

SEVENTH FRAMEWORK PROGRAMME (FP7)



ITD TITLE: Smart Fixed Wing ITD

Clean Sky Joint Technology Initiative

CONSORTIUM AGREEMENT

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THIS CONSORTIUM AGREEMENT for the SFW-ITD ITD is made on 30th January 2009 pursuant to REGULATION (EC) No 71/2008 OF THE COUNCIL of 20th 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 Smart Fixed Wing 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,

BETWEEN:

(1) Airbus SAS a "Société par Actions Simplifiée" incorporated under the laws of France, registered under the number 383 474 814 RCS Toulouse, with share capital of EUR 2,704,375.00, with its Head Office at 1 Rond-Point Maurice Bellonte, 31700 Blagnac , France, (hereinafter referred to as 'Airbus' or the 'Co-ordinator')

(2) Airbus France S.A.S, (national registration number: 393341532) with its head office at 316, Route de Bayonne, 31060 Toulouse, France,

(3) Airbus Deutschland GmbH, (national registration number: HRB 43527) of Kreetstag 10, Hamburg, 21129 Germany,

(4) Airbus UK Limited, (national registration number: 03468788) with its registered office at New Filton House, Filton, Bristol, BS99 7AR, United Kingdom

(5) Airbus España S.L., (national registration number: HOJA M279526) with its head office at Avenida John Lennon, 28906 Getafe, Spain,

(6) Saab AB (Publ), a company incorporated under the laws of Kingdom of Sweden, under the national registration number 556036-0793, whose registered office is at SE-581 88 – Linköping, Sweden (hereinafter referred to as "Saab")

(7) Deutsches Zentrum für Luft-und Raumfahrt e.V., of Linder Höhe, 51147 Köln, Germany (hereinafter referred to as 'DLR')

(8) ONERA – Office National d'Etudes et de Recherches Aérospatiales, a public entity having its registered office located at Avenue de la Division Leclerc 29, B.P.72, 92322 Châtillon, France (hereinafter referred to as 'ONERA')

(9) INCAS – National Institute for Aerospace Research "Elie Carafoli", B-dul Iuliu Maniu 220, sector 6, Bucharest, Romania, CUI R0 434670, reg. no. J40/6492/1991, the Cluster Coordinator of the INCAS Cluster (hereinafter referred to as 'INCAS')

(10) S.C Straero S.A., (national registration number: J/40/5793/1991), member of the INCAS cluster, of Bd. Iuliu Maniu 220, sector 6, Bucharest, 061126, Romania,

(11) S.C Avioane Craiova S.A, (national registration number: J16/1214/1991), member of the INCAS cluster, of Jud. Dolj, Com. Chercesti, Str. Aviatorilor nr. 10, Ghercesti, iud. Dolj, 207280, Romania,

(12) S.C Romaero S.A., (national registration number: J40/3940/1991), member of the INCAS cluster, of B-dul Ficusului nr. 44, Sector 1, 013975, Bucharest, Romania,

(13) Stork Fokker AESP bv, of Industrieweg 4, 3351 LB Papendrecht, the Netherlands, member of the NL Cluster (hereinafter referred to as 'Stork')

(14) Aircraft Development and Systems Engineering (ADSE) B.V, (national registration number: 34116438), member of the NL cluster, of Saturnusstraat 12, 2130HB Hoofddorp; The Netherlands,

(15) Airborne Composites B.V, (national registration number: 27285141), member of the NL cluster, of Laan van Ypenburg 70, PO Box 24031, 2490AA, The Hague, The Netherlands,

(16) Axxiflex Turbine Tools B.V., (national registration number: 18051008), member of the NL cluster, of Stedenbaan 15 Postbus 157, 5120 AD Rijen NB, The Netherlands;

(17) Microflown Technologies B.V, (national registration number: 28077207), member of the NL cluster, of Einsteinstraat 7, 6902 PB, Zevenaar, The Netherlands;

(18) Fokker Elmo B.V., (national registration number: 20084205), member of the NL cluster, of Aviolandalaan 33, Postbus 75, 4630 AB Hoogerheide, The Netherlands,

(19) Stichting Nationaal Lucht- en Ruimtevaartlaboratorium (NLR) (national registration number: 41150373), member of the NL cluster, of Anthony Fokkerweg 2, 1059CM Amsterdam, The Netherlands,

(20) Technische Universiteit Delft, member of the NL cluster, of Stevinweg 1, 2628 CN Delft, The Netherlands,

(21) Universiteit Twente, member of the NL cluster, of Drienerlolaan 5, PO Box 000, 7522 NB Enschede, The Netherlands,

(22) QinetiQ Limited a company registered in England and Wales under company number 03796233 whose registered office is at 85 Buckingham Gate, London, SW1E 6PD, England and with offices at Cody Technology Park, Ivley Road, Farnborough, Hampshire, GU14 0LX, England (hereinafter referred to as 'QinetiQ')

(23) RUAG Aerospace AG, a company incorporated under Swiss law, registered under the number CH-100.3.021.761-7/, with its head office at Seetalstrasse 175, CH-6032 Emmen, Switzerland (hereinafter referred to as 'RUAG')

(24) Dassault Aviation, a "Société Anonyme" incorporated under the laws of France, registered under the number 712 042 456 RCS Paris, with share capital of EUR 81 007 176, with its Head Office at 9 Rond-Point des Champs Élysées-Marcel Dassault, 75 008 Paris, France, (hereinafter referred to as "Dassault"),

