

## **SEVENTH FRAMEWORK PROGRAMME (FP7)**



### **CLEAN SKY Joint Technology Initiative**

### **GREEN ROTORCRAFT Integrated Technology Demonstration (ITD)**

### **CONSORTIUM AGREEMENT**

**CONTENTS**

**Article 1: Definitions ..... 6**

**Article 2: Purpose..... 8**

**Article 3: Entry into force, duration and termination..... 8**

**Article 4: Responsibilities of the Parties ..... 10**

**Article 5: Liability ..... 11**

**Article 6: Governance structure..... 13**

**Article 7: Article 7: Financial provisions ..... 21**

**Article 8: Intellectual Property, Use and Dissemination ..... 25**

**Article 9: Access Rights ..... 27**

**Article 10: : Non-disclosure of information..... 31**

**Article 11: Miscellaneous ..... 32**

**Article 12: : Signatures ..... 35**

**[Attachment 1]: Background included..... 59**

**[Attachment 2]: Accession document ..... 60**

**[Attachment 3]: Listed Affiliated Entities..... 61**

**[Attachment 4]: Initial list of Parties and other contact persons..... 62**

**[Attachment 5]: List of Third Parties..... 67**

**[Attachment 6]: Agreement for the loan of material or equipment ..... 68**

**[Attachment 7]: Initial Consortium Plan ..... 70**

**THIS CONSORTIUM AGREEMENT for the Green Rotorcraft ITD is made on 2<sup>nd</sup> December 2008**

**pursuant to ;**

REGULATION (EC) No 71/2008 OF THE COUNCIL of 20<sup>th</sup> December 2007 (published in OJ L 30, 4.2.2008) setting up the Clean Sky Joint Undertaking and its statutes hereinafter referred to as Statutes and all Joint Undertaking Grant Agreements relevant to Green Rotorcraft Integrated Technology Demonstrator (hereafter referred to as the " GRC 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) **Eurocopter S.A.S.** (national registration number: 352383715), the GRC-ITD co-leader Eurocopter, established in Aéroport International de Marseille-Provence, 13725 Marignane, France, (hereinafter referred to as 'EC-sas') and

(2)- **Westland Helicopters Ltd.** , established in Lysander Road, Somerset, Yeovil BA20 2YB, United Kingdom, (hereinafter referred to as "AGUSTAWESTLAND UK"), and

(3)- **Agusta S.p.A.** (, established in Via G. Agusta 520, 21017, Cascina Costa di Samarate Varese, Italy, (hereinafter referred to as "AGUSTAWESTLAND IT"), and

(4) **Eurocopter Deutschland GmbH** (national registration number: HRB 16508), affiliated to the GRC-ITD co-leader Eurocopter, established in Industriestrasse, 86607 Donauwörth, Germany, (hereinafter referred to as 'EC-D'), and

(5)- **Eurocopter España S.A.**, affiliated to the GRC-ITD co-leader Eurocopter, established in Carratera del Barrio de la Fortuna 10, 28044 Cuatro Vientos, Madrid, Spain, (hereinafter referred to as 'EC-E'), and

(6)- **Liebherr-Aerospace Lindenberg GmbH**, (national registration number: HRB1613) established in Pfaenderstrasse 50-52, PO Box 1363, 88161 Lindenberg, Germany, (hereinafter referred to as 'LLI'), and

(7)- **Thales Avionics Electrical Systems S.A.**, (national registration number: 552114175) established in 41 Boulevard de la République, 78401 Chatou, France, (hereinafter referred to as 'TAES'), and

(8)- **Hispano-Suiza** (national registration number: 692015217) established in 18 Boulevard Louis Seguin - 92707 COLOMBES Cedex (France), ('Hispano-Suiza'), and

(9)- **Wytownia Sprzetu Komunikacyjnego PZL Swidnik Spolka Akcyjna**, national registration number: 0000028780 National Court Register: 0000028780- District Court of Lublin,

XI-th Economic Department), share capital: 86 006 050,00 zł; paid up capital: 86 006 050,00 zł , EU VAT Taxpayer Identification Number: PL 7130005502; - established in Aleja Lotnikow Polskich 1, 21045 Swidnik, Poland (hereinafter referred to as 'PZL-Sw'), and

(10)- **Office National d'Etudes et de Recherches Aéropatiales (ONERA)**, (national registration number: 775722879), established in 29, avenue de la Division Leclerc – B.P. 72, 92322 Châtillon, France, (hereinafter referred to as 'ONERA'), and

(11)- **Deutsches Zentrum für Luft- und Raumfahrt e.V. (DLR)**, (national registration number: VR2780) established in Linder Höhe, 51147 Köln, Germany, (hereinafter referred to as 'DLR'), and

(12)- **Centro Italiano Ricerche Aerospaziali (C.I.R.A.)** S.c.p.A, (national registration number: 128446/CF04532710631), member of the CIRA-SELEX ATS cluster, established in Via Maiorise s.n.c, 81043 Capua, Caserta, Italy, (hereinafter referred to as 'CIRA' or 'CIRA-SELEX ATS Cluster Coordinator' ), acting in its own name and in the name and on behalf of CIRA-SELEX ATS cluster members, and

(13)- **SELEX Sistemi Integrati** S.p.A, (national registration number: 900045), member of the CIRA-SELEX ATS cluster, established in Via Tiburtina 1231, 00131 Rome, Italy, (hereinafter referred to as 'SELEX'), and

