***[Indicative template: each clause needs to be adapted to each specific project]***

**Project Consortium Agreement**

Project Name Here

Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia deserunt mollit anim id est laborum.

SMART PROJECT CONSORTIUM AGREEMENT (PCA)

Relating to the SMART Project

[SMART **Project Acronym]** [SMART Project Full Name………………………].

Under the SMART PROGRAM

Among:

1. **Company Legal name**, having its offices at
   * Hereinafter referred to as “company short name”
   * Represented for the signature of this Project Consortium Agreement by its authorized representative M.…..
2. **Company Legal name**, having its offices at
   * Hereinafter referred to as “company short name”
   * Represented for the signature of this Project Consortium Agreement by its authorized representative M. …..
3. **Company Legal name**, having its offices at
   * Hereinafter referred to as “company short name”
   * Represented for the signature of this Project Consortium Agreement by its authorized representative M. …..
4. **Company Legal name**, having its offices at
   * Hereinafter referred to as “company short name”
   * Represented for the signature of this Project Consortium Agreement by its authorized representative M. …..
5. **Company Legal name**, having its offices at
   * Hereinafter referred to as “company short name”
   * Represented for the signature of this Project Consortium Agreement by its authorized representative M. …..
6. **Company Legal name**, having its offices at
   * Hereinafter referred to as “company short name”
   * Represented for the signature of this Project Consortium Agreement by its authorized representative M. …..

(Hereinafter together referred to as "the Parties")

###### Table of Contents

[Article 1 DEFINITIONS 4](#_Toc203271267)

[Article 2 PURPOSE AND SCOPE OF THE PARTNERSHIP 6](#_Toc203271268)

[Article 3 COMING INTO FORCE - DURATION 8](#_Toc203271269)

[Article 4 PROJECT MANAGEMENT 8](#_Toc203271269)

[Article 5 EXECUTION OF THE CO-OPERATION - SUBCONTRACTING](#_Toc203271270) 10

[Article 6 FINANCING](#_Toc203271271) 11

[Article 7 CONFIDENTIALITY 9](#_Toc203271272)

[Article 8 INTELLECTUAL PROPERTY RIGHTS 12](#_Toc203271273)

[8.1 Ownership and protection of Knowledge 12](#_Toc203271274)

[8.2 Publication of Knowledge 13](#_Toc203271275)

[8.3 Dissemination of Knowledge after the end of the Project 13](#_Toc203271276)

[8.4 Access Rights in the scope of the Project and outside the scope of the Project 13](#_Toc203271277)

8.5 Affiliates Access Rights 16

[8.6 Software 15](#_Toc203271279)

[Article 9 WARRANTY/LIABILITY 17](#_Toc203271280)

[Article 10 TERMINATION – RIGHT TO WITHDRAW 19](#_Toc203271280)

Article 11 FORCE MAJEURE 21

Article 12 INSURANCE 21

[Article 13 LANGUAGE 19](#_Toc203271281)

Article 14 NOTICES 22

[Article 15 ANNEXES, CONFLICTS AND INCONSISTENCIES 20](#_Toc203271283)

[Article 16 ASSIGNMENTS - AMENDMENTS](#_Toc203271284) 22

[Article 17 SEVERABILITY](#_Toc203271285) 23

[Article 18 RESTRICTIONS 21](#_Toc203271286)

[Article 19 APPLICABLE LAW 21](#_Toc203271287)

[Article 20 SETTLEMENT OF DISPUTES](#_Toc203271288) 23

WHEREAS

1 In the framework of the SMART PROGRAM, the Parties have submitted a proposal for a Project entitled: [“………..”], hereinafter referred to as "the Project";

2. The Project has been selected by the SMART Technical Committee and has obtained a SMART Label from the SMART Board;

3. The Parties, who have acceded to or accepted the rules for SMART Projects as laid down in the SMART Frame Agreement and the **“REGULATIONS**: Overview for SMART Project Proposers” wish to define in addition thereto certain of their rights and obligations inter se with respect to the carrying out of the Project.

**Therefore, the Parties hereby agree as follows:**

##### Article 1 DEFINITIONS

1.1 **Parties** mean the Parties signing this Cooperation Agreement and being SMART Projects’ Participants ***[“Project Full Name”].***

1.2 **Coordinator** or Project Leader refers to [“Legal name of Project Coordinating Company”].

* 1. **Project** means the entire project as described in the work-plan referred to in *Annex A* to this Agreement.
  2. **Project deliverables** means the reports referred to in *Annex B* of this Agreement as well as any element designated as such in *Annex A* to this Agreement.

1.5 **Cooperation agreement** or **Agreement** means this agreement including its annexes.

