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SEVENTH FRAMEWORK PROGRAMME (FP7)



Call Reference N°: *[insert number]*

ITD TITLE: *[insert title]*

PROPOSAL TITLE: *[insert title]*

Clean Sky Joint Technology Initiative

IMPLEMENTATION AGREEMENT

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THIS IMPLEMENTATION AGREEMENT for the *[insert name of ITD]* ITD is made on [200[]] pursuant to

REGULATION (EC) No 71/2008 OF THE COUNCIL of 20th December 2007 setting up the Clean Sky Joint Undertaking including its Annex I, hereinafter referred to as Statutes.

BETWEEN:

(1) [Insert Name, corporate number and main business address of ITD member engaging the Partner] the ("Topic Manager") ; and

(2), (3), ..., (n) [insert Name, corporate number and main business address of ITD members other than the Topic Manager who are concerned with the work of the Partner] the "Members"; and

(n+1) (n+2), etc

[Insert Name, corporate number and main business address of Partner]

hereinafter, jointly or individually, referred to as "Partner(s) and, together with the Topic Manager, the Members and any Additional Members as "Parties" or "Party"

WHEREAS:

(A) The Partner has submitted a proposal and has been awarded a grant from the Joint Undertaking set up by the Council Regulation (EC) 71/2008., in relation to the Partner's participation in the *[insert name of ITD]* as part of the Clean Sky Joint Technology Initiative

(B) The Parties wish to agree certain legally binding commitments among themselves in relation to the Partners' ITD Activities in addition to the provisions of the relevant Grant Agreement(s) on the terms and conditions of this Implementation Agreement

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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 Grant Agreement for Members including its Annexes as may be amended below without the need to replicate said terms herein. The definitions contained in article II.1 of the Grant Agreement for Members are set out for reference in Attachment 7.

1.2 Additional and Modified Definitions

[Specific and different definitions in accordance with each ITD Consortium Agreement may be required]

["Additional Member" means a Member which elects to become a Party to this Implementation Agreement by signing an instrument in the form of Attachment 2.]

[minor adaptations may be necessary for consistency with the ITD Consortium Agreement)

"Confidential Information" means all information in whatever form or mode of transmission, which is disclosed by a Disclosing Party to a Recipient in connection with the ITD activities 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.

"Defaulting Party" means a Party which is in breach of a Consortium Agreement, this Implementation Agreement and/or the relevant Grant Agreement(s).

[SAGE ITD] ["Demonstrator" means the engine demonstrator resulting from the relevant Project and each part which are integrated or added in, which includes - but is not limited to - the software and hardware.]

[GRC ITD] "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.

"Disclosing Party" means the Party disclosing Confidential Information;

"Effective Date" means either the date of signature of this Implementation Agreement or the Start Date of the first relevant Grant Agreement for Partners whichever is the earlier;

"Foreground" means Foreground generated by any Party in the performance of the ITD Activities;

"Grant Agreement" means either: a) the Grant Agreement for Members, or b) the Grant Agreement for Partners;

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"Grant Agreement for Members" means the Grant Agreement reference [insert CSJU reference] executed in relation to the ITD by a JU Member that is also a Party to this Implementation Agreement;

"Grant Agreement for Partners " means the Grant Agreement reference [insert CSJU reference] executed by the JU and the Partner in relation to the ITD Activities;

"ITD" means the [insert name of ITD] ITD;

"ITD Activities" means the activities to be performed by [the] or [one or more] Partner(s) as described in Annex I to the Grant Agreement for Partners;

"ITD Consortium Agreement" means the agreement dated [insert date] governing the management and performance of the ITD;

"ITD Consortium" means the consortium of parties to the ITD Consortium Agreement;

"ITD Steering Committee" means the JU body referred to in Article 8 of Annex 1 of the Clean Sky Regulation EC 71/2008 under this ITD;

"Joint Undertaking" or "JU" means the Clean Sky Joint Undertaking as set up by the Council Regulation (EC) No 71/2008 of 20th December 2007;

"Materials" means the tools and equipments (including, but not limited to, software and hardware) provided by a Party to an other Party for the performance of the ITD activities at the exclusion of the parts and equipments of the Demonstrators ;

"Members" means the Topic Manager and those other members of the Joint Undertaking who are parties to the Grant Agreement for Members, the ITD Consortium Agreement; and this Implementation Agreement and includes the Additional Members with effect from their respective dates of accession to this Implementation Agreement.