(14)- **Airborne Composites** B.V, (national registration number: 27285141), member of the Stichting IGOR cluster, established in Laan van Ypenburg 70, PO Box 24031, 2490 AA Den Haag, The Netherlands, (hereinafter referred to as 'ABC'), and

(15)- **Alpei Poeschel Roesler - Akustik Technologie Goettingen (ATG)**, (national registration number: 1469.94), member of the Stichting IGOR cluster, established in Bunsenstrasse 9C, 37073 Goettingen, Germany, (hereinafter referred to as 'ATG'), and

(16)- **Eurocarbon** B.V., (national registration number:14044242), member of the Stichting IGOR cluster, established in Dr. Nolenslaan 119c, 6136GM Sittard, The Netherlands, (hereinafter referred to as 'Eurocarbon'), and

(17)- **Fibre Optic Sensors and Sensing Systems** BVBA (FOS&S), (national registration number: 85905), member of the Stichting IGOR cluster, established in Ciplastraat 14, 2440 Geel, Belgium, (hereinafter referred to as 'FOS&S'), and

(18)- **LMS International** N.V., (national registration number: 0428295877), member of the Stichting IGOR cluster, established in Interleuvenlaan 68, 3001 Leuven, Belgium, (hereinafter referred to as 'LMS'), and

(19)- **Microflown Technologies** B.V., (national registration number: 28077207), member of the Stichting IGOR cluster, established in Einsteinstraat 7, 6902 PB Zevenaar, The Netherlands, (hereinafter referred to as 'Microflown' or 'IGOR Cluster Coordinator'), acting in its own name and in the name and on behalf of Stichting IGOR cluster members, and

(20)- **Micromega Dynamics** S.A, (national registration number: 0466034916), member of the Stichting IGOR cluster, established in Parc Scientifique du Sart-Tilman, Rue des Chasseurs Ardennais 4, 4031 Angleur, Belgium, (hereinafter referred to as 'MMD'), and

(21)- **Stichting Nationaal Lucht- en Ruimtevaartlaboratorium (NLR)**, (national registration number: 41150373), member of the Stichting IGOR cluster, established in Anthony Fokkerweg 2, PO Box 90502, 1059 CM Amsterdam, The Netherlands, (hereinafter referred to as 'NLR'), and

(22)- **Technische Universiteit Delft**, member of the Stichting IGOR cluster, established in Stevinweg 1, PO Box 5, 2628 CD, The Netherlands, (hereinafter referred to as 'TU Delft'), and

(23)- **Universiteit Twente**, member of the Stichting IGOR cluster, established in Drienerlolaan 5, 7522 NB Enschede, The Netherlands, (hereinafter referred to as 'Uni Twente'),

and

The Partners who have from time to time entered into an instrument of accession in accordance with the forms set out in attachment 2 which is (are) referred to, jointly or individually, as "Partner(s)"

and all 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 GRC ITD to the Joint Undertaking as part of the Clean Sky Joint Technology Initiative set up by decision of the European Community.

On 2<sup>nd</sup> December 2008, Eurocopter SAS has signed the Grant Agreement CSJU-GAM-GRC-2008-1 with the Clean Sky JU, setting the conditions for the performance of the ITD Green Rotorcraft (GRC ITD) by the Consortium to be constituted between Eurocopter and the Parties identified in the list above by numbers (2) through (23);

The Parties wish to agree certain legally binding commitments among themselves in relation to the GRC ITD in addition to the provisions of the relevant Grant Agreement (s) awarded to the Partie(s) by the Joint Undertaking for the GRC ITD on the terms and conditions of this Consortium Agreement.

(" the ITD Consortium Agreement ")

#### AGREED TERMS:

## Article 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 Agreement(s) including its Annexes as may be amended below without the need to replicate said terms herein.

### 1.2 Additional Definitions

“Change of Control” occurs if the majority of the ordinary voting rights in the shareholding assembly has been acquired by a new controlling entity that is different from the current ownership of the Party experiencing such change. For sake of clarity, the change in control of a Party as a consequence of which such Party remains under the direct or indirect sole control of its parent company does not constitute a change of control under this ITD Consortium Agreement.

"Cluster" means a cluster as defined in the Grant Agreement CSJU-GAM-GRC-2008-1 i.e. a legal entity (1) whose members include two or more Parties which are not affiliates of each other (2) whose members are Beneficiaries in said Grant Agreement;

“Cluster Coordinator” means the representative of the Cluster, elected by the Parties member of the given Cluster, as per article 4.2.2.

“Consortium” means the consortium of parties to this ITD 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 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 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 ITD Consortium Agreement;

“Consortium Committee” and “CC” means the committee in charge of the overall supervision of the Consortium, to assist and advise the ITD Steering Committee in its function.

"Coordinator" means the ITD Leader that acts as the 'coordinator' as defined in the Grant Agreement CSJU-GAM-GRC-2008-1 and assumes the responsibilities of such coordinator in front of other Parties involved in this Grant Agreement ;

“Defaulting Party” means a Party which is in breach of this ITD Consortium Agreement and/or the relevant Grant Agreements as specified in Article 3.3 of this ITD Consortium Agreement.