1.6 **Change of control** means any change in the control exercised over a Party. Such control may result in particular from:

- direct or indirect holding of a majority of the share capital of the Party or a majority of the voting rights of the latter's shareholders or associates, or

- direct or indirect holding in fact or in law of decision-making powers in the Party.

**1.7 Force Majeure** means any unforeseeable and insuperable event affecting the carrying out of the project by one or more Parties.

* 1. **Knowledge:** means the results, including information, whether or not they can be protected, arising from this project, as well as copyrights or rights pertaining to such results following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.
  2. **Pre-existing know-how:** means the information, which is held by the Parties prior to the conclusion of this Agreement, or acquired in parallel with it and necessary for carrying out the project, as well as copyrights or rights pertaining to such information following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.
  3. **Access rights:** means licenses and user rights to Knowledge or pre-existing know-how.
  4. **Use**: means the direct or indirect utilization of Knowledge in research activities or for developing, creating and marketing a product or process or for creating and providing a service.
  5. **Project Share** of a Party shall mean that Party's share of the total budgeted cost of the Project as shown in *Annex C*.

1.13 **Software terminology:**

1. “API” or “Application Programming Interface” shall mean an interface or other means provided for by a Software application, component or library for the purpose of interfacing or interaction of other Software with such application, component or library.
2. “Software” shall mean software programs, either in “Object Code”, i.e. in machine-readable, compiled and/or executable form, or in “Source Code”, i.e. in human readable form.
3. “Software information” shall mean technical information used, or useful in, or relating to the design, development, use or maintenance of any version of a software program.
4. “Software documentation” shall mean software information in documentary form.
   1. **Dissemination:** means the disclosure of Knowledge by any appropriate means other than publication resulting from the formalities for protecting Knowledge.
   2. **Subcontract**: means an agreement to provide services relating to tasks required for the project and which cannot be carried out by the Party itself, concluded between a Party and one or more subcontractors for the specific needs of the Project.
   3. **Subcontractor**: means a third party carrying out minor tasks not relating to the core work of the Project, by means of a subcontract with one or more of the Parties.
   4. **Contract**: means the agreement signed between a Party and its Public Authority, relating to the Project.
   5. **Legitimate interest** means any interest, in particular of a commercial nature, of a Party which may be invoked in the cases provided for in this Agreement provided that the Party demonstrates that the damage to that interest is likely, given the circumstances, to cause a specific prejudice that is disproportionate, considering the objectives of the provision in respect of which it is invoked.

Unless the context otherwise requires, words and expressions defined in the SMART Frame Agreement and in the “REGULATIONS: Overview for SMART Project Proposers” have the respective meanings attributed to them when used in this Agreement.

##### Article 2 PURPOSE AND SCOPE OF THE PARTNERSHIP

2.1 This Agreement governs the rights and obligations of the Parties with respect with the partnership to be carried out for the SMART Project.

2.2 The scope of the Project is defined in the **Full Project Proposal**. The Full Project Proposal forms an integral part of this Agreement by reference only.

2.3 The Parties shall carry out the Project and their respective tasks under the Project in accordance with the conditions set out in the SMART Frame Agreement, the “REGULATIONS : Overview for SMART Project Proposers” as well as in this Agreement.

2.4 Provisions may be added to this Agreement to expand or clarify other aspects, provided that none of them contradicts any of the provisions of the SMART Frame Agreement, the “REGULATIONS: Overview for SMART Project Proposers” and this Agreement.

##### 

##### Article 3 COMING INTO FORCE - DURATION

* 1. This Agreement shall enter into force following its signature by all the Parties.
  2. This Agreement shall thereafter remain into force for the duration of the Project which is estimated at[\_\_\_\_\_\_\_]:

- Until the fulfilment or termination of the Projectand at the latest on [\_\_\_\_\_\_\_] and complete discharge of all obligations of the Parties under the Contract and/or under this Agreement as well as any amendment or extension thereof; or

- Until this Agreement is terminated under any cases under *Article 10*below;

Whichever occurs first.

#### Article 4 PROJECT MANAGEMENT

4.1 The Parties shall establish, within thirty calendar days after the signature of this Agreement, a Project Co-ordination Committee (PCC) composed of one representative of each of them. Each representative shall have one vote and may appoint a substitute to attend and vote at any meeting of the PCC.

4.2 The PCC shall be chaired by the Co-ordinator being also denominated “Project Leader” in the “REGULATIONS: Overview for SMART + Project Proposers”.

The Co-ordinator shall convene meetings of the PCC at least once every four-month and shall also convene meetings at any time upon written request of any Party in case of an emergency situation.

