

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



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

### **ECO DESIGN Integrated Technology Demonstrator (ITD)**

### **CONSORTIUM AGREEMENT**

## CONTENTS

Article 1: Definitions .....	8
Article 2: Purpose .....	10
Article 3: Entry into force, duration and termination.....	10
Article 4: Responsibilities of the Parties.....	12
Article 5: Liability .....	13
Article 6: Governance structure.....	15
Article 7: Financial provisions.....	26
Article 8: Intellectual Property, Use and Dissemination .....	29
Article 9: Access Rights.....	31
Article 10: Non-disclosure of information .....	35
Article 11: Miscellaneous.....	37
Article 12: Signatures .....	40
[Attachment 1]: Background included .....	79
[Attachment 2]: Accession document.....	80
[Attachment 3]: Listed Affiliated Entities .....	81
[Attachment 4]: Initial list of Parties and other contact persons .....	84
[Attachment 5]: List of Third Parties .....	89
[Attachment 6]: Agreement for the loan of material or equipment.....	90
[Attachment 7]: Initial Consortium Plan.....	92
[Attachment 8]: ED ITD Steering Committee Rules of Procedures .....	93
[Attachment 9]: ED ITD Management Plan .....	94

THIS CONSORTIUM AGREEMENT for the EcoDesign ITD is made on [ TBD  
200[8]]

pursuant to ;

REGULATION (EC) No 71/2008 OF THE COUNCIL of 20<sup>th</sup> Decembre 2007 setting up the Clean Sky Joint Undertaking and its statutes hereinafter referred to as Statutes and all Joint Undertaking Grant Agreements relevant to the ECoDesign Integrated Technology Demonstrator (hereafter referred to as the " ED 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) **Dassault Aviation SA** , a "Société Anonyme" incorporated under the law of France registered under number 712 042 456 RCS ,with share capital of EUR 81 007 176 with its head office at 9, Rond-Point des Champs-Élysées Marcel Dassault - 75008 PARIS - France

(hereinafter referred to as 'Dassault' or 'the ITD Coordinator' or 'ITD Co-Leader') and

(2)- **Fraunhofer Gesellschaft zur Förderung der angewandten Forschung e.V.** (national registration number: VR4461) established in Hansastrasse 27 C - 80686 MUENCHEN (Germany), (hereinafter referred to as 'FhG' or 'ITD Co-Leader'), and

(3)- **Airbus S.A.S** (national registration number: 383474814) established in 1 Rond- Point Maurice Bellonte - 31707 BLAGNAC (France), (hereinafter referred to as "*Airbus*"), and

(4) **Airbus France S.A.S** (national registration number: 393341532) established in 316, Rue de Bayonne, 31060 TOULOUSE (France) (hereinafter referred to as "*Airbus F*"), and

(5)- **Airbus Deutschland GmbH** (national registration number: HRB 43527) established in Kreetslag 10, HAMBURG, 21129 (Germany), (hereinafter referred to as "*Airbus D*"), and

(6)- **Airbus UK Limited** (national registration number: 03468788) established in New Filton House, Filton, BRISTOL BS99 7AR, (United Kingdom), (hereinafter referred to as "*Airbus UK*"), and

(7)- **Airbus España SL** (national registration number: HOJA M279526) established in Paseo John Lennon s/n, 28906 Getafe-Madrid, (Spain), (hereinafter referred to as "*Airbus Sp*"), and

(8)- **Agusta** S.p.A (national registration number: REA 263011) established in Via Giovanni Agusta 520 - 21017 SAMARANTE (Italy), (hereinafter referred to as "*Agusta*"), and

(9)- **Alenia Aeronautica** S.p.A (national registration number: 643596) established in Viale dell'Aeronautica snc - 80038 POMIGLIANO D'ARCO (NA, Italy), (hereinafter referred to as "*Alenia*"), and

(10) **Westland Helicopters** Ltd (national registration number: 604352) established in Lysander Road, Somerset - Yeovil BA20 2YB (United Kingdom), (hereinafter referred to as "*Westland*"), and

(11) **EADS – CASA** (national registration number: M10082) established in Avenida de Aragon 404 - 28022 MADRID (Spain), (hereinafter referred to as "*EADS-CASA*"), and

(12) - **Eurocopter** S.A.S (national registration number: 352383715) established in Aeroport International Marseille-Provence - 13725 MARIIGNANE (France), (hereinafter referred to as "*Eurocopter*"), and

(13) **Eurocopter Deutschland** GmbH (national registration number: HRB 16508) established in Industriestrasse, 86607 Donauwörth (Germany), (hereinafter referred to as "*Eurocopter D*"), and

(14) **Liebherr-Aerospace Toulouse** S.A.S (national registration number: 552016834) established in Avenue des Etats-Unis 408 - 31016 TOULOUSE Cedex (France), (hereinafter referred to as "*Liebherr F*"), and