(25) EADS Construcciones Aeronáuticas, S.A. "Sociedad Unipersonal" registered under the laws of Spain under identification code (referred to as NIF in Spain) for any purpose A-28-006104, with its Head Office located at Avenida de Aragón, 404, 28022 Madrid, Spain (hereinafter referred to as "EADS-CASA")

(26) Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V., a non-profit association incorporated under the laws of Germany, registered under the number VR 4461 at the Amtsgericht (district court) München, with its registered office at Hansastrasse 27C, 80686 München, Germany, (hereinafter referred to as 'Fraunhofer')

(27) Liebherr Aerospace Lindenberg GmbH, Pfaenderstraße 50-52, 88161 Lindenberg, Germany. (hereinafter referred to as 'Liebherr')

(28) Rolls-Royce plc, a company registered in England and Wales (CN 1003142) whose registered office is at 65 Buckingham Gate, London SW1E 6AT England (hereinafter referred to as 'Rolls-Royce')

(29) Safran SA a company incorporated under the laws of France with its registered office at 2, boulevard du Général Martial Valin, 75724 Paris Cedex 15, registered under number 562 082 909 RCS Paris (hereinafter referred to as 'Safran')

(30) Aircelle, (national registration number: 352 050 512), of Route du Pont VIII, BP 91, 76700 Gonfreville l'Orcher, France,

(31) Messier-Dowty Limited, (national registration number: 3548809) of Cheltenham Road East, GL2 9HQ Gloucester, Gloucestershire, United Kingdom,

(32) Snecma SA, (national registration number: 414815217) of 2, Boulevard du Général Martial Valin, 75015 Paris, France,

(33) Sagem Défense Sécurité, (national registration number: 480107911) of Le Ponant de Paris, 27 rue Leblanc 75015 Paris, France,

(34) Thales Avionics SA a company incorporated under the laws of France with its registered office at 45 Rue de Villiers, 92526 Neuilly sur Seine Cedex, registered under number 612 039 495 RCS Nanterre (hereinafter referred to as 'Thales')

(35) Aernnova Aerospace S.A.U. a sociedad unipersonal incorporated under the laws of Spain with its head office at Parque Tecnológico de Alva, C/ Leonardo da Vinci 13, 01510 Minano Mayor, Spain

(36) Thales Research & Technology, route Départementale 128, 91767 Cedex Palaiseau, France

(37) Aernnova Engineering Solutions Iberica, Parque Tecnológico de Álava, Calle Leonardo da Vinci, 13 01510 Miñano Mayor (Álava) Spain

(38) Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D-15827 Blankenfelde –Mahlow, Germany

hereinafter, jointly or individually, referred to as "Members" or "Member"

And the Partners who have from time to time entered into an instrument of adherence in accordance with the forms set out in Attachment 2

Members and such Partners hereinafter, jointly or individually, referred to as "Parties" or "Party" relating to the Smart Fixed Wing Aircraft Integrated Technology Demonstrator

hereinafter referred to as "SFWA-ITD"

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the SFWA-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 SFWA 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 their Annexes as may be amended below without the need to replicate said terms herein.

1.2 Additional Definitions

"Airbus Companies" means the following companies: Airbus S.A.S., Airbus Deutschland GmbH, Airbus France S.A.S., Airbus España S.L., Airbus UK Ltd;

"Confidential Information" means all information in whatever form or mode of transmission, which is disclosed by a Disclosing Party to any 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 30 days from oral disclosure at the latest as confidential information by the Disclosing Party;

"Consortium" means the consortium of parties to this Consortium Agreement, notwithstanding any other definition of this term in any Grant Agreement;

"Consortium Body" means any one or more of the bodies referred to under Article 6 of this Consortium Agreement.

"Consortium Budget" means the allocation of all the resources in cash or in kind for the activities as defined in Annex IA and IB of the relevant Grant Agreements and in the Consortium Plan thereafter.

"Consortium Plan" means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the ITD Steering Committee the initial version of which is included as [Attachment 7] to this Agreement; for the avoidance of doubt, the performance obligations of each Party shall be those defined in Annex IB of the applicable Grant Agreements;

"Coordinator" means the ITD Co-Leader that acts as the 'coordinator' as defined in the Grant Agreement and assumes the responsibilities of such coordinator on behalf of the Members;

"Defaulting Party" means a Party which is in breach of this Consortium Agreement and/or any Grant Agreement as specified in Article 3.3 of this Consortium Agreement.

"Disclosing Party" means the Party disclosing Confidential Information;

"Effective Date" means either the date of signature of the Consortium Agreement by all the Parties or the Start Date of the first Grant Agreement whichever is the earlier;

"Grant Agreement" means an agreement under which the Clean Sky Joint Undertaking agrees to fund activities of one or more of the Parties within the ITD. Where an existing Grant Agreement is amended by the parties thereto agreeing a new Annex IB in respect of a new period the grant in relation to such new Annex IB shall be deemed to give rise to a separate Grant Agreement for the purposes of this Consortium Agreement;

"ITD Co-Leader" means either of the two members specifically identified in the Clean Sky Statutes Annex II as ITD Leaders and Co-leaders of the SFW-ITD, namely Airbus and Saab;

"ITD Management Committee" or "ITD MC" means a committee that manages and governs the SFWA ITD as more particularly described in Article 6.2.3;

"Joint Undertaking" and "JU" means the Clean Sky Joint Undertaking as set up by the REGULATION (EC) No 71/2008 OF THE COUNCIL of 20th December 2007;

"Partner" means any legal entity selected by the Joint Undertaking to perform specific tasks in relation to this ITD pursuant to a Call for Proposals;

"Recipient" means the Party receiving Confidential Information;

"Steering Committee" means the JU body relating to the Smart Fixed Wing Aircraft ITD referred to in Article 8 of Annex 1 of the Clean Sky Regulation EC 71/2008;

"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 any one or more work packages which together form the work scope of the SFW-ITD according to the description of work appended to the Grant Agreement signed by the Members as the same may be developed by the Consortium Plan in the course of the relevant year;

"Work Package Leader" means the person leading and managing a relevant Work Package;

"Work Package Management Team" means any of the Consortium Bodies established under Article 6.2.4 below.