The Co-ordinator shall give each of the Party at least fifteen-calendar day notice in writing of such meetings or seven-calendar day notice, in case of an emergency situation.

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

Any decision required to be taken by the PCC may be taken in meetings via teleconference and/or via e-mail.

The Co-ordinator shall draft the minutes of each meeting to formalize in writing all decisions taken and shall dispatch them to all Parties without delay.

The minutes shall be considered as accepted by the other Parties if, within fifteen calendar-day from receipt thereof, none of them has objected in writing to the Co-ordinator.

4.3 The PCC shall be in charge of notably, in accordance with the rules laid down in the SMART Frame Agreement and in the “REGULATIONS: Overview for SMART + Project Proposers”:

1. making proposals to the Parties for the review and/or amendment of terms of this Agreement;
2. deciding to suspend all or part of the Project;
3. in case of default of a Party, agreeing on actions to be taken against the Defaulting Party (as defined in *Article 10*), and making proposals to the other Parties to assign the Defaulting Party's tasks, and if appropriate to agree upon a new entity to join the Project for that purpose;
4. deciding upon the entering into the Project of new Parties;
5. deciding upon major changes in the tasks assigned to the Parties and more generally in the Project itself and insure full compliance with provisions of the “REGULATIONS: Overview for SMART Project Proposers” applicable in case of amendments of a Project
6. deciding on technical roadmaps for the Project and prepare, under the responsibility of its Project Leader, the Technical Reports to be presented twice a year to SMART Association (according with the provisions of the “REGULATIONS: Overview for SMART Project Proposers”);
7. reviewing the selection of additional expertise (subcontractors);
8. without prejudice to the rules under Article 8, agreeing press releases and publications by the Parties.

The PCC, under the responsibility of its Project Leader, shall ensure that the present Project fully comply at all times with any rules laid down in the SMART Frame Agreement and in the “REGULATIONS: Overview for SMART Project Proposers”.

4.4 The decision-making process has been determined between the Parties and is as follows:

[\_\_\_\_\_\_\_\_\_\_\_]

##### 

##### Article 5 EXECUTION OF THE CO-OPERATION - SUBCONTRACTING

* 1. Without prejudice to any other obligations under this Agreement, the Parties shall take all necessary measures to perform, fulfil, promptly and in due time all their obligations so that the Project is carried out in accordance with the terms and conditions of the SMART Frame Agreement, **the “REGULATIONS**: Overview for SMART Project Proposers” **,** the Contract and this Agreement.
  2. The Parties shall provide the Co-ordinator with the deliverables, information, and reports, as the Co-ordinator requires in order to perform its duties under the “REGULATIONS: Overview for SMART Project Proposers” and this Agreement, as well as under the Contract.
  3. Each Party undertakes:

1. to notify the Co-ordinator and each of the other Parties of any delay in performance or of any event that may impact the Project;
2. to inform the Co-ordinator of relevant communications it receives from third parties in relation to the Project;
3. to ensure the accuracy of any information or materials it supplies to the other Parties and to promptly correct any error therein of which it is notified. The recipient Party shall be responsible for the use to which it puts such information and ma­terials;
4. not to use knowingly any proprietary rights of a third party for which such Party has not acquired the corresponding right of use and/or to grant licenses;
5. to act at all times in good faith and in a manner that reflects the good name, goodwill and reputation of the other Parties and in accordance with good business ethics;
6. to participate in a co-operative manner to the meetings of the PCC under this Agreement.
   1. The Parties shall ensure that the work to be performed, as identified in Annex A, can be carried out by them. However, where it is necessary to subcontract certain elements of the work to be carried out, this should be clearly identified in the Full Project Proposal. During the implementation of the Project, the Parties may subcontract other minor services, which do not represent core elements of the Project work, which cannot be directly assumed by them and where this proves necessary for the performance of their work under the Project.

##### Article 6 FINANCING

Each Party shall bear its own costs in connection with the carrying out of the Project, according to Annex C and to any decision of the PCC that can amend from time to time its Project Share, and will be solely responsible for its applications to obtain any subsidies therefore.

The Parties indeed recognize and agree that they are each responsible for the execution and financing of their contribution in the Project. In this regard, funding contracts, i.e. the “Contracts” are dealt with directly between each Party and its funding Public Authority

The Parties agree that each Contract negotiated by each Party shall fully comply with the terms of this Agreement, as well as with the rules of the SMART Frame Agreement and the “REGULATIONS: Overview for SMART Project Proposers”**.**

##### Article 7 CONFIDENTIALITY

7.1 During the term of the Project and for a period of five years thereafter, the Parties shall treat as confidential any information of whatsoever kind or nature and in whatever form in relation to the Project which is disclosed during the term of this Agreement. The information need not to be marked as “confidential” by the disclosing Party to fall within the coverage of this Agreement.