(15) **Aircelle** (national registration number: 352 050 512) established in Route du Pont VIII - 76700 GONFREVILLE L'ORCHER (France), (hereinafter referred to as "*Aircelle*"), and

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

(17) **Microturbo** (national registration number: 630800084) established in 8, chemindu pont de Rupé - BP 2089 - 31019 Toulouse Cedex 2 (France), (hereinafter referred to as "*Microturbo*"), and

(18) **Snecma** (national registration number: 414815217) established in 2 Boulevard du General Martial-Valin 75724 cedex 15, PARIS (France), (hereinafter referred to as "*Snecma*"), and

(19) **Sofrance** (national registration number: 757.502.240) established in Z.I. Des Gannes, 6 et 8 rue Maryse Bastié - B.P. 3 - 87800 NEXON (France), (hereinafter referred to as "*Sofrance*"), and

(20) **Technofan** (national registration number: 710802547) established in 10 Place Marcel Dassault - ZAC du Grand Noble - BP 30053 - 31702 BLAGNAC Cedex (France), (hereinafter referred to as "*Technofan*"), and

(21) **Turbomeca** (national registration number: 338481955) established in Avenue du President Szydlowski, 64511 BORDES Cedex (France), (hereinafter referred to as "*Turbomeca*"), and

(22) **Thales Avionics Electrical Systems** (national registration number: 552114175) established in 41 Boulevard de la République BP 53 - 78401 CHATOU Cedex (France), (hereinafter referred to as "*ThAES*"), and

(23) **European Aeronautic Defence and Space Company EADS France**, (national registration number: 341535094) whose registered office is 37 boulevard de Montmorency, 75086 PARIS Cedex, FRANCE, and its Innovation Works department, having offices at 12 rue Pasteur 92152 SURESNES, FRANCE. (hereinafter referred to as "*EADS F*"),and

(24) **Hellenic Aerospace Industry S.A.** (national registration number: 74249) established in Athens Tower Mesogeion Ave 2-4, GR11527 ATHENS, (Greece), (hereinafter referred to as "*HAI*"), and

(25) **Israel Aerospace Industries Ltd.** (national registration number: 520027194) established in Ben Gurion International Airport - 70100 (Israel), (hereinafter referred to as "*IAI*"), and

(26) **Stork Fokker AESP B.V.** (national registration number: 23088399), member of the NL cluster, established in Industrieweg 4- 3351LB Papendrecht (Netherlands), (hereinafter referred to as "*Stork*" or "*Cluster Coordinator*"), acting in its own name and in the name and on behalf of the following NL Cluster members :

(27) **ADSE** (national registration number: 34116438), member of the NL cluster, established in Scorpius 90 , 2132 LR Hoofddorp (Netherlands), (hereinafter referred to as "*ADSE*"), and

(28)- **Axxiflex Turbine Tools BV.** (national registration number: 18051008), member of the NL cluster, established in Stedenbaan 15 – box 157 - NB 5120 AD Rijen, (Netherlands), (hereinafter referred to as "*Axxiflex*"), and

(29) **NLR** (Stichting Nationaal Lucht- en Ruimtevaartlaboratorium) (national registration number: 41150373), member of the NL cluster, established Anthony Fokkerweg 2 – 90502 - 1059CM AMSTERDAM (Netherlands), (hereinafter referred to as "*NLR*"),and

(30) **Sergem B.V.** (national registration number: 27244129), member of the NL cluster, established in Spoorlaan 6 - 2495 AL Den Haag (Netherlands), (hereinafter referred to as "*Sergem*"), and

(31) **TU-Delft**, Aerospace Faculty, member of the NL cluster, established in Stevinweg 1 - box 5 - 2628 CN DELFT (Netherlands), (hereinafter referred to as "*TU Delft*"), and

(32) **University Twente**, member of the NL cluster, established in Drienerlolaan 5 - 7522 NB - ENSCHEDE (Netherlands), (hereinafter referred to as "*Univ Twente*"), and

(33) **RUAG Aerospace AG**(national registration number: CH10030217617), member of the RUAG cluster, established in Seetalstrasse 175 - P.O. box 301 - CH-6032 EMMEN (Switzerland), (hereinafter referred to as "*RUAG*"), or "Cluster Coordinator",

(34) **Huntsman Advanced Materials** (Switzerland) GmbH (national registration number: CH-270.4.013.542-0/), member of the RUAG cluster, established in Klybeckstrasse 200 - CH-4057 BASEL (Switzerland), (hereinafter referred to as "*Huntsman*"), and

(35) **EPFL - Ecole Polytechnique Fédérale de Lausanne** (national registration number: 414110372), member of the RUAG cluster, established in Bâtiment CE-3.316 Station 1 - 1015 Lausanne (Switzerland), (hereinafter referred to as "*EPFL*"),and

(36) **University of Applied Sciences of Northwestern Switzerland, FHNW** - member of the RUAG cluster, established in Schulthess-Allee 1 – box 235 - 5201 Brugg (Switzerland), (hereinafter referred to as "*FHNW*"), and

