

**CONSORTIUM AGREEMENT**  
**for Cooperative Research**  
under the Sixth Framework Program of the  
European Community (2002-2006)  
for the Project  
CALM-TRACKS&ROUTES

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## Consortium Agreement

### Preamble

#### Suggestion from AIDICO:

Some reference to the contract with Commission and the number of the project could be useful.

This agreement sets as its goal to carry out co-operative research and innovations **under the Sixth Framework Program of the European Community**, in the project CALM-TRACKS&ROUTES, **proposal No: 017609**, and to convert the knowledge and experience, which were gained in the course of the project, into practice.

This Agreement becomes effective the *25<sup>th</sup> of April 2005* by and between the parties below:

### **Parties to this Consortium Agreement**

The Consortium is composed of the contract partner, who is acting as Co-ordinator, and the following legal entities:

#### For the SMEs part

##### **Partner 1**

**CALMA – TEC**, having its registered office at Bahnhofstraße 4, A-2340 Mödling.  
Represented by DI Ursula Brunbauer.  
Hereafter called to as **Co-ordinator**.

##### **Partner 2**

**CORDES + PARTNER**, Jägerweg 10, D-85521 Ottobrunn.  
Represented by DI Friedrich Vehling.  
Hereafter called to as **Partner 2**.

##### **Partner 3**

**MIZAR**, Telakkatie 5, FI-23500 Uusikaupunki.  
Represented by Mr. Ilpo Maaranen.  
Hereafter called to as **Partner 3**.

##### **Partner 4**

**CELLOFOAM**, Freiburger Straße 44, D-88382 Biberach/Riss.  
Represented by Mr. Jörg Röllinghoff.  
Hereafter called to as **Partner 4**.

##### **Partner 5**

**ISOLITH**, Roidwalchen30, A-5204 Strasswalchen.  
Represented by Mr. Manfred Hattinger.  
Hereafter called to as **Partner 5**.

**Hereinafter collectively referred to as “SME Partners”**

## **For the RTD Performers part**

### **Partner 6**

**OEAW**, Austrian Academy of Sciences, Dr. Ignaz Seipel-Platz 2, A-1010 Vienna.  
Represented by Prof. Herwig Friesinger.  
Hereafter called to as **Partner 6**.

### **Partner 7**

**SU**, Stockholms Universitet, Universitetsvagen 10, SE-10691 Stockholm.  
Represented by Mr. Leif Lindfors.  
Hereafter called to as **Partner 7**.

### **Partner 8**

**AIDICO**, Parque Tecnológico, c/ Benjamin Franclin 17, E-46980 Paterna (Valencia).  
Represented by Mr. Ramón Congost Vallés.  
Hereafter called to as **Partner 8**.

### **Partner 9**

**UGENT**, Gent University, Sint-Pietersnieuwstraat 25, B-9000 Gent.  
Represented by Prof. Andreas De Leenheer.  
Hereafter called to as **Partner 9**.

### **Partner 10**

**PROMETHOR**, retired

### **Partner 11**

**UNI KEMPTEN**, University of Applied Sciences Kempten  
Bahnhof Str. 61-63, D-87435 Kempten.  
Represented by Prof. Robert Schmidt.  
Hereafter called to as **Partner 11**.

**Hereinafter collectively referred to as “RTD Performers”**

**SME Partners, RTD Performers and Other Partners are collectively referred as the “Parties”.**

WHEREAS **SME Partners** have agreed to cooperate among them and with **RTD Performers** to develop Innovation of noise barriers:  
Improved noise abatement for motorways and railway tracks  
and to prepare the conditions for its future marketing.

### Suggestion AIDICO:

WHEREAS the terms of this Agreement shall complement but not conflict with the provisions set out in the EC Contract.

WHEREAS this Agreement shall comply with the competition rules under the Treaty establishing the European Community.

## **Article 1 - Definitions**

Without prejudice to the definitions of the EU “Rules of Participation” which are incorporated hereinafter by reference, the terms hereafter shall have the following meaning:

**Affiliate** of a Party means a company (i) that is owned or controlled by, (ii) that owns or controls, or (iii) that is under common control, with such Party. Ownership or control of a company in this definition shall mean ownership or control, directly or indirectly, of at least 50 % of the voting stocks or shares for the appointment of representatives of such Company. For the purpose of application of the present Agreement and in particular the application of the provisions of Article 7.4 on Access rights to Affiliates, the Affiliates of the Parties shall be limitatively listed in Exhibit B of the present Agreement.

**Bank Guarantee** means a bank guarantee to be issued by a Party to the benefit of the European Commission (EC) and substantially in the form requested by EC. (?)