Accordingly, each Party undertakes that:

1. the receiving Party shall not use any such information for any purpose other than in accordance with the terms of this Agreement, and
2. the receiving Party shall not disclose any such confidential information to any third party except with the disclosing Party’s prior written consent, and
3. such information shall neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication have not been specifically authorized in writing by the disclosing Party.
4. the receiving Party shall return or destroy the confidential information received in any tangible form upon the first written request of the disclosing Party and to retain no copies or reproductions in whatever form. The receiving Party shall confirm that destruction to the requesting Party in writing. Ownership in all documents and/or other physical records or materials exchanged pursuant to this confidentiality undertaking shall remain with the disclosing Party.
5. If the Receiving Party is required by law (pursuant to legal proceedings, subpoena, or other similar process) to disclose any confidential information, the receiving Party shall promptly notify the disclosing Party in writing and cooperate with the disclosing Party so the disclosing Party may seek a protective order or other appropriate remedy.

It shall be at the discretion of the disclosing Party as to which of its information may be disclosed under this confidentiality undertaking.

Disclosure of confidential information pursuant to this confidentiality undertaking in no case shall be construed as granting to the Receiving party, expressly or implicitly, any license, proprietary right, title or interest whatsoever with respect to the confidential information.

7.2 No obligation of confidentiality shall apply to any such information:

1. has come into the public domain prior to, or after the disclosure thereof and in such case through no wrongful act of the receiving Party; or
2. is already known to the receiving Party, as evidenced by written documentation in the files of the receiving Party; or
3. has been lawfully received from a third party without restrictions or breach of this Agreement; or
4. has been or is published without violation of this Agreement; or
5. is independently developed in good faith by employees of the receiving Party who did not have access to the Confidential Information; or

7.3 The Parties shall impose the same obligations on their employees, who obtain knowledge of confidential information, as far as legally possible even for the time after the end or after the termination of employment.

7.4 The Parties shall also impose the same obligations on their Affiliates and subcontractors.

7.5 As well it is agreed and understood that the signature of a confidentiality agreement, in terms not less protective than the ones above, shall be a condition precedent to any third party to attend any meeting of the PCC.

7.6 Disclosure of information necessary because of the engagement of subcontractors, or for the application for patents, or other industrial property protection and in order to be able to develop or to manufacture and to have manufactured industrial products incorporating certain work results of this cooperation shall not constitute a breach of this Article.

7.7 Any parent company or affiliated company shall not be considered as third party provided such parent and/or affiliated company undertake to enter into obligations similar to the provisions of ***Articles 8, 9 and 10.***

7.8 The Parties agree to maintain in confidence any samples furnished by any of the other Parties under the program.

* 1. Any technical report, which includes the results, that is required to be submitted to a public financing Authority shall be submitted on the conditions of confidentiality at least to the extent imposed by such Authority.

7.10 The Agreement cancels and supersedes all prior understandings and undertakings of the Party relating to the Confidential Information exchanged or received in the framework of this Agreement pursuant to the Project.

##### Article 8 INTELLECTUAL PROPERTY RIGHTS

### 8.1 Ownership and protection of Knowledge

8.1.1 Knowledge shall be the property of the Party generating it.

8.1.2 Where the Knowledge Information is or incorporates or is intended to be or to incorporate a software technology, a software development or a software product, the Parties agree that each Party may take appropriate actions to protect Software Results developed by such Party under the Project by such rights as are available under such Party's national legal system including without limitation copyright or any other similar statutory right, and to protect such Software Results to the extent reasonably possible as proprietary information.

8.1.3 If, in the course of carrying out work on the Project, a joint invention, design or work is made (and at least two Parties are contributors), and if the features of such joint invention, design or work are such that it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining in force the protection of the relevant intellectual property right, the Parties concerned agree that they may jointly apply to obtain and/or maintain the relevant rights and shall strive to set up amongst themselves appropriate agreements in order to do so as well as in order to determine utilisation’ conditions of such joint invention by each Party to the appropriate separate agreement.

So long as any such rights are in force, the Parties concerned shall be entitled to use, without owing any financial compensation to or requiring the consent of the other Party concerned, and to license such rights, save as otherwise provided for in the appropriate separate agreement .