["Project" means one of the ITD projects, to which this Implementation Agreement relates, and which forms parts of the work scope of the ITD;]

"Recipient" means the Party receiving Confidential Information;

[GRC ITD] "Subproject" means one of the ITD subprojects, to which this Implementation Agreement relates Agreement, and which forms parts of the work scope of the ITD;

"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 ITD according to the description of work appended to the Grant Agreement for Members as the same may be developed over the life of the ITD;]

Section 2: Purpose

2.1 The purpose of this Implementation Agreement is to specify the respective rights and obligations of the Member(s) and the Partner(s) with respect to the ITD.

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[The following clause will be omitted from CFPs where this right is not offered to the Partners]

[2.2 Partner Option to Accede To ITD Consortium]

Each Partner shall have the right (but not the obligation) for a period of [] months from the date of this Agreement, to execute an Accession Agreement in the form set out in Attachment 2 to the ITD Consortium Agreement under which the Partner will become a party to the ITD Consortium Agreement. The execution of such an Accession Agreement shall supersede this Implementation Agreement, which shall be of no further effect in relation to the relevant Partner. The said period of [] months may be extended in respect of any Partner by notice given by the Topic Manager (with the approval of the ITD Steering Committee) to such Partner.]

Section 3: Entry into force, duration and termination

3.1 Entry into force

This Implementation Agreement shall have effect from the Effective Date.

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3.2 Duration and termination

Subject to its earlier termination, this Implementation Agreement shall continue in full force and effect until fulfilment of all of the obligations of the Partner under its Grant Agreement.

The participation of one or more Parties to this Implementation Agreement may be terminated in accordance with the terms of this Implementation Agreement and Annex II of the Grant Agreement.

In the event of a breach by a Party of its obligations under this Implementation Agreement such Party will be given written notice requiring such breach to be remedied within thirty (30) calendar days.

If such breach is not remedied within that period or is not capable of remedy, the non-breaching Parties to this Implementation Agreement may decide to declare the Party to be a Defaulting Party and shall give notice of such declaration to the JU.

If the Joint Undertaking does not award the Grant Agreement for Partners or terminates the Grant Agreement for Partners or a Party's participation in the Grant Agreement for Partners, this Implementation Agreement shall automatically terminate in respect of the affected Party or Parties, subject to the provisions surviving the expiration or termination under Art. 3.4 of this Implementation Agreement..

3.3 Withdrawal of the participation of a Party.

The Parties agree that if a Partner requests to withdraw from its participation in the ITD activities it will be considered as a request for termination and be subject to the unanimous agreement of the Parties to this Implementation Agreement. A Member may withdraw from this Implementation Agreement with the unanimous consent of the other Members. The Topic Manager shall consult the other members of the ITD Consortium before giving or withholding such agreement.

3.4 Survival of rights and obligations

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

Termination or voluntary withdrawal of a Partner shall not affect and will be without prejudice to any rights of such Partner accrued at the date of termination or withdrawal or obligations of such Partner, unless otherwise agreed. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

Section 4: Responsibilities of Parties

4.1 General principles

Each Partner undertakes to act in good faith (including with third parties) and 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 Agreement for Partners(s) and this Implementation Agreement in good faith as prescribed by Belgian law.

Each Partner undertakes to notify promptly to the Topic Manager any significant information, fact, problem or delay likely to affect the ITD. Each Partner shall promptly provide all information reasonably required by the Topic Manager to carry out its tasks in relation to the management and operation of the ITD.

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

4.2 Consortium [omit if there is only one Partner]

Each Partner being a member of a consortium agrees to be represented by one person representing such consortium as the single member representative for all purposes of this Implementation Agreement (the "Partner Coordinator").