(37) **Eidgenössische Technische Hochschule Zürich** (ETH Swiss Federal Institute of Technology Zurich - **ETHZ**) (national registration number: GESETZSR414110), member of the RUAG cluster, established in Raemistrasse 101 – 8092 ZUERICH (Switzerland), (hereinafter referred to as "*ETHZ*"), and

(38) Advanced Composites Group Limited ACG (national registration number: 2264869), member of the RUAG cluster, established in Concorde House - 24, Warwick New Road, LEAMINGTON SPA – WARWICKSHIRE CV32 5JG (UK), (hereinafter referred to as "*ACG*"), and

(39)- **Hadeg Recycling** GmbH (national registration number: HRB 101368), member of the RUAG cluster, established in Julius-Leber-Weg 11 - D-21684 STADE (Germany), (hereinafter referred to as "*Hadeg*"),

Hereinafter jointly or individually referred to as "Party(ies) which is (are) member(s) of the JU"

,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 are referred to as "Partner(s) "

and "Parties which are members of the JU" and "Partners" 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 ED ITD to the Joint Undertaking as part of the Clean Sky Joint Technology Initiative set up by decision of the European Community.

The Parties wish to agree certain legally binding commitments among themselves in relation to the ED ITD in addition to the provisions of the relevant Grant Agreement (s) awarded to the Parties by the Joint Undertaking for the ED 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

" Cluster" means a grouping of legal entities not affiliated to each other, whose members intend to perform work within the ED ITD . A Cluster may be but is not necessarily a legal entity notwithstanding any other definition of this term in any Grant Agreement;

"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.

" ITD Coordinator" means the ITD Leader that acts as the 'coordinator' as defined in the ED ITD Grant Agreement and assumes the responsibilities of such coordinator on behalf of the Parties.;

"Consortium Plan" means the description of the work as per Annex 1A (7 years) and 1B (1 year) of the relevant yearly Grant Agreement 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. For the avoidance of doubt, the performance obligations of each Party shall be those defined in Annex IB of the applicable Grant Agreements;

"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.

"Disclosing Party" means the Party disclosing Confidential Information;

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

" relevant Grant Agreement " means either the ED ITD Grant Agreement including its annual amendment(s) entered into by the JU with the members of the JU for the



ED ITD or any Partner Grant Agreement entered into by the JU with one or more Partner(s)

"General Management " means the central executive management of the ED-ITD and consists of the two ITD Co-leaders , with Dassault Aviation as General Manager and Fraunhofer as deputy

"ITD Co-Leader" means either of the two members specifically identified in the Clean Sky Statutes Annex II as ITD Leaders and Co-leaders of the ED-ITD, namely Dassault Aviation and Fraunhofer;

"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 ED 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;

"Party which is a member of the JU" means any Leader and Associates of the ED ITD as well as any of their Participating Affiliates involved in the ED ITD,

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

"Project (s)" means the EcoDesign for Airframe (EDA) Project and/or the EcoDesign for Systems (Small aircrafts) (EDS) Project referred to in the Consortium Plan which together form the work scope of the ED ITD according to the description of work appended to the Grant Agreement signed by the ITD Leaders and Associates

"Project Management Committee" means the committee of persons from the same Project that manages and governs the relevant Project;

"Project Manager" means the person leading and managing a relevant Project;

"Recipient" means the Party receiving Confidential Information;

"Use" means the direct or indirect utilisation of foreground in further research activities other than those covered by the ED 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 referred to in the Consortium Plan which together form the work scope of the ED ITD according to the description of work appended to the Grant Agreement(s) signed by the Parties which are members of the JU.

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

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

**Article 2: Purpose**

The purpose of this ITD Consortium Agreement is to specify with respect to the ED ITD 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 October 1, 2008, the Effective Date.

**3.2 Duration**

This ITD Consortium Agreement shall continue in full force and effect until fulfilment of all obligations undertaken by the Parties under the relevant Grant Agreement(s) and under this ITD Consortium Agreement.

**3.3 Termination**

**3.3.1** The participation of one or more Parties to this ITD Consortium Agreement may be terminated in accordance with the terms of this ITD Consortium Agreement and Articles II.36 to II.38. of Annex II of 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 the relevant Grant Agreement(s), the ITD 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 under the recommendation of the relevant PMC via the ITD Coordinator 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 the ED ITD.

**3.3.4** Such termination from a Grant Agreement shall entail termination of the ITD Consortium Agreement with respect to the Defaulting Party

**3.3.5** In the event that the JU refuses to enter into a Grant Agreement with the Parties which are members of the JU for the forthcoming year's activities of the ITD the

Steering Committee shall meet (without the participation of its non-voting members) to agree on a process for the discontinuation of the Parties' activities within the ITD and for the termination of this Consortium Agreement.