Section 2: Purpose

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

Section 3: Entry into force, duration and termination

3.1 Entry into force

This Consortium Agreement shall have effect from the Effective Date.

3.2 Duration

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

3.3 Termination

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

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

3.3.3 If such breach is not remedied within that period or is not capable of remedy, the 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 relevant Grant Agreement for such Defaulting Party's termination of its participation in and to the ITD and this Agreement.

3.3.4 In the event that the JU refuses to enter into a Grant Agreement with the Members for the forthcoming year's activities of the ITD the Steering Committee shall meet (without the participation of its non-voting members) to agree on a process for the discontinuation of the Parties' activities within the ITD and for the termination of this Consortium Agreement.

3.4 Withdrawal of the participation of a Party in the ITD

3.4.1 Subject to Article 3.4.2, the Parties agree that if a Party wishes to withdraw from the Consortium, it will be considered as a request for termination and be subject to the unanimous agreement of the Steering Committee and in accordance with GA II.36).

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

- (a) the Withdrawing Member has chosen not to enter into a Grant Agreement for the following year on the ground that (i) the proposed Annex IB thereto will impose terms on such Member that vary from the technical or financial content of Annex IA

to such Member's material detriment or (ii) the Steering Committee has amended the Consortium Plan so that a future Annex IB would impose terms on such Member that vary from the technical or financial content of the immediately preceding version of the Consortium Plan to such Member's material detriment; and

- (b) the Withdrawing Member gives written notice to the Coordinator and the Steering Committee and the other Members not less than ninety (90) days before the end of the current year or, if the applicability of 3.4.2 (a) only becomes apparent less than 90 days before the end of the current year, as soon as reasonably practicable after it has become apparent; and
- (c) the Withdrawing Member completes all of its obligations under the current Annex IB and the relevant Grant Agreement.

3.5 Survival of rights and obligations

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

3.5.2 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 Steering Committee and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

3.6 Suspension

The obligations of the Parties hereunder to perform ITD activities are conditional on the existence of a Grant Agreement funding such activities. If at any time the Consortium Plan envisages the performance of ITD activities by a Party such Party shall nevertheless be under no obligation to perform them until such time as it has become a Beneficiary under a Grant Agreement in respect of such activities.

Section 4: Responsibilities of Parties

4.1 General principles

4.1.1 Each Party undertakes to take part in the efficient implementation of the ITD, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the Grant Agreements and this Consortium Agreement in good faith as prescribed by Belgian law.

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

4.1.3 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 6.2

4.1.4 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 ITD Co-Leaders

4.2.1 The ITD Co-Leaders are in charge of managing the SFWA-ITD and to ensure that the activities are conducted by the Parties until completion as defined in the Consortium Plan.

4.2.2 With the support of the Coordinator, the ITD-MC and the other Parties, they are responsible for the regular review and updating of this Consortium Plan where necessary or desirable.

4.3 Responsibilities of the Members

4.3.1 The Members will participate in the management of the SFW-ITD in support of the ITD Co-Leaders and ensure technical leadership and completion of their agreed respective tasks.

4.3.2 Each Member shall participate in the activities of each Consortium Body of which it is represented in relation to the development of the Consortium Plan and shall provide each such Consortium Body with such information and support as is necessary for this purpose.

4.3.3 Any Member whose representative has been nominated as the chairman of any Consortium Body shall be responsible for proposing decisions and preparing the agenda of such Consortium Body, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at those meetings.

4.4 Clusters

4.4.1 Each Cluster agrees to be represented in all relevant Consortium Bodies by one person representing each Cluster (which does not have to be the same person on each Consortium Body) as the single Member representative 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 any Consortium Body 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 relevant Grant Agreement.

4.4.2 Each Cluster signing this Agreement will be responsible before the other Parties and the Coordinator for the performance of all activities allocated to the Cluster under any GA and the Consortium Plan.

4.4.3 Each Cluster further warrants that it is duly authorised to sign this Agreement as agent on behalf of all Cluster members and that each such Cluster member is jointly and severally liable for the performance of any activity within the ITD that is allocated to such Cluster member by the Consortium Plan or any Grant Agreement.

Section 5: Liability

5.1 Notwithstanding its liability to the JU as set out in the Grant Agreement each Party undertakes to the other Parties to perform its work at its own risk and under its sole liability and shall be liable for its non-compliance of its obligations in relation to any Work Package in which it is involved.

5.2 No warranties

5.2.1 In respect of any information or materials supplied or created by one Party to another pursuant to this Consortium Agreement, no warranty 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 save as provided by Articles 5.5 and 5.6.

5.2.2 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.

5.2.3 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 Consortium Agreement howsoever caused.

5.3.2 The total, aggregate liability of a Party for any and all loss and damage demonstrated by other Parties as arising out of or in connection with any breach of this Agreement howsoever caused is limited to the lower of twenty five million euro (€25,000,000) or twice the amount of the total costs of the defaulting Party's activities in the ITD arising under Grant Agreements in respect of the current and all previous years. In the event that a breach of this 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 agreement 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 total share of the Party making the claim in the total costs of the ITD arising under Grant Agreements in respect of the current and all previous years.