Each Partner being a member of a consortium signing this Implementation Agreement will be responsible to the other Parties for the performance of all activities allocated to the consortium under the Grant Agreement for Partners.

Each consortium member is jointly and severally liable for the performance of its activity that is allocated to such consortium by the Grant Agreement. for Partners.

Section 5: Liability

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

5.2 No warranties for the information and Materials

In respect of any information or Materials supplied or created by one Party to any recipient Party, 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.

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

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

5.3 Limitation and exclusion of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss.

The total aggregate liability of each Party for any and all loss and damage arising out of or in connection with this Implementation Agreement howsoever caused is limited to twice the total budget under the Grant Agreement for Partners

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

The terms of this Implementation Agreement shall not be construed to exclude or limit any Party's liability for infringement of intellectual property rights, breach of confidence or any non-contractual liability.

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5.4 Damage caused to third parties

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

5.5 Involvement of third parties

A Partner that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) remains solely responsible for carrying out its ITD Activities and for such third party's compliance with the provisions of this Implementation 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 to this Implementation Agreement.

5.6 In the case of loan or bailment of Materials between Parties for the performance of the Partners' ITD Activities, an agreement based on the model set out in Attachment 6 shall be entered into by the Parties and may be amended to contain specific conditions regarding liability.

5.7 [Flight tests] , [Demonstrator], etc

[this clause may require minor adaptations to the safety implications of the ITD activities and the content of ITD Consortium Agreement]

5.7.1 In the case of any supply, loan or bail by a Partner for the performance of any flight test or other safety-critical demonstration activities within the ITD the Partner shall enter in to a specific agreement with the Member or other person operating the aircraft or demonstrator setting out their respective rights obligations and liabilities. Such agreement may require the Partner to give warranties as to:

1.1.1. use of appropriate materials

1.1.2. use of reasonable skill and care in design; and

1.1.3. compliance with any applicable aircraft interface specification.

1.1.4.

5.7.2 Each such agreement shall set out the obligations of the parties to carry insurance in respect of their potential liabilities there under. 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 Partner shall carry appropriate product liability insurance.

[GRC ITD clause] The Topic Manager will give official notice to the Partner(s) of any JU or Steering Committee decision to declare a test article as a Demonstrator whenever parts to be provided under this Agreement are to be incorporated in the configuration of said Demonstrator. This official notice shall be given within ten days after the JU or Steering Committee decision. Concerning parts supplied by the Parties for assembly and testing of a Demonstrator, each Party warrants:

- (a) these parts shall comply with the agreed specifications of the Managing Member; 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.

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

Section 6: Partner Management and ITD Governance

[Adaptations will be necessary to reflect actual management structure of each ITD]

6.1 The ITD management, coordination and decisions are handled variously by the following Consortium **[and Project]** bodies: The Coordinator, the ITD Steering Committee, **the Consortium management Committee, the Project Management Committee Work Package Management Teams [etc. as appropriate].**

6.2 The Partner shall comply with all decisions of the said Steering Committee, in so far as compliance with such decisions does not conflict with this Agreement or the statement of work annexed to the Grant Agreement for Partners.

6.3 [additional specific Partner management terms may be inserted according to the management structure of the ITD]

Section 7: Financial provisions

7.1 General Principles

The financial regime for the performance of the ITD activities is described in the relevant Grant Agreement entered into with the Joint Undertaking and the Partner.

7.2 Payments of the JU financial contribution

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

Section 8: Intellectual Property, Use and Dissemination

[Minor adaptations will be necessary for consistency with the ITD Consortium Agreement. Some such adaptations are identified as options below.]

8.0 General

[SFWA ITD clause] 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 Implementation 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).

[SAGE ITD clause] Each of the Parties will comply with their respective obligations in their respective Grant Agreements. The Partner will have the rights granted to it as set out in Articles II.26-II.33 of the Grant Agreement for Partners in respect of the ITD activities they are involved in only and not otherwise and the other Parties will have the rights granted to them as set out in Articles II.26-II.33 of the Grant Agreement for Members.