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

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

**3.4.2** Any Party which is a member of the JU may withdraw from the ED ITD and this ITD Consortium Agreement (thereafter it will be referred to as the "Withdrawing Party") without further liability provided that

(a) Such Withdrawing Party has chosen not to enter into a Grant Agreement for the following year on the grounds that

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

(b) Such Withdrawing Party gives written notice to the relevant PMC(s) and the ITD Steering Committee and 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) Such Withdrawing Party completes all of its obligations under the current Annex IB and the relevant past or on-going Grant Agreement (s).

### **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 any of the obligations of a Party leaving the Consortium incurred prior to such date, unless otherwise agreed between the relevant PMC 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 ED ITD, and to cooperate, perform and fulfill, 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 ED ITD, any significant information, fact, problem or delay or any other risk likely to affect the ED ITD.
- 4.1.3 Each Party shall promptly provide all information reasonably required by a Consortium Body or by the ITD 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 ED ITD.
- 4.1.5 Each Party which a member of the JU shall participate in the activities of each Consortium Body of which it is represented in relation to the development of the Consortium Plan and shall provide each such Consortium Body with such information and support as is necessary for this purpose.
- 4.1.6 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 For the purpose of this article, the Parties which are members of a Cluster and the Cluster itself shall be considered as one single Party :

As a consequence thereof:

- a) Such Parties agree to be represented in all relevant Consortium Bodies of the ED ITD by one person representing the Cluster with one single vote for

the Cluster (which does not have to be the same person on each Consortium Body)

- b) Each Cluster Coordinator shall be considered as the single representative of the Cluster for all other purposes of this ITD Consortium Agreement ("Cluster Coordinator").
- c) For each Cluster, 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 relevant PMC and the ITD Coordinator as required.
- d) The Cluster and its Cluster members are jointly and severally liable for the performance of any activity within the ED ITD that is allocated to the Cluster by the Consortium Plan or any Grant Agreement.

**4.2.2** Should a Cluster Coordinator executes this ITD Consortium Agreement on behalf of the members of its Cluster, such Cluster Coordinator warrants that it has received a power of attorney from each of the Cluster members authorising him to sign the ITD Consortium Agreement on behalf of each of them. Such Cluster Coordinator agrees to provide a copy thereof on request of the ITD Coordinator.

**4.2.3** The transfer of activities and corresponding budgets between members of a Cluster is allowed at any time without need for amendment to the Consortium Plan, as far as this Consortium Plan is satisfactorily implemented and for the same cost. The Consortium Budget and financial reporting will consider separately the activities performed by each Cluster in compliance with JU accounting procedures and with Annex II of the relevant 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 relevant 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 ED Project 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 ED Project 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 howsoever caused is limited to twice the amount of the total costs of the defaulting Party's activities in the ED ITD arising under relevant Grant Agreements. and cumulated in respect of the current and all previous years In the event that a breach of this Agreement causes damage to more than one other Party whose aggregate exceeds the foregoing limit the claiming Parties shall use all reasonable endeavours to agree an apportionment among themselves of the said limit and failing such agreement shall refer such apportionment to arbitration under Article 11.8.

5.1.3.3 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 ED 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 including the JU

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 pro-rata their Project shares.

### 5.2.2 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Consortium remains solely responsible for carrying out its relevant part of the 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.

## Article 6: Governance structure

### 6.1 General Principles

6.1.1 The ED ITD is structured in two Projects : ECoDesign for Airframe (EDA) and EcoDesign for Systems (Small Aircraft) (EDS) allocated among the Parties

6.1.2 The Consortium management, coordination and decisions are handled by the ITD Coordinator and the following Consortium Bodies,: the General Management, the two Project Management Committees and the Work Package Management Teams.

## 6.2 Consortium Bodies

The Consortium Bodies become operational on the Effective Date. The detailed functions and operations of the Consortium Bodies are described in the Management Plan in [attachment 9]

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

### 6.2.1 ITD Coordinator

6.2.1.1 The ITD Coordinator shall act as the intermediary between the Parties and the Joint Undertaking. In addition to its responsibilities as a Party it shall perform all tasks assigned to it as described in the Grant Agreement(s) attributable to the ITD Coordinator.

6.2.1.2 The ITD Coordinator shall be responsible for :

- (a) Keeping the address list of the Parties and other contact persons updated and available;
- (b) Submitting information on the progress of the Consortium work and reports and other deliverables (including financial statements and related certification) to the Joint Undertaking;
- (c) 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;
- (d) Administering the Community financial contribution and fulfilling the financial tasks described in Article 7.1.1 and 7.3 below;
- (e) Providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the ITD Coordinator when such copies or originals are necessary for the Parties to present claims;
- (f) Receiving and submitting requests for amendments and termination at the initiative of the Consortium in accordance with Annex II to relevant Grant Agreements, Article II.36.

6.2.1.3 If the ITD Coordinator fails in its coordination tasks, the members of the two PMCs may propose to the Joint Undertaking to change the ITD Coordinator through a vote in an ITD Steering Committee meeting.