5.3.4 For the avoidance of doubt the limits of liability under Articles 5.3.2 and 5.3.3 shall operate independently, so that in the event that both articles 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 Consortium Agreement shall not be construed to exclude or limit any Party's liability for any non-contractual liability including any liability for death or personal injury.

5.4 Third Parties

5.4.1 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 (including but not limited to the JU) resulting from the performance of the said Party's obligations under this Consortium Agreement. The Parties' liability to indemnify one another under this clause 5.4 shall not be subject to the foregoing limitations.

5.4.2 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 relevant 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.

5.5 Loans etc of equipment

In the case of supply, loan or bail of material and/or equipment between Parties for the performance of the Consortium work other than flight testing 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.

5.6 Flight tests

5.6.1 In the case of any supply, loan or bail of between Parties for the performance of any flight test activities within the ITD the relevant parties shall enter in to a specific agreement setting out their respective rights obligations and liabilities. If deemed appropriate by both Parties, such agreement may require the supplier to give the Party performing the flight test warranties as to:

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

5.6.2 Each such agreement shall set out the obligations of the parties to carry insurance in respect of their potential liabilities thereunder. Unless otherwise agreed the operator of the aircraft on which the flight test is performed shall carry appropriate aircraft hull insurance and cause its insurers to waive subrogation rights and the supplier shall carry product liability insurance sufficient to cover its third party legal liability.

Section 6: Governance structure

6.1 General Principles

The ITD is structured by Work Packages allocated among the Parties which Work Packages may be subject to a further subordinate agreement ("Work Package Agreement") that may be entered into by two or more Parties hereto as required.

The Consortium management, coordination and decisions are handled variously by the Coordinator and the Consortium Bodies; SFWA-ITD Management Committee and Work Package Management Teams.

The Consortium Bodies shall endeavour to achieve consensus on all matters on which they are required to make decisions.

6.2 Consortium Bodies

The Consortium Bodies become operational on the Effective Date.

6.2.1 Coordinator

6.2.1.1 The Coordinator shall act as the intermediary between the Parties and the Joint Undertaking. In addition to its responsibilities as a Party it shall perform all tasks assigned to it as described in the Grant Agreement attributable to the Coordinator and shall act as the principal point of contact with the JU in negotiating future Grant Agreements for the ITD in accordance with the Consortium Plan on behalf of the Members.

6.2.1.2 The Coordinator shall be responsible for:

- (a) Monitoring compliance by the Parties with their obligations;
- (b) Keeping the address list of members 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) Transmitting documents and information connected with the management of the Consortium Agreement, including copies of Accession documents and changes of contact information to the Parties;
- (e) 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;
- (f) Receiving and submitting requests for amendments and termination at the initiative of the Consortium in accordance with Annex II to relevant Grant Agreements, Article II.36.

6.2.1.3 If the Coordinator fails in its coordination tasks, the SFWA-ITD MC may propose to the Joint Undertaking to change the Coordinator through a vote in a meeting or by consents of the Parties. Decisions shall be taken unanimously by all of the other Parties.

6.2.1.4 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party. For the avoidance of doubt the Coordinator is not authorised to execute on behalf of any other Party any amendment to a Grant Agreement whose effect is to adopt a new Annex IB for a new period.

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

6.2.1.6 In addition to the reports required by the Grant Agreements the Parties shall give the Co-ordinator reports pursuant to requirements imposed by the Steering Committee or the ITD MC as follows:

- (a) as necessary for the annual budget process of the JU
- (b) as necessary to enable the Co-ordinator efficiently to perform its duties under the Grant Agreement)
- (c) A reasonable frequency for such submission should not be more than four times a year and should only contain estimated data.

6.2.1.7 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.

6.2.2 Steering Committee

6.2.2.1 The ITD Steering Committee is in charge of the overall supervision of the Consortium. The Members confirm the rules of procedure for the Steering Committee set out in Attachment 8.

6.2.2.2 Decisions on the following matters shall be referred to the Steering Committee:

- (a) Reviewing and as necessary amending the Consortium Plan
- (b) Approving the description of SFWA activities for inclusion in the Annual Implementation Plan of the JU
- (c) the allocation of the Consortium Budget among the Parties in accordance with the relevant Grant Agreements, and reviewing and proposing to the Parties budget transfers;
- (d) changes to the terms of any signed Grant Agreements;
- (e) suspension of all or part of the Consortium or requesting the Joint Undertaking to terminate all or part of one relevant Grant Agreement, or the participation of one or more Parties;
- (f) Deciding on actions to be taken against a Defaulting Party, including a request to the Joint Undertaking for an audit or for the assistance of the Joint Undertaking, and approving the assignment of the Defaulting Party's tasks to Non-Defaulting Parties, and reallocating the Community Financial Contribution among the Parties effectively involved in completion of such Defaulting Party's tasks and/or if appropriate agree upon a new entity to join the Consortium for that purpose;
- (g) In case of default of the Coordinator in the performance of its tasks as a Coordinator, advising on actions to be taken and, if necessary, submitting a proposal to the Joint Undertaking for the instigation of a new Coordinator;
- (h) Advising on procedures and policies in accordance with the relevant Grant Agreement rules, Annex II General Conditions - Part C for the use and dissemination of the Foreground;
- (i) Advising on the rules for the management of the funds received from the Joint Undertaking and for the management and co-ordination budgets rules

- (j) Deciding on major changes in work, particularly termination, creation, or reallocation of top level work packages;
- (k) Advising on press releases and publications by the Parties or by the Joint Undertaking with regard to the ITD.