**Budget of the Project:** means estimated cost incurred to carry out the Project tasks as defined in Annex 1.

**By Laws** means the By Laws for the management of the Consortium, as the same may be amended or supplemented from time to time, and in line with the allocation of mission and works described in article 9, and subject to the compliance with the principle laid down in the contract, in the regulation concerning the rules for participation (Regulation EC N°2321/2002 – Official journal of December 30 2002) and the applicable public policy.

**Change of control** means the acquisition by a competitor of a controlling interest in the share capital of either Party.

**Consortium Agreement** means the present contractual arrangement among the Parties for the purpose of cooperating on the Project without creation of any legal entity hereinafter referred to as “**Consortium**”.

Such an agreement shall not affect the Parties obligations to the European Community and/or to one another arising from the contract.

Such Consortium is concluded between the Parties for the development of the Knowledge or any contractual obligation arising from this Consortium Agreement.

**Contract** means a grant agreement between the European Community and the ~~participants~~ **Parties** concerning the performance of an indirect action establishing rights and obligations between the Community and the ~~participants~~ **Parties** on the one hand, and between the ~~participants~~ **Parties** in that indirect action on the other. (MIZAR)

**Cooperative research (CRAFT)** means a contract funded by EC for the benefit of a number of SMEs from different countries on common specific problems or needs to give a support to SMEs for outsourcing RTD and Innovation development to RTD Performers. Other Partners can also support the Project.

**Contribution to the Project** means resources committed to the Project by the Parties.

**Coordinator** means the Contractor identified in this contract who, in addition to its obligations as a Party, is obliged to carry out the specific coordination tasks provided for in this agreement on behalf of the Parties to the Consortium Agreement.

**Dissemination** means the disclosure of Knowledge by any appropriate means other than publication resulting from the formalities for protecting the Knowledge.

**EC:** the European Commission of the European Community.

**Effective date** means the date upon which the Parties shall set the Consortium and start the joint development of the Knowledge. The Starting date of the Project will be communicated to the Parties by the Commission.

**Knowledge** means the results, including information, whether or not they can be protected, arising from the Project governed by this contract, 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.

**Pre-existing know-how** means the information which is held by the Parties prior to the conclusion of the contract or acquired in parallel with it, 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.

**Project** means all the work referred to in Annex 1 of the contract.

**Protected Account** shall mean a separated deposit account opened by the Coordinator who is acting as trustee on behalf of the Consortium and designed for the purpose of receiving and managing all advance payments made by the Commission.

**Software:** software means any of the software provided under this project including source code, software and function libraries, example or test programs, applications and any documentation. (Suggestion OeAW)

## **Article 2 - Scope of the Consortium Agreement**

The purpose of this Agreement is to define the terms and conditions of the implementation of joint Cooperative research performed within a CRAFT program funded by European Commission for the benefit the SME Partners listed above through the outsourcing of researches and Innovation development to RTD Performers, and in particular for that purpose to define:

- (i) The relationships of the Parties during the negotiation phase with the European Commission prior to the Project, and including the pre-allocation of work;
- (ii) The setting up of a Consortium Agreement in order to jointly carry out and manage the Project;
- (iii) The setting up of a Consortium in order to jointly carry out the development of the Knowledge.

Nothing in this Consortium Agreement shall be deemed to create a partnership or agency or any formal business organization or legal entity among the [Contractors SME Partners or RTD performers \(MIZAR\)](#). This Consortium has not for purpose to exploit commercially the Knowledge as a differentiated legal entity.

### **Article 3 - Setting up of a Consortium**

The Parties agree to set up a Consortium for the purpose of developing the Knowledge, and initiate the conditions for its further exploitation.

Said Consortium is a contractual arrangement among the Parties for the purpose of cooperating on the Project as defined in the present agreement and further detailed in Annex 1 of the contract.

### **Article 4 - Cooperation for the development of Knowledge**

The Parties have agreed to cooperate in carrying out the Project and the tasks relating to the Project described in the terms and conditions set out in Annex 1 of the contract.

The present Consortium has not for purpose to organize the marketing of the Knowledge, and the Parties are free to take any decision in compliance with their rights as defined in the present Consortium Agreement.

### **Article 5 - Financing of the Project**

#### **5.1. Eligible costs of the Parties**

Eligible costs within the definition of the EU Commission shall be determined on the basis of actual expenses incurred for the Project as reflected by the Accounting system of the Parties, and as may be certified by external auditors.

#### **5.2. Financial costs borne by SME Partners**

In consideration to the fact that Knowledge is owned by SME Partners as from day one of its creation and the transfer is deemed operated to SME by the RTD Performers, the SME Partners each hereby agree to bear the costs connected with the performance of the work allocated to them in accordance with Annex I of the contract.