[GRA ITD clause] Each of the Parties will comply with their respective obligations and will have the rights granted to them as set out in Articles II.26- II.33 of the Grant Agreements in respect of the ITD .

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[Eco-design ITD, SGO ITD, GRC ITD clause] Each of the Parties will comply with their obligations in their respective Grant Agreement.

The Partner will have the rights granted to it as set out in Articles II.26-II.30 of the Grant Agreement for Partners in respect of the ITD activities and

Members will have the rights granted to them as set out in Articles II.26-II.30 of the Grant Agreement for Members and in the Consortium Agreement executed at the level of the ITD.

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).

The Parties agree to implement their mutual obligation as stated in their respective Grant Agreement articles II-26-II-30 in respect of the ITD activities as follows :

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

Except as otherwise provided for in this Implementation Agreement, the rights in Foreground shall belong exclusively to the Party generating such Foreground.

8.1.1 Joint ownership

In case of joint ownership of Foreground, each of the joint owners shall be entitled to utilise their jointly owned Foreground free of charge, and without requiring the prior consent of the other joint-owner(s) for their own direct Use only.

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

- 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.

8.1.2 Transfer of Foreground

Each Party may transfer ownership of its own Foreground wholly or in part following the procedures of [the relevant Grant Agreement] Article II 27.

[[Eco Design ITD, SGO ITD, GRA ITD, SAGE ITD, GRC ITD clause] It may identify specific third parties it intends to transfer the ownership of its Foreground to in [Attachment 5] to this Implementation Agreement.

The other Parties hereby waive their right to object to a transfer to third parties listed in Attachment 5 according to the relevant Grant Agreement Article II.27.3.]

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

[Any addition to Attachment 5 after signature of this Agreement requires the unanimous approval of all Parties to this Implementation Agreement.]

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The Parties recognise that in the framework of a merger or an acquisition of an important part of its assets, a Partner 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.

8.2 Dissemination

8.2.1 Publication

Dissemination activities including but not restricted to publications and presentations shall be governed by Article II.30 [of the relevant Grant Agreement]. In implementing article II.30 Parties engaging in dissemination activities shall notify the Topic Manager prior to issuing such material. The Topic Manager shall consult the ITD Consortium before any such dissemination activities take place.

8.2.2 Publication of another Party's Foreground or Background

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

8.2.3 Cooperation obligations

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

8.2.4 Use of names, logos or trademarks

Nothing in this Agreement shall be construed as conferring rights to use in advertising, publicity, or otherwise the name of the Parties or any of their logos or trademarks, without their prior written approval.

Section 9: Access Rights

[Minor adaptations may be necessary for consistency with the ITD Consortium Agreement. Some such adaptations are identified below.]

[SFWA ITD clause Include with default clause 8.0, GRC ITD clause] 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 Implementation 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).

[Eco-design ITD, SGO ITD, GRA ITD, SAGE ITD clause] Each of the Parties will comply with their obligations in their respective Grant Agreements.

The Partner will have the rights granted to it as set out in Articles II.31-II.34 of the Grant Agreement for Partners in respect of their ITD activities , and

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the Parties who are Members will have the rights granted to them as set out in Articles II.31-II.34 of the Grant Agreement for Members, and in the Consortium Agreement executed at the level of the ITD.

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).

The Parties agree to implement their mutual obligation set out in article II.35 of their respective Grant Agreement, in respect of the ITD activities as follows :

9.1 Background covered

The Parties shall identify in the Attachment 1, the Background to which they shall grant Access Rights, and may update the Attachment 1 during the term of this Implementation Agreement **[exclude if paragraph included under clause 9.0]** on the conditions indicated hereafter.

[Eco-design ITD, SGO ITD, GRC ITD clause] 9.1.2 However, a Party may decide to withdraw Background from [Attachment 1] provided that:

1.1.5. such Party provides the other Parties with a prior written notice to that effect, and

1.1.6. in the event any of the withdrawn Background has been utilised or is planned to be utilised 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 utilisation under this Implementation Agreement.