“Demonstrator” means a major test article featuring a representative model or prototype system integrating several new technologies developed in this ITD or in other ITDs within the Clean Sky Joint Technology Initiative. Such Demonstrator is designed, produced and assembled in order to be tested in an environment relevant to the operating conditions of the commercial products it is intended to represent. No test article can be considered in application of Article 5.4 unless it has been declared as a Demonstrator in the Grant Agreement CSJU-GAM-GRC-2008-1 or in the present Agreement or by a written resolution of the Steering Committee.

"Disclosing Party" means the Party disclosing Confidential Information;

"Effective Date" means the 1st of July, 2008

“Force Majeure” shall mean any event preventing a Party from the performance of its obligations which is unavoidable and unforeseeable and beyond the control of such Party.

“GRC Co-Leader” means either of the two members specifically identified in the Clean Sky Statutes Annex II as ITD Co-leaders of the GRC ITD, namely AgustaWestland UK/IT and Eurocopter, the latter represented as such or by any of its participating Affiliates, EC-D or EC-E ;

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

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

“Partner” means any legal entity selected by the GRC ITD as approved by the Joint Undertaking to perform specific tasks in relation to the GRC ITD pursuant to a Call for Proposals.

Participating Affiliate means an affiliate of a Joint Undertaking Member participating in Clean Sky.

“Management Committee” and “MC” means the committee gathering the Coordinator and the GRC Co-Leaders and all Subproject Leaders and some other representatives of Subproject Management Teams; this Management Committee being in charge of the daily management of the GRC-ITD including all decisions not affecting significantly the overall scope, structure and timing of the GRC ITD.

“Subproject” and “SP” means any of the seven subprojects referred to in the Consortium Plan which together form the Green Rotorcraft ITD, according to the description of work appended to the Grant Agreement signed by the GRC-ITD Leaders and Associates, as follows:

- Subproject GRC1 entitled Innovative Rotor Blades
- Subproject GRC2 entitled Drag reduction of airframe and non lifting rotating systems
- Subproject GRC3 entitled Integration of Innovative Electrical Systems
- Subproject GRC4 entitled Integration of a Diesel engine on a light helicopter
- Subproject GRC5 entitled Environment-friendly flight paths
- Subproject GRC6 entitled Eco-Design Demonstrators for Rotorcraft
- Subproject GRC7 entitled Technology Evaluator for Rotorcraft

"Subproject Management Team" and "SMT" means the committee of persons from the same Subproject that manages and governs the relevant Subproject;

"Subproject Leader" means the person leading and managing a relevant Subproject;

"Recipient" means the Party receiving Confidential Information;

"Relevant Grant Agreement(s)" means either the Grant Agreement CSJU-GAM-GRC-2008-1 entered into by the JU and by the Parties identified in the list above by numbers (1) through (23) including all amendments thereof or any other Grant Agreement relevant to the GRC ITD entered into by the JU with one or more Partner(s) including all amendments thereof;

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

"Work Package" (WP) means any one or more work packages referred to in the Consortium Plan which together form the work scope of the GRC ITD according to the description of work appended to the Grant Agreement CSJU-GAM-GRC-2008-1 including all amendments thereof ;

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

## **Article 2: Purpose**

The purpose of this ITD 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.

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

### **3.1 Entry into force**

**3.1.1** This ITD Consortium Agreement shall have effect retroactively on 1<sup>st</sup> of July 2008, the Effective Date.

**3.1.2** A new Party may enter the Consortium with the prior agreement of all Parties. Such agreement shall not be unreasonably withheld if the new Party is entering a relevant Grant Agreement with the JU or has been selected as a Partner after a Call for Proposals referring to this ITD Consortium Agreement and upon signature of the Accession document [Attachment 2] by the new Party and the Coordinator on behalf of the Parties. Such accession shall have effect from the date identified in the Accession document.



### **3.2 Duration**

This ITD Consortium Agreement shall continue in full force and effect until fulfilment of all obligations undertaken by the Parties under Grant Agreement CSJU-GAM-GRC-2008-1 and all other relevant Grant Agreements.

### **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 ITD Consortium Agreement and Articles II.36 to II.38. of Annex II of Grant Agreement CSJU-GAM-GRC-2008-1 and similar Articles in any relevant Grant Agreement.
- 3.3.2** In the event the relevant Consortium Body identifies a breach by a Party of its obligations under this ITD Consortium Agreement or under a relevant Grant Agreement, 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 ITD 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 GRC ITD and this Agreement.

### **3.4 Withdrawal of the participation of a Party in the GRC ITD**

- 3.4.1** 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 all other Parties and in accordance with article II.36 of Grant Agreement CSJU-GAM-GRC-2008-1 and similar Articles in any relevant Grant Agreement.
- 3.4.2** Any Party may withdraw from the Consortium (thereafter it will be referred to as the "Withdrawing Party") without liability provided that
- (a) the Withdrawing Party has requested termination of its participation in Grant Agreement CSJU-GAM-GRC-2008-1 for the following year on the grounds that the proposed Annex IB included in the Grant Agreement amendment will impose terms on such Party that vary from the technical or financial content of Annex IA included in the Grant Agreement prior any amendment , to such Party's material detriment;
  - (b) the Withdrawing Party gives written notice to the Coordinator, to the ITD Steering Committee and to the other Parties 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 Party completes all of its obligations under the current Annex IB of Grant Agreement CSJU-GAM-GRC-2008-1 or under any other relevant past or on-going 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 ITD 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 MC, the ITD 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.