6.2.3 SFWA-ITD Management Committee

A. Composition

6.2.3.1 The SFWA-ITD Management Committee ("ITD-MC") shall be in charge of the operational daily management of the ITD.

6.2.3.2 The ITD-MC shall consist of the following appointed persons:

- (a) a representative of the Coordinator, and
- (b) a representative of the ITD- Co-Leader, which is not the Coordinator
- (c) the Leaders of the Work Packages at levels one and two in the SFWA-ITD work breakdown structure set out in the Consortium Plan

6.2.3.3 Membership may be updated upon ITD-MC's unanimous agreement. When required by the topics to be discussed in the agenda, the ITD-MC may by unanimous approval only, invite the other persons connected with the Consortium work.

6.2.3.4 The ITD Co-Leaders are responsible for appointing the chairman of the ITD-MC. Each ITD-MC representative shall participate or be duly represented by a substitute to each PMC meeting.

6.2.3.5 The Aircraft Concept Managers shall attend the meetings of the ITD-MC and shall report from time to time as required by the ITD-MC on the progress of the relevant aircraft concept technologies.

B. Procedure

6.2.3.6 The ITD-MC chairman shall convene meetings of the ITD-MC at least on a quarterly basis and shall also convene meetings at any time upon written request of any representative of the ITD-MC in the case of an emergency situation.

6.2.3.7 The ITD-MC chairman shall give each of the representatives at least fifteen (15) calendar days' notice in writing of such meetings or seven (7) calendar days notice in case of an emergency situation.

6.2.3.8 Should a representative of the ITD-MC suggest adding a discussion/decision to the proposed agenda, it shall do so in writing to all other representatives at least two (2) working days prior to the meeting date.

6.2.3.9 However, any decision required or permitted to be taken by the ITD-MC may be taken as follows:

- (a) In meetings including meetings held via teleconference or videoconference;

- (b) Without a meeting, through circulation among the representatives of the ITD-MC of a written document setting forth the decision to be made which must be returned within fifteen (15) calendar days to the ITD-MC chairman, duly signed and with their recommendations indicated in relation thereof. In such a case, the ITD-MC chairman 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 fifteen (15) calendar days of the expiration date of the above fifteen (15) days.

6.2.3.10 Each of the ITD-MC representatives will have one vote at ITD-MC meetings, save that a representative shall not be entitled to vote on a resolution relating to an allegation of default by the Member appointing him. The ITD-MC shall make its decisions by simple majority of voting representatives present.

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

6.2.3.12 The chairman shall draft the minutes of each meeting to formalize in writing all decisions taken and shall dispatch them to all members of the ITD-MC and relevant other Parties within fifteen (15) calendar days of a meeting date.

6.2.3.13 The minutes shall be considered as accepted by the members of the ITD-MC if no such member has objected in writing to the chairman within fifteen (15) calendar days of receiving the draft minutes.

C. Functions

6.2.3.14 The ITD-MC shall be responsible for managing the SFWA-ITD and in particular will be responsible for

- (a) Reviewing the Consortium Plan (including the Consortium Budget) at least once a year and making proposals to the Steering Committee for the development and amendment of the Consortium Plan to reflect the evolution of the ITD and its contribution to the Clean Sky Programme as a whole;
- (b) Giving overall guidance to the WPMTs and Members in relation to the process of developing the Consortium Plan
- (c) When major modifications to the scope and content of the Work Packages are required, making proposal to the Steering Committee for those modifications;
- (d) Making proposals to the Steering Committee for the review and/or amendment of the terms of the relevant Grant Agreements;
- (e) Making proposals to the Steering Committee to suspend all or part of the Consortium or to terminate all or part of the relevant Grant Agreements, or to request the Joint Undertaking to terminate the participation of one or more Parties;
- (f) Reviewing and deciding in case of default of a Party and preparing proposals to the Steering Committee with regard actions to be taken against the Defaulting Party (as defined in Articles 6, 7 and 9, including through a request to the Joint Undertaking for an audit, an assignment of the Defaulting Party's tasks, and suggestions on any new entity to join the Consortium for that purpose);
- (g) Reviewing the content of Calls for Proposals and preparing the selection of new Partners;
- (h) When required reviewing the content of Calls for Tender in conjunction and cooperation with the Party concerned;

- (i) Deciding on technical roadmaps for the SFWA-ITD;
- (j) Proposing to the Steering Committee rules for the management of the funds received from the Joint Undertaking in accordance with Article 7 and
- (k) Generally supporting the Coordinator particularly in preparing for meetings with the Joint Undertaking and delivery and exchange of Project related data and deliverables.
- (l) Alerting the Steering Committee and the Coordinator in case of delay in the performance of the ITD or in case of default of any Party;
- (m) Coordinating on a day-to-day basis the progress of the technical work under the ITD;
- (n) Reviewing deliverables at each agreed step under the Consortium Plan and advising the Coordinator of any delay in delivery that cannot be remedied or any major discrepancy.
- (o) Changing the list of Affiliated Entities, when requested by a Party;
- (p) Changing the list of third parties to which ownership of Foreground may be assigned.
- (q) Approving withdrawal of Background from Attachment 1.

6.2.3.15 The Parties agree to abide by all decisions of the PMCITD-MC, subject to their rights under Article 6.2.7 and 6.2.8 below.

6.2.4 Work Package Management Teams

A. Composition

6.2.4.1 Each Work Package at level one or two ("level N") as outlined in the SFWA-ITD work break down structure set out in the Consortium Plan shall be governed by a Work Package Management Team (WPMT). A level N WPMT shall consist of one representative of each active Work Package at level N+1 forming part of such WPMT. Representatives of level N+1 Work Packages which are either not yet active or fully completed are not required but may be invited to some WPMT meetings, as required by the agenda.

