

## SEVENTH FRAMEWORK PROGRAMME (FP7)



### Clean Sky Joint Technology Initiative

**GREEN REGIONAL AIRCRAFT  
Integrated Technology Demonstrator (ITD)**

**CONSORTIUM AGREEMENT**

**CONTENTS**

Section 1 : Definitions ..... 3

Section 2 : Purpose..... 5

Section 3 : Entry into force, duration and termination ..... 5

Section 4 : Responsibilities of Parties ..... 6

Section 5 : Liability ..... 7

Section 6 : Governance structure..... 9

Section 7 : Financial provisions..... 18

Section 8 : Intellectual Property, Use and Dissemination ..... 19

Section 9 : Access Rights ..... 20

Section 10 : Non-disclosure of information..... 23

**THIS CONSORTIUM AGREEMENT** for the GRA ITD is made on Effective Date pursuant to REGULATION (EC) No 71/2007 OF THE COUNCIL of 20<sup>th</sup> December 2007 setting up the Clean Sky Joint Undertaking and its statutes hereinafter referred to as Statutes and all Joint Undertaking Grant Agreements relevant to the Green Regional Aircraft Integrated Technology Demonstrator (hereafter referred to as the “GRA ITD”), either currently available at the Effective Date or to be concluded thereafter in the course of the Clean Sky Joint Technology Initiative, with their Annexes,

**[Intentionally blanked]**

hereinafter, jointly or individually, referred to as “Parties” or “Party”

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Green Regional Aircraft ITD to the Joint Undertaking as part of the Clean Sky Joint Technology Initiative set up by decision of the European Community.

The Parties wish to agree certain legally binding commitments among themselves in relation to the Green Regional Aircraft ITD in addition to the provisions of the relevant Grant Agreements on the terms and conditions of this Consortium Agreement.

**AGREED TERMS:**

## **Section 1: Definitions**

### 1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Statutes and as printed in italics in the relevant Grant Agreements including its Annexes as may be amended below without the need to replicate said terms herein.

### 1.2 Additional Definitions

“*Consortium*” means the consortium of parties to this ITD Agreement (Parties), notwithstanding any other definition of this term in any Grant Agreement.

“*Consortium Body*” means any one or more of the bodies referred to under clause 6 of this Agreement.

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

"*Consortium Management Committee*" or "*CMC*" means the advisory committee of the Consortium more particularly described in clause 6.2.2 .

"*Coordinator*" means the GRA ITD Leader that:

- a. acts as the 'coordinator' of all the Parties;
- b. assumes the responsibilities of coordinator on behalf of the GRA ITD;
- c. Represents the Parties towards the Joint Undertaking and acts as intermediary for any communication between the JU and such Parties.

The Coordinator of the GRA ITD is Alenia Aeronautica S.p.A. until fulfilment of all obligations undertaken by the Parties under the GRA Grant Agreement and under this Consortium Agreement.

"*Consortium Plan*" means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the GRA ITD Steering Committee the initial version of which is included as [Attachment 8] to this Agreement.

"*Cluster Coordinator*" means the person representing each Cluster.

"*CMC Chairman*" means the person leading and managing the relevant Program.

"*Defaulting Party*" means a Party which is in breach of this Consortium Agreement and/or the GRA Grant Agreements .

"*Disclosing Party*" means the Party disclosing Confidential Information.

"*Effective Date*" means the date of signature of the Consortium Agreement by all the Parties.

"*GRA*" means Regional Aircraft.

"*GRA Grant Agreement*" means either the contract entered into by the JU with the Members in relation to the GRA ITD or any contract entered into by the JU with one or more Partner(s) in relation to the GRA ITD.

"*ITD Co-Leader*" means the GRA ITD Leader which is not the Coordinator of the GRA ITD (EADS CASA).

"*ITD Leaders*" means the Coordinator (Alenia) and the ITD Co-Leader (EADS CASA).

"*ITD Steering Committee*" means the JU body referred to in Article 8 of Annex 1 of the Clean Sky Regulation EC 71/2007.

"*Member*" or "*Members*" means collectively the ITD Leaders, the Associates of the GRA ITD and the Participating Affiliates.

"*Joint Undertaking*" and "*JU*" means the Clean Sky Joint Undertaking as set up by the REGULATION (EC) No 71/2007 OF THE COUNCIL of 20<sup>th</sup> December 2007.

"*Partner*" means any legal entity selected by the ITD as approved by the Joint Undertaking to perform specific tasks in relation to GRA ITD pursuant to a CfP.

"*Party*" and "*Parties*" means the signatory and the signatories to this GRA Consortium Agreement, both initial (Members) or subsequent (Partners and Participating Affiliates which have signed an accession document to adhere to this Consortium Agreement).

“*Program*” means the program referred to in the Consortium Plan in Attachment 7, which forms the work scope of the GRA ITD and which is structured into different projects.

“*Project*” means any one or more projects referred to in the Consortium Plan which together form the work scope of the GRA ITD, more particularly described in clause 6.1.

“*Project Management Committee*” and “*PMC*” means the committee of persons that manages and governs the relevant Project, more particularly described in clause 6.2.3.

“*Project Leader*” means the person leading and managing a relevant Project.

“*Recipient*” means the Party receiving Confidential Information.

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

“*Work Package*” means work packages, tasks and subtasks within each Project.

“*Work Package Management Team*” and “*WPMT*” means the team of persons that manages and governs the relevant Work Package, more particularly described in clause 6.2.4.

“*Work Package Leader*” means the person leading and managing a relevant Work Package.

## **Section 2: Purpose**

The purpose of this GRA Consortium Agreement is to supplement the provisions of the GRA Grant Agreement and to specify with respect to the Consortium the relationship and the respective rights and obligations among and between the Parties.