## **Article 4: Responsibilities of the Parties**

### **4.1 General principles**

- 4.1.1** Each Party undertakes to take part in the efficient implementation of the GRC ITD, and to cooperate, perform and fulfil, promptly, on time, and in good faith all of its obligations under the relevant Grant Agreement(s) and this ITD Consortium Agreement.
- 4.1.2** Each Party undertakes to notify promptly, in accordance with the governance structure of the GRC ITD, any significant information, fact, problem or delay or any other risk likely to affect the GRC 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 undertakes to provide all information necessary pursuant to any requirement imposed by the ITD Steering Committee or by the JU in particular as necessary for the preparation and adoption of the annual budget of the JU in relation with the GRC ITD.
- 4.1.5** Each Party which is a member of the JU or a Participating Affiliate thereof shall participate in the activities of each Consortium Body in 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.

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

## **4.2 Clusters**

- 4.2.1** All Parties member of a Cluster in the Grant Agreement CSJU-GAM-GRC-2008-1 agree to be represented in all relevant Consortium Bodies of the GRC ITD by one person representing said Cluster (which does not have to be the same person in each Consortium Body)
- 4.2.2** All Parties member of a Cluster have elected among themselves one Party as Cluster Coordinator. The Cluster Coordinator shall be considered as the single representative of said Cluster for all purposes of this ITD Consortium Agreement other than the purpose of paragraph 4.2.1 above.
- 4.2.3** The 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 MC and to the Coordinator as required.
- 4.2.4** The transfer of activities and corresponding budgets between members of a Cluster is allowed with prior approval by the ITD Steering Committee and has to be reflected in amendments of the Consortium Plan. The Consortium Budget and financial reporting will consider separately the activities performed by each Cluster member in compliance with JU accounting procedures and with Annex II of the relevant ITD Grant Agreement.

## **Article 5: Liability**

### **5.1 Liability between Parties**

#### **5.1.1 Own performance**

Notwithstanding its liability to the JU, as set out in the Grant Agreement(s), 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 GRC Subproject in which it is involved.

#### **5.1.2 No warranties**

- 5.1.2.1** In respect of any information or materials supplied or created by one Party to another, pursuant to this ITD 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.

5.1.2.2 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.

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

### **5.1.3 Limitation and exclusion of contractual liability**

5.1.3.1 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 ITD Consortium Agreement howsoever caused.

5.1.3.2 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 ITD Consortium Agreement, and occurred in the framework of some Subproject, howsoever caused, is limited to either:

- (i) twice the value of the liable Party's share within the total amount of the completed and on going activities relevant to said Subproject
- (ii) or to the value of the liable Party's share within the total amount of the completed and on going activities in the entire GRC programme, which ever is the smaller amount.

5.1.3.3 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 GRC ITD of the Party making the claim arising under relevant Grant Agreements and cumulated in respect of the current and all previous years.

5.1.3.4 For the avoidance of doubt the limits of liability under Articles 5.1.3.2 and 5.1.3.3 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.

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

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

## **5.2 Third Parties**

### **5.2.1 Damage caused to third parties**

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

5.2.1.2 In the event of a claim of the JU and if such claim of the JU has been settled by any other Party (ies) the Party whose default has caused or contributed to such claim shall reimburse any amount, to such any other Party(s).

5.2.1.3 In the event of a claim of the JU and if it is not possible to attribute the default to any Party, the amount claimed by the JU shall be apportioned between all the Parties prorata their shares in the Consortium Plan.

#### **5.2.2 Involvement of third parties**

A Party that enters into a subcontract or otherwise involves third parties remains solely responsible for carrying out its relevant part of the work and for such third party's compliance with the provisions of this ITD Consortium Agreement and of the relevant Grant Agreement(s). It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties in this ITD Consortium Agreement.

#### **5.3 Loan of material or equipment**

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

#### **5.4 Demonstrators**

Concerning the Demonstrators created in the frame of this ITD (or Green Rotorcraft project), as well as its parts supplied by the Parties for the performance of its activities within the ITD, each Party warrants:

- (a) these parts shall comply with the agreed specifications of the ITD; and
- (b) it shall use all reasonable skill and care in design and manufacturing; and
- (c) it shall repair and/or replace parts in case of defect.

This warranty shall be valid during all the duration of the ITD

### **Article 6: Governance structure**

#### **6.1 General Principles**

6.1.1 The GRC-ITD is structured by Subprojects allocated among the Parties.

6.1.2 The Consortium management, coordination and decisions are handled by the Coordinator and the following Consortium Bodies: the Consortium Committee (CC), the Management Committee (MC) and Subproject Management Teams (SMT).

## 6.2 Consortium Bodies

The Consortium Bodies become operational on the Effective Date.

### 6.2.1 Coordinator

The Coordinator shall act as the intermediary between the Parties and the JU. In addition to its responsibilities as a Party it shall perform all tasks assigned to it as described in the Grant Agreement CSJU-GAM-GRC-2008-1.

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"). The Parties agree that each of them shall contribute financially to the Coordinator's expenses in discharging his/her Consortium management and coordination functions, as per Article 7.3 thereafter.

The Coordinator shall be responsible for:

- a) Monitoring compliance by the Parties with their obligations;
- b) Keeping the address list of the Parties and other contact persons updated and available;
- c) 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 points of contact information to the Parties;
- e) Administering the Community financial contribution and fulfilling the financial tasks described in Article 7.1.1 and 7.3 below;
- f) 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;
- g) 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.