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



- 6.2.1.5 The ITD Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in any relevant Grant Agreement.
- 6.2.1.6 The level of details regarding information requested by the ITD 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 be set forth in the Management Plan.
- 6.2.1.7 The ITD 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 ITD Coordinator of such communication.

## **6.2.2 The General Management**

6.2.2.1 The General Management consists of the ITD Co-Leaders and is the interface between the Steering Committee of the ITD which is the decision making body of the ITD in the Joint Undertaking and the Consortium Bodies of the ITD.

6.2.2.2 the Rules of Procedures of the ITD Steering Committee are in [attachment 8].

6.2.2.3 The Co-Leaders are responsible for :

- (a) The general management of the ED ITD in accordance with the Management Plan and to ensure that the activities are conducted by the Parties until completion as defined in the Consortium Plan.
- (b) The regular review and updating of this Consortium Plan where necessary or desirable with the support of the two PMCs and the other Parties,
- (c) Monitoring compliance by the Parties with their obligations;
- (d) Collecting, reviewing and validating information on the progress of the Consortium work and reports and other deliverables (including financial statements and related certification) submitted by the two PMCs,
- (e) Checking and authorizing any press release and publication by the Parties without prejudice to the Steering Committee procedures,
- (f) Proposing decisions to be taken by the ITD Steering Committee and monitoring the implementation of decisions so taken;
- (g) Taking note of a change of the name of a representative of a Party to the Steering Committee, to the relevant Project Management Committee and shall notify all the Parties.

## **6.2.3 Project Management Committee (PMC)**

A) Composition

6.2.3.1 The PMC means the relevant Project Management Committee and shall consist of the following appointed persons :

a) Non voting members :

- a representative of the ITD Coordinator as such,
- a representative of the ITD Co-Leader as such ,
- the Project Manager as such,

b) voting members :

- The relevant nominated representative of each Work Package Leader at levels one, two and three in the ED-ITD work breakdown structure set out in the Consortium Plan .Should a Party be the leader of more than one Work Package in the Project, such Party will have only one vote in the PMC. Should several Parties be Participating Affiliates of a leader of another Clean Sky ITD as per the Statutes of the JU and be Work Package Leaders in the Project. These Parties will have only one vote in the PMC.for all of them including the ITD Leader to which they are affiliated

and in addition for the EDA PMC only :

- a representative of Liebherr LTS, and
- a representative of EADS - CASA

6.2.3.2 The membership of the PMC may be changed with the PMC's unanimous agreement. When required by the topics to be discussed in the agenda, the PMC may by unanimous approval only, invite the other persons connected with the Project work.

6.2.3.3 The relevant Project manager shall chair all meetings of the PMC. Each PMC representative shall participate or be duly represented by a substitute to each PMC meeting.

B) Procedure

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

6.2.3.5 The Project Manager shall give each of the representatives at least fifteen (15) calendar days' notice in writing of such meetings or seven (7) calendar days notice in case of an emergency situation.

- 6.2.3.6 Should a representative of the PMC suggest adding a discussion/decision to the proposed agenda, it shall do so in writing to all other representatives at least two (2) working days prior to the meeting date.
- 6.2.3.7 However, any decision required or permitted to be taken by the PMC may be taken as follows:
- (a) In meetings including meetings held via teleconference or videoconference; or
  - (b) Without a meeting, through circulation among the representatives of the PMC of a written document setting forth the decision to be made which must be returned within fifteen (15) calendar days to the Project manager, duly signed and with their recommendations indicated in relation thereof. In such a case, the Project manager shall draft the minutes to formalize in writing the decisions taken, taking into account the documents returned and shall dispatch them to the representatives within fifteen (15) calendar days of the expiration date of the above fifteen (15) days.
- 6.2.3.8 Each of the PMC representatives will have one vote at PMC meetings, save that a representative shall not be entitled to vote on a resolution relating to an allegation of default by the Party being a member of the JU appointing him.
- 6.2.3.9 The PMC shall make decisions by simple majority of all voting rights
- 6.2.3.10 No PMC decision will be validly decided unless and until at least two-third (2/3) of its representatives are present or represented, or have expressed their votes in a written form.

The Parties agree to abide by all recommendations of the PMC subject to their rights under article 6.2.5 and 6.2.6.

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

All the minutes (including those drafted without meeting as above mentioned) shall be considered as accepted by the members of the PMC if, within fifteen (15) calendar days from receipt thereof, no member of the PMC has objected in writing to the ITD Coordinator, provided that objection shall be either on such formalization or on a decision that was not part of the agenda and which was not accepted by all members of the PMC.