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

### **3.1 Entry into force**

This GRA Consortium Agreement shall have effect from the Effective Date.

### **3.2 Duration**

This GRA Consortium Agreement shall continue in full force and effect until fulfilment of all obligations undertaken by the Parties under the GRA Grant Agreement and under this Consortium Agreement.

### **3.3 Termination**

The participation of one or more Parties to this GRA Consortium Agreement may be terminated in accordance with the terms of this Consortium Agreement and Annex II of GRA Grant Agreement (Articles II.36 to II.38.).

In the event the relevant Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the GRA Grant Agreements, the Coordinator will give written notice to such Party requiring that such breach be remedied within thirty (30) calendar days.

If such breach is not remedied within that period or is not capable of remedy, the GRA Steering Committee may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include submitting a request in accordance with Annex II.36 of the GRA Grant

Agreement for such Defaulting Party's termination of its participation in and to the ITD and this Agreement.

### 3.4 Withdrawal of the participation of a Party in the GRA ITD

The Parties agree that if a Party wishes to withdraw from the Consortium other than for the reason specified below, it will be considered as a request for termination and be subject to the unanimous agreement of CMC and in accordance with GRA Grant Agreement II.36).

Any Party may withdraw from the GRA ITD and this Agreement (whereafter they will be referred to as the "Withdrawing Party") without liability provided that::

- a. the Withdrawing Party has chosen to withdraw due to the proposed Annex IB to the GRA Grant Agreement for the following year imposing terms on such Party that vary from the technical or financial content of Annex IA to such Party's material detriment; and
- b. the Withdrawing Party gives written notice to the CMC and the ITD Steering Committee and the other Parties not less than ninety (90) days before the end of the current year; and
- c. the Withdrawing Party completes all of its obligations under the current Annex IB and the GRA Grant Agreement.

If a Party participates in different Projects and withdraws from participation only in one of them, it should be able to continue to work in the other project and to remain a member of the GRA Consortium.

### 3.5 Survival of rights and obligations

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

Termination or voluntary withdrawal of a Party shall not affect and will be without prejudice to any rights of a Party accrued at the date of termination or withdrawal or obligations of a Party leaving the Consortium incurred prior to such date, unless otherwise agreed between the CMC 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 GRA ITD and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the GRA Grant Agreement and this Consortium Agreement in good faith.

Each Party will conduct its activities at its own cost and risk, as defined in the Consortium Plan, until completion.

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

Each Party shall promptly provide all information reasonably required by a Consortium body or by the Coordinator to carry out its tasks as foreseen in Article 6.1.2.

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

#### 4.2 Responsibilities of the Coordinator

The Coordinator is in charge of managing the GRA ITD and to ensure that the activities are conducted by the Parties until completion as defined in the Consortium Plan.

With the support of the CMC and of the other Parties, the Coordinator is responsible for the regular review and updating of this Consortium Plan where necessary or desirable.

#### 4.3 Clusters

Each party to any Cluster agrees to be represented in all governing bodies of the GRA ITD by one person representing the relevant Cluster (which does not have to be the same person on each Consortium Body) for all purposes of this Agreement ("Cluster Coordinator").

The relevant Cluster Coordinator will ensure and be responsible for the allocation of payment to and collection and management of technical and financial statements and reports to and from each Cluster member and report the same to the CMC as required.

The transfer of activities and corresponding budgets between each party to a Cluster is allowed at any time without need for amendment to the Consortium Plan, as far as this Consortium Plan is satisfactorily implemented and for the same cost. The Consortium Budget and financial reporting will consider separately the activities performed by each Cluster in compliance with JU accounting procedures and with Annex II of the GRA Grant Agreement.

Each party to any Cluster being a Party hereto, separately commit itself to manage and execute its share of the Consortium Plan work.

Each party to any Cluster which signs this GRA ITD Consortium Agreement is jointly and severally liable for the performance of any activity within the GRA ITD that is allocated to it by the Consortium Plan or by the GRA Grant Agreement.

### **Section 5: Liability**

#### 5.1 Liability among the Parties

Notwithstanding its liability to the JU as set out in the Grant Agreement each Party (included any member of the Clusters, represented by the Cluster Coordinator) undertakes to the other Parties to perform its work and activities at its own risk and under its sole liability and shall be liable for its non-compliance of its obligations in relation to any Project in which it is involved.

#### 5.2 No warranties for the information and materials.

In respect of any information or materials supplied or created by one Party to another pursuant to this GRA ITD Consortium Agreement, no warranty, guaranty or representation of any kind is made, given or implied as to the sufficiency, fitness for purpose or as to the absence of any infringement of any proprietary rights of third parties.

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

Nevertheless, each Party undertakes that it will not knowingly make available any proprietary rights of a third party for any Project for which such Party has not acquired the corresponding right of use and to grant licenses.

#### 5.3 Limitation and exclusion of contractual liability

5.3.1 No Party shall be responsible for or liable to any other Party for any special, indirect, or consequential loss arising out of or in connection with this GRA ITD Consortium Agreement howsoever caused.

5.3.2 The total, aggregate liability of a Party for any and all loss and damage demonstrated by another Party as arising out of or in connection with any breach to this GRA ITD Consortium Agreement howsoever caused is limited to twice the amount of the total costs of the defaulting Party's activities in the GRA ITD arising under relevant Grant Agreements and cumulated in respect of the current and all previous years.

In the event that a breach of this GRA ITD Consortium Agreement causes damage to more than one other Party whose aggregate exceeds the foregoing limit, the claiming Parties shall use all reasonable endeavours to agree an apportionment among themselves of the said limit and failing such agreements shall refer such apportionment to arbitration under article 11.8.