The GRC ITD Co-Leaders AgustaWestland UK/IT and Eurocopter may agree between themselves to implement in turn the Coordinator's role in order to share the burden of this function over the whole duration of the Programme. In such case, the term for each Party among GRC Co-Leaders in the Coordinator's function must correspond to whole calendar years and be not less than two (2) successive years. Such a change of Coordinator will be proposed to the Joint Undertaking through a vote in a CC meeting or by consent of Parties. Such a

decision shall be taken unanimously by all of the Parties and needs to be accepted by the ITD Steering Committee.

If the Coordinator fails in its coordination tasks, the members of the CC may propose to the Joint Undertaking to change the Coordinator through a vote in a meeting or by consent of Parties. Such a decision shall be taken unanimously by all of the Parties and need to be accepted by the ITD Steering Committee.

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 any relevant 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 any relevant Grant Agreement shall prior be agreed by the CC. A reasonable frequency for such submission should not be more than four times a year and should only contain estimated data.

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 The Consortium Committee**

The ITD Steering Committee is in charge of the overall supervision of the Consortium and the Consortium Committee will assist and advise the ITD Steering Committee in its function. The CC shall in turn, be advised by the Management Committee.

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

The CC shall consist of the Parties' representatives who seat in the ITD Steering Committee, as follows:

- The CC Chairman appointed by one of the GRC ITD Co-Leaders and is elected as Chairman by the ITD Steering Committee;
- A representative appointed by each ITD Leader being a Party in this Agreement, including the GRC ITD Co-Leader other the one represented by the Chairman
- A representative appointed by each GRC ITD Associate being a Party in this Agreement

Each cluster will be represented by its Cluster Coordinator.

The CC appointed representatives are listed in the Attachment 4 of this Consortium Agreement.

In addition, other non voting representatives of the Parties will participate in the CC upon invitation by the Chairman. These invited non voting representatives will generally include

members of the Management Committee including the Management Committee Chairman. They will report in front of the CC on the technical progress and implementation plan concerning the Subprojects and on the GRC ITD management.

The CC Chairman shall convene meetings of the CC immediately prior to each ITD Steering Committee meeting i.e. once every three (3) months unless there appears no specific need for the CC to meet at that time. The CC Chairman shall also convene meetings at any time upon written request of any member of the CC in the case of an emergency situation, provided that this request is supported by at least one fourth (1/4) of the CC members.

Rules of procedures adopted by the GRC ITD Steering Committee, including the allocation of voting rights, will apply similarly to the CC, except for the provisions concerning Steering Committee members which are not Parties in this Agreement.

### 6.2.3 Management Committee

The Management Committee shall be in charge of the operational daily management of the GRC-ITD including all decisions not affecting significantly the overall scope, structure and timing of the GRC-ITD.

The Management Committee shall consist of the following appointed persons:

- the Chairman of the MC appointed by the Coordinator,
- Representatives appointed by all Subproject Management Teams being active at this time, each SMT being represented at least by the Subproject Leader or an alternate mandated by the Subproject Leader.

The MC Chairman may be supported by a Management Controller. The Management Controller shall provide assistance to the MC Chairman with regard to daily administrative tasks under the sole responsibility of the MC Chairman. The Management Controller will act toward the Parties on behalf of the MC Chairman and will attend the MC meetings.

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

The 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.

Should a representative of the 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.

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

- i. In meetings including meetings held via teleconference or videoconference;
- ii. Without a meeting, through circulation among the representatives of the MC of a written document setting forth the decision to be made which must be returned within fifteen (15) calendar days to the MC Chairman, duly signed and with their recommendations indicated in relation thereof. In such a case, the 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.



The MC shall in particular be responsible for the following:

- i. Making proposals to the CC and Steering Committee for the allocation of the GRC-ITD Budget in accordance with the relevant Grant Agreements, including the GRC-ITD Plan and for possible budget transfers;
- ii. When major modifications of the scope and content of the Subprojects are required, making proposal to the CC and the Steering Committee for those modifications;
- iii. Making proposals to the CC and the Steering Committee for the review and/or amendment of the terms of the relevant Grant Agreements;
- iv. Making proposals to the Steering Committee to suspend all or part of the GRC-ITD 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;
- v. Reviewing and deciding in case of default of a Party and preparing proposals to the CC and 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 GRC-ITD for that purpose;
- vii. Reviewing the content of Calls for Proposals and preparing the selection of new Partners;
- viii. Reviewing the content of Calls for Tender (in conjunction and cooperation with the members concerned) and preparing the selection of subcontractors or service providers;
- ix. Making proposals to the CC and the Steering Committee for the entering in the Consortium Agreement of new Partners selected from Calls for Proposals;
- x. Deciding on technical roadmaps for the GRC-ITD;
- xii. Supporting the Coordinator or the CC Chairman in preparing meetings with the Joint Undertaking and related data and deliverables.

The MC shall make its decisions through consensus.

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

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

The MC Chairman shall draft the minutes of each meeting to formalize in writing all decisions taken and shall dispatch them to all Members within fifteen (15) calendar days of a meeting date.