6.2.4.2 Each WPMT shall have one chairperson. The chairperson shall be appointed by the Work Package Leader being responsible for all included level N+1 Work Packages.

B. Procedure

6.2.4.3 Each representative may appoint a substitute to attend at any meeting of the WPMT.

6.2.4.4 The chairperson shall convene meetings (including meetings held via teleconference or videoconference) of the WPMT at least every three (3) months and shall also convene meetings at any time as needed for normal progress of the Work Package or upon written request of any member of the WPMT in the case of an emergency situation.

6.2.4.5 The chairperson shall give each of the members of the WPMT at least ten (10) calendar days notice in writing of such meetings or seven (7) calendar days notice in case of an emergency situation.

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

6.2.4.7 However, any decision required or permitted to be taken by the WPMT may be taken in accordance with the foregoing:

- (a) In meetings including meetings held via teleconference or videoconference.
- (b) Without a meeting, through circulation among the members of the WPMT of a written document setting forth the decision to be made which must be returned within fifteen (15) calendar days to the Work Package Leader, duly signed and with their recommendations indicated in relation thereof. In such a case, the Work Package Leader shall draft the minutes to formalize in writing the decisions taken, taking into account the documents returned and shall dispatch them to all members of the WPMT within fifteen calendar days of the expiration date of the above fifteen (15) days.

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

6.2.4.9 Decisions shall be taken by consensus by all representatives of the WPMT.

6.2.4.10 The chairperson shall draft the minutes of each meeting to formalize in writing all decisions taken and shall dispatch them to all members of the WPMT within fifteen (15) calendar days of the concerned meeting date.

6.2.4.11 The minutes shall be considered as accepted by the members of the WPMT if, within fifteen (15) calendar days from receipt thereof, no member has objected in writing to the Work Package Leader, 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.

6.2.4.12 Accepted minutes will be dispatched to Partners involved in the Work Package for information and for implementation of decisions which they might be concerned with and stored in a depository by the Work Package Leader.

C. Function

6.2.4.13 The WPMT shall be in charge of managing the Work Package and in particular be responsible for the following:

- (a) Making detailed proposals to the ITDMC for the development of the Consortium Plan as it affects the relevant Work Package
- (b) Deciding upon the allocation of the tasks in accordance with the Budget allocation approved in the ITD Steering Committee, including the Consortium Plan and reviewing and proposing to the concerned Parties budget transfers within the limits of the Consortium Budget and the Consortium Plan for the SFWA-ITD;
- (c) Reviewing the content of Calls for Proposals and preparing the selection of new Partners to be proposed to the ITDMC;
- (d) Reviewing the content of Calls for Tender to be proposed to the ITD-MC (in conjunction and cooperation with the members concerned) and preparing the selection of subcontractors or service providers;

- (e) Alerting the ITD-MC and the Coordinator in case of delay in the performance of the Work Package or in case of default of any Party under said Work Package;
- (f) Analysing and documenting default of a Party under the Work Package and prepare proposal and action plan to the ITD-MC for this latter's decision;
- (g) Deciding upon the exchange of level N+1 work packages between the Parties in the Work Package, in the event that this exchange has an impact, which does not go beyond the scope of the Work Package and has no impact on the Consortium Budget and Consortium Plan.

D. Work Package Management Team Chairperson.

6.2.4.14 The chairperson shall have the following functions only:

- (a) Administration, preparation of minutes and provision of the chairman of the WPMT, and follow-up of its decisions;
- (b) Transmission of any documents and information connected with the Work Package to the Parties concerned;
- (c) Transmission of any documents and information connected with the Work Package to the Coordinator;
- (d) Transmission of the SFWA-ITD deliverables of the Parties within the Work Package to the Coordinator;
- (e) Coordinating on a day-to-day basis the progress of the technical work under the Work Package;
- (f) For the purpose of Article 7.1, reviewing deliverables at each agreed step under the Consortium Plan for the Work Package concerned and advise the Coordinator of any delay in delivery that could not be remedied or any major discrepancy.

6.2.4.15 The chairperson shall neither be entitled to act nor to make legally binding declarations on behalf of any other Party nor to enlarge its role beyond the one described herein.

6.2.5 Other Management Bodies

6.2.5.1 The management of work packages, tasks and subtasks within each Work Package 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.

6.2.5.2 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 relevant Grant Agreements.

6.2.5.3 Each work package, task or subtask at level N must be represented in the management body at level N-1 which it belongs to by a single leading person in charge to inform, coordinate and report. Each leader at level N will be supported by a team consisting at least of leaders of all currently active tasks or subtasks at level N+1.

6.2.5.4 Any Partner will be involved in at least one team in charge of the specific task or subtask it is participating to, in relation with at least the corresponding task or subtask leader.

6.2.5.6 Any difficulty arising in a team at level N which prevents a crucial decision to be agreed between involved Parties in a reasonable time frame must be escalated at level N-1 or relevant empowered body for resolution.

6.2.6. Aircraft Concept Manager

6.2.6.1 For each aircraft developed in the ITD an Aircraft Concept Manager shall be appointed by the Member with the principal engagement in the relevant technology. The Aircraft Concept Manager shall be responsible for ensuring efficient workflow, communication and delivery between the relevant Work Packages. The Aircraft Concept Manager has no operational function, but shall be responsible for advising the ITD-MC and pursuing all types of coordination to pursue the success of his mission.