8.1.4 In the case where a Party (“Originator”) would decide in its sole discretion that it does not intend to seek adequate and effective protection of certain of its Knowledge from the Project, then, the Originator shall inform in writing the other Parties, through the Coordinator, and any Party interested in applying to obtain and maintain such protection shall advise the other Parties, including the Originator,through the Coordinator and in writing within one month of receipt of relevant notice. In the absence of reaction of the other Parties, this Party undertakes to negotiate in good faith with the Originator any appropriate agreement in order todetermine utilisation’s conditions of such Knowledge between this Party and the **Originator.**

In case several Parties are interested in so applying, they shall strive to set up amongst themselves and with the Originator appropriate agreements in order to do so as well as in order to determine utilisation’s conditions of such Knowledge by the interested Parties and **the Originator.**

The foregoing shall be without prejudice to the Access Rights of all Parties that will remain applicable in accordance with the Clause 8.4 on Access Rights and with the terms and conditions of any appropriate separate agreements negotiated between the interested Parties.

### 8.2 Publication of knowledge

8.2.1 A Party may not publish Knowledge generated by another Party or any Pre Existing Know How of such other Party, even if such Knowledge or Pre-Existing Know How is amalgamated with such Party’s Knowledge, without the other Party’s prior written approval.

For the avoidance of doubt, for the period of secrecy needed for a successful patent application, there cannot be any publication during such period without prior written approval of the Party owner of the Knowledge.

8.2.2 A Party shall provide the other Parties with a 30-day prior notice of any planned publication on its Knowledge and, if requested, with copy of relevant publication data. Adequate publication references shall be given in the publication.

Unless it has granted prior written publication approval, any Party may object to the publication within fifteen calendar days from receipt of the data, if it considers and can reasonably show that the protection of its own Knowledge could thereby be adversely affected.

Objection shall be made to the issuing Party, with a copy to all the other Parties. An objecting Party shall use its reasonable endeavours to make suggestions for modifications that would, if adopted, make the publication or communication possible.

### 

### Dissemination of Knowledge after the end of the Project

If dissemination of Knowledge does not adversely affect its protection or use and subject to legitimate interests, the Parties shall ensure further dissemination of their own Knowledge as provided under this Agreement.

### 

### 8.4 Access Rights in the scope of the Project or outside the scope of the Project

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

The Parties agree that Access Rights are granted on a non-exclusive and a non transferable basis.

The Parties also agree that, if not otherwise provided in this Agreement or granted by the owner of the Knowledge or Pre Existing Know-how in an appropriate separate agreement, the Access Rights shall not include the right to grant sub-licenses, except for the Affiliates.

8.4.2 **Access Rights in the scope of the Project:** The Parties agree that the Access Rights on the Pre-Existing Know-How and on the Knowledge needed for carrying out the Project shall be granted on a royalty-free basisonly for the purpose of the carrying out of the Project.

8.4.3 **Access Rights out of the scope of the Project for use of a Party’s own Knowledge**: the Party holding the Knowledge (and/or Pre-Existing Know-How) undertakes to negotiate in good faith with another Party, any appropriate separate agreement to organise Access Rights’ conditions of the latter to its Knowledge (and Pre-Existing Know-How)

* Save as otherwise provided for in this Agreement or in a separate agreement between the interested Parties, the Parties agree that the Access Rights on the Pre-Existing Know-How needed for Use of a Party’s own Knowledge shall be granted on fair and non-discriminatory market conditions. In any case, the Party holding the Pre-Existing Know-How undertakes to negotiate any access rights to its Pre-Existing Know-How and associated intellectual property rights, at conditions at least equivalent to the most favourable conditions negotiated with other partners and or co-contractors.

***[These conditions can be either negotiated in a separate agreement or in the present Agreement]***

* Save as otherwise provided for in this Agreement or in a separate agreement between the interested Parties, the Parties agree that the Access Rights on the Knowledge needed for Use of another Party’s own Knowledge shall be negotiated in good faith, at conditions at least equivalent to the most favourable conditions negotiated by the Party holding the Knowledge with other partners and or co-contractors.

***[These conditions can be either negotiated in a separate agreement or in the present Agreement]***

8.4.4 In the event that the Parties fail to commercially exploit their Knowledge within three years from the completion of the Project, the owners of any intellectual property rights in the Knowledge shall make such technology available for licensing to third parties, the benefits from such licensing being shared between the Parties to this Agreement on a basis which shall be **fair and reasonable** having regard to all the circumstances, including the relative financial, technical and commercial contributions made by the Parties to this Agreement.

8.4.5 Should a Party reasonably believe that, without Access Rights on another Party’s Pre-Existing Know-How or Knowledge, the performance of its own task for the Project or the Use of its own Knowledge resulting from the Project would be technically impossible or significantly delayed, such Party shall then promptly request in writing Access Rights from said other Party, identify the extent of the Access Rights and provide reasonable evidence on its needs. Any Party undertakes to negotiate in good faith the Access Rights’ conditions of any other Party requesting Access Rights, in the abovementioned scopes.