The minutes shall be considered as accepted by the Members if no Member has objected in writing to the MC Chairman, provided that objection shall be possible only in the following events:

- if made by a representative of the MC on the grounds that such 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 representatives of the MC and provided that the objection is made within fifteen (15) calendar days of receipt of the minutes.
- if made by a Member that is not a representative of the MC on the grounds that such Member's activity, time for performance, costs or liabilities, or intellectual property rights are

impacted or whose information is to be published, provided that the objection is made within fifteen (15) calendar days of receipt of the minutes.

## 6.2.4 Subproject Management Teams

### 6.2.4.1 Subproject Management Team structure

Each Subproject shall be governed by a Subproject Management Team (SMT). A Subproject Management Team shall consist of a chairman representing the Subproject Leader and one representative of each active Work Package participating to such Subproject. Representatives of Work Packages which are either not yet active or fully completed are not required but may be invited to some SMT meetings, as required by the agenda.

The Subproject Leader shall chair all meetings of the SMT. Each representative may appoint a substitute to attend at any meeting of the SMT.

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

The Subproject Leader shall give each of the representatives at least ten (10) calendar days notice in writing of such meetings or seven (7) calendar days notice in case of an emergency situation.

Should a representative of the SMT 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.

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

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

The SMT shall be in charge of managing the Subproject and in particular be responsible for the following:

- i. Deciding upon the allocation of the tasks in accordance with the Budget allocation approved in the CC and the Steering Committee, including the GRC-ITD Plan and reviewing and proposing to the concerned Parties budget transfers within the limits of the Consortium Budget and the Consortium Plan for the GRC ITD;
- ii. Reviewing the content of Calls for Proposals and preparing the selection of new Partners to be proposed to the MC;
- iii. Reviewing the content of Calls for Tender to be proposed to the MC (in conjunction and cooperation with the members concerned) and preparing the selection of subcontractors or service providers;

- iv. Alerting the MC and the MC Chairman in case of delay in the performance of the Subproject or in case of default of any Party under said Subproject;
- v. Analysing and documenting default of a Party under the Subproject and prepare proposal and action plan to the MC for this latter's decision;
- vi. Deciding upon the exchange of work packages between the members in the Subproject, in the event that this exchange has an impact, which does not go beyond the scope of the Subproject and has no impact on the Consortium Budget and Consortium Plan.

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

Decisions shall be taken by consensus by all representatives of the SMT.

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

The minutes shall be considered as accepted by the representatives if, within fifteen (15) calendar days from receipt thereof, no representative has objected in writing to the Subproject 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 representatives.

Accepted minutes will be dispatched to Parties involved in the Subproject for information and for implementation of decisions which they might be concerned with.

#### 6.2.4.2 Subproject Leader

The Subproject Manager shall have the following functions:

- a) Administration, preparation of minutes and provision of the SMT and follow-up of its decisions;
- b) Transmission of any documents and information connected with the Subproject to the Parties concerned;
- c) Transmission of any documents and information connected with the Subproject to the MC
- d) Transmission of the Subproject deliverables of the Parties within the Project to the MC;
- e) Co-ordinating on a day-to-day basis the progress of the technical work under the Subproject with the support of the MC
- f) informing the Coordinator and the MC of any delay in delivery that could not be remedied or any major discrepancy.

The Subproject Leader shall neither be entitled to act or 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

The management of work packages, tasks and subtasks within each Subproject 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 must 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.

The Parties conducting a work package, a task or a subtask at any level N must be collectively represented in the management body at the upper level N-1 to which it contributes by a leader i.e. a single person in charge to inform, coordinate and report. Any leader of a work package, a task or a subtask at level N will be supported by a team consisting at least of leaders of all currently active tasks or subtasks at the lower level N+1 which contribute to completion of the work package, task or subtask which he/she is leading.

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.

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 for non-legally binding mediation.

#### **6.2.6 Right to object**

A member of a 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 those bodies may exercise a right to object with respect to the corresponding decision or relevant part of the decision.

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

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

In case of exercise of the right to object, the members shall make every effort to resolve the matter which occasioned the objection to the general satisfaction of all its members. Should the Consortium Body which took the decision being objected fail to reach a satisfactory solution, the issue will be escalated to the next higher Consortium Body. In case the CC as the uppermost Consortium Body can not reach a satisfactory solution, the issue will be transferred to the Steering Committee which will make the final decision in compliance with its own rules of procedures in compliance with the JU statutes and without prejudice of further settlement between Parties as specified in Section 11.8 .

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

A member requesting to leave the Consortium or a Subproject may not object decisions relating thereto.

The Coordinator and/or the other GRC ITD Co-Leader may object any decision of the CC, MC or SMT 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.

A Party that is not represented on a Consortium Body may object to any decision of such Consortium Body on the grounds that such Party's activity, time for performance, costs or liabilities, or intellectual property rights are impacted or whose information is to be published, provided that the objection, through written notice, is made within fifteen (15) calendar days of receipt by such Party of a copy of the minutes.

For the avoidance of doubt no such decision shall be binding on any Party until the 15-day period for giving notice of objection has expired.

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 6.2.5, 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.

## **Article 7: Article 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 Parties which are Beneficiaries in Grant Agreement CSJU-GAM-GRC-2008-1 shall be distributed by the Coordinator to such Parties either directly or through their Cluster Coordinator if relevant, subject to :

- the Consortium Budget as included in the Consortium Plan, and
- the approval of reports by the Joint Undertaking, and
- the provisions of payment in Article 7.3.

7.1.1.2 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 Grant Agreement.