6.2.7 Veto Rights

6.2.7.1 A Member of any Consortium Body 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 in which case the decision shall be treated as of no effect in relation to such Party.

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

6.2.7.3 When a decision has been taken on a new item added to the agenda before or during the meeting, a member may veto such decision during the meeting and within fifteen (15) days after the minutes of the meeting are sent.

6.2.7.4 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 its members.

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

6.2.7.6 A member requesting to leave the Consortium or a Work Package may not veto decisions relating thereto.

6.2.7.7 Either ITD Co-Leader may veto any decision of a Consortium Body 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.

6.2.8 Objection to decision

6.2.8.1 A Party which is not a member of any Consortium Body and whose own work, time for performance, costs, liabilities, intellectual property rights or other Legitimate Interests would be severely affected by a decision of such Consortium Body shall have the right to object to such decision in which case the decision shall be treated as of no effect in relation to such Party.

6.2.8.2 The affected Party shall give notice of objection within 15 calendar days of receiving from the Chairman of the relevant Consortium Body minutes of the meeting at which the decision was taken.

6.2.8.3 For the avoidance of doubt no such decision shall be binding on any Party until it has in fact received a copy of the relevant minutes and the 15-day period for giving notice of objection has expired.

6.2.8.4 Where the chairman of a Consortium Body believes that a proposed decision may be objected to by a party under the provisions of this Article 6.2.8 he shall if possible notify the relevant Party of the proposed decision in advance of the meeting at which it is to be discussed and give the Party an opportunity to make representations to the Consortium Body.

6.2.9 Escalation

In the event of a veto under article 6.2.7 or an objection under article 6.2.8 any member of the Consortium Body whose decision is affected or the objecting Party may within 15 days of the notice of veto or objection require the matter to be referred to a superior decision-making body as follows:

- (a) In the case of a decision by a WPMT at level N, to the level N-1 WPMT or as the case may be the ITD MC;
- (b) In the case of a decision of the ITD MC, to the Steering Committee;
- (c) In the case of a decision of the Steering Committee to the Governing Board of the JU.

Section 7: Financial provisions

7.1 General Principles

7.1.1 Distribution of Financial Contribution

7.1.1.1 The financial contribution of the Joint Undertaking to the Members 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.

7.1.1.2 A Member shall be funded only for its tasks carried out in accordance with the Consortium Plan and will be paid in accordance with the Grant Agreement.

7.1.1.3 The Partners shall obtain payment of the financial contribution of the Joint Undertaking to their activities in accordance with the provisions of the relevant Grant Agreements and the Coordinator shall have no responsibility therefor.

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

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

7.1.3.2 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 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 3.4 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

7.2.1 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

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

7.3.2 Making payments to Members is the exclusive task of the Coordinator. In particular, the Coordinator shall:

- (a) Notify the Member 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.

7.3.3 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 Steering Committee on the Consortium Budget, which includes the payment schedule.

7.3.4 Payments to Members will be handled according to the following two principles:

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

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

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

7.4 Management Costs of the Co-Leaders

7.4.1 The Members (including the ITD Co-Leaders) agree to contribute to the management costs incurred by the ITD Co-Leaders the total sum of one hundred and fifty thousand Euros (€150,000) in each year. The several contributions of the Members to the said total sum shall be calculated in proportion to their respective participations in the costs of the ITD in the year in question, as determined by the Steering Committee. The ITD Co-Leaders shall in each year agree between themselves the allocation of the payments to be made by the other Members and shall notify their agreement to the Steering Committee. The ITD Co-Leaders may agree with the Steering Committee (acting for this purpose without the participation of the ITD Co-Leaders) to reduce the amount of this contribution. For the avoidance of doubt, nothing in this Agreement shall prevent the ITD Co-Leaders from claiming grants from the Joint Undertaking in respect of any management costs which are Eligible Costs under the Grant Agreement.

7.4.2 Any sums due from a Member under Article 7.4.1 shall be paid to the ITD Co-Leader(s) within 30 days of the decision of the Steering Committee establishing the amount of the Members' contributions, provided that the ITD Co-Leader to whom payment is due has issued an invoice to the relevant Member.

Section 8: Intellectual Property, Use and Dissemination

8.0 General

8.0.1 The provisions of Articles II.26 – II.30 of annex II to the standard FP7 grant agreement shall be deemed to form part of this Consortium Agreement. References in this Article 8 to Articles numbered in the form II.x shall unless otherwise specified be read as references to the said standard provisions. For the avoidance of doubt the rights and obligations of each Party as against the JU shall be governed by the relevant Grant Agreement(s).

8.0.2 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

8.1.1.2 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.

8.1.1.3 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:

- (a) at least 45 days prior notice must be given to the other joint owner(s);
- (b) 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.

8.2 Transfer of Foreground

8.2.1 Each Party may transfer ownership of its own Foreground in all or in part following the procedures of Article II 27

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

8.2.3 The other Parties hereby waive their right to object to a transfer to listed third parties according to Article II.27.3.

8.2.4 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.

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

8.2.6 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 Art. II.27.2.

8.3 Dissemination

8.3.1 Publication

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

8.3.2 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.

8.3.3 Cooperation obligations

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

8.3.4 Use of names, logos or trademarks

Nothing in this 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

9.0 General

The provisions of Articles II.31 – II.33 of annex II to the standard FP7 grant agreement including, for the avoidance of doubt, the definition of “use” shall be deemed to form part of this Consortium Agreement. References in this Article 9 to Articles numbered in the form II.x shall unless otherwise specified be read as references to the said standard provisions. For the avoidance of doubt the rights and obligations of each Party as against the JU shall be governed by the relevant Grant Agreement(s).