[SAGE ITD clause] In the event any of the withdrawn Background has been utilised or is planned to be utilised by a Party for the Project, the owning Party will be obliged to grant a licence of such Background to such Party as if such withdrawn Background remained available for utilisation.

[GRA ITD clause] In the event any of the withdrawn Background has been utilised by a Party for the Project, the owning Party will be obliged to grant a licence of such Background to such Party as if such withdrawn Background remained available for Use under this Implementation Agreement.

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 **[Work Package]** **[ITD Activity]** and the owning Party will not be required to provide any Access Rights thereto.

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

9.2 General Principles

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

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As provided in [the relevant Grant Agreement(s)] Article II.32.3, the Parties shall specify promptly in Attachment 1 any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Consortium).

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

Access Rights shall be free of any administrative transfer costs.

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

Foreground and Background shall be Used or otherwise utilised only for the purposes for which Access Rights to it have been granted.

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

The requesting Party must show with all due care and in good faith that the Access Rights are needed, notably if such requesting Party reasonably believes that without Access Rights on another Party's Background or Foreground, the performance of its own tasks or the Use of its own Foreground would be technically impossible or significantly delayed,

9.3 Access Rights for implementation

[SFWA ITD clause] 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. In addition, each Partner grants the Topic Manager the non-exclusive, fully paid up right to sub-license the Partner's Foreground and Background, to any other participant in the ITD provided that and only to the extent that and for as long as such Foreground and Background is necessarily required for such other participant to perform and complete its work in the ITD.

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

In addition, each Party hereby grants any other party in the same Project as such Party the non-exclusive, fully paid up right to sub-license its Foreground and Background, to any Partner of that other Party provided that and only to the extent that and for as long as such Foreground and Background is necessarily required for the other Party to perform and complete its Project work. The other Party will be and will remain primarily liable for such Partner's use of the same.

[Eco-design ITD, SGO ITD, GRC ITD clause] Access Rights to Foreground and Background of a Party if needed by any other Party for the performance of its own work under its relevant Grant Agreement is hereby granted by a Party on a royalty-free basis. Such other Party will have no right to sub-license the same without the prior written permission of such Party.

[GRA ITD clause] Access Rights to Foreground and Background of a Party to a Project or to a Work Package needed by any other Party to the same Project for the performance of its own work is hereby granted by a Party on a royalty-free basis for the purpose of performing its obligations in the ITD activities only and not otherwise. Such other Party will have no right to sub-license the same without the prior written permission of such Party.

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9.4 Access Rights for Use

Access Rights to Foreground if needed for Use of a Party's own Foreground **of the same Project [Subproject]** shall be granted on fair and reasonable conditions.

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

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

Access Rights to Background if needed for Use of a Party's own Foreground **of the same Project [Subproject]** shall be granted on fair and reasonable conditions.

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

Notwithstanding Article II.34.3 [of the relevant Grant Agreement], Affiliate Entities shall enjoy Access Rights where the Party requiring Access Rights for its Affiliate Entity can show that its Affiliate Entity:

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

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

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

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

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

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

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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 this Implementation 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 Exiting Parties

9.7.1 Access Rights granted to a leaving Party

9.7.1.1 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 to terminate its participation in this Implementation Agreement.

9.7.1.2 Non-Defaulting Party

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

9.7.2 Access Rights to be granted by any leaving Party

Any Party exiting this Implementation Agreement with the consent of all other Parties to it, shall continue to grant Access Rights pursuant to the relevant Grant Agreement and this Implementation Agreement as if it had remained a Party for the whole duration of the **[ITD] [relevant Project], [Subproject]**

9.8 Specific Provisions for Access Rights to Software

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

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

[Default] 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 Project [Subproject] by two or more Partners, 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 Partners shall grant to the Members a right to use free of charge such material or equipment for the implementation of the Clean Sky Programme in accordance with Annex I to the Members Grant Agreement and the loan conditions in Attachment 6 to this Agreement and/or any conditions applicable to any flight test activities.