### 8.5 Affiliates Access Rights

Each Party hereby grants Access Rights to all Affiliates of the Parties as if such Affiliates were parties hereto, provided that such Affiliates fulfil all confidentiality and other obligations of the Parties under the Contract and this Agreement.

Upon a company not being an Affiliated Company of a Party to this Agreement, as per the definition of Affiliated Company of the “REGULATIONS : Overview for SMART Project Proposers” :

1. All Access Rights granted **to** such Affiliate in respect of Knowledge or Pre-existing Know-How shall lapse, provided however that, except as otherwise agreed by the relevant Parties, any Knowledge which has been incorporated into the products or services of said Affiliate or which has been amalgamated with said Affiliate's own information may continue to be used (exclusively in the manner it was used upon such date) by said Affiliate under a non exclusive license agreement to be negotiated with the relevant Party(ies), upon such ex Affiliate’s written request, provided however that no Legitimate Interests of such Party(ies) oppose the grant of such licenses.
2. All Access Rights granted **by** such Affiliate hereunder shall continue in full force and effect.

### 8.6 Software

8.6.1 The Parties agree that Access Rights (under all the rules herein defined) when applying to Software do not comprise access to Source Code but only to Object Code, unless otherwise expressly provided herein below.

8.6.2 For Software, which is either Pre-Existing Know-How or Knowledge, the Parties also agree that they shall have Limited Source Code Access for carrying out their tasks under the Project but they shall not have any access to Source Code for Use.

* + 1. Limited Source Code Access shall mean Source Code access (i.e. access to Source Code (as available from the Contractor granting such access) and also to Software Documentation), provided in any case that an API including Software Documentation for the respective Software is not available; and also that use of the Software in Object Code form alone is not meaningful.

***[To be adapted to each PCA: Parties could put in place software licence agreements to organize use of the Software being either Pre-Existing Know-How or Knowledge (either individual or joint Knowledge), for the use in the scope or outside the scope of the Project]***

#### Article 9 WARRANTY / LIABILITY

9.1 In supplying any information or materials to any of the other Parties each Party undertakes to use all reasonable endeavours to ensure the accuracy thereof and (in the event of any error therein) promptly on being notified to correct the same, but the supplying Party shall be under no further obligation or liability in respect of the same, and no warranty condition or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or fitness for purpose of such information or materials. The recipient Party shall therefore in any event, be entirely responsible for any use whatsoever of such information or materials.

9.2 No Party shall be responsible to another for indirect or consequential loss or damages such as but not limited to loss of profit, revenue or loss of contracts.

* 1. Each Party shall be solely liable for any loss incurred by, or damage or injury to third parties resulting from the implementation by such Party of the Project, in accordance with any applicable law.

9.4 Each Party shall remain fully responsible for the performance of any part of its Work Package, or for the performance of its obligations by any Subcontractor.

Therefore said Party shall ensure that (a) such subcontracts fully comply with the requirements of the SMART Frame Agreement, the “REGULATIONS: Overview for SMART Project Proposers” as well as with requirements of this Agreement; (b) the other Parties’ Access Rights (as described in Clause 8.4 of the present Agreement) are fully preserved; and (c) the third party shall have no access to any other Party’s Knowledge or Pre-Existing Know-How without the latter’s prior written consent and that such subcontracts fully comply in any case with the present Agreement and appropriate separate agreement(s) negotiated by said Party for Access Rights to any other Party’s Knowledge or Pre-Existing Know-How.

9.5 Subject to cases of *force majeure* and to any applicable legislation, the Parties shall use reasonable endeavours to achieve the results aimed at by the SMART Project [*and shall carry it out jointly and severally*] OR *[severally and not jointly].*

***[This principle of liability is to be specifically negotiated between the parties and could be customized given Project Share and/or Project Participation of each Party] it could be stated that each Party remain fully responsible for the performance of its own Work Package, subject always to any applicable law].***

9.6 In any case, each Party obtaining necessary financing from its funding Public Authority, shall be individually and solely liable towards the SMART + Association for the payment of its Project Fees, as fully described in clause 9 of the “REGULATIONS: Overview for SMART Project Proposers”.

#### Article 10 TERMINATION – RIGHT TO WITHDRAW

* 1. This Agreement expires automatically with the fulfilment or termination of the Project and complete discharge of all obligations of the Parties under the Contract and/or this Agreement.
  2. This Agreement shall automatically terminate without any further demand and without liability of any Party to the others upon the first to occur of the following events:

1. No SMART label awarded to the Project;
2. Cancellation of the Project;
3. Should any Party enter into bankruptcy or liquidation or any other arrangement for the benefit of its creditors, if the other Parties decide, subject to approval by the SMART Board, to terminate the Project.
   1. In the event of a breach by a Party ("the Defaulting Party") of its obligations under this Agreement or the Contract which is irremediable or which is not remedied within sixty calendar days of a written notice from the Co-ordinator requiring that such breach be remedied, then the other Parties may jointly decide to terminate this Agreement with respect to the Defaulting Party following a minimum thirty calendar day prior written notice by the Co-ordinator.
   2. Such termination shall take place with respect to the Defaulting Party, who shall be deemed to have agreed to the termination of this Agreement in respect of its participation therein, provided always that:

a) any and all Access Rights granted **to** the Defaulting Party and its Affiliates by the other Parties under this Agreement shall cease immediately ; but any and all Access Rights granted **by** the Defaulting Party to the other Parties and their Affiliates under this Agreement shall remain in full force and effect ;

b) the tasks of the Defaulting Party shall be assigned to one or several companies and/or entities which are chosen by the other Parties and which agree to be bound by the terms of Agreement. The preference shall be granted to one or more of the remaining Parties;

1. the Defaulting Party shall:
   1. assume all reasonable direct cost increase (if any) resulting from the assignment referred to in b) above in comparison with the costs of the tasks of the Defaulting Party as specified in Annex A and
   2. be liable for any so resulting additional direct cost incurred by the other Parties, up to a total amount which shall not exceed twice the Defaulting Party's Project Share, and any excess amount shall be shared between the Parties (including the Defaulting Party) pro rata to their Project Shares at the time of exclusion of the Defaulting Party.
   3. The provisions of Article 10.4 shall also apply in the events that:

(a) any Party’s participation in the Project is terminated by the SMART Board, without prejudice to any other rights of the other Parties;

* 1. any Party enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors and the other Parties decide to terminate this Agreement with respect to that Party and to take over the fulfilment of such Party's obligations**.**
  2. A Party is entitled to withdraw from the Project or to otherwise request the termination of its participation in the Project having obtained the prior written consent of the other Parties (such consent not to be unreasonably withheld).
  3. After the entry into force of this Agreement any third party would acquire, directly or indirectly, the ownership or control of more than 50% of the voting shares of a Party of this Agreement, the other Parties may unanimously decide to terminate this Agreement with respect to such Party, the provisions of *Article 10.4* being correspondingly applicable to such Party with the exception of *Article 10.4 c*).

Such decision must be taken within sixty calendar days from the date such take-over has been made public. If the other Parties would not agree *unanimously* to such termination as aforesaid, any Party or Parties may withdraw from this Agreement.

10.6 In case of takeover of any Party’s tasks all rights and obligations under the Contract and this Agreement shall in good faith be redistributed among the remaining Parties.

10.7 Neither Party shall by reason of withdrawal or termination be relieved from:

* + 1. its responsibilities under this Agreement or the Contract in respect of that part of that Party's tasks which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or
    2. any of its obligations or liabilities ari­sing out of such withdrawal or termination.

10.8 The provisions of the Articles of this Agreement relating to liability, confidentiality, intellectual property rights and publications shall survive the term or termination of this Agreement for any reason whatsoever to the extent needed to enable the Parties to pursue the remedies and benefits provided for in those Articles.

For the avoidance of doubt, termination or withdrawal shall not affect any rights or obligations incurred prior to the date of the termination.

##### Article 11 FORCE MAJEURE

11.1 Force Majeure shall mean any act, event or condition beyond the reasonable control of a Party that was not reasonably foreseeable at the time of execution of this Agreement and is not avoidable under normal circumstances, including but not limited to acts of God, war, riots, acts of Government or any state or political subdivision thereof, fires, floods, explosions of other catastrophes, labour disturbances, freight embargoes or material shortages.

* 1. No Party shall be liable for any failure to perform or any delay in performing any of its obligations under this Agreement if such failure or delay arises out of Force Majeure. The Party facing an event of Force Majeure shall promptly notify the other Parties and shall use its reasonable endeavours to remedy any default or delay occasioned thereby forthwith upon such event ceasing to apply.
  2. In case of frustration of this Agreement or if the fulfilment of substantial provisions of this Agreement is affected by Force Majeure, the Parties shall endeavour to adapt the Agreement to the new situation. In the event that the Parties do not agree upon such an adaptation within a period of three months, the Agreement shall, as far as such Party is concerned, be terminated without notice by the Party that cannot reasonably be expected to fulfil the Agreement.

##### Article 12

##### INSURANCE

Each Party undertakes to enter into all necessary insurance policies in order to cover all risks (including environmental risks) arising out of the performance of the tasks allocated to it pursuant to Annex A and/or B (or any decision of the PCC).

##### Article 13

##### LANGUAGE

This Agreement is drawn up in English which language shall govern all documents, notices and meetings for its application and/or extension or in any other way relative thereto together with all reports, communications, correspondence and technical work between the Parties shall be in English.

##### Article 14 NOTICES

Any notice to be given under this Agreement shall require documents duly signed and personally delivered or delivered by mail. They shall be addressed to the attention of the following recipients of the Parties or to such other address and recipient as a Party may designate in respect of that Party by written notice to the other Parties:

- \_\_\_\_\_\_\_\_\_\_ nominates as contact for technical matters  
 \_\_\_\_\_\_\_\_\_\_, Dept. \_\_\_\_\_\_\_\_\_\_

and as contact for administrative matters   
. \_\_\_\_\_\_\_\_\_\_, Dept. \_\_\_\_\_\_\_\_\_\_

- \_\_\_\_\_\_\_\_\_\_ nominates as contact for technical matters  
. \_\_\_\_\_\_\_\_\_\_, Dept. \_\_\_\_\_\_\_\_\_\_

and as contact for financial matters

 \_\_\_\_\_\_\_\_\_\_, Dept. \_\_\_\_\_\_\_\_\_\_

##### Article 15 ANNEXES, CONFLICTS AND INCONSISTENCIES

The Annexes to this Agreement, which are an integral part thereof, are:

Annex A (Project Work-plan)

Annex B (Project Deliverables)

Annex C (Project Costs Breakdown)

In the event of conflict or inconsistency between any provision contained in the body of this Agreement and any provision contained in its Annexes, the provisions contained in this Agreement shall prevail.

##### Article 16 ASSIGNMENTS - AMENDMENTS

15.1 Any rights or obligations of the Parties arising from this Agreement may not be assigned or transferred in all or in part to any third party without the other Parties’ prior written approval and such consent shall not be unreasonably withheld if to an Affiliate of the assigning Party.

15.2 All amendments and modifications to this Agreement require documents duly signed by all Parties.

##### Article 17 SEVERABILITY

Should any provision of this Agreement prove to be invalid or incapable of fulfilment, or subsequently become invalid or incapable of fulfilment, whether in whole or in part, this shall not affect the validity of the remaining provisions of this Agreement. In such a case, the Parties shall be entitled to demand that a valid and practicable provision be negotiated which most nearly fulfils the purpose of the invalid or impracticable provision.

##### Article 18 RESTRICTIONS

The activities contemplated by this Agreement are subject to any mandatory rules or regulations that may be applicable in the countries in which the Parties’ activities occur. Nothing in this Agreement shall be deemed to be an agreement to violate such rules or regulations. To the extent any such rules or regulations forbid or restrict any of the activities contemplated hereunder, the Parties agree, subject to Article 16, that this Agreement shall not obligate either Party to conduct such activity.

##### Article 19 APPLICABLE LAW

This Consortium Agreement shall be construed according to and governed by the law of [\_\_\_\_\_\_\_].

##### Article 20 SETTLEMENT OF DISPUTES

19.1 In case of dispute or difference between two or among several Parties arising out of or in connection with this Agreement, the Parties shall first endeavour to settle it amicably.

* 1. All disputes or differences arising in connection with this Agreement*,* which cannot be settled amicably, shall:
  2. [either be subject to the jurisdiction of the appropriate national court of the Party who would be the prospective defendant in legal action on the issue]; OR
  3. [be settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris by one or more arbitrators to be appointed under the terms of those Rules. In any arbitration in which there are three arbitrators, the Chairman shall be of juridical education.

19.3 If the Arbitrators are not appointed within thirty calendar-days from the request for arbitration by a disputing Party, either disputing Party may ask the International Chamber of Commerce for the appointment of the Arbitrators.

19.4 The award of the Arbitrator will be final and binding upon the Parties concerned. The Arbitrator shall determine by whom and to whom the costs of arbitration shall be paid.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement in … original copies.

Authorised to sign on behalf of

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of

By (signature):

Name (block letters):

Title:

Date:

ANNEX A

Project Work-plan

ANNEX B

**Project Deliverables - Work Packages**

[Indicative list of what could be found in this Annex]

Responsible of each Work Package

Technical description of each Work Package

Duration and integration of each Work Package in the whole Project

Manpower/resources used for each Work Package

ANNEX C

**Project Costs Breakdown**