7.1.1.3 The Financial contribution of the Joint Undertaking to the Parties which are Partners shall be paid directly by the JU to the Partner concerned in accordance with its Partner Grant Agreement and the Coordinator shall have no responsibility.

#### **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 JU. The Coordinator, the ITD Co-Leader 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 transferred 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 5.1.3 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 Eligible Consortium Management Costs**

7.3.1 Costs incurred by the Coordinator and the GRC ITD Co-leaders and possibly other Beneficiaries in the Grant Agreement CSJU-GAM-GRC-2008-1 in the performance of activities for management of the consortium are eligible costs as set out in said Grant Agreement (Annex II.16.3.1) and will attract 50% reimbursement from the JU.

7.3.2 In respect of the remaining 50% of such costs, each Party which is a Beneficiary in the Grant Agreement CSJU-GAM-GRC-2008-1 hereby agrees to contribute a share of such remaining cost pro-rata to each such Party's total expenditure incurred in the same period as the Consortium Management Cost.

7.3.3 For avoidance of doubt, costs which are eligible for complementary refunding as per paragraph 7.3.2 above have to be identified in the Consortium Plan and shall correspond only to the following expenses and activities :

- maintenance of the present Consortium Agreement until full completion or termination of the Consortium Plan and all relevant Grant Agreement(s);
- activities and costs directly linked with participation in the Clean Sky Governing Board including travel and subsistence;

- activities and costs directly linked with the GRC Steering Committee meetings (organisation, hosting, travel and subsistence, preparation, participation, conclusion and follow-on);
- activities and costs directly linked with meetings of the Management Committee (organisation, travel and subsistence, hosting, preparation, participation, conclusion and follow-on);
- the compilation of members' contributions needed for progress reports, financial reports and other contractual reports; the drafting and delivery of such reports;
- the organisation of contractual reviews;
- the compilation of members' contributions needed for the Annual Implementation Plans including budget breakdown; the drafting and delivery of such Annual Implementation Plans;
- the collection obtaining of the certificates on the financial statements and costs relating to financial audits,
- the management of JU funds including booking, accounting, transfer of prepayments and balance payments, banking charges for fund transfers;
- Participation in the selection process of Partners and Subcontractors, as organised by the JU, including travel and subsistence to attend selection panel meetings
- Creation and maintenance of various templates and management procedures;
- Creation and update of directories and registers at consortium level;
- Provision, configuration and up keeping of an IT platform to serve as repository and data exchange means;

#### **7.3.4 Justifying Consortium Management Costs**

In accordance with its own usual accounting and management principles and practice, the Coordinator or GRC ITD Co-leader or any other Beneficiaries in the Grant Agreement CSJU-GAM-GRC-2008-1 having incurred some Consortium Management Costs shall be solely responsible for justifying these costs required to be submitted to the Coordinator and approved by the Steering Committee, as a distinct subset of its costs reported for refunding by the JU.

**7.3.5** The amounts to be claimed from all Beneficiaries in the Grant Agreement CSJU-GAM-GRC-2008-1 as complementary refunding of Consortium Management Costs will be invoiced by the Coordinator after approval by the Steering Committee.

**7.3.6** Such amounts will be 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.

- 7.3.7** In order to avoid increasing the general administrative burden of the GRC ITD, the Parties which are Beneficiaries in the Grant Agreement CSJU-GAM-GRC-2008-1 authorize the Coordinator to retain such amounts on their part of the payment which the Coordinator will receive from the JU in accordance with the Consortium Plan.
- 7.3.8** The collection and redistribution of such amounts will have the effect to increase the refunding rate for management of the consortium above 50% up to 100% and to reduce the net refunding rate for all other activities below 50%, both refunding rates being modified in the same ratio for all Beneficiaries in the Grant Agreement CSJU-GAM-GRC-2008-1.
- 7.3.9** The total collected amount for all the management costs shall be limited to maximum value of 150k € for each annual period. For avoidance of doubt, the given maximal amount shall be applicable for the entire management costs resulting from the Consortium and not for the management costs of each single entity as defined in article 7.3.1.
- 7.3.10** In the event the JU agrees to fund the Coordinator Management Costs, the Coordinator will in addition or separately, invoice the JU in respect of the part or whole Consortium Management Costs and set off any such amounts that may otherwise have been due from the Parties which are Beneficiaries in the Grant Agreement CSJU-GAM-GRC-2008-1.

#### **7.4 Payments of the JU financial contribution**

- 7.4.1** Payments to Partners will be made directly by the Joint Undertaking.
- 7.4.2** Payments to Parties that are members of the JU is the exclusive task of the Coordinator. In particular, the Coordinator shall:
- (a) Notify a Party which is 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.
- 7.4.3** 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 Joint Undertaking on the Consortium Budget, which includes the payment schedule.
- 7.4.4** Payments to Parties which are members of the JU 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 such 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

**7.4.5** Payments to Clusters which are members of the JU will be made by the Coordinator to each Cluster Coordinator for distribution within each Cluster. Such payment discharges the Coordinator from its obligations on payments as regards any member of the Cluster.

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

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

### **8.1 Foreground**

**8.1.1** 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.30 of the Grant Agreement CSJU-GAM-GRC-2008-1 or similar Articles of other relevant Grant Agreement(s) in respect of the Subproject they are involved in only and not otherwise. 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).