5.3.3 The total, aggregate liability of a Party in respect of any and all claims by any one Party in respect of any and all loss and damage shall be limited to the amount of the total costs of the activities in the GRA ITD of the Party making the claim arising under the GRA Grant Agreement and cumulated in respect of the current and all previous years.

5.3.4 For the avoidance of doubt, the limits of liability stated above shall operate independently, so that in the event that both articles 5.3.2 and 5.3.3 are relevant to a single claim, the lower of the limits obtained by applying each article shall apply.

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

5.3.6 The terms of this GRA ITD Consortium Agreement shall not be construed to exclude or limit any Party's liability for any non-contractual liability.

#### 5.4 Damage caused to third parties

Each Party shall be solely liable and will indemnify the other Parties for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations under this Consortium Agreement.

#### 5.5 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 Consortium remains solely responsible for carrying out its relevant part of the Consortium work and for such third party's compliance with the provisions of this Consortium Agreement and of the GRA Grant Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties in this Consortium Agreement.

#### 5.6 Loan of material and/or equipment

Except for the provision in subsequent article 5.7, in the case of loan or bail of material and/or equipment between Parties for the performance of the Consortium work an agreement based on the model set forth in Attachment 6 shall be entered into between the Parties and may be amended to contain specific conditions regarding liabilities.

#### 5.7 Flight tests or large demonstrators

In the case of any supply, loan or bail of material and/or equipment between Parties for the performance of any flight test or large demonstrator activities within the GRA ITD the relevant Parties shall enter into a specific agreement setting out their respective rights, obligations and liabilities. If deemed appropriate,



such agreement may require the supplier to give to the Party performing the flight test or large demonstrators warranties such as to:

- (a) use of reasonable skill and care in design; and
- (b) compliance with any applicable aircraft interface specification.

## **Section 6: Governance structure**

### 6.1 General Principles and Consortium Bodies

The Program of the GRA ITD is initially structured into the following five Projects allocated among the Parties:

- a. Low Weight Configuration (LWC)
- b. Low Noise Configuration (LNC)
- c. All Electric Aircraft (AEA)
- d. Mission Trajectory Management (MTM)
- e. New Configuration (NC)

The Consortium management, coordination and decisions are handled variously by the GRA ITD Steering Committee and by the Coordinator.

The following Consortium Bodies support the GRA ITD Steering Committee and the Coordinator at different levels:

- a. Consortium Management Committee (CMC)
- b. Project Management Committees (PMCs)
- c. Work Package Management Teams (WPMTs)

The Consortium Bodies become operational on the Effective Date.

#### 6.1.1 GRA ITD Steering Committee

The GRA ITD Steering Committee is the main decision and governing body of the GRA ITD. It is in charge of the overall supervision of the GRA ITD.

The responsibilities, tasks and activities of the ITD Steering Committee are more particularly described in article 8 of Annex 1 to the Clean sky Regulation EC 71/2007.

#### 6.1.2 Coordinator

The Coordinator is responsible of the Program vis-à-vis the Joint Undertaking.

Being the Coordinator a legal entity, the Coordinator's duties will be under the responsibility of a representative, appointed by the same Coordinator to this purpose (the "Coordinator Representative"). The Coordinator (Alenia) will act through its "Coordinator Representative" (a person in charge).

The Coordinator shall act as the intermediary between the Parties and the Joint Undertaking.

In addition to its responsibilities as a Party, the Coordinator shall perform all tasks assigned to it as described in the GRA Grant Agreement as attributable to the Coordinator and hereunder.

The Consortium budget will be established and agreed such that the Coordinator will be sufficiently and adequately compensated in respect of all costs and expenses it incurs in the course of acting as the Coordinator on behalf of the Parties ("Coordinator Liability").

Subject to subsection (e) below, the Members agree that each of them shall pay the Coordinator for its “Coordinator Liability” not less than yearly and within 30 days of its receipt of the Coordinator's invoice.

Moreover The Members agree that::

- a. The Coordinator at the time of conclusion of this CA perceives that the payment to compensate the same Coordinator for its “Coordinator Liability” (management cost) for the year 2008 amounts to an equivalent maximum annual workload of Euro 300.000 for coordination activities, such amount to be verified and accounted for as soon as the real figures become available. Amounts to be paid shall be adapted respectively.
- b. In particular, having the GRA ITD started its activity on June 2008, the management cost is due to the Coordinator for seven months (from June 1, 2008 to December 31, 2008) and, therefore, amounts to a maximum of Euro 175.000.
- c. Half of the management cost (corresponding to a maximum of Euro 87.500) should be funded by the JU and the other half (the other maximum Euro 87.500), subject to (e) below, will be shared among the Parties (including the Coordinator) in proportion to their share participation to the Program as approved by the GRA ITD Steering Committee for 2008.
- d. For the subsequent years until the duration of the Program, an agreement shall be entered into between the Parties to establish the budget of management cost. Then, the GRA ITD Steering Committee shall approve the contribution of each Party (including the Coordinator) to half of the budget of the management cost in proportion to its share participation to the Program. The other half of the budget of management cost should be funded by the JU.
- e. Upon motivated request to the Coordinator, during the full duration of the Program, a Party may select to assume a management contribution in kind instead of contributing cash to the Coordinator's management cost. The allocation of tasks shall be agreed between the Coordinator and the Party in mutual consent and shall take into account the compliance of the responsibilities assigned to the Coordinator, as described in the GRA Grant Agreement and in this GRA Consortium Agreement.