#### C) Functions

- 6.2.3.11 The PMC shall be responsible for the operational daily management of the Project and in particular for :
- (a) Making proposals to and advising the General Management and the ITD Coordinator for the allocation of the Consortium Budget in accordance with

the relevant Grant Agreements, including the Consortium Plan and for possible budget transfers;

- (b) When major modifications to the scope and content of the Projects are required, making proposal to and advising the General Management and the ITD Coordinator for those modifications;
- (c) Making proposals to and advising the ITD Coordinator for the review and/or amendment of the terms of the relevant Grant Agreements;
- (d) Making proposal and advising the ITD Coordinator on a change of the list of Affiliated Entities, when requested;
- (e) Advising the ITD Coordinator of major changes in work, particularly termination, creation, or reallocation of top level Work Packages,
- (f) Making proposals to the General Management and the ITD Coordinator to suspend all or part of the Project or to terminate the part of the relevant Grant Agreements related to the Project, or to request the Joint Undertaking to terminate the participation of one or more Parties,
- (g) Advising the General Management and ITD Coordinator on actions to be taken against a Defaulting Party, including a request to the Joint Undertaking for an audit or for the assistance of the Joint Undertaking, and approving the assignment of the Defaulting Party's tasks to Non-Defaulting Parties, and reallocating the Community Financial Contribution among the Parties effectively involved in completion of such Defaulting Party's tasks and/or if appropriate agree upon a new entity to join the Consortium for that purpose; Any Party affected by this default will be invited to attend the discussion devoted to the matter.
- (h) Reviewing and deciding cases of default of the Project Manager in the performance of his tasks and preparing proposals to the General Management and the ITD Coordinator on actions to be taken and possible nomination of a new Project manager;
- (i) Reviewing and recommending the content of Calls for Proposals and preparing the selection of new Partners;
- (j) Providing advice on selecting new Partners with the assistance of independent experts in compliance with Joint Undertaking procedures;
- (k) Reviewing the content of calls for tender in conjunction and cooperation with the Party(ies) concerned and coordinating the selection of subcontractors or service providers in accordance with the JU dedicated procedure , if any.
- (l) Advising the ITD Coordinator on entering into the relevant Grant Agreements and the ITD Consortium Agreement of new Parties;

- m) Building technical roadmaps for the Project;
- n) Proposing to the ITD Coordinator rules for the management of the funds received from the Joint Undertaking in accordance with Article 7,
- o) Generally supporting the General Management and the ITD Coordinator particularly in preparing for meetings with the Joint Undertaking and delivery and exchange of Project related data and deliverables.
- p) Alerting the General Management and the ITD Coordinator in case of delay in the performance of the Project or in case of default of any Party under said Project;
- q) Coordinating on a day-to-day basis the progress of the technical work under the Project;
- r) advising the General Management and the ITD Coordinator on procedures and policies in accordance with the relevant Grant Agreement rules, Annex II General Conditions - Part C for the use and dissemination of the Foreground;
- s) Advising the ITD Coordinator on a change of a third party to which ownership of Foreground will be assigned,
- t) Advising the ITD Coordinator on withdrawal of Background from Attachment 1,
- u) Advising the General Management and the ITD Coordinator on press releases and publications by the Parties involved in the Project or by the Joint Undertaking with regard to the Project, as per the relevant Grant Agreements and this Consortium Agreement,

6.2.3.12 The two PMCs together shall be responsible for :

advising on actions to be taken by the Steering Committee and, if necessary, submitting a proposal to the Joint Undertaking for the instigation of a new coordinator in case of default of the ITD Coordinator in the performance of its tasks as a coordinator,

The two PMCs will meet and decide in accordance with the provisions of article 6.2.3. A) and B) except that if a Party is represented in both PMCs such Party will have only one vote. The meeting will be chaired by the Co-Leader which is not the ITD Coordinator.

6.2.3.13 Project Manager

The Project Manager shall have the following functions:

- a) Administration, preparation of minutes and provision of the chairman of the Project Management Committee and follow-up of its decisions;

- b) Transmission of any documents and information connected with the Project to the Parties concerned;
- c) Transmission of any documents and information connected with the Project to the General Management
- d) Transmission of the Project deliverables of the Parties within the Project to the General Management;
- e) Coordinating on a day-to-day basis the progress of the technical work under the Project with the support of the PMC
- f) informing the ITD Coordinator and the General Management of any delay in delivery that could not be remedied or any major discrepancy.

The Project Manager 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

#### **6.2.4 Work Package Management Team**

The management of work-packages, tasks and subtasks within each Project will be organised and managed through a Work Package Management Team 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.

The Level 1 Work Package Management Team shall consist of the Level 1 Work Package leader and one representative of each Level 2 Work Package participating to such Level 1 Work Package.

The Level 2 Work Package Management Team shall consist of the Level 2 Work Package Leader and one representative of each Level 3 Work Package participating to such Level 2 Work Package.

The Level 3 Work Package Management Team shall consist of the Level 3 Work Package Leader and the other Parties participating to such Level 3 Work Package.

The Work Package Leader shall convene meetings (including meetings held via teleconference or videoconference) of the Work Package Management Team every two (2) months and shall also convene meetings at any time upon written request of any member of the Work Package Management Team in the case of an emergency situation.