[SAGE ITD clause] 9.9 Ownership and use of the Demonstrators

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The Partner shall deliver Demonstrator parts to [] and [] will accept delivery of such parts on behalf of the JU. Each part integrated or added in the Demonstrator shall remain the property of the Party who has provided this part in the frame of the relevant Project implementation.

The location(s) of each Demonstrator shall be determined by the Project Manager in charge of the relevant Project.

Notwithstanding any other provision, during each Project and for two (2) years from the end of the relevant Project, each Party involved in this project agrees to grant to the Party represented by the relevant Project Manager a free of charge right of use of the relevant Demonstrator and its parts. Before the end of the two (2) years period, the Parties of each Project may agree to continue to use the relevant Demonstrator on fair and reasonable conditions.

After the end of the agreed extended period, each Party may request the return of the parts of the Demonstrator(s) that it provided. If the relevant Party returns the concerning parts, no warranty shall be given or assumed (expressed or implied) of any kind in relation to such part whether in regard to the physical condition, serviceability, or otherwise.

Section 10: Non-disclosure of information

[Minor adaptations may be necessary for consistency with the ITD Consortium Agreement.]

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

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

The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees, and sub-contractors and shall ensure that their employees, and sub-contractors remain so obliged, as far as legally possible, during and after the end of the work of the ITD and/or after the termination of employment or the relevant contract of engagement.

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

- The Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;

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- The Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- 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;
- The Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or

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

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

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

The confidentiality obligations under this Implementation 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

[Minor adaptations may be necessary for consistency with the ITD Consortium Agreement.]

11.1 Attachments and severability

This Implementation 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 Parties 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: Grant Agreement for Members reference definitions

[Other Attachments may be included as required]

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

Should any provision of this Implementation Agreement become invalid, illegal or unenforceable or conflict with any obligation of a Party to the Joint Undertaking under the relevant Grant Agreement, it shall not affect the validity of the remaining provisions of this Implementation Agreement. In such

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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 Implementation 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

[Eco Design ITD, SGO ITD, SAGE ITD, GRC ITD clause] Any notice to be given under this Implementation Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Topic Manager based on the initial list of members and other contact persons in **[Attachment 4].**

Any notices sent hereunder 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.

[Any communication in connection with this Implementation Agreement shall in any case, be signed by an authorised representative of the sending Party and will be deemed to be given in person, or if posted, by courier or parcel express service, at the time of delivery provided that in each case where delivery occurs after 6.00pm on a business day in the sending Party's country or at any time on a day which is not a business day, service will be deemed to occur at 9.00am on the next following business day.]

[Eco-Design ITD, SGO ITD, SAGE ITD, GRC ITD clause] Any formal notice in connection with this Implementation Agreement shall in any case, be signed by an authorised representative of the sending Party and will be deemed to be given in person, or sent by mail with recorded delivery or telefax with receipt acknowledgement

[Eco-Design ITD, SGO ITD, SAGE ITD, GRC ITD clause] 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).]

[Any change of persons or contact details shall be notified immediately by the respective Party to the authorised representative of the other Party. 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 Implementation Agreement by all Parties hereto.]

11.4 Assignment and amendments

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

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

11.5 Mandatory national law

The Parties recognise that at the time of signature of this Implementation Agreement, nothing in this Implementation Agreement requires a Party to breach any mandatory national law under which

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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 Implementation 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 Implementation Agreement shall be construed in accordance with and governed by the laws of the Kingdom of Belgium.

11.8 Settlement of disputes

[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.]

All disputes arising out of or in connection with this Implementation Agreement, which cannot be solved amicably in accordance with the Statutes of the Joint Undertaking, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by **[one or more]/[three (3)]** arbitrators appointed in accordance with its Rules for a Pre-Arbitral Referee Procedure.

The place of arbitration shall be **[insert agreed seat as in ITD Consortium Agreement]**.

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

Nothing in this Implementation Agreement shall limit the Parties' right to seek injunctive relief or to enforce an arbitration award in any applicable competent court of law.