For avoidance of doubt:

- a “management contribution in kind” shall mean the allocation of one or more tasks which are initially Coordinator's management tasks to a Party by amending respectively Annex I of the GRA Grant Agreement and the Annual Implementation Plan, as appropriate. The Party shall:
  - a. assume full responsibility for such task towards the Coordinator and the JU and
  - b. take the burden for the non-funded share of the eligible costs for such task(s) and
  - c. in return account for and receive the respective EC contribution.
- should allocation of appropriate management work be impossible, due to constitutional duties of the Coordinator, the affected Party and the Coordinator shall discuss in good faith how to proceed before any related management costs become due.
- in any case, once the option to contribute in kind has been selected by a Party, it may not be altered into an obligation to contribute in cash without the affected Party's express prior consent.

The Party paying its proportion of the “Coordinator Liability” shall make all payments due without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless such Party has a valid court order requiring an amount equal to such deduction to be paid by the Coordinator to the paying Party.

All amounts invoiced by the Coordinator are exclusive of VAT or other sales tax, applicable taxes or levies which are required to be charged in addition at the rate in force on the date payment is required.

In the event the JU agrees to fund the Coordinator Liability, the Coordinator will in addition or separately, invoice the JU in respect of the part or whole Coordinator Liability and set off any such amounts that may otherwise have been due from the other Parties.

The Coordinator shall be responsible for:

- a. monitoring compliance by the Parties with their obligations;
- b. keeping the address list of Members, Members' representatives and other contact persons updated and available;
- c. collecting, reviewing and submitting information on the progress of the Consortium work and reports and other deliverables (including financial statements and related certification) to the Joint Undertaking;
- d. proposing decisions and preparing the agenda of CMC and GRA ITD Steering Committee meetings and supporting the GRA ITD Steering Committee Chairman in his duties, chairing the CMC meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at those meetings;
- e. transmitting to the Joint Undertaking and distributing to the Parties documents and information connected with the management of the GRA Consortium Agreement, including copies of Accession documents and changes of contact information to the Parties and changes of the name of a representative of a member to the GRA ITD Steering Committee, the CMC, the PMCs and the WPMTs;
- f. administering the Community financial contribution and fulfilling the financial tasks described in Article 7.1.1 and 7.3 below;
- g. providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator, because of its specific function, when such copies or originals are necessary for the Parties to present claims or when any of the Parties requests them from the Coordinator;
- h. receiving and submitting requests for amendments and termination at the initiative of the Consortium in accordance with Annex II to GRA Grant Agreement, Article II.36.

If the Coordinator Representative fails in its coordination tasks, the CMC may propose to the GRA ITD Steering Committee to change the Coordinator Representative through a vote in a meeting or by consents of the Parties. In this case, decisions shall be taken unanimously by all of the Parties, excluding the Coordinator Representative.

If the GRA Coordinator fails in its coordination tasks, the CMC may propose to the GRA ITD Steering Committee to change the GRA ITD Coordinator through a vote in a meeting or by consents of the Parties. In this case, decisions shall be taken unanimously by all of the Parties, excluding 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 GRA Grant Agreement.

The level of details regarding information requested by the Coordinator for the management of the Consortium Agreement and the frequency for providing such information beyond the reporting periods set in GRA Grant Agreement shall prior be agreed by the GRA ITD Steering Committee, previous advise from CMC.

The Coordinator shall provide evidence of any particular Joint Undertaking request for information to a Party. In the event such a request concerns a piece of information that the Party considers as sensitive said Party may elect to directly provide the information to the Joint Undertaking and will inform the Coordinator of such communication.

### 6.1.3 Consortium Management Committee

**GRA ITD Consortium Agreement  
V1 (Publishable Version – June, 5<sup>th</sup> 2009)**

The Consortium Management Committee is the advisory Body of the GRA Consortium and, in particular, of the GRA ITD Steering Committee.

As mentioned above (section 6.1.1), the GRA ITD Steering Committee is the body in charge of the overall supervision of the GRA ITD, the CMC will assist and advise the GRA ITD Steering Committee in its function.

The CMC shall, in turn, be advised by the relevant Project Management Committee.

The CMC has no competence to take decisions concerning the internal sovereignty and independence of the Parties and is a advisory body only.

The CMC will be in charge of analysing major deviations arising during operations (normally reported to it by the Project Management Committees) and of proposing alternative solutions to the GRA ITD Steering Committee.

The CMC shall consist of the following persons:

- Voting members: one representative of each Party of the Consortium, included the Coordinator. A Cluster Coordinator for each Cluster will represent all parties of such a Cluster.
- Not Voting Members: participants of other ITDs, representatives of the Joint Undertaking, representatives of the PMCs, representatives of the WPMTs and/or third parties, to refer on specific topics and without any voting rights, by prior invitation made by the Chairman, provided that other Parties not oppose for reasonable grounds.

The CMC appointed representatives are listed in the Attachment 4 to this Consortium Agreement.

Any change to the CMC appointed representatives must be notified promptly and in writing by the concerned Party to the Coordinator.

The Coordinator shall appoint the Chairman of the CMC, which does not have to be necessarily the same person appointed as Coordinator Representative. In the case that the Chairman and the Coordinator Representative are different persons, the Chairman has not voting rights.

The Chairman of CMC shall call and chair all meetings of the CMC.

The Chairman of CMC shall convene meetings of the CMC at least on a quarterly basis and, at a minimum, prior to each GRA ITD Steering Committee meeting and shall also convene meetings at any time upon written request of any member of the CMC in the case of an emergency situation, provided that this request is supported by at least one fourth (1/4) of the Parties,

The Chairman of CMC shall give each of the members of the CMC at least fifteen (15) working days notice in writing of such meetings or ten (10) working days notice in case of an emergency situation, along with an agenda.

Should a representative not be able to attend a meeting, it shall appoint a substitute or mandate another representative to vote on its behalf.

Any substitute will have to justify its appointment as a substitute by written evidence, to be distributed to the Chairman of CMC in advance of the meeting.