9.1 Background covered

9.1.1 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.

9.1.2 However, A Party may decide to withdraw Background from [Attachment 1] provided that:

- (a) such Party provides the other Parties with a prior written notice to that effect, and
- (b) in the event any of the withdrawn Background has been used by a Party, the owning Party will be obliged to continue to grant a licence of such Background to such Party as if such withdrawn Background remained available for use under this Consortium Agreement.

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

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

9.1.5 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

9.2.1 Each Party shall take appropriate measures to ensure that it can grant Access Rights and fulfil the obligations under the relevant 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.

9.2.2 As provided in 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).

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

9.2.4 Access Rights shall be free of any administrative transfer costs.

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

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

9.2.7 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.

9.2.8 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 if needed for the performance of the own work of a Party under the -ITD shall be granted on a royalty-free basis

9.4 Access Rights for Use

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

9.4.2 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.

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

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

9.4.5 A request for Access Rights may be made up to two (2) years after the completion of the ITD notwithstanding that the participation in the ITD of the Party to whom such request is made may have expired or terminated at an earlier date.

9.5 Access Rights for Affiliated Entities

9.5.1 Notwithstanding Article II.34.3, Affiliate Entities shall enjoy Access Rights where the Party requiring Access Rights for its Affiliate Entity can show that its 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.

9.5.2 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 any relevant Grant Agreement and under this Consortium Agreement as if such Affiliated Entities were Parties.

9.5.3 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.

9.5.4 The same shall apply for an Affiliated Entity which have been added on the list in Attachment 3 following a decision of the Steering Committee provided that the addition of such Affiliated Entity has been notified in writing by the Steering Committee chairman to the objecting Party and the objection is made within 15 calendar days of the receipt of such notice.

9.5.6 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.

9.5.7 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.

9.5.8 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 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 Steering Committee to terminate its participation in the Consortium.

9.7.2.1.2 Non-Defaulting Party

A Non-Defaulting Party leaving voluntarily (including a Partner leaving on the completion of the relevant Grant Agreement) 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 ITD.

9.8 Specific Provisions for Access Rights to Software

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

9.8.2 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

9.9.1 In the event a material or equipment is developed or manufactured in the ITD 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.

9.9.2 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 Clean Sky Programme in accordance with Annex I and the loan conditions in Attachment 6 to the Consortium Agreement and/or any conditions applicable to any flight test activities.

Section 10: Non-disclosure of information

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

- (a) Not to use or disclose Confidential Information of which it is the Recipient, otherwise than for the purpose for which it was disclosed;
- (b) Not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
- (c) To ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- (d) To return to the Disclosing Party on demand all Confidential Information which has been supplied to 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.

10.2 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 ITD and/or after the termination of employment or the relevant contract of engagement.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 The confidentiality obligations under this Consortium Agreement and the relevant 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.

Section 11: Miscellaneous

11.1 Attachments, inconsistencies and severability

11.1.1 This Consortium Agreement consists of this body text and:

[Attachment 1]: (Background included)

[Attachment 2]: (Accession document)

[Attachment 3]: (Listed Affiliated Entities)

[Attachment 4]: (Initial list of Members and other contact persons)

[Attachment 5]: (List of Third Parties to which transfer of Foreground is possible without prior notice to other Parties)

[Attachment 6]: (Agreement for the loan of material/equipment)

[Attachment 7]: (Initial Consortium Plan)

[Attachment 8]: Steering Committee rules of procedure

11.1.2 In case of conflicts between the Attachments and the core text of this Consortium Agreement, the latter shall prevail.

11.1.3 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

11.3.1 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 Coordinating Manager based on the initial list of members and other contact persons in [Attachment 4].

11.3.2 Notices required to be sent that are legal notices shall be addressed to a Party's Company Secretary (or equivalent officer) at the registered address or the address of the principal company headquarters.

11.3.3 Formal notices:

If it is required in this Consortium Agreement (Article. 9.7.2.1.1 and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

11.3.4 Other communication:

Other non-legal communications between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt (e.g. minutes).

11.3.5 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. The change of the contact persons list does not require the signature of an amendment of the Consortium Agreement by all Parties hereto.

11.4 Assignment and amendments

11.4.1 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.

11.4.2 Amendments and modifications to the text of this Consortium Agreement require a separate agreement between all Parties.

11.5 Mandatory national law

The Parties recognize that at the time of signature of this Consortium Agreement, nothing in this Consortium Agreement requires a Party to breach any mandatory national law under which the Party is operating. To the extent any future mandatory law forbids or restricts any of the activities contemplated hereunder, the Parties agree to inform each other and discuss about the consequences thereof.

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 the Kingdom of Belgium.

11.8 Settlement of disputes

11.8.1 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 its Rules for a Pre-Arbitral Referee Procedure.

11.8.2 The place of arbitration shall be Geneva, Switzerland.

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

11.8.4 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.

11.9 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 -ITD are not overcome within six (6) weeks after such notification, the transfer of tasks, if any, shall be decided by the competent Consortium Bodies.

11.10 Benefit:

This Agreement will be binding on and inure to the benefit of the Parties and their respective successors, permitted assignees and permitted transferees.

11.11 Waiver, remedies cumulative:

The rights of each Party under this Agreement may be exercised as often as needed, are cumulative and apply in addition to its rights under the general law and may be waived only in writing and specifically. Not exercising or delay in exercising any right is not a waiver of that right.

11.12 Counterparts:

This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures were on the same original of the agreement.