The cost for management of the Consortium shall be borne by the Consortium. The EC financial contribution for management (7% of the EC contribution to the Project) shall be held in trust by the Co-ordinator to cover expenses for audit certificates of every party and other project **management costs, as set out in the budget for the project in Annex I. (CALMA)**



### 5.3. Rank of priority for the allocation of funding for the Project

The project budget, regarding the upper limit of total eligible costs of RTD or innovation related activities and of consortium management activities in Annex I is binding on all project partners. Any exceeding of this budget upper limit must be announced to the Co-ordinator in advance and must be followed by an approval of the Consortium, represented by the Steering Committee. In the adverse case the exceeding is not covered by the project budget. (Suggestion CALMA)

The EC funding will cover, in that order and as far as the work is to be carried out in that period:

- a) RTD Performers using AC model
  - 100% of eligible costs of RTD and innovation related activities.
  - 100% of management costs or financial transfer costs in the management budget.

#### Suggestion AIDICO:

- b) RTD Performers using FC model.
  - 100% of management costs or financial transfer costs in the management budget.
  - 50% of eligible costs of RTD and innovation related activities.

- c) SME eligible costs
  - 100% of management costs or financial transfer costs in the management budget.
  - 50% of eligible costs of RTD and innovation related activities.

### 5.4. Allocation of funds within the Consortium, Protected Account and management

Funding received from the European Commission is collectively granted to the Consortium budget and is not granted to any single SME Partner. The allocation of EC financial contribution to the Parties will be made by the Coordinator following the distribution of the budget, as set out in Annex I, and according to the procedure described hereafter.

The appropriate sums shall be transferred to the respective Party according to the procedure laid down as follows:

- a) One third upon receipt of the advance payment from the European Commission
- b) One third against receipt by the Coordinator of relevant deliverables at mid-term period.
- c) One third upon receipt by the Coordinator of final payment from the Commission and relevant deliverables from the Parties.

The Coordinator will open a Protected Account.

A Protected Account is a separated deposit account opened by the Coordinator on behalf of the Consortium and designed for the purpose of receiving and managing all payments made by the Commission.

The Coordinator will notify each other ~~Contractor~~ Party (MIZAR) promptly of the date and amount transferred to its respective bank account.

### 5.5. Bank guarantee (?) MIZAR, (?) CELLOFOAM (?) UGent

The failure by one Party to provide a bank guarantee will constitute a major breach of the Consortium and will allow the other Parties to decide on the termination of the participation to the Consortium of the breaching Party within the conditions of Article 12.

## **Article 6 - Operational structure and organization**

### **6.1 The Coordinator**

The Coordinator shall be the intermediary between the Parties and the Commission and shall perform all tasks assigned to it as described in the contract and hereunder.

In particular, the Coordinator shall be responsible for:

1. submitting reports and other deliverables to the Commission;
2. the administration, preparation of minutes and provision of the chairman of the Steering Committee and follow-up of their decisions;
3. the transmission of any documents and information connected with the Project to and between the Parties;
4. distributing of advance payments and transferring sums allocated among the Parties as per the budget agreed in the Steering Committee and keeping related records identifying what portion of the payments made by the Commission has been allocated and/or paid to each Contractor.

The Coordinator shall neither be entitled to act or to make legally binding declarations on behalf of any other Party or to enlarge its role beyond the one described herein and in the contract. However, the Coordinator shall have the right to submit amendments, which are deemed to have been made on behalf of all other Parties.

### **6.2 The Steering Committee**

The Parties shall appoint a Steering Committee composed of one representative of each Party.

The representative of the SME **CALMA - TEC** will chair the Steering Committee.

#### **Representation rules? (CELLOFOAM)**

**The Steering Committee will decide upon the representation rules.**

#### **6.2.1 Mission of the Steering Committee**

The Steering Committee shall be in charge of the overall direction and major decisions with regards to the Project.

It shall be in particular responsible for:

- the « budget » of the Project
- proposing the evolution of techniques and processes needed for the Project
- resolving any problems such as arbitration regarding technical choices and other conflicts if any.

#### **6.2.2 Meetings**

Meetings of the Steering Committee shall be convened at least **twice once (AIDICO)** every reporting period, and at such times as may be determined by the chairperson.

Notice in writing of not less than 15 calendar days shall be given to each representative of any proposed meeting of the Steering Committee accompanied by an agenda.

All meetings shall be conducted in the English language and any reports brought before meetings of the Steering Committee for information and action shall be prepared in the English language.

The Consortium can agree on using electronic solutions.

### 6.2.3 Quorum and Voting rules

#### **Quorum:**

The Steering Committee shall not deliberate and decide validly unless a majority of two-thirds (2/3) of its members are present or represented. Where decisions are to be taken unanimously, all Parties must be present or represented at the meeting.

