



D1.2 CONSORTIUM AGREEMENT

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<i>Disclaimer: The views expressed in this document do not necessarily reflect the views of the EC.</i>	



Note

Deliverable D1.2 Consortium Agreement was finalized and signed by all partners before the decision on document templates for the Project. The previous title page and this page have been added to the original unmodified document.

DiDIY

DiDIY Project, no 644344, Consortium Agreement

Revision 12 Dec 2014

History of changes

[12 Dec 2014 – Revision keeping into account Partners' comments]

Procedural issues

[AC] 6.3.2; : Do we need to force ourselves to have formal meetings every 10 months, i.e. more than one per year? I suggest we also allow for online motions, discussion and online voting on particular issues (not 'meetings'). We have a system for that which we used in EUCogIII (TalkNVote). [coordinator: The specification "The Steering Board will meet every ten months" is in the Grant Agreement, Section 2.3.2, and before in the proposal. It actually implies two meetings, at M10 and M20, plus the kick off meeting, where the Steering Board will be constituted, and the final meeting. Hence this should be maintained as is.]

[AC] 6.3.3: Why ask for 2/3 majority? I suggest simple majority and in case of parity the coordinator's vote is decisive. If parity and they abstain, the motion is rejected. [coordinator: See the reply below.]

[FKI] 6.3.3: Vincent's observations seem in general reasonable to us. The majority decision making vs more consensus based well, that's a doubt. The 2/3 majority would require 5 out of 7 partners in favour, whereas the simple majority would only need 4. There can be critical situations where this may make the difference. How do you feel about this? For online voting we could just use email - we will perfectly know each other for this level of trust (I would recommend to use GPG keys to sign / encrypt our important messages in such case). [coordinator: Agreed: changed accordingly.]

Financing-related issues

[AC] 7: I suggest that the coordinator distributes the pre-payment to partners each year, so that we don't have to pre-finance ourselves. The formulations don't bare that out, like "Costs accepted by the Funding Authority will be paid to the Party concerned". [coordinator: See the reply below.]

[UOW] 7.3: Our preference would be for option 1 - some pre-financing and a schedule for when additional payments will be made. [coordinator: See the reply below.]

[FKI] 7: There remains some questions about the distribution of the EC pre-financing & intermediate payments. As we can't (much) pre-finance ourselves, this is an important detail to check. Luca, could you enlighten us about how this will work in the consortium? [coordinator: The Grant Agreement, Sections 20 and 21, gives some of these specifications, in particular relating to the dates for payments (pre-financing; one interim payment after M15; one payment of the balance). As for the distribution of the pre-financing, I propose to adopt the simplest criterion of proportionality to total budget per partner: extended accordingly.]

Dissemination-related issues

[AC] 8.3.1: Do we want "Prior notice of any planned publication shall be given to the other Parties at least 45 calendar days before the publication."? [coordinator: I agree that this specification seems to

be uselessly constraining, particularly for academic work. On the other hand, the whole Section 8.3.1 is about the possibility for partners other than the author of a candidate publication to check it, and possibly object to it. The specification '45 calendar days' is inherited from the Grant Agreement, which actually admits "unless agreed otherwise". I propose to maintain this constraint at the moment. In the course of the Project, if the publication process goes smoothly and when dissemination activities increase in quantity, the Steering Board can decide to revise this subject.]

[FKI] 8.1: About the licensing of results: in WP6 we have defined that all results will be published under equal conditions to all European citizens and organisations, more concretely under free licenses. That means that we either rewrite Section 8 or use the literal meaning of "8.1 Joint ownership: Unless otherwise agreed." So we will need to agree otherwise, as promised to the EC. [coordinator: Thanks for this note: changed accordingly.]

Miscellanea

[AC] Introduction: 'Amerikaniko Kollegio Anatolia' in capitals, like the other names [coordinator: Ok: changed accordingly.]

[AC] 6.3.5: "He shall" -> "They shall" [coordinator: The sentence is "The chairperson shall produce ... He shall send ...". Hence a singular reference is correct, and only it may be changed to "She/He": changed accordingly.]

A few typos have been fixed.

[5 Dec 2014 – First version]

Adapted from the template provided by DESCA - © DESCA - Horizon 2020 Model Consortium Agreement (www.desca-2020.eu), Version 1.1, May 2014, and sent to all Partners for comments.

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This Consortium Agreement is based upon Regulation (EU) no 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for the participation and dissemination in “Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)” (hereinafter referred to as “the Rules”), and the European Commission Multi-beneficiary General Model Grant Agreement and its Annexes, and is made on 01/01/2015, hereinafter referred to as the Effective Date

between:

UNIVERSITA CARLO CATTANEO LIUC (LIUC), CF02015300128, established in Corso Matteotti 22, Castellanza 21053, Italy, IT02015300128, represented for the purposes of signing the Agreement by PLSIGN, Gian Claudio Castellani, the Coordinator,

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STICHTING FREE KNOWLEDGE INSTITUTE (FKI) NL6, 34288702, established in Cruquiuskade 219, Amsterdam 1018 AM, Netherlands, NL818771392B01,

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POLITECNICO DI MILANO (POLIMI), CF80057930150, established in Piazza Leonardo Da Vinci 32, Milano 20133, Italy, IT04376620151,

hereinafter, jointly or individually, referred to as “Parties” or “Party” relating to the Action entitled Digital Do It Yourself in short DiDIY hereinafter referred to as “Project”

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Funding Authority as part of the Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020).

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement signed by the Parties and the EC (hereinafter “Grant Agreement”).

The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium 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 or in the Grant Agreement including its Annexes.

1.2 Additional Definitions

“Consortium Plan”: description of the action and the related agreed budget as first defined in the Grant Agreement and which may be updated by the Steering Board.

“Funding Authority”: body awarding the grant for the Project.

“Defaulting Party”: Party which the Steering Board has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Section 4.2 of this Consortium Agreement.

“Needed Access Rights”: [for the implementation of the Project] Access Rights without the grant of them carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources; [for the exploitation of Results] Access Rights without the grant of them the Exploitation of own Results 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.

An entity becomes a Party to the Consortium Agreement upon signature of the accession document (Attachment 2) by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

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 or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.

If the Grant Agreement

- is not signed by the Funding Authority or a Party, or
- is terminated,

or if a Party's participation in the Grant Agreement is terminated,

this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Section 3.3 of this Consortium Agreement.

3.3 Survival of rights and obligations

The provisions relating to Access Rights and Confidentiality, for the time period mentioned therein, as well as for Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Steering Board 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 Belgian law.

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 promptly provide all information reasonably required by a Consortium Body 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 that a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement (e.g., improper implementation of the Project), the Coordinator or, if the Coordinator is in breach of its obligations, the Party appointed by the Steering Board, will give formal notice to such Party requiring that such breach will be remedied within 30 calendar days.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Steering Board may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

4.3 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the Grant Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the Grant Agreement.

Section 5: Liability towards each other

5.1 No warranties

In respect of any information or materials (including Results and Background) 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.

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and

- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliated Entities) exercising its Access Rights.

5.2 Limitations of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act or by a breach of confidentiality.

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 as identified in Annex 2 of the Grant Agreement provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory 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 by it or on its behalf under this Consortium Agreement or from its use of Results or Background.

5.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure.

Each Party will notify the competent Consortium Bodies of any Force Majeure without undue delay. 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 Steering Board is the decision-making body of the Consortium.

The Coordinator is the legal entity acting as the intermediary between the Parties and the Funding Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

6.2 Members

The Steering Board shall consist of one representative of each Party (hereinafter referred to as "Member").

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.6 of this Consortium Agreement.

The Coordinator shall chair all meetings of the Steering Board, unless decided otherwise by the Steering Board.

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

This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Section 11.8 of this Consortium Agreement.

6.3 Operational procedures for the Steering Board

6.3.1 Representation in meetings

Any Member:

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

6.3.2 Preparation and organisation of meetings

The chairperson shall convene ordinary meetings of the Steering Board at least once every 10 months and shall also convene extraordinary meetings at any time upon written request of any Member.

The chairperson shall give notice in writing of a meeting to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

The chairperson shall send each Member a written original agenda no later than 14 calendar days preceding the meeting, or 7 calendar days before an extraordinary meeting.

Any agenda item requiring a decision by the Members must be identified as such on the agenda. Any Member may add an item to the original agenda by written notification to all of the other Members no later than 7 calendar days preceding the meeting.

During a meeting of the Steering Board the Members present or represented can unanimously agree to add a new item to the original agenda.

Any decision may also be taken without a meeting if the chairperson circulates to all Members a written document which is then signed by the defined majority of Members (see Section 6.3.3 of this Consortium Agreement). Such document shall include the deadline for responses.

Meetings of the Steering Board may also be held by teleconference or other telecommunication means.

Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.3.5 of this Consortium Agreement.

6.3.3 Voting rules and quorum

The Steering Board shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).

Each Member shall have one vote.

Defaulting Parties may not vote.