**8.1.2** 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.

#### **8.1.3 Joint ownership**

**8.1.3.1** 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.

**8.1.3.2** 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 forty-five (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 the relevant Grant Agreement Article II.27.
- 8.2.2** It shall identify specific third parties it intends to transfer the ownership of its Foreground to in [Attachment 5] to this ITD Consortium Agreement.
- 8.2.3** The other Parties hereby waive their right to object to a transfer to listed third parties according to the relevant Grant Agreement 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 ITD Consortium 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 the relevant Grant Agreement 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 of the relevant Grant Agreements.

### **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.

## **Article 9: Access Rights**

Each of the Parties will comply with their respective obligations and will have the rights granted to them as set out in Articles II.31-II.35 of the Grant Agreement in respect of the Subproject they are involved. For the avoidance of doubt the term "use" under any relevant Grant Agreement shall be interpreted in accordance of the definition given in this ITD Consortium Agreement. and the rights and obligations of each Party as against the JU shall be governed by the relevant Grant Agreement(s).

### **9.1 Background**

**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 ITD Consortium Agreement.

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

- (i) such Party provides the other Parties with a prior written notice to that effect, and
- (ii) 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 the Consortium.

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

The Parties agree that all Background not listed in [Attachment 1] shall not thereafter be used or included in any Subproject 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**

**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 the relevant 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).

- 9.2.3 Access Rights shall be granted at the level of each Subproject only unless otherwise specifically agreed by the Parties.
- 9.2.4 Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.
- 9.2.5 Access Rights shall be free of any administrative transfer costs.
- 9.2.6 Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties according to the relevant Grant Agreement Article II.32.7
- 9.2.7 Foreground and Background shall be used only for the purposes for which Access Rights to it have been granted.
- 9.2.8 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.
- 9.2.9 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 in the Subproject 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 Subproject if needed by any other Party to the same Subproject 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 Subproject only and not otherwise. Such other Party will have no right to sub-license the same without the prior written permission of such Party.

### 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 end of the GRC ITD.subject to the conditions are article 9.7.2 below.

## **9.5 Access Rights for Affiliated Entities**

**9.5.1** Notwithstanding Article II.34.3 of the Grant Agreements, 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 Foreground. Affiliated Entities which obtain Access Rights shall fulfil all confidentiality and other obligations accepted by the Parties under the Grant Agreement (s) 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 relevant Consortium Body and a Party has raised an objection to such inclusion in accordance with article 6.2.6.

**9.5.5** 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.

**9.5.6** In the event of any Change of Control of an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall terminate on notice of this Change of Control and will be renegotiated with the owning Party.

**9.5.7** 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 ITD 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 the Consortium (including a Partner leaving on the completion of the relevant Grant Agreement) shall have continuing Access Rights to the Foreground that was developed prior to 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 (including a Partner leaving on the completion of the relevant Grant Agreement) 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**

**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 Consortium by two or more Parties, such Parties shall enter into a separate agreement addressing the

ownership and conditions of use, maintenance and deposit, etc... of such material or equipment.

- 9.9.2** The Parties 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 ITD Consortium Agreement.

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

**10.1** All information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Subproject during its implementation and which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within [15] days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

**10.2** The Recipients hereby undertake, without prejudice to any commitment of non-disclosure under any relevant Grant Agreement, for a period of ten (10) years after termination of Grant Agreement CSJU-GAM-GRC-2008-1 and all other relevant Grant Agreements including their subsequent amendments :

- (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 Recipient including all copies thereof and to delete all information all information stored in a machine readable form. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only.

**10.3** The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees, and 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 GRC ITD and/or after the termination of employment or the relevant contract of engagement.

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

- (a) The Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations; or
- (b) The Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential; or
- (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; or
- d) The Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;

**10.5** 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.

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

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

**10.8** 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.

## **Article 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)

**11.1.2** In case the terms of this Consortium Agreement are in conflict with the terms of any relevant Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the Attachments and the core text of this Consortium Agreement, the latter shall prevail.

**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 Coordinator 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 Party's principal company headquarters.

### **11.3.3 Formal notices:**

If it is required in this Consortium Agreement that a formal notice, consent or approval shall be given, such notice shall be in writing and signed by an authorized representative of the 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 ITD Consortium Agreement by all Parties hereto.

#### **11.4 Assignment and amendments**

**11.4.1** No rights or obligations of the Parties arising from this ITD Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' written prior formal approval.

**11.4.2** Amendments and modifications to the text of this ITD 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 ITD Consortium Agreement, nothing in this ITD 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 ITD 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 ITD 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** Any Party shall have the right to have recourse to and shall be bound by the pre-arbitral referee procedure of the International Chamber of Commerce in accordance with its Rules for a Pre-Arbitral Referee Procedure.

**11.8.2** All disputes arising out of or in connection with this ITD Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules of Arbitration.

**11.8.3** The place of arbitration shall be Brussels, Belgium.

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

**11.8.5** Nothing in this Consortium Agreement shall limit the Parties' right 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 ITD Consortium Agreement if such breach is caused by a Force Majeure event, such as but not limited to acts of God, war, insurrection, epidemics, sabotage, labour dispute, strikes, lock-outs, shortage of labour, interruption or delays in transportation, fire, explosion, equipment or machinery breakdown.

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 ITD Consortium 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 ITD Consortium 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. Failure to exercising or delay in exercising any right is not a waiver of that right.

### **11.12 Counterparts**

This ITD Consortium 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.

## **Article 12: Signatures**

AS WITNESS:

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