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

Any decision requiring a vote at the Work Package Management Team meeting must be identified as such on the invitation.

Should a member of the Work Package Management Team 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 Work Package Management Team may be taken in accordance with the foregoing:

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

The Work Package Management Team shall be in charge of managing the Work Packages and in particular be responsible for the following:

- a) Advising the relevant Project Management Committee on the allocation of the Work Package tasks in accordance with the Work Package Budget allocation approved including the Consortium Plan and reviewing and proposing to the concerned Parties budget transfers within the limits of the Work Package Budget
- b) Making proposals to the Project Management Committee for the entering into the Grant Agreement and the Consortium Agreement of new Parties for participation in the Project;
- c) Alerting the Project Management Committee and the ITD Coordinator in case of delay in the performance of the Work Package or in case of default of any Party under said Work Package;
- d) Analyzing and documenting default of a Party under the Work Package and prepare proposal and action plan to the Project Management Committee for this latter's decision;

The Work Package Management Team shall not deliberate and decide validly unless a majority of two-thirds (2/3) of its members are present or represented.

Each representative shall have one vote and may appoint a substitute to attend and vote at any meeting of the Work Package Management Team.

In the case of sub paragraph a) decisions shall be taken unanimously by all members of the Work Package Management Team.

In the other cases, decisions shall be taken by a majority of 75% of the votes of Parties present or represented.

The members of the Work Package Management Team agree to abide by all decisions of the Work Package Management Team subject to their right under 6.2.5 and 6.2.6.

The Work Package Leader shall draft the minutes of each meeting to formalize in writing all decisions taken and shall dispatch them to all members within fifteen calendar days of the concerned meeting date.

The minutes shall be considered as accepted by the Work Package members if, within fifteen calendar days from receipt thereof, no member has objected in writing to the Work Package Leader, provided that objection shall be either on such formalization or on a decision that was not part of the agenda and which was not accepted by all members.

#### 6.2.4.1 Work Package Leader

The Work Package Leader shall have the following functions :

- a) Leading of the tasks which are part of its Work Package.
- b) Chairing of all meetings of the Work Package Management Team.
- c) Administration, preparation of minutes and provision of the chairman of the Work Package Management Team, and follow-up of its decisions;
- d) Transmission of any documents and information connected with the Work Package to the Parties concerned;
- e) Transmission of any documents and information connected with the Work Package to the Project Manager;
- f) Transmission of the Project deliverables of the Parties within the Work Package to the Project Manager ;
- g) Coordinating on a day-to-day basis the progress of the technical work under the Work Package;
- h) For the purpose of Article 7.1, reviewing deliverables at each agreed step under the Consortium Plan for the Work Package concerned and advise the Project Manager of any delay in delivery that could not be remedied or any major discrepancy.



The Work Package 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 .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.

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 Project may not object decisions relating thereto.

the ITD Coordinator and/or the ITD Co-Leader may object any decision of the PMC or a Work Package Management Team 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 at the level of the ED ITD.

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 is made within fifteen (15) calendar days of receipt by such Party of a copy of the minutes.

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

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

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.

## 6.2.6 Escalation

6.2.6.1 In the event of an objection under article 6.2.5 any member of a Consortium Body at any level whose decision is affected or the objecting Party may within 15 days of the notice of objection require the matter to be referred to a superior decision-making body in the following escalation order:

a) Within the Consortium :

- Work Package Management Team at level 3, to
- Work Package Management Team at level 2, to
- Work Package Management Team at level 1, to

- Project Management Committee, to
- General Management; to

b) in the Joint Undertaking :

- Steering Committee, to
- JU Executive Director, to
- Governing Board.

6.2.6.2 If the relevant superior decision making body is unable to settle the matter within 30 (thirty) business days, then the dispute shall be referred to the next superior making 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 members of the JU shall be distributed by the ITD Coordinator to such Parties 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 direct by the JU to the Partner concerned in accordance with its Partner Grant Agreement and the ITD Coordinator shall have no responsibility therefor.

## **7.1.2 Justifying Costs**

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs and other financial information required to be submitted to the Joint Undertaking. Neither the ITD 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 provided by the ITD 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 pursuant to the terms of Article 3.3 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 Articles 5.1.3.2 to 5.1.3.4. 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.

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

## **7.3 Eligible Management Costs**

7.3.1 The Parties which are members of the JU hereby agree to contribute to the "ITD Coordinator Management Costs" the total sum of one hundred and fifty thousand

Euros (€150,000) in each year. The several contributions of the Parties which are members of the JU to the said total sum shall be calculated in proportion to their respective participations in the costs of the ED ITD in the year in question, as determined by the Steering Committee. For the avoidance of doubt, nothing in this Agreement shall prevent the ITD Coordinator from claiming grants from the Joint Undertaking in respect of any management costs which are Eligible Costs under the Grant Agreement.