Any decision requiring a vote at a CMC meeting must be identified as such on the invitation.

Should a member of the CMC suggest adding a discussion/decision to the proposed agenda, it shall do so in writing to all other members of the CMC at least five (5) working days prior to the planned meeting date.

Any subsequent change to the agenda of the CMC will require an approval by a majority vote of two – third (2/3) of the member of the CMC or, alternatively, supported by the simple majority of the Parties in proportion to their share participation to the Program as approved by the GRA ITD Steering Committee.

Recommendations required or permitted to be taken or made by the CMC may be adopted:

- in meetings duly convened (through physical attendance of the members of CMC or by telephone or video conference) and only with respect to the matters that were set forth in the agenda for such meeting (unless the members unanimously agreed in writing to integrate the agenda).
- without a meeting, through circulation among the members of the CMC of a written document setting forth the decision to be voted which must be returned within fifteen (15) working days to the Chairman of CMC, duly signed and with their votes indicated in relation thereof. In such a case, the Chairman of CMC shall draft the minutes to formalize in writing the decisions taken, taking into account the documents returned and the votes accounted for in accordance with the rules below mentioned in the same paragraph and shall dispatch them to all members of CMC within fifteen (15) working days of the expiration date of the above fifteen (15) working days.

The CMC will be responsible for – and may deliberate on- the following:

- a. liaison with the GRA ITD Steering Committee;
- b. advising on the allocation of the Consortium Budget among the Parties in accordance with the GRA Grant Agreement, including the Consortium Plan, and reviewing and proposing to the Parties budget transfers;
- c. advising on a change of the list of Affiliated Entities, when requested;
- d. advising on changes to the terms of the signed GRA Grant Agreement and/or this Consortium Agreement;
- e. advising on suspension of all or part of the Consortium Plan or requesting the Joint Undertaking to terminate all or part of the GRA Grant Agreement, or the participation of one or more Parties;
- f. advising on actions to be taken against a Defaulting Party, including, if reasonable, a request to the Joint Undertaking for an audit and for the re-assignment of the Defaulting Party's tasks to Non-Defaulting Parties, and reallocating the Community Financial Contribution (coming from the Guarantee Fund) among the Parties effectively involved in completion of such Defaulting Party's tasks;
- g. advising for addition(s) of new Parties to the Consortium to replace the Defaulting Party.
- h. in case of default of the Coordinator Representative in the performance of its coordination activity, advising on actions to be taken and, if necessary, submitting a proposal to the GRA ITD Steering Committee for the instigation of a new Coordinator Representative;
- i. advising on entering into the GRA Grant Agreement and the Consortium Agreement of new Parties;
- j. advising on procedures and policies in accordance with the GRA Grant Agreement rules, Annex II General Conditions - Part C for the use and dissemination of the Foreground;
- k. advising on the rules for the management of the funds received from the Joint Undertaking and for the management and co-ordination budgets rules;
- l. advising on press releases and publications by the Parties or by the Joint Undertaking with regard to the GRA ITD, as per the GRA Grant Agreement and this Consortium Agreement;
- m. advising on a change of a third party to which ownership of Foreground will be assigned;
- n. advising on any modification (addition or withdrawal) of Background from Attachment 2;
- o. advising on the level of details regarding information requested by the Coordinator for the management of the Consortium Agreement and the frequency for providing such information beyond the reporting periods set in GRA Grant Agreement;
- p. supporting the Coordinator for the preparation of meetings/reports and collection of related data and deliverables;
- q. advising on selection of new Partners with the assistance of independent experts in compliance with Joint Undertaking procedures;

- r. reviewing and deciding cases of default of the Chairman of CMC in the performance of his tasks and preparing proposals to GRA ITD Steering Committee on actions to be taken and possible nomination of a new Chairman of CMC;
- s. in case of default of any technical leader (Project Leader or Work Package Leader) in the performance of his tasks, preparing proposals to GRA ITD Steering Committee on actions to be taken and possible nomination of a new leaders (taking into account the advises of the PMCs and of the WPMTs, if any);

No CMC decision will be validly decided unless and until at least two-thirds (2/3) of its representatives are present or represented, or have expressed their votes in a written form (For avoidance of doubts the quorum necessary for the validity of the meeting shall be two-thirds).

The CMC shall make decisions by simple majority of all voting rights of the present or represented members.

Votes are weighted according to the financial commitment to the Consortium of each representative of the CMC, as approved by the GRA ITD Steering Committee for each year.

(For avoidance of doubt, the majority necessary to validly and lawfully approve any resolution shall be simple majority of the members of CMC present or represented, taking into account the weight of votes according to financial commitment of each member of CMC to the Consortium).

Any Defaulting Party or Party(ies) in relation to which the CMC is making any decision or whose participation has been or will be terminated pursuant to a notice of termination having been issued will not participate in any decision of the CMC.

Those members of the CMC having answered one or several Calls for Proposals either directly or indirectly are not allowed to take part in the selection process.

The Parties agree to abide by all recommendations of the CMC.

The Chairman of CMC shall draft the minutes of each meeting to formalize in writing all decisions taken and shall dispatch them to all members of the CMC within five (5) working days of a meeting.

All the minutes (including those drafted without meeting as above mentioned) shall be considered as accepted by the members of the CMC if, within five (5) working days from receipt thereof, no member of the CMC has objected in writing to the Chairman of CMC, provided that objection shall be either on such formalization or on a decision that was not part of the agenda and which was not accepted by all members of the CMC.

#### 6.1.4 Project Management Committees

The Project Management Committees ("PMCs") shall be in charge of the operational daily management of the relevant Project.

The PMCs are also the advisory bodies of CMC.