#### **Voting rules:**

Each representative shall have one vote. A representative may be represented and vote at a meeting of the Steering Committee under a written proxy given to any other representative. Each representative shall only have one proxy.

**I)** For all decisions pertaining to the conduct of the Consortium within the framework of the agreed contract and budget, the decisions shall be taken by a majority of 50% of the votes of Parties present or represented, provided always that a [Contractor Party \(MIZAR\)](#) which Work Package, time for performance, costs or liabilities, or intellectual property rights are impacted or whose information is to be published, may veto such decisions and such veto shall be duly justified.

**II)** In the cases of sub paragraphs **i** to **ix**, decisions shall be taken unanimously by all of the Parties, excluding the defaulting [Contractor Party \(MIZAR\)](#) as appropriate or excluding the [Contractor\(s\) Party\(s\) \(MIZAR\)](#) which participation would be terminated.

- i)** deciding upon the allocation of the Project's budget, the preparation of the Budget and any proposed amendments thereto;
- ii)** deciding upon the allocation of work;
- iii)** deciding upon a change of the list of Affiliates;
- iv)** making proposals to the Parties for the review and/or amendment of terms of the contract including any major change in the nature of the Project including starting or stopping to conduct a particular part of the Project;
- v)** deciding to suspend all or part of the Project or to terminate all or part of the contract
- vi)** in case of default of a [Contractor Party \(MIZAR\)](#) agreeing on actions to be taken against the defaulting [Contractor Party \(MIZAR\)](#) as well as replacement or exclusion of a Party (the Party concerned will have no voting right);
- vii)** in case of default of the Coordinator in the performance of its tasks as a Coordinator;
- viii)** any transaction between the Consortium and a representative or a Party or an Affiliate or a company in which any such Party or Affiliate has an interest or holds any position;
- ix)** Selection of bank and determination of mandates and signature levels for the Protected Account.

**However, the above decision shall be subject to the prior mandatory agreement of the SME Committee for all decision pertaining to:**

- Ownership of the Knowledge
- Access rights to the Knowledge

If the members of the Steering Committee are unable to agree on any matter requiring a unanimous vote, an event of deadlock will be deemed to have occurred. Then the Parties will negotiate a solution at their highest decision level (i.e., the President of each Party) on mutually acceptable terms, and shall make good faith efforts to come to a solution.

The Parties agree to abide by all decisions of the Steering Committee.

### 6.3 The SME Committee

The Participating SME Partners shall appoint a SME Committee composed of one representative of each SME Partner. The participation of the RTD Performers can be agreed between the SME Partners.

The overall responsibility of the SME Committee is the supervision of the results and the fitness of the implementation of the Project towards the internal organization of the SMEs, the assessment of technical and exploitation reports, the specific expert missions concerning the dissemination and use of the Knowledge, the preparation of the decisions concerning the ownership of the results, the granting of Access rights to the RTD Performers and Other Partners, and the preparation of the overall opinion of the SME Partners for the other Committees.

- The SME Committee shall propose to the Consortium all major decisions that cannot be taken without being fully approved by SME Partners, such as major change in technological solutions departing from the starting views of SME Partners.
- The goal in setting up the SME Committee is to make sure that SME Partners agree between themselves on “industrial efficiency and consistency” of the results in connection with individual future commercialization targets.

### 6.4 The RTD Committee

The RTD Performers shall appoint a RTD Committee composed of one representative of each RTD Performer. The participation of the SME Partners can be agreed between the RTD Performers.

The overall responsibility of the RTD Committee is the exchange of the RTD results to promote the further RTD work, the definition of the current state of the art and the proposal for the change of the technical work program.

## **Article 7 - Intellectual Property**

### **7.1 Ownership of Knowledge**

Each Party is bound by the terms and conditions of the European Commission contractual rules, which are hereby made an integral part of the present Consortium Agreement:

- Annex II General Conditions - Part C entitled "Intellectual Property Rights",
- Annex III "Specific IPR Provisions for Cooperative Research Actions" as hereby complemented.

Knowledge is owned by SME Partners as from day one of its creation and the transfer is deemed operated to SME by the RTD Performers who accept to enter into any additional agreement if necessary in particular for the purpose of complying with the copyrights laws of the different countries concerned. Except for that last purpose, no formal additional transfer of ownership is necessary from RTD Performers.

Knowledge arising from work carried out under the Project shall be the joint property of the SME Partners alone and they undertake to define the allocation of property rights, in the respective property proportions hereafter.