**7.3.2** Any sums due from a Party which is a member of the JU ' under Article 7.3.1 shall be paid to the ITD Coordinator within 30 days of the decision of the Steering Committee establishing the amount of the Parties which are members of the JU 'contributions, provided that the ITD Coordinator to whom payment is due has issued an invoice to the relevant Party which is a member of the JU.

#### **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 ITD Coordinator. In particular, the ITD Coordinator shall:

- (a) Notify a Party which are 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 ITD 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 ITD Coordinator to each Cluster Coordinator for distribution within each Cluster. Such

payment discharges the ITD Coordinator from its obligations on payments as regards any member of the Cluster.

**7.4.6** The ITD 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**

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 in respect of the Project 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 Intellectual Property Rights**

**8.1.1 Background**

**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 Foreground**

Except as otherwise provided in this ITD Consortium Agreement, the rights in Foreground shall vest exclusively in the Party generating such Foreground

**8.1.3.1 Joint ownership**

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

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

- 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.

**8.1.3.2 Transfer of Foreground**

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

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

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.

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 ITD Consortium Agreement requires the unanimous approval of the ITD Steering Committee.

The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, a Party may be subject to confidentiality obligations which prevent it from giving prior notice for the transfer as foreseen in the 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 Agreements.

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

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

### **8.2.3 Cooperation obligations**

The Parties undertake to cooperate to allow the timely submission, examination, publication and defense 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.

## **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 Project 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 covered**

- 9.1.1** The Parties shall identify in the [Attachment 1] the Background to which they shall grant Access Rights, and may update the Attachment 1 during the term of this 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 license 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 Project and the owning Party will not be required to provide any Access Rights thereto.

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

### **9.2 General Principles**

- 9.2.1** Each Party shall take appropriate measures to ensure that it can grant Access Rights and fulfill 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 Project 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 Project or the Use of its own Foreground would be technically impossible or significantly delayed,

### 9.3 Access Rights for implementation

Access Rights to Foreground and Background of a Party to a Project if needed by any other Party to the same Project for the performance of its own work is hereby granted by the former Party on a royalty-free basis .

### 9.4 Access Rights for Use

- 9.4.1 Access Rights to Foreground if needed for Use of a Party's own Foreground shall be granted on fair and reasonable conditions.
- 9.4.2 Use for third party research shall be subject to the prior written approval of the owner of the Foreground, such agreement will not be unreasonably withheld.
- 9.4.3 Access rights for internal research activities shall be granted on a royalty-free basis.
- 9.4.4 Access Rights to Background if needed for Use of a Party's own Foreground shall be granted on fair and reasonable conditions.



**9.4.5** A request for Access Rights may be made up to two (2) years after the end of the ED ITD subject to the conditions of 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 it's Affiliate Entity:

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

**9.5.2** Such Access Rights shall be granted on fair and reasonable conditions and upon written bilateral agreement with the owner of the Information . Affiliated Entities which obtain Access Rights shall fulfil all confidentiality and other obligations accepted by the Parties under 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 PMC and a Party has raised an objection to such inclusion in accordance with article 6.2.5.

**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 lapse unless agreed otherwise by 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 listed in attachment 1 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 (including a Partner leaving on the completion of the relevant Grant Agreement) shall have Access Rights to the Foreground developed until the date of the termination of its participation. The time-limit for its right to request these Access Rights shall start on the same date.

#### **9.7.2.2 Access Rights to be granted by any leaving Party**

Any Party leaving the Consortium (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, 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 Project during its implementation and which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within [15] days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

### **10.2**

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

- (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 fulfillment 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 ED 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 advise 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 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: 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)
- [Attachment 8]: (ED ITD Steering Committee Rules of Procedures)
- [Attachment 9]: (ED ITD Management 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 ITD 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 principal company headquarters.

### **11.3.3 Formal notices :**

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

### **11.3.4 Other communication :**

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

**11.3.5** Any change of persons or contact details shall be notified immediately by the respective Party to the ITD 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' 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 or more arbitrators 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 Force Majeure. Each Party will notify the competent Consortium Bodies of any Force Majeure as soon as possible. If the consequences of Force Majeure for the -ITD are not overcome within six (6) weeks after such notification, the transfer of tasks, if any, shall be decided by the competent Consortium Bodies.

### **11.10 Benefit**

This 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. Not exercising or delay in exercising any right is not a waiver of that right.

**Article 14: [Attachment 2]: Accession document**

**ACCESSION**

of a new Party to

EcoDesign ITD Consortium Agreement, version [..., YYYY-MM-DD]

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

hereby consents to become a Party to the EcoDesign ITD Consortium Agreement identified above, that it will comply with the terms of the relevant Grant Agreement and accepts all the rights and obligations of a Party from starting [date].

[OFFICIAL NAME OF THE ITD COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT]

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

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE ITD COORDINATOR]

Signature(s)

Name(s)

Title(s)