[option] Notwithstanding the foregoing, the Parties agree that each of them may seek interim measures, including injunctive relief, in relation to the provisions of this Implementation Agreement or the Parties' performance of it from any court of competent jurisdiction.]

11.9 Force Majeure

No Party shall be considered to be in breach of this Implementation Agreement if such breach is caused by Force Majeure. Each Party will notify the Topic Manager 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 proposed by the Topic Manager to the Joint Undertaking in consultation with the affected Party(ies).

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 Implementation Agreement may be exercised as often as needed, are cumulative and apply in addition to its rights under the general law and may be

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waived only in writing and specifically. Not exercising or delay in exercising any right is not a waiver of that right.

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Section 12: Signatures

This Implementation 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.

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

Signature(s)

Name(s)

Title(s)

Signature(s)

Name(s)

Title(s)

[add other Parties as required]

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Attachment 1: Background included

Access Rights to Background made available to the Parties:

| | |
|---|--|
| Name of the Party | |
| Owner | |
| Nature | |
| Registration / protection | |
| Description / Title | |
| Access conditions for carrying out the -ITD / Limitations | |

| | |
|---|--|
| Name of the Party | |
| Owner | |
| Nature | |
| Registration / protection | |
| Description / Title | |
| Access conditions for carrying out the -ITD / Limitations | |

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

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Attachment 2: Accession document

ACCESSION

of an additional Member to

Implementation Agreement, version [..., YYYY-MM-DD]

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE GRANT AGREEMENT]

being a Member of the Clean Sky Joint Undertaking hereby consents to become a Party to the Implementation Agreement relating to the [insert title] ITD activities , that it will comply with the terms of the said agreement and accepts all the rights and obligations of a Party there under in particular the terms of article 8 to 10 starting [date].

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

[Date and Place]

[INSERT NAME OF THE **ADDITIONAL MEMBER**]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE TOPIC MANAGER]

Signature(s)

Name(s)

Title(s)

[Date and Place]

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Attachment 3: Listed Affiliated Entities

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Attachment 4: Initial list of Parties and other contact persons

Recipients for Notices in Accordance with Section 11 of this Implementation Agreement:

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Green: optional paragraphs, depending on ITD

Attachment 5: List of Third Parties

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Attachment 6: Agreement for the loan of material or equipment

Simple Letter Agreement for the Loan of every materials, tools and equipments (including, but not limited to, software and hardware) provided by a Party to another Party for the performance of their obligations under a Project of the [] ITD, at the exclusion of the parts and equipments of the Demonstrator(s) resulting from each Project.

In response to the RECIPIENT Party s request dated [] for the MATERIAL or EQUIPMENT [insert description] . . .(the "MATERIAL") The PROVIDER Party asks that the RECIPIENT Party agree to the following before delivering the MATERIAL to the RECIPIENT Party :

- The MATERIAL is and always remains the property of the PROVIDER Party and is made available in the frame of the [name of the -ITD] -ITD for the sole performance of the RECIPIENT Party 's tasks.
- THIS MATERIAL IS NOT FOR USE IN HUMAN SUBJECTS.
-
- The MATERIAL shall always remain in the RECIPIENT Party's premises [] for the duration of the loan and will not be further provided to others without the PROVIDER Party's written consent.
- The RECIPIENT Party shall refer any request for the MATERIAL to the PROVIDER Party .
-
- THE PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.
-
- Unless prohibited by law, RECIPIENT assumes all liability for claims for damage of the Material caused by it which is in its custody and for claims for damage against it by third parties which may arise from its use, storage or disposal of the MATERIAL except that, to the extent permitted by law, the PROVIDER Party shall be liable to the RECIPIENT Party when the damage is caused by it including for the gross negligence or wilful misconduct of the PROVIDER Party .
-
- The RECIPIENT Party agrees to use the MATERIAL in compliance with all applicable statutes and regulations.
-
- The MATERIAL is provided at no cost.
- (Need to address (transportation costs, export authorization, risk transfer INCOTERMS) duration of the custody)

The PROVIDER Party, RECIPIENT Party must both sign 2 copies of this letter and each keeps one signed copy for their record

The PROVIDER Party will then send the MATERIAL.