PMCs are initially five, corresponding to the five Projects allocated among the Parties (Low Weight Configuration, Low Noise Configuration, All Electric Aircraft, Mission Trajectory Management, New Configuration).

The CMC may decide to appoint additional PMCs in relation to one or more additional Projects.

Each PMC shall consist of the following appointed persons:

- Voting Members: nominated representatives of all other member participating into the Project and a Project Leader (Chairman of the PMC), appointed by the Voting Members to act as Chairman of PMC and to call and chair all meetings of the prominent PMC, with a voting right.

- Not Voting Members: the Chairman of CMC, with non voting right.

The Project Leader will duly keep updated the list of PMC membership.

The makeup of the PMC may be changed with the PMC's unanimous agreement.

When required by the topics to be discussed in the agenda, the Project Leader (PMC Chairman) may invite the other persons connected with the GRA ITD work, included representatives of Work Packages which are either non yet active or fully completed, to refer on specific topics and without any voting rights.

The Project Leader shall convene meetings of the relevant PMC at least every two months.

The Project Leader (Chairman of the PMC) shall also convene meetings at any time when appropriate, or upon written request of any representative of the PMC in the case of an urgent situation.

The Project Leader shall give each of the representatives at least ten (10) working days' notice in writing of such meetings or five (5) working days notice in case of an urgent situation.

Each PMC representative shall participate or be duly represented by a substitute. Any substitute will have to justify its appointment as a substitute by written evidence, to be distributed to the relevant Project Manager in advance of the meetings.

Any decision requiring a vote at a PMC meeting must be identified as such in the agenda on the invitation.

Should a member of the PMC suggest to add a discussion/decision to the proposed agenda, it shall do so in writing to all other representatives of the PMC at least two (2) working days prior to the meeting date.

Any decision required or permitted to be taken by the PMC may be taken as follows:

- in meetings duly convened (through physical attendance of the members or by telephone or video conference) and only with respect to the matters that were set forth in the agenda for such meeting (unless the members unanimously agreed in writing to integrate the agenda);
- without a meeting, through circulation among the representatives of the PMC of a written document setting forth the decision to be made which must be returned within ten (10) working days to the relevant Project Leader, duly signed and with their recommendations indicated in relation thereof. In such a case, the relevant Project Leader shall draft the minutes to formalize in writing the decisions taken, taking into account the documents returned and shall dispatch them to the representatives within of the expiration date of the above ten (10) working days.

The PMCs shall be responsible for managing the Project and in particular will be responsible for making proposals to the CMC for the allocation of the Consortium Budget in accordance with the GRA Grant Agreements, including the Consortium Plan and for possible budget transfers.

Moreover, the PMCs shall be responsible for:

- a. when major modifications to the scope and content of the Projects are required, making proposal to the CMC for those modifications;
- b. making proposals to the CMC;
- c. to suspend all or part of the Consortium;
- d. to terminate all or part of the GRA Grant Agreement,;
- e. to request the GRA ITD Steering Committee to activate the procedure for termination of the participation of one or more Parties;

- f. reviewing and deciding in case of default of a Party and preparing proposals to the CMC with regard actions to be taken against the Defaulting Party, including suggestions on any new entity to join the Consortium for that purpose;
- g. reviewing and deciding cases of default of a Work Package Leaders in the performance of his tasks and preparing proposals to the CMC on actions to be taken and possible nomination of a new Work Package Leaders;
- h. recommending and/or reviewing the content of Calls for Proposals (in conjunction and cooperation with the members concerned) and preparing the selection of new Partners;
- i. recommending and/or reviewing the content of Calls-for-Tender (in conjunction and cooperation with the members concerned) and preparing the selection of subcontractors or service providers;
- j. making proposals to the CMC for the selection of new Partners to be selected from Calls for Proposals;
- k. advising CMC on selecting new Partners;
- l. deciding on technical roadmaps for the Project;
- m. generally supporting the Coordinator particularly in preparing for meetings with the Joint Undertaking and delivery and exchange of Project related data and deliverables;
- n. alerting the CMC and the Coordinator Representative in case of delay in the performance of the Project or in case of default of any Party under said Project;
- o. through the appointed Project Leader, coordinating on a day-to-day basis the progress of the technical work under the Project;
- p. through the appointed Project Leader, reviewing deliverables at each agreed step under the Consortium Plan for the Project concerned and advising the Chairman of CMC and the Coordinator Representative of any delay in delivery that can not be remedied or any major discrepancy.

Each of the PMC representatives will have one vote at PMCs meetings. The PMCs shall make its decisions by a simple majority of voting representatives present. In case of parity the vote of the Project Leader (Chairman PMC) will prevail (For avoidance of doubt, the majority necessary to validly and lawfully approve any resolution shall be simple majority of the members of PMC present or represented).

The PMCs shall not deliberate and decide validly unless all PMCs representatives concerned with the topics to be decided are present or represented.

Some members of the PMC may not to participate in the vote concerning recommendations in connection with Calls for Proposals or Calls for Tender if they intend to answer the corresponding Calls directly or indirectly (through one of their Affiliates).

The Parties agree to abide by all decisions of the PMCs.

The Project Leader shall draft the minutes of each meeting to formalize in writing all decisions taken and shall dispatch them to all members of the relevant PMC within five (5) working days of a meeting date.

The minutes shall be considered as accepted by the members of the relevant PMC if no such members has objected in writing to the Project Leader, provided that any objection is made within five (5) working days of receipt of the minutes and shall be either on such formalization or on a decision that was not part of the agenda and which was not accepted by all members of the PMC

#### 6.1.5 Work Package Management Teams

The management of Work Packages, tasks and subtasks within each Project will be organised and managed in a flexible manner by the involved Parties according to the work breakdown structure of the Consortium Plan, taking in account technical participation and leadership responsibilities at each level.