The Knowledge arising from work in this project will be allocated to its belonging WP and shared out between the SME Partners of the project under different property proportions, according to the ratio of distribution described hereafter:

- **WP 1:** The Knowledge arising from work carried out in this WP will be allocated to **all SME Partners** of this project, concerning their contribution of SME eligible costs to the SME subtotal budget for RTD or innovation related activities.
- **WP 2:** The Knowledge arising from work carried out in this WP will be allocated to **all SME Partners** of this project, concerning their contribution of SME eligible costs to the SME subtotal budget for RTD or innovation related activities.

#### Suggestion OeAW:

#### **Ownership of Knowledge - WP2:**

Any software and all copies thereof whether arising from work carried out or developed under the project or applied by OeAW under the project will remain absolute and exclusive property of OeAW. The absolute and exclusive rights on use, exploitation and change of the software will remain with OeAW for an unlimited period too.

Any result of specific calculations performed under the project will become knowledge arising from work carried out in WP 2 and allocated to all SME partners of this project.

- **WP 3:** The Knowledge arising from work carried out in this WP will be allocated to the partners involved in this WP (**CALMA, CORDES, MIZAR**), depending on the realised work.
  - ) CALMA - CORDES - 50% - 50%
  - ) MIZAR - CORDES: 50% - 50%
  - ) CALMA - MIZAR - CORDES : 1/3 each
- **WP 4:** The Knowledge arising from work carried out in this WP will be allocated to **all SME Partners and AIDICO**, concerning their contribution of SME eligible costs and AIDICO`s eligible costs to the SME subtotal budget plus AIDICO`s subtotal budget for RTD or innovation related activities. (Disagreement CELLOFOAM)

- **WP 5:** The Knowledge arising from work carried out in this WP will be allocated to the partners involved in this WP (**CALMA, MIZAR, CORDES**), depending on the realised work.
  - ) CALMA: 100%
  - ) CALMA - CORDES : 50% - 50%
  - ) MIZAR: 100%
  - ) CALMA - MIZAR: 50% - 50%
  - ) CALMA - CORDES - MIZAR: 1/3 each
  
- **WP 6:** The Knowledge arising from work carried out in this WP will be allocated to the partners involved in this WP (**CALMA, MIZAR, CORDES**), depending on the realised work.
  - ) CALMA: 100%
  - ) CALMA - CORDES : 50% - 50%
  - ) MIZAR: 100%
  - ) CALMA - MIZAR: 50% - 50%
  - ) CALMA - CORDES - MIZAR: 1/3 each
  
- **WP 7:** As there is no Knowledge arising from this WP, no necessity of allocating any property rights.

Any needed Access-rights shall be granted upon written request.

Suggestion UGent:

RTD performers should automatically be granted a non-exclusive, worldwide and royalty free license to use the Knowledge they generated in the Project for further academic research purposes, idem in art 7.3

The Parties hereby acknowledge and agree that all and any Knowledge will be the sole and exclusive property of the SME Partners (including AIDICO in WP 4) subject to the allocation of rights.

RTD Performers warrant and represent that all materials created or developed by any employees of RTD Performers engaged in performing the research (including without limitation all reports, analyses and other documentation and materials) in the course of performing the research for the SME Partners shall be original works of authorship.

Suggestion AIDICO:

The RTD Performers acting as parties of this contract can continue with the research and technical developing activities within the area of knowledge defined by this project. Also, they will use the knowledge, acquired by the execution and implementation of this project for other issues that they can not affect to the results of this project.

## 7.2 Access rights to Pre-existing know-how

The Parties have identified and listed in Exhibit A of this Consortium Agreement the Pre-existing know-how to which they may grant Access rights:

### A) Access rights to the Pre-existing know-how needed for carrying out the Project:

The Parties agree that the Access rights to the Pre-existing know-how listed in Exhibit A needed for carrying out the Project shall be granted on a royalty-free basis for the duration of the Project only.

#### AIDICO:

- Know-how for calculation of the NAC for absorptive materials (AIDICO)
- Know-how for simulation of the acoustic field for constructive elements (AIDICO)
- Know-how for design and development of process of foaming (AIDICO)
- Know-how for the acoustic performance of absorptive material designed from recycled wastes. (AIDICO)

Will be added to the list of Pre-Existing Know How.

### B) Access rights to Pre-existing know-how needed by the SME Partners for using Knowledge arising from the Project

The Parties agree that the Access rights to the Pre-existing know-how listed in Exhibit A needed by the SME Partners for using the Knowledge shall be granted on fair and non-discriminatory conditions to be agreed.

The Parties agree that all other Pre-existing know-how shall be considered as unnecessary for the implementation of the Project and for the use of its results, and it shall be excluded from any granting of Access rights provided however that the [Contractors Parties \(MIZAR\)](#) may update Exhibit A with further development of the listed Pre-existing know-how that would have been developed between the date of submission of the Proposal and the date of award of the contract.