PROVIDER Party INFORMATION and AUTHORISED SIGNATURE

Provider Scientist:
Provider Organisation:
Address:
Name of Authorised Official:
Title of Authorised Official:

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Green: optional paragraphs, depending on ITD

Certification of Authorised Official: This Simple Letter Agreement __has / __has not [check one] been modified. If modified, the modifications are attached.

Signature of Authorised Official..... and Date ...

RECIPIENT Party INFORMATION and AUTHORISED SIGNATURE

Provider Scientist:

Provider Organisation:

Address:

Name of Authorised Official:

Title of Authorised Official:

Signature of Authorised Official:

Date:

Certification of Recipient: I have read and understood the conditions outlined in this Agreement and I agree to abide by them in the receipt and use of the MATERIAL.

Signature of Recipient... and Date...

Attachment 7 : Grant Agreement for Members : reference definitions

**THE CLEAN SKY JOINT UNDERTAKING GRANT AGREEMENT FOR MEMBERS
ANNEX II GENERAL CONDITIONS**

II.1. Definitions

1. "*access rights*" means licences and user rights to *foreground* or *background*;
2. "*affiliated entity*" means any legal entity that is under the direct or indirect control of a *beneficiary*, or under the same direct or indirect control as the *beneficiary* control taking any of the following forms:
 - (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
 - (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.
3. "*annex I*" means Annexes IA and IB to this *grant agreement* together with any further annexes adopted pursuant Article 6;
4. "*associated country*" means a *third country* which is party to an international agreement with the *Community*, under the terms or on the basis of which it makes a financial contribution to all or part of the Seventh Framework Programme;
5. "*background*" means information which is held by *beneficiaries* prior to their accession to this agreement, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to this agreement, and which is needed for carrying out the *project* or for using *foreground*;
6. "*cluster*" means a *beneficiary* which is a legal entity (1) whose members include two or more undertakings which are not affiliates of each other (2) whose members intend to perform work within the *project*;
7. "*Commission*" means the Commission of the European Communities;
8. "*Community*" means European Community;
9. "*dissemination*" means the disclosure of *foreground* by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of *foreground* in any medium;
10. "*fair and reasonable conditions*" means appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the *foreground* or *background* to which access is requested and/or the scope, duration or other characteristics of the *use* envisaged;
11. "*Financial Rules*" means the financial rules adopted by the *JU* pursuant to Article 6 of the Regulation (EC) 71/2008 and "*Implementing Rules*" means any implementing rules adopted pursuant to the *Financial Rules*;
12. "*foreground*" means the results, including information, whether or not they can be protected, which are generated under the *project*. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection;
13. "*irregularity*" means any infringement of a provision of *Community* law or any breach of obligation resulting from an act or omission by a *beneficiary* which has, or would have, the effect of prejudicing the budget of the *JU*;
14. A legal entity is qualified as "*non-profit*" when considered as such by national or international law;

15. "*partner*" means any legal entity which is not a *beneficiary* but which participates in the *programme* under a separate *grant agreement* pursuant to a call for proposals launched by the *JU*;
16. "*project*" means each consecutive annual project carried out by the *beneficiaries* in accordance with the relevant Annex IB for which an annual contribution is awarded;
17. "*programme*" means any technical activities described in Annex IA over the existing period of the *JU* and implemented through annual *projects*;
18. "*public body*" means any legal entity established as such by national law, and international organisations;
19. "*research organisation*" means a legal entity established as a *non-profit* organisation which carries out research or technological development as one of its main objectives;
20. "*SMEs*" mean micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC in the version of 6 May 2003.
21. "*statutes*" means the statutes of the *JU* annexed to Regulation (EC) 71/2008;
22. "*third country*" means a State that is not a Member State;
23. "*use*" means the direct or indirect utilisation of *foreground* in further research activities other than those covered by the *project*.