At any level, all involved Parties have to participate in the technical management process as required by the timely completion of the corresponding deliverables and in such a manner as to ensure a sufficient level of information and the protection of each Party's Legitimate Interests in compliance with JU Statutes and with the GRA Grant Agreements.

The management of work packages at any level will be organised according to the work breakdown structure of the Consortium Plan, taking in account technical participation and leadership responsibilities.

The Work Package Management Teams (WPMTs) will consist of the various technical responsible formally appointed by the Parties involved in the relevant tasks and sub-tasks within each Work Package.

The person in charge of each Work Package, appointed by the relevant Work package Parties (Work Package Leader) will call and chair the WPMTs meetings.

The Work Package Leader will duly keep updated the membership list of the WPMT.

WPMTs are responsible for:

- a. coordinating on a day-to-day basis the progress of the technical work under the Work Package;
- b. alerting the PMC and the Project Leader in case of delay in the performance of the Work Package or in case of default of any Party under said Work Package;
- c. reviewing deliverables at each agreed step under the Consortium Plan for the Work Package concerned and advising the PMC of any delay in delivery that can not be remedied or any major discrepancy.

## 6.2. Veto Rights

A member of the CMC and/or PMC whose own work, time for performance, costs, liabilities, intellectual property rights or other Legitimate Interests would be severely affected by a decision of the of those bodies may exercise a veto with respect to the corresponding decision or relevant part of the decision.

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

When a decision has been taken on a new item added to the agenda before or during the meeting, a member of CMC and/or PMC may veto such decision during the meeting and within five (5) working days after the minutes of the meeting are sent.

In case of exercise of veto, the members shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all 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 or a Project may not veto decisions relating thereto.

The Coordinator may veto any decision of the CMC in case this decision would adversely and severely affect the results to be delivered by the Consortium or the resources needed to deliver these results.

## **Section 7: Financial provisions**

### 7.1 General Principles

#### 7.1.1 Distribution of Financial Contribution

The financial contribution of the Joint Undertaking to the Consortium shall be distributed by the Coordinator subject to:

- a. the Consortium Budget as included in the Consortium Plan,
- b. the approval of reports by the Joint Undertaking, and
- c. 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 and will be paid in accordance with the GRA Grant Agreement.

#### 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 and other financial information required to be submitted to the Joint Undertaking. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for any such justification of costs, expenses or a Party's expenditure provided by the Coordinator to the Joint Undertaking.

#### 7.1.3 Funding Principles

A Party that spends less than its allocated share of the Consortium Budget will be funded in accordance with its 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 and will not be funded by any amount in excess of its allocated share unless agreed otherwise by the GRA ITD Steering Committee.

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

A Party withdrawing from the Consortium pursuant to the terms of Article 4.2 or whose participation in the Consortium is terminated shall refund all advances paid to it except the amount of expended eligible costs accepted by the Joint Undertaking and shall, where such terminated Party is a Defaulting Party, within the limits specified in Article 5.3 of this Consortium Agreement, bear any additional costs justifiably required by the other Parties in order to allow such Parties to perform their tasks.

### 7.2 Budgeting

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

### 7.3 Payments of the JU financial contribution

Payments to Partners will be made directly by the Joint Undertaking.

Payments to Parties that are members of the JU is the exclusive task of the Coordinator.

In particular, the Coordinator shall:

- a. Notify the member of the JU concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references,
- b. Perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts,
- c. Undertake to keep the JU financial contribution to the Consortium separate from its normal business accounts, its own assets and property.

All payments shall be made without undue delay after receipt by the Coordinator of funds from the Joint Undertaking in accordance with the accepted decisions of the Joint Undertaking on the Consortium Budget, which includes the payment schedule.

Payments to Parties will be handled according to the following two principles:

- pre-financing in respect of future work included in the Consortium Plan, which may be forwarded to Parties in separate instalments in conformity with the decisions of the Joint Undertaking.
- payments for past performance approved by the Joint Undertaking will be compared with the pre-financing given to a Party for such past performance; the difference due will be paid to the Party concerned.

Payments to Clusters will be made by the Coordinator to each Cluster Coordinator for distribution within each Cluster.

The Coordinator is entitled to either withhold any payment due to a Defaulting Party or recover any sum already paid to a Defaulting Party.

## **Section 8: Intellectual Property, Use and Dissemination**

Each of the Parties will comply with their respective obligations and will have the rights granted to them as set out in Articles II.26-II.33 of the GRA Grant Agreement in respect of the Project they are involved in only and not otherwise.

All Background is and will remain the exclusive property of the Party owning it (or, where applicable, the third party from whom its right to use the Background has derived) and except as otherwise provided for herein, no Party will be entitled to any right or license to any of the other Party's Background.

### **8.1 Foreground**

#### **8.1.1 Joint ownership**

As permitted in the GRA Grant Agreement, in case of joint ownership of Foreground, each of the joint owners shall be entitled to use their jointly owned Foreground free of charge, and without requiring the prior consent of the other joint-owner(s) for their own direct use only.

As long as the co-ownership agreement is not yet concluded, each of the joint owners shall be entitled to grant non-exclusive licences to third parties, without any right to sub-license, subject to the following condition:

- 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). For the avoidance of doubt, 'fair and reasonable' might mean free of charge.

#### 8.1.2 Transfer of Foreground

Each Party may transfer ownership of its own Foreground in all or in part following the procedures of the GRA Grant Agreement Article II 27.

It may identify specific third parties it intends to transfer the ownership of its Foreground to in [Attachment 5] to this Consortium Agreement.

The other Parties hereby waive their right to object to a transfer to listed third parties according to the GRA Grant Agreement Article II.27.3.

The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer.

Any addition to Attachment 5 after signature of this Agreement requires the unanimous approval of the GRA ITD Steering Committee.

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 prior notice for the transfer as foreseen in the GRA Grant Agreement Art. II.27.2.

### 8.2 Dissemination

#### 8.2.1 Publication

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

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

For the avoidance of doubt, a Party shall not publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with Party's Foreground, without the other Party's prior written approval.

#### 8.2.3 Cooperation obligations

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

#### 8.2.4 Use of names, logos or trademarks

Nothing in this 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 shall grant Access Rights, and may update the Attachment 1 during the term of this Consortium Agreement.

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

In the event any of the withdrawn Background has been used by a Party, the owning Party will be obliged to grant a licence of such Background to such Party as if such withdrawn Background remained available for use under the Consortium.

The Parties agree that all Background not listed in Attachment 1 shall not thereafter be used or included in any Project and the owning Party will not be required to provide any Access Rights thereto.

The Parties agree, however, to negotiate in good faith additions to Attachment 1 if a Party so requests and provide such additions are needed. For the avoidance of doubt, the owner is under no obligation to agree to additions of his Background to Attachment 1.

## 9.2 General Principles

Each Party shall take appropriate measures to ensure that it can grant Access Rights and fulfil the obligations under the GRA Grant Agreement and this Consortium Agreement notwithstanding any rights of its employees, or any person it assigns or engages to perform its own work share for the Consortium.

As provided in the GRA Grant Agreement Article II.32.3 the Parties shall specify promptly in Attachment 1 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 Consortium).

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

Access Rights shall be free of any administrative transfer costs.

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

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

All requests for Access Rights shall be made in writing. The granting of Access Rights may be made conditional on the acceptance of specific conditions 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 with all due care and in good faith that the Access Rights are needed, notably if such requesting Party reasonably believes that without Access Rights on another Party's Background or Foreground, the performance of its own tasks for the or the Use of its own Foreground would be technically impossible or significantly delayed.

## 9.3 Access Rights for implementation

Access Rights to Foreground and Background of a Party to a Project, if needed by any other Party to the same Project for the performance of its own work, is hereby granted by a Party on a royalty-free basis for the purpose of performing its obligations in the Project only and not otherwise. Such other Party will have no right to sub-licence the same without the prior written permission of such Party.

#### 9.4 Access Rights for Use

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

Use for third party research shall be subject to the prior written approval of the owner of the Foreground, such agreement will not be unreasonably withheld.

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

A request for Access Rights may be made up to two (2) years after the end of the -ITD.

#### 9.5 Access Rights for Affiliated Entities

Notwithstanding Article II.34.3 of the GRA Grant Agreement, Affiliate Entities shall enjoy Access Rights where the Party requiring Access Rights for its Affiliate Entity can show that it's Affiliate Entity:

- a. holds the right to use the Foreground owned by the Party it is affiliated to; and
- b. needs Access Rights in order to Use such Foreground; and
- c. is established in a Member State or an Associated Country; and
- d. is listed in Attachment 3 to this Consortium Agreement.

Such Access Rights shall be granted on fair and reasonable conditions and upon written bilateral agreement with the owner of the Information . Affiliated Entities which obtain Access Rights shall fulfil all confidentiality and other obligations accepted by the Parties under the GRA Grant Agreement and under this Consortium Agreement as if such Affiliated Entities were Parties.

However a Party may refuse to grant Access Rights to another Party's Affiliated Entity which is listed in Attachment 3 if the Party asked to grant such Access Rights has, prior to the signature of the Consortium Agreement , raised objections stating that its Legitimate Interests would be affected by the addition of that Affiliated Entity to such list.

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.

In the event of any change of control of an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse unless agreed otherwise by the owning Party.

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

#### 9.6 Additional Access Rights

Any grant of Access Rights not covered by any relevant Grant Agreement or/and 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 ITD Steering Committee to terminate its participation in the Consortium.

9.7.2.1.2 Non-Defaulting Party

A Non-Defaulting Party leaving voluntarily shall have Access Rights to the Foreground developed until the date of the termination of its participation. The time-limit for its right to request these Access Rights shall start on the same date.

9.7.2.2 Access Rights to be granted by any leaving Party

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

9.8 Specific Provisions for Access Rights to Software

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

Parties' Access Rights to Software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

9.9 Ownership and use of materials or equipment

In the event a material or equipment is developed or manufactured in the Consortium by two or more Parties, such Parties shall enter into a separate agreement addressing the ownership and conditions of use, maintenance, deposit, etc... of such material or equipment.

The Parties to the Consortium Agreement will be granted a right to use free of charge such material or equipment for the implementation of the Consortium in accordance with Annex I and the loan conditions in Attachment 6 to the Consortium Agreement.

**Section 10: Non-disclosure of information**

The Recipients hereby undertake, without prejudice to any commitment of non-disclosure under GRA Grant Agreement, for a period of ten (10) years after the end of the work of the Joint Undertaking:

- a. Not to use or disclose partially or totally Confidential Information of which it is the Recipient, otherwise than for the purpose for which it was disclosed;
- b. Not to use or disclose partially or totally 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 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 sub-contractors and shall ensure that their employees, and sub-contractors remain so obliged, as far as legally possible, during and after the end of the work of the GRA ITD and/or after the termination of employment or the relevant contract of engagement.

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 or has been 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 Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party.
- e. The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Consortium as with its own confidential and/or proprietary information, but in no case less than reasonable care.

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

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

The confidentiality obligations under this Consortium Agreement and the GRA Grant Agreements shall not prevent the communication of Confidential Information to the Joint Undertaking subject to the Joint Undertaking complying with obligations of confidentiality in relation to such information no less robust than as set out in this clause.

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