It is also agreed and understood that such lists may also be updated to include that part of Pre-existing know-how not identified in Exhibit A and that would prove to be needed for the performance of a [Contractor's Parties \(MIZAR\)](#) part of the Project or for the use of a SME Partner's own Knowledge resulting from the Project.

The Parties' Pre-existing know-how is and shall remain the sole and exclusive property of the owning Parties.

[When necessary \(MIZAR\)](#), access rights are granted on a non-exclusive basis and shall not include the right to grant sublicenses.

## 7.3 Access rights and future licenses for exploitation of the Knowledge

The SME Partners will set up the necessary License Agreement in order to organize the future dissemination or marketing of the Knowledge subject to the following principle:

The SME Partners will negotiate at the same time the terms for exercising co-ownership of resulting Knowledge by setting up the main legal and financial principle concerning the Access rights and the financial contribution and/or rights of each Party for a commercial use of the Pre-existing know-how and Knowledge.

Access rights to the Knowledge might be granted to RTD Performers or Other Partners, if unanimously agreed by SME Partners, as early as three years after ending the Project, in order to protect the business competitive advantage of the SME Partners against third parties.

Access rights to Knowledge shall not include the right to grant sub-licenses.

#### **7.4 Access rights for Affiliates**

Each Party hereby grants Access rights to all Affiliates of the other Parties listed in Exhibit B, as if such Affiliates were parties hereto, provided all such Affiliates fulfil all confidentiality and other obligations of the Parties under the contract and under this Consortium Agreement.

Upon the date of cessation of an Affiliate to meet all criteria defined in Article 1 of this Consortium Agreement:

- All Access rights granted to such Affiliate in respect of the Knowledge or the 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, upon such ex Affiliate's written request, provided however that no legitimate interests of such Party oppose the grant of such licenses.
- All Access rights granted by such Affiliate hereunder shall continue in full force and effect.

#### **7.5 Protection of the Knowledge**

The SME Partners having jointly the ownership of the Knowledge shall be collectively responsible for:

- the preparation, filing and prosecuting of any patent applications for inventions comprised within the Knowledge; and
- maintaining in force all and any patents granted pursuant to the patent applications

They may however designate one SME Partner in order to do the filing in the name and upon the instructions of all SME Partners.

The SME Partners will have sole discretion in relation to any decision which requires to be taken with regard to prosecution of any patent applications or other protection filed in respect of inventions comprised within the field of Intellectual Property, including but not limited to any decision relating to amendment of any claims comprised within such patent application, and maintenance of all and any patents granted pursuant to such patent applications.

Application for the patents will be prepared by RTD Performers and filed by the SME Partners in accordance with the provisions of the Joint Ownership Agreement, in particular with respect to the lead concerning the operation of filing the patents.

#### Suggestion AIDICO:

Application for the patents will be prepared jointly by the SMEs & RTD Performers and filed by the SME Partners in accordance with the provisions of the Joint Ownership Agreement, in particular with respect to the lead concerning the operation of filing the patents.

#### Suggestion UGent:

RTD performers shall provide full assistance to SME partners in their application for the patent on the Knowledge, SME partners shall compensate the RTD performers for their reasonable costs resulting from this assistance.



## **Article 8 - Responsibilities of the Parties**

### **8.1 Liabilities**

#### **8.1.1 Toward third parties**

Basic standard commitment - In case one Party has caused a loss or damage to third parties and that the claim is recognized before a legitimate court in a final judgment, in particular but without limitation in case of infringement of third parties intellectual property rights, then such Party will be fully liable and responsible without limitation and shall indemnify the other Parties of the Consortium, in case of claim of such third party against the Consortium.

Neither Party will be able to commit the other Parties and each **Contractor Party (MIZAR)** will subscribe a basic civil reasonable insurance policy in that respect.

### **8.2 Non-solicitation of personnel**

During the whole implementation of the Project and the twelve months following the final implementation date, each Party shall not directly or indirectly engage any employee of another Party having followed the implementation of the Project unless otherwise agreed by the concerned Party.

## **Article 9 - Allocation of work among the Parties and commitment of resources**

### **9.1 Allocation of work**

The allocation of work to be performed in the Project is described in the Proposal and in Annex 1 of the Contract:

- Allocation of Knowledge and supply of materials and equipment
- Knowledge and allocation of industrialization works
- Allocation of resources (funds, testing equipment,...)

The Parties commit themselves to allocate adequate resources to follow the negotiation for the EC contract, to promptly inform the other Parties of any disagreement during the negotiation phase.

