s)

Name(s)

Position

SECRETARY GENERAL

Date 04. 01. 2011.

Stamp of Organisation:



AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (13), **Innovasjon Norge**

Title(s) *SENIOR VICE PRESIDENT*
Name(s) *HANS MARTIN VIKDAL*
Position

Date *25th March 2011*

Stamp of Organisation:

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in one original copy to be kept by the Coordinator the day and year first above written. All Parties have received a copy of the signed Consortium Agreement.

Authorised to sign on behalf of (14), **Agència de Suport a l'Empresa Catalana (ACC1Ó)**

Title(s) *Mr.*
Name(s)
Position *Josip Moragas Treixà*

Date

15 ABR 2011

Stamp of Organisation:

Attachment 1: Background included

Access Rights to Background made available to the Parties:

Syddansk Universitet (SDU):

Hereby includes in its obligation to grant Access Rights only Background generated by the SDU Department of Entrepreneurship and Relationship Management who are directly involved in carrying out the Project. All other Background generated by SDU is excluded from Access Rights. Access Rights will only be provided upon written request and if Needed for the Project.

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

Attachment 2: Background excluded

Background excluded from Access Rights:

Syddansk Universitet (SDU):

All Background generated by SDU – apart from Background generated by the SDU Department of Entrepreneurship and Relationship Management who are directly involved in carrying out the Project – is excluded from Access Rights.

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

Attachment 3: Accession document

ACCESSION

of a new Party to

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

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

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

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

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

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

Signature(s)

Name(s)

Title(s)

Attachment 4: Listed Affiliated Entities

Attachment 5: Initial list of Members and other contact persons

Recipients for Notices

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

IESE, Universidad de Navarra

The Coordinator

Mr F

Tel.

E-mail:

Avenida Pearson, 21

08034 Barcelona

Spain

Clusterland Oberosterreich Gmbh

Member of the Steering Committee:

Clusterland Oberösterreich GmbH

A-4020 Linz, Hafenstraße 47-51

FN 271378k, Landesgericht Linz

Austria

Tel:

Fax

VDI/VDE Innovation + Technik GmbH,

Member of the Steering Committee:

Steinplatz 1

10623 Berlin

Germany

Phone:

Fax:

MFG Medien-und filmgesellschaft baden-wuerttemberg MbH

Member of the Steering Committee:

Breitscheidstr. 4 - 70174 Stuttgart

Germany

Phone:

Fax:

Association Club des Districts Industriels Français

Member of the General Assembly:

14, rue Passet, 69007 Lyon,

Ref: The EC Grant Agreement for an action with multiple beneficiaries number 245658 39 / 41

France
Téléphone :
Fax :

Europa InterCluster
Member of the Steering Committee:

Europa Intercluster
Avenue des Arts, 12 Bte 7 - 1210 Brussels
Belgium

Syddansk Universitet,
Member of the Steering Committee:

University of Southern Denmark
Engstien 1
DK-6000 Kolding
Denmark
Phone:
Fax

B.I.A OÜ
Member of the General Assembly:

Lai 30, 51005 Tartu
Estonia
Tel.
Fax:

Croatian Employers' Association
Member of the General Assembly:

Pavla Hatza 12, 10 000 Zagreb
Croatia
tel: ()
fax: ()

Ecoplus. Niederösterreichs Wirtschaftsagentur GmbH,
Member of the General Assembly:

Firmensitz:
Niederösterreichring 2, Haus A
3100 St. Pölten
Austria
Tel.: () , Fax DW 19609

Departament d'Empresa i Ocupació de la Generalitat de Catalunya ,
Member of the General Assembly:

Pg de Gràcia 129
08008 Barcelona
Spain
Phone:
Fax:

Munkaadók és Gyáriparosok Országos Szövetsége
Member of the General Assembly:

1055. Bp. V., Kossuth Lajos tér 6-8.
Hungary
Phone:

Innovasjon Norge
Member of the General Assembly:

Phone:
Fax:
VISITING ADDRESS:
Akersgata 13
POSTAL ADDRESS:
Innovation Norway
PO Box 448 Sentrum
N-0104 Oslo
Norway

Agència de Suport a l'Empresa Catalana (ACC1Ó)
Member of the General Assembly:

Pg de Gràcia 129
08008 Barcelona
Spain
Phone:
Fax: