

**CONSORTIUM AGREEMENT  
FOR SMALL OR MEDIUM-SCALE  
FOCUSED RESEARCH PROJECTS  
IN THE FP7**

**Project “EYESHOTS”  
no. ICT- 217077**

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**CONSORTIUM AGREEMENT**

THIS CONSORTIUM AGREEMENT is based upon REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) hereinafter referred to as Rules for Participation and the EC Grant Agreement, adopted on 10 April 2007 hereinafter referred to as the Grant Agreement and Annex II adopted on 10 April 2007 hereinafter referred to as Annex II of the Grant Agreement and is made on 13 November 2007, hereinafter referred to as “Effective Date”

BETWEEN:

- UNIVERSITA' DEGLI STUDI DI GENOVA,  
the Coordinator
- WESTFAELISCHE WILHELMS-UNIVERSITAET MUENSTER,
- ALMA MATER STUDIORUM - UNIVERSITA DI BOLOGNA,
- UNIVERSITAT JAUME I DE CASTELLON,
- KATHOLIEKE UNIVERSITEIT LEUVEN

hereinafter, jointly or individually, referred to as “Parties” or “Party”

relating to the Project entitled

“Heterogeneous 3-D Perception across Visual Fragments”

in short

EYESHOTS

hereinafter referred to as “Project”

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a Proposal for the Project to the European Commission as part of the Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration Activities under the funding scheme of “Collaborative Project”.

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the Grant Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

## **Section 1: Definitions**

### **1.1 Definitions**

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules for Participation or in the Grant Agreement including its Annexes without the need to replicate said terms herein.

### **1.2 Additional Definitions**

#### **“Defaulting Party”**

Defaulting Party means a Party which the EYESHOTS Council (see Annex I - B2.1) has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Article 4.2 of this Consortium Agreement.

#### **“Needed”**

Needed means:

- For the implementation of the Project:

Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources.

- For Use of own Foreground:

Access Rights are Needed if, without the grant of such Access Rights, the Use of own Foreground would be technically or legally impossible.

#### **“Software”**

Software means sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression.

## **Section 2: Purpose**

The purpose of this Consortium Agreement is to specify with respect to the Project the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the Project and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.

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

### **3.1 Entry into force**

An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

### **3.2 Duration and termination**

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

However, this Consortium Agreement may be terminated in accordance with the terms of this Consortium Agreement and Annex II of the Grant Agreement (Grant Agreement Article II.37. and II.38.).

### **3.3 Survival of rights and obligations**

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

Termination shall not affect any rights or obligations of a Party leaving the Consortium (see Section 9.7) incurred prior to the date of termination, unless otherwise agreed between the Council and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

## **Section 4: Responsibilities of Parties**

### **4.1 General principles**

Each Party undertakes to take part in the efficient implementation of the Project, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the Grant Agreement and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by most of European civil law systems.

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

Each Party shall provide promptly all information reasonably required by a Consortium Body (see Annex I - B2.1) or by the Coordinator to carry out its tasks.

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

### **4.2 Breach**

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

If this does not occur, the Council may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof.

## **Section 5: Liability towards each other**

### **5.1 No warranties**

In respect of any information or materials supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

The recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials. The providing Party should in any case inform promptly about restrictions regarding the use of information and materials supplied.

### **5.2 Limitations of contractual liability**

No Party shall be responsible to any other Party for punitive damages, indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts.

A Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's share of the total costs of the Project.

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

The terms of this Consortium Agreement shall not be construed to amend or limit any non-contractual liability.

### **5.3 Damage caused to third parties**

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations under this Consortium Agreement or from its use of Foreground or Background.

### **5.4 Force Majeure**

No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure. Each Party will notify the competent Consortium Bodies of any Force Majeure as soon as possible. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

## **Section 6: Governance structure**

### **6.1 General structure**

The organisational structure of the Consortium shall comprise the following Consortium Bodies (see Annex I - B2.1):

- (a) **Council** as the ultimate decision-making body of the Consortium;
- (b) **Executive Management Committee** concerned with the *administrative* aspects of the day-to-day scientific, technical and financial management;
- (c) **Technical Management Committee** concerned with the management of the scientific and technical activities (delegated to the Coordinator and the Technical research Manager who will be assisted by the Work package Leaders and their deputies).

## **6.2 General operational procedures for all Consortium Bodies**

### **6.2.1 Representation in meetings**

Any member of a Consortium Body:

should be present or represented at any meeting of such Consortium Body; may appoint a substitute or a proxy to attend and vote at any meeting; and shall participate in a cooperative manner in the meetings.

### **6.2.2 Preparation and organisation of meetings**

Convening meetings:

The chairperson of a Consortium Body shall convene meetings of that Consortium Body.

	Ordinary meeting	Extraordinary meeting
Council	At least once a year	At any time upon written request of the Executive Management Committee or 1/3 of the members of the Council
Executive Management Committee	At least quarterly	At any time upon written request of any member of the Executive Management Committee
Technical Management Committee	At least every 6 months	At any time upon written request of any member of the Technical Management Committee

Notice of a meeting:

The chairperson of a Consortium Body shall give notice in writing of a meeting to each member of that Consortium Body as soon as possible and within the minimum number of days preceding the meeting.

	Ordinary meeting	Extraordinary meeting
Council	45 calendar days	15 calendar days
Executive Management Committee	30 calendar days	7 calendar days
Technical Management Committee	30 calendar days	7 calendar days



Sending the agenda:

The chairperson of a Consortium Body shall prepare and send each member of that Consortium Body a written agenda within the minimum number of days preceding the meeting:

Council	15 calendar days
Executive Management Committee	7 calendar days
Technical Management Committee	7 calendar days

Adding agenda items:

Any agenda item requiring a decision by the members of a Consortium Body must be identified as such on the agenda.

Any member of a Consortium Body may add an item to the original agenda by written notification to all of the other members of that Consortium Body within the minimum number of days preceding the meeting.

Council	7 calendar days
Executive Management Committee	2 calendar days
Technical Management Committee	2 calendar days

During a meeting the members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.

Any decision may also be taken without a meeting by circulating to all members of the Consortium Body a written document which is then signed by the defined majority (see Article 6.2.3.) of all members of the Consortium Body.

Meetings of each Consortium Body can also be held by teleconference or other telecommunication means.

Decisions may only be executed once the relevant part of the Minutes is accepted according to Article 6.2.5.

### **6.2.3 Voting rules and quorum**

Each Consortium Body shall not deliberate and decide validly unless a quorum of two-thirds (2/3) of its members are present or represented.

Each member of a Consortium Body present or represented in the meeting shall have one vote.

Defaulting Party members may not vote.

Decisions shall be taken by a majority of two-thirds (2/3) of the votes.

### **6.2.4 Veto rights**

A member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of a Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.

When the decision is foreseen on the original agenda, a member may veto 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 veto such decision during the meeting and within 15 days after the Minutes of the meeting are sent.

In case of exercise of veto, the members of the related Consortium Body shall make every effort to resolve the matter who occasioned the veto to the general satisfaction of all its members.

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

A Party requesting to leave the Consortium may not veto decisions relating thereto.

#### **6.2.5 Minutes of meetings**

The chairperson of a Consortium Body shall produce written Minutes of each meeting which shall be the formal record of all decisions taken. He shall send the draft to all of its members within 10 calendar days of the meeting.

The Minutes shall be considered as accepted if, within 15 calendar days from sending, no member has objected in writing to the chairperson with respect to the accuracy of the draft of the Minutes.

The accepted Minutes shall be sent to all of the members of the Consortium Body and the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

### **6.3 Specific operational procedures for the Consortium Bodies**

In addition to the rules described in Article 6.2, the following rules apply:

#### **6.3.1 Council**

##### **6.3.1.1 Members**

The Council shall consist of one representative of each Party (hereinafter Council Member). Each Council Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 6.3.1.2. of this Consortium Agreement.

The Coordinator shall chair all meetings of the Council, unless decided otherwise in a meeting of the Council.

For the avoidance of doubt, any change to the Consortium Agreement or to Annex I to the Grant Agreement shall only be legally binding between the Parties if agreed in writing and executed by the duly authorized signatories of each Party.

This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Article 11.8.

##### **6.3.1.2 Decisions**

The Council shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein.

The following decisions shall be taken by the Council:

Content and finances:

Proposals to the Parties for changes to the Consortium Agreement, or to Annex I of the Grant Agreement to be submitted to the duly authorized signatories of each Party and the European Commission for approval.

Evolution of the Consortium:

- Withdrawal of a Party from the Consortium and the approval of the settlement on the modalities and conditions of the withdrawal;
- Declaration of a Party to be a Defaulting Party;
- Corrective measures to be required from a Defaulting Party;
- Termination of a Defaulting Party's participation in the Consortium and measures relating thereto;
- Proposal to the European Commission for a change of the Coordinator;
- Suspension of all or part of the Project.

Appointments

Annex I of Grant Agreement specifies the appointment of the Consortium Bodies, as agreed upon by the Parties when they submitted and negotiated the proposal.

Changes in these appointments will be decided by the Council.

### **6.3.2 Executive Management Committee**

#### **6.3.2.1 Members**

The Executive Management Committee shall consist of the Coordinator and Scientific Manager, the Technical Research Manager, and the Administrative Manager.

#### **6.3.2.2 Decisions**

The Executive management level will be concerned with the administrative aspects of the day-to-day scientific, technical and financial management. Such as:

Scientific: Publication coordination in shared papers, workshop planning, advising of PhD student cooperations, coordination of mobility and training, etc.

Technical: Technology transfer from Work Packages results to industrial applications; IPR handling.

Administrative: Reporting and financial management.

### **6.3.3 Technical Management Committee**

#### **6.3.3.1 Members**

The Technical Management Committee shall consist of the Coordinator, the Technical research Manager and all Work package Leaders, as specified in the Annex 1 of the Grant Agreement, or modified by the Council (hereinafter Technical Members).

The Coordinator shall chair all meetings of the Technical Management Committee, unless decided otherwise.

#### **6.3.3.2 Minutes of meetings**

Minutes of Technical Management Committee meetings, once accepted, shall be sent by the Coordinator to the Council Members for information.

**6.3.3.3 Tasks**

The Technical Management Committee shall prepare the meetings, propose decisions and items for the agenda of the Council according to Article 6.3.1.2.

It shall seek a consensus among the Parties.

The Technical Management Committee shall be responsible for the proper execution and implementation of the decisions of the Council.

The Technical Management Committee shall monitor the effective and efficient implementation of the Project. In particular with regard to:

- the timely delivery of reports and Work package results;
- formulating an implementation plan for the activities of the Work packages for the future period;
- alerting the Council in case of delay in the performance of the Work package or in case of breach of responsibilities of any Party under said Work package;
- analysing and documenting, at the request of the Council, a presumed breach of responsibilities of a Party under the Work package and preparing a proposal of remedies to the Council;
- deciding upon any exchange of tasks between the Parties in a Work package when such exchange has no impact beyond the scope of the Work package and its budget.

In addition, the Technical Management Committee shall collect information at least every 6 months on the progress of the Project, examine that information to assess the compliance of the Project with the Description of work.

The Technical Management Committee shall:

- initiate, coordinate and have organised the Work package(s);
- support the Coordinator in preparing meetings with the European Commission and in preparing related data and deliverables;
- prepare the content and timing of press releases and joint publications by the Consortium or proposed by the European Commission in respect of the procedures of the Grant Agreement Article II 30.3.

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In the case of abolished tasks as a result of a decision of the Council, the Technical Management Committee shall advise the Council on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

**6.3.3.4 Work Package Leader**

The Work package Leader shall have the following functions:

- communicating any plans, deliverables, documents and information connected with the Work package between its members and, if relevant, to the Consortium Bodies;
- submitting the implementation plan of the Work package to the Technical Management Committee for review;
- coordinating on a day-to-day basis the progress of the technical work under the Work package;
- following up decisions made by Consortium Bodies insofar as they affect the Work package;
- advising the Coordinator of any discrepancy with the Description of Work, including any delay in delivery.

#### **6.4 Coordinator**

The Coordinator shall be the intermediary between the Parties and the European Commission and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations;
- keeping the address list of members and other contact persons updated and available;
- collecting, reviewing to verify consistency and submitting reports and other deliverables (including financial statements and related certifications) to the European Commission;
- transmitting documents and information connected with the Project, including copies of Accession documents and changes of contact information to and between Work package Leaders, as appropriate, and any other Parties concerned;
- administering the Community financial contribution and fulfilling the financial tasks described in Article 7.3;
- providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

If the Coordinator fails in its coordination tasks, the Council may propose to the European Commission to change the Coordinator.

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

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

### **Section 7: Financial provisions**

#### **7.1 General Principles**

##### **7.1.1 Distribution of the Financial Contribution**

The financial contribution of the European Commission to the Project shall be distributed by the Coordinator according to:

- *the overall budget breakdown for the project as included in the Annex I;*
- *the approval of reports by the European Commission;*
- *the provisions of payment in **Article 7.2.***

##### **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 with respect to the Project towards the European Commission. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the European Commission.

##### **7.1.3 Financial Consequences for a leaving Party**

A Party leaving the Consortium shall refund all advances paid to it except the amount of expended eligible costs accepted by the European Commission.

Furthermore a Defaulting Party shall, within the limits specified in Article 5.2 of this Consortium Agreement, bear any additional costs occurring to the other Parties in order to perform its and their tasks.

## **7.2 Payments**

Payments to Parties are the exclusive tasks of the Coordinator.

In particular, the Coordinator shall:

- *notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references;*
- *perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts.*

All payments shall be made without undue delay by the Coordinator after receipt of funds from the European Commission **and not later than 30 days after receipt.**

The Coordinator is entitled to withhold any advances either due to a Defaulting Party or to a Beneficiary not being a Party.

The Coordinator is entitled to recover any advances already paid to a Defaulting Party.

## **Section 8: Foreground**

Regarding Foreground, Grant Agreement Article II.26. - Article II.29. shall apply with the following additions:

### **8.1 Joint ownership**

#### **8.1.1 Use of jointly owned Foreground**

In case of joint ownership of Foreground, each of the joint owners shall in respect of the jointly owned Foreground and resulting patents, patent applications and other intellectual property rights protecting such jointly owned Foreground be entitled:

- a) to use it for internal or all research purposes; and/or
- b) to commercially exploit it; and/or
- c) to grant non-exclusive licenses to third parties (with the right to grant sublicences and for the sublicensee to grant further sublicences).

For b) and c) above, the following preliminary conditions shall apply:

- (i) at least 45 calendar days notice must be given to the other joint owner(s) prior to any commercial exploitation or grant of license; and
- ii) fair and reasonable compensation must be agreed with and provided to the other joint owner(s) prior to any commercial exploitation or grant of license, unless expressly agreed otherwise by the other joint owner(s).

The obligation of a joint owner to notify the other joint owner(s) and to provide fair and reasonable compensation to the other joint owner(s) in the event of commercial exploitation of and/or grant of license on jointly owned Foreground shall lapse 2 years after the end of the Project. After such date each of the joint owners shall be free to use jointly owned Foreground, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

The obligation of a joint owner to notify the other joint owner(s) and to provide fair and reasonable compensation to the other joint owner(s) in the event of commercial exploitation of and/or grant of license on patents, patent applications and other intellectual property rights protecting jointly owned Foreground shall lapse after the lifetime of the respective protected intellectual property right. After such date each of the joint owners shall be free to use the intellectual property rights, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

Notwithstanding the foregoing, the joint owners shall jointly agree in advance on any intellectual property protection measures for any jointly owned Foreground as further set out in Article 8.1.2.

### **8.1.2 Protection of jointly owned Foreground**

a) All patents and other registered intellectual property rights issued on the jointly owned Foreground, and any other intellectual property rights protecting such Foreground, shall be jointly owned by the joint owners of such Foreground.

b) Within a reasonable period following creation of any jointly owned Foreground, the joint owners shall enter into good faith discussions in order to agree on an appropriate course of action for filing applications for patent protection or other protection, including the decision as to which joint owner is to be entrusted with the preparation, filing and prosecution of such applications and in which countries or territories such applications are to be filed. Except for any priority applications, the filing of any applications for patents or other intellectual property rights on jointly owned Foreground shall require mutual agreement between the joint owners (but excluding any joint owner(s) who choose(s) pursuant to paragraph c) below not to contribute to the cost of such application). All external costs related to applications for patent protection or other protection resulting from such applications and the fees for maintaining such protection shall be shared equally between the joint owners, subject to paragraph c) below.

c) If and when a joint owner decides not to contribute, or not to continue its contribution, as the case may be, to the costs of application for or maintenance of patent or other intellectual property rights protection for the jointly owned Foreground, for one or more countries or territories, it shall be entitled not to contribute, or to discontinue its contribution, provided however that:

- (i) it shall promptly notify the other joint owner(s) in writing of its decision;
- (ii) it shall forthwith relinquish all its title to and interest in such jointly owned patents, patent applications or other registered intellectual property rights protecting such Foreground for the countries or territories concerned to the other owner(s) who contribute or continue their contribution, as the case may be, to such costs in accordance with paragraph b) above; and
- (iii) it shall lose its rights under Section 8.1.1 above with respect to such jointly owned patents, patent applications or other registered intellectual property rights for the countries or territories concerned as of the moment of notification, but subject, however, to the retention of a non-transferable, non-exclusive, royalty-free and fully paid-up licence, without the right to grant sublicenses, for the lifetime of such jointly owned patents, patent applications or other registered intellectual property rights for the countries or territories

concerned in favour of and for internal or all research purposes of] the relinquishing joint owner.

d) Each joint owner of patents or patent applications or other intellectual property rights protecting such jointly owned Foreground shall have the right to bring an action for infringement of any such jointly owned intellectual property rights only with the consent of the other owner(s). Such consent may only be withheld by another joint owner who demonstrates that the proposed infringement action would be prejudicial to its commercial interests.

## **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 Grant Agreement.

The time limit to give a prior notice of any Dissemination activity shall be 30 days. The time limit for a Party to object on grounds stated in Article II.30 of the Grant Agreement is 15 days.

The Party objecting a publication has to show that its legitimate interests will suffer disproportionately great harm and shall include a request for necessary modifications. In case the objection is caused by the intention to file a patent application, Parties agree that the objecting Party shall have up to 12 months for doing so from the date of receipt of the first notice of the publication.

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

For the avoidance of doubt, a Party may not publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the 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 defence of any dissertation or thesis for a degree which includes their Foreground or Background. However, confidentiality and publication clauses have to be respected.

### **8.2.4 Use of names, logos or trademarks**

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

## **Section 9: Access Rights**

### **9.1 Background covered**

The Parties shall identify in Attachment 3 the Background made available to other Parties, to which they are ready to grant Access Rights, subject to the provisions of this Consortium Agreement and the Grant Agreement. Such identification may be done by:

- naming the Party



- and by subject matter.

The owning Party may add further Background to Attachment 3 during the Project by written notice. However only the Council can permit a Party to withdraw any of the Background from Attachment 3.

The Parties agree that all Background not explicitly specified in Attachment 3 is explicitly excluded from Access Rights. They agree, however, to negotiate in good faith additions to Attachment 3 if a Party asks them to do so and those are needed. For the avoidance of doubt, the owner is under no obligation to agree to additions of his Background to Attachment 3.

In addition, if a Party wishes to exclude specific Background, it shall list such Background in the Attachment 4. The owning Party may withdraw any of its Background from Attachment 4 during the Project by written notice.

However, only the Council can permit a Party to add Background to Attachment 4.

## **9.2 General Principles**

Each Party shall implement its tasks in accordance with the Description of Work and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party property rights.

As provided in the Grant Agreement Article II.32.3, Parties shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction that might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Project).

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

Access Rights shall be free of any administrative transfer costs.

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

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

All Access Rights shall be granted upon written request.

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

The requesting Party must show that the Access Rights are Needed.

## **9.3 Access Rights for implementation**

Access Rights to Foreground and Background Needed for the execution of the own work of a Party under the Project shall be granted on a royalty-free basis.

#### **9.4 Access Rights for Use**

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

A third party shall not be granted direct Access to Background Foreground generated by other Parties unless those Parties explicitly agree to it.

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

#### **9.5 Additional Access Rights**

For the avoidance of doubt any grant of Access Rights not covered by this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

#### **9.6 Access Rights for Parties entering or leaving the Consortium**

##### **9.6.1 New Parties entering the Consortium**

All Foreground developed before the accession of the new Party shall be considered to be Background with regard to said new Party.

##### **9.6.2 Parties leaving the Consortium**

###### **9.6.2.1 Access Rights granted to a leaving Party**

###### **9.6.2.1.1 Defaulting Parties**

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 Council to terminate its participation in the Consortium.

###### **9.6.2.1.2 Non-defaulting Parties**

A Party leaving voluntarily and with the other Parties' consent 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.

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

Any Party leaving the Project shall continue to grant Access Rights pursuant to the Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

#### **9.7 Specific Provisions for Access Rights to Software**

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

Parties' Access Rights to Software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights. In any case, the form of such Software have to allow the execution of the own work of the Parties under the Project.

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

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 at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of 5 years after the end of the Project:

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

The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.

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

- the Confidential Information becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or the Confidential Information was already known to the Recipient prior to disclosure.

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

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

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

- notify the Disclosing Party, and
- comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

Disclosure of Confidential information according to this section 10 shall not constitute a breach of confidentiality obligations.

The confidentiality obligations under this Consortium Agreement and the Grant Agreement shall not prevent the communication of Confidential Information to the European Commission.

## **Section 11: Miscellaneous**

### **11.1 Attachments, inconsistencies and severability**

This Consortium Agreement consists of this body text and

- Attachment 1 (initial list of members and other contact persons).
- Attachment 2 (Agreement for the Transfer of Material).
- Attachment 3 (Background included for Access Rights).
- Attachment 4 (Background excluded from Access Rights).

In case this Consortium Agreement is in conflict with the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the appendices and the body text of this Consortium Agreement, the latter shall prevail.

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**

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator based on the initial list of members and other contact persons in [Attachment 1].

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all concerned.

**Formal notices:**

If it is required in this Consortium Agreement that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and sent by mail with recorded delivery or telefax with receipt acknowledgement, or e-mail with acknowledgement of receipt.

**Other communication:**

Other communication between the Parties may be effected by e-mail.

Concerning the communication from the Coordinator regarding actions to be undertaken by the Parties, the following procedure should be followed to guarantee that the e-mail communication is arrived and that proper consequent action is undertaken by the recipient Parties: an explicit statement in the e-mail reply should be provided with indication of how and when the communicated deadlines will be met.

**11.4 Assignment and Amendments**

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

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

**11.5 Mandatory statutory law**

Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

**11.6 Language**

This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings and processes relative thereto.

**11.7 Applicable law**

This Consortium Agreement and all clauses in the Grant Agreement affecting the rights and obligations between the Parties shall be construed in accordance with and governed by the laws of Luxembourg.

**11.8 Settlement of disputes**

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

The place of arbitration shall be Luxembourg if not otherwise agreed by the conflicting Parties.

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

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

## **Section 12: Signatures**

AS WITNESS:

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

Authorised to sign on behalf of

**UNIVERSITA' DEGLI STUDI DI GENOVA, (Coordinator)**

Signature

Prof. Daniele Caviglia

Director of Department of Biophysical and Electronic Engineering

Authorised to sign on behalf of

**WESTFAELISCHE WILHELMS-UNIVERSITAET MUENSTER,**

Signature

Dr. Katharina Steinberg

Financial Officer – Department of Financial Affairs

Signature

Karl-Heinz Sandknop

Head of Finance Department

Authorised to sign on behalf of

**ALMA MATER STUDIORUM - UNIVERSITA DI BOLOGNA,**

Signature

Prof. Giovanni Zamboni Gruppioni  
Head of the Department Fisiologia Umana e Generale

Authorised to sign on behalf of

**UNIVERSITAT JAUME I DE CASTELLON,**

Signature

Prof. Francisco Toledo-Lobo  
Rector

Authorised to sign on behalf of

**KATHOLIEKE UNIVERSITEIT LEUVEN**

Signature

Prof.dr. ir. Koenraad Debackere  
Managing Director K.U.Leuven Research & Development

Signature

Paul Van Dun  
General Manager K.U.Leuven Research & Development

For approval:

Signature

Prof.dr. Marc Van Hulle



**Attachment 1: Initial list of members and other contact persons**

Recipients for Notices in Accordance with Section 11 of this *Consortium Agreement*.

**- UNIVERSITA DEGLI STUDI DI GENOVA**

Dr. Silvio P. Sabatini (Dept. of Biophysical and Electronic Engineering)  
Tel. +39-010-3532092  
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E-mail: [silvio.sabatini@unige.it](mailto:silvio.sabatini@unige.it)  
Via Opera Pia 11a, 16145 Genova, Italy,

other contact:

Dr. Fabio Solari  
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Fax +39-010-3532777  
E-mail: [fabio.solari@unige.it](mailto:fabio.solari@unige.it)  
Via Opera Pia 11a, 16145 Genova, Italy,

Prof. Giorgio Cannata (Dept. of Computer, Communication & Systems Science)  
Tel. +39-010-3532223  
Fax +39-010-3532154  
E-mail: [cannata@dist.unige.it](mailto:cannata@dist.unige.it)  
Via Opera Pia 13, 16145 Genova, Italy,

**- WESTFAELISCHE WILHELMS-UNIVERSITAET MUENSTER**

Prof. Markus Lappe (Psychological Institute II)  
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Fax +49-251-8334173  
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other contact:

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Dr. Fred Hamker  
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E-mail: [fhamker@uni-muenster.de](mailto:fhamker@uni-muenster.de)  
Fliegerstr. 21, D-48149 Muenster, Germany,

other contact:

Mr. Jan Willschut  
Tel. +49-251-8334185  
Fax +49-251-8334180  
E-mail: [wiltschj@psy.uni-muenster.de](mailto:wiltschj@psy.uni-muenster.de)  
Fliegerstr. 21, D-48149 Muenster, Germany.

**- ALMA MATER STUDIORUM - UNIVERSITA DI BOLOGNA**

Prof. Patrizia Fattori (Department of Human and General Physiology)

Tel. +39-051-2091749

Fax +39-051-2091737

E-mail: [patrizia.fattori@unibo.it](mailto:patrizia.fattori@unibo.it)

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other contact for scientific matters:

Dr. Nicoletta Marzocchi

Tel. +39-051- 2091748/77

Fax +39-051- 2091737

E-mail: [nicoletta.marzocchi@unibo.it](mailto:nicoletta.marzocchi@unibo.it)

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other contact for administrative matters:

Dr. Michela Gamberini

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Fax +39-051- 2091737

E-mail: [m.gamberini@unibo.it](mailto:m.gamberini@unibo.it)

Piazza di Porta San Donato 2, 40126 Bologna, Italy.

**- UNIVERSITAT JAUME I DE CASTELLON**

Prof. Ángel P. del Pobil (Dept. of Engineering and Computer Science)

Tel. +34-964-728293, +34-619886397 (mobile) +34-964-728294 (lab)

Fax +34-964-728486

E-mail: [pobil@icc.uji.es](mailto:pobil@icc.uji.es)

Campus Riu Sec, Edificio TI, E-12071 Castellon, Spain,

other contact:

Mr. Eris Chinellato

Tel. +34-964-728292

Fax +34-964-728486

E-mail: [eris@icc.uji.es](mailto:eris@icc.uji.es)

Campus Riu Sec, Edificio TI, E-12071 Castellon, Spain, Italy.

**- KATHOLIEKE UNIVERSITEIT LEUVEN**

*For all legal, financial and administrative matters:*

Paul Van Dun

K.U.Leuven R&D

Minderbroedersstraat 8A

B-3000 Leuven

Belgium

Tel.: +32-16 32 65 04

Fax: +32-16 32 65 15

Email: [maria.vereecken@lrd.kuleuven.be](mailto:maria.vereecken@lrd.kuleuven.be)

For scientific/technical matters:

Prof. Marc Van Hulle  
Dept. of Neurosciences, Lab. voor Neuro- en Psychofysiologie  
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Fax +32-16-345960

E-mail: [marc.vanhulle@med.kuleuven.be](mailto:marc.vanhulle@med.kuleuven.be)

other contact:

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Campus Gasthuisberg, O and N II  
Herestraat 49, 3000 Leuven, Belgium.

**Attachment 2: Agreement for the Transfer of Material**

## Simple Letter Agreement for the Transfer of Materials

In response to the RECIPIENT's request for the MATERIAL [insert description] . . . The PROVIDER asks that the RECIPIENT and the RECIPIENT SCIENTIST agree to the following before the RECIPIENT receives the MATERIAL:

- The above MATERIAL is the property of the PROVIDER and is made available in the frame of the EYESHOTS project.
- THIS MATERIAL IS NOT FOR USE IN HUMAN SUBJECTS.
- The MATERIAL will be used for not-for-profit research purposes only.
- The MATERIAL will not be further distributed to others without the PROVIDER's written consent. The RECIPIENT shall refer any request for the MATERIAL to the PROVIDER. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agree to make the MATERIAL available, under a separate Simple Letter Agreement to other scientists for teaching or not-for-profit research purposes only.
- The RECIPIENT agrees to acknowledge the source of the MATERIAL in any publications reporting use of it.
- Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. THE PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. Unless prohibited by law, RECIPIENT assumes all liability for claims for damage against it by third parties that may arise from the use, storage or disposal of the MATERIAL except that, to the extent permitted by law, the PROVIDER shall be liable to the RECIPIENT when the damage is caused by the gross negligence or wilful misconduct of the PROVIDER.
- The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations.
- In case of a transfer of MATERIAL within the scope of the EYESHOTS Project, the Parties agree that the MATERIAL is and shall remain the property of the PROVIDER and that the PROVIDER shall become the joint owner of the Foreground related to the MATERIAL or the use of the MATERIAL.
- The MATERIAL is provided at no cost.

The PROVIDER, RECIPIENT and RECIPIENT SCIENTIST must sign both copies of this letter and return one signed copy to the PROVIDER.

The PROVIDER will then send the MATERIAL. The delivery costs will be covered by the RECIPIENT.

## PROVIDER INFORMATION and AUTHORISED SIGNATURE

Provider Scientist:

.....

Provider Organisation:

.....

Address:

.....  
Name of Authorised Official:

.....  
Title of Authorised Official:

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

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

#### RECIPIENT INFORMATION and AUTHORISED SIGNATURE

Recipient Scientist: .....  
Recipient Organisation: .....  
Address: .....  
Name of Authorised Official: .....  
Title of Authorised Official: .....  
Signature of Authorised Official: .....  
Date: .....

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

Signature of Recipient Scientist .....and Date .....

**Attachment 3: Background included for Access Rights**

The Parties agree that all Background not listed in Attachment 3 shall be explicitly excluded from Access Rights.

Access Rights to Background are made available by the following Parties to the other Parties for the following Background:

For UNIVERSITA DEGLI STUDI DI GENOVA: The Background owned by or acquired by the research team of UNIVERSITA DEGLI STUDI DI GENOVA, directly involved in carrying out the Project, to the extent such Background is necessary for the implementation of the Project or for the Use of Foreground.

For WESTFAELISCHE WILHELMS-UNIVERSITAET MUENSTER: The Background owned by or acquired by the research team of WESTFAELISCHE WILHELMS-UNIVERSITAET MUENSTER, directly involved in carrying out the Project, to the extent such Background is necessary for the implementation of the Project or for the Use of Foreground.

For ALMA MATER STUDIORUM - UNIVERSITA DI BOLOGNA: The Background owned by or acquired by the research team of ALMA MATER STUDIORUM - UNIVERSITA DI BOLOGNA, directly involved in carrying out the Project, to the extent such Background is necessary for the implementation of the Project or for the Use of Foreground.

For UNIVERSITAT JAUME I DE CASTELLON: The Background owned by or acquired by the research team of UNIVERSITAT JAUME I DE CASTELLON, directly involved in carrying out the Project, to the extent such Background is necessary for the implementation of the Project or for the Use of Foreground.

For KATHOLIEKE UNIVERSITEIT LEUVEN: The Background owned by or acquired by the research team of KATHOLIEKE UNIVERSITEIT LEUVEN, directly involved in carrying out the Project, to the extent such Background is necessary for the implementation of the Project or for the Use of Foreground.

**Attachment 4: Background excluded from Access Rights**

Access Rights to Background are excluded by the following Parties for the following Background, whether formally protected or not:

For UNIVERSITA DEGLI STUDI DI GENOVA:

- Any background which has been developed by other than the research group involved in the Project.
- Any background which is subject to non disclosure agreements with Third parties.
- Any background developed by the research group involved in the Project on research topics which are not specifically subject of the Project activities, as described in the Description of Work.
- All know-how in patents and current patent applications;

For WESTFAELISCHE WILHELMS-UNIVERSITAET MUENSTER:

- Any background which has been developed by other than the research group involved in the Project.
- Any background which is subject to non disclosure agreements with Third parties.
- Any background developed by the research group involved in the Project on research topics which are not specifically subject of the Project activities, as described in the Description of Work.
- All know-how in patents and current patent applications;

For ALMA MATER STUDIORUM - UNIVERSITA DI BOLOGNA:

- Any background which has been developed by other than the research group involved in the Project.
- Any background which is subject to non disclosure agreements with Third parties.
- Any background developed by the research group involved in the Project on research topics which are not specifically subject of the Project activities, as described in the Description of Work.
- All know-how in patents and current patent applications;

For UNIVERSITAT JAUME I DE CASTELLON:

- Background developed by the UJI in fields unrelated to the objective of this project
- Background developed by any institute or research working group other than the group involved in the project headed by Prof. Angel del Pobil.
- Background developed by scientists participating in the Project which is outside the scope of the Programme for jointly executed research activities of the Project
- Background derived outside the project, which UJI is not entitled to grant access rights due to third parties rights
- Any other background which is not needed to carry out the project work plan
- All know-how in patents and current patent applications;
- Know-how which is related to the licenses given by UJI to our industrial collaborators and licensees;
- Know-how that is covered under specific research agreements and confidentiality agreements and therefore subject to third party rights.

For KATHOLIEKE UNIVERSITEIT LEUVEN:

- Any background which has been developed by other than the research group involved in the Project.
- Any background which is subject to non disclosure agreements with Third parties.
- Any background developed by the research group involved in the Project on research topics which are not specifically subject of the Project activities, as described in the Description of Work.
- All know-how in patents and current patent applications;

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