## **Article 10 - Confidentiality**

With respect to all information other than Knowledge of whatever nature or form relating in any manner to the business or affairs of another Party as is disclosed to a Party on a confidential basis by any other Party hereunder or otherwise in connection with the Project whether pending or after execution of the contract each Party undertakes to each of the other Parties that:

- (a) It will not - during a period of 5 years from the date of disclosure - use any such information for any purpose other than in accordance with the terms of the contract and of the present Agreement; and
- (b) It will treat the same as (and use reasonable endeavour to procure that the same be kept) confidential and not disclose the same to any other person without the prior written consent of the disclosing Party in each case;

Provided always that such undertaking shall not in any case be deemed to extend to any information, which the receiving Party can show:

- (A) was at the time of receipt published or otherwise generally available to the public,

- (B) has after receipt by the receiving Party been published or become generally available to the public otherwise than through any act or omission on the part of the receiving Party,
- (C) was already in the possession of the receiving Party at the time of receipt without any restrictions on disclosure,
- (D) was rightfully acquired from others without any undertaking of confidentiality imposed by the disclosing Party,
- (E) was developed independently of the work under the Consortium Agreement by the receiving Party ;

Subject to the prior signature of similar confidentiality undertakings as contained in this Agreement, nothing in this Article shall prevent the communication of information to the Commission or to any Party or to any permitted third party insofar as necessary for the proper carrying out of the contract and/or this Agreement and/or the Use of Knowledge from the Project as provided for in this Agreement.

With respect to any permitted communication of any of the confidential information by the recipient Party to any other person such Party will use reasonable endeavour to procure due observance and performance by such other person of all relevant undertakings in the contract or in this Agreement.

Each Party undertakes to take all appropriate steps as on its own behalf as on behalf of its employees having to know the said results to consider and keep the latter as confidential.

**RTD Performers:**

The RTD Performers shall not divulge the Knowledge to whomsoever during the Project and thereafter if they are not previously expressly authorized by the Steering Committee.

**Article 11 - Publication rights**

Suggestion OeAW:

Publication should be permitted unless legitimate interests of partners are opposing.

**CALMA:**

To provide that the publication of data does not affect the protection of Knowledge it owns or Knowledge it generated under work carried out within the Project, the Parties agree that the definition of Protection of knowledge and obligations pertaining thereto shall be as per the Commission contract, Exhibit II General Conditions II.33.3 in accordance with the amendment in Exhibit III.6, and after the conclusion of the Consortium Agreement, by such rules as they may have been amended as a result of the Consortium Agreement negotiations.

***II.33 - Protection of knowledge***

*3. A contractor may publish or allow the publication of data, on whatever medium, concerning knowledge it owns provided that this does not affect the protection of that knowledge. The Commission and the other contractors shall be given 30 days prior written notice of any planned publication. If, before the end of this period, the Commission and/or the other contractors so request, a copy of this data shall be communicated to them within 30 days after receipt of such request. The Commission and the other contractors may object to the publication within 30 days after receipt of the data envisaged to be published, if they consider that the protection of their knowledge would be adversely affected by this publication. The planned publication shall be suspended until the end of this consultation period. In the absence of any objection within the above-mentioned period, it is deemed that the Commission and the other contractors agree.*

A Party may publish or allow the publication of data, on whatever medium, concerning Knowledge it owns or Knowledge it generated under work carried out within the Project, provided that this does not affect the protection of that Knowledge.

However, no publication rights are given by SME Partners to any RTD Performer on the Knowledge until unanimous decision by SME Partners. Unless specifically agreed among the SME Partners, no publication rights are given by either SME to any other SME on the Knowledge until joint decision has been agreed upon by SME Partners.

Any Party opposing such a publication can only do it for legitimate interest.

## **Article 12 - Coming into force – Duration – Earlier termination**

### **12.1 Coming into force**

This Consortium Agreement shall come into force on the Effective Date.

What is the definition of "Effective Date", 1st April or is it the date of the signature of the last Party of the consortium agreement? (UGent)  
25<sup>th</sup> of April 2005

The start date of the Project will be communicated to the Contractors by the Commission.

Unless otherwise provided, the Consortium shall be organized for an initial duration of 24 months.

### **12.2 Duration**

This Consortium Agreement shall thereafter remain into force:

- until the fulfilment or termination of the contract awarded by the Commission and resulting from the Proposal and complete discharge of all obligations of the Parties under the contract and/or under this Consortium Agreement as well as any amendment or extension thereof; or
- until this Consortium Agreement is terminated under any cases under Article 12 & 13; whichever occurs first.

### **12.3 Earlier termination**

This Consortium Agreement shall automatically terminate without any further demand and without liability of any ~~Contractor~~ Party (MIZAR) to the others upon the first to occur of the following events:

- award by the Commission of a contract for the Project to other parties;
- upon a ~~18~~ 6 (CALMA) month period from the date of coming into force hereto, if the contract has not been awarded to the Parties before expiration of such period ;
- cancellation of the Project by the Commission ;
- termination of the entire contract by the Commission;

In the event the participation of only one Party terminates, the Consortium Agreement shall continue within the conditions set forth in this agreement.

Any decision to continue shall be subject to the signature of an addendum for a new Consortium subject to the approval of the Commission.

### **Article 13 - Other consequences of term or termination**

In case of take over of any Party's Work Package, all rights and obligations under the contract and this Consortium Agreement shall in good faith be re-allocated (work and funding) among the remaining Parties.

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

- its responsibilities under this Consortium Agreement or the contract in respect of that part of that Party's Work Package which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or
- Any of its obligations or liabilities arising out of such withdrawal or termination.

The provisions of the Articles of this Consortium Agreement relating to liability, confidentiality, intellectual property rights and publications shall survive the term or termination of this Consortium 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 14 - Replacement of a breaching Party**

In the event of the breach of this agreement by a Party, as provided here above, the Steering Committee, may decide to nominate a new Party to be subrogated the breaching (defaulting) Party.

Such decision should be subject to the Agreement of the Commission, which shall be duly informed, and object of the signature of a specific Addendum to all relevant Agreement.

### **Article 15 - Force majeure/vis maior**

The Parties agree that the definition of force majeure and obligations pertaining thereto shall be as per the Commission contract, Exhibit II General Conditions, and after the conclusion of the Consortium Agreement, by such rules as they may have been amended as a result of the Consortium Agreement negotiations.

### **Article 16 - Assignment**

This agreement and the rights and obligations provided for hereunder shall not be assigned by either Party to any other Party including Affiliates.

### **Article 17 - Notices**

Formal notice under this Agreement shall be made by registered mail at the addresses of the Parties in the Heading of this Agreement or to any other address subsequently designated by a Party by a written notification to the other Parties and to the Coordinator.

### **Article 18 - Adjustment in case of invalidity**

In the event that any of the provisions agreed upon herein shall, entirely or partly, be held invalid by any administrative body or any court of competent jurisdiction, the Parties agree to modify this Agreement such as to comply with the relevant law, rules and regulations and to reflect the original intent of the Parties as closely as possible.

### **Article 19 - Dispute resolution**

This Agreement shall be governed by the laws of  
Austria Belgium (MIZAR).  
Belgium. – (as the EC-contract - UGent)

In the event the Parties have been unable to amicably resolve any dispute arising out of this Agreement it shall be finally settled under the rules of arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said rules.

The arbitration shall take place in Brussels and the language will be English.

### **Article 20 - Entire Agreement**

This Agreement as approved by the EC and the Exhibits A (Pre-existing know-how) and B (Affiliates) to this Consortium Agreement, as well as the contract and its Annexes (Annex I – description of work, Annex II General conditions, Annex III Specific provisions related to cooperative research) signed between the Consortium and the EC Commission, constitute the entire Agreement between the Parties respecting the subject matter thereof and supersedes all previous negotiations and commitments concerning the same.

This Agreement has been executed in 10 originals (number of Parties)

Agreed and signed by

**SME Partners**

**For Partner 1**

Signature

Name: Ursula Brunbauer  
Place: Mödling, Austria  
Date: 25th of April 2005

**For Partner 2**

Signature

Name: Friedrich Vehling  
Place:  
Date: 25th of April 2005

**For Partner 3**

Signature

Name: Ilpo Maaranen  
Place:  
Date: 25th of April 2005

**For Partner 4**

Signature

Name: Jörg Röllinghoff (Jürgen Grimmeisen)  
Place:  
Date: 25th of April 2005

**For Partner 5**

Signature

Name: Manfred Hattinger (Josef Hattinger)  
Place:  
Date: 25th of April 2005

## **RTD Performers**

### **For Partner 6**

Signature

Name: Prof. Herwig Friesinger

Place:

Date: 25th of April 2005

### **For Partner 7**

Signature

Name: Leif Lindfors (Kare Bremer)

Place:

Date: 25th of April 2005

### **For Partner 8**

Signature

Name: Ramón Congost Vallés (Luis Esteban Domínguez Arribas)

Place:

Date: 25th of April 2005

### **For Partner 9**

Signature

Name: Andreas De Leenheer (Marc De Clercq)

Place:

Date: 25th of April 2005

### **For Partner 11**

Signature

Name: Prof. Robert Schmidt

Place:

Date: 25th of April 2005

### **List of Annexes to the EC contract:**

Annex I – Description of work, Allocation of works and resources.

Annex II - General conditions,

Annex III - Specific provisions related to cooperative research

### **List of Exhibits to this Consortium Agreement:**

Exhibit A- List of the Pre-existing know-how

Exhibit B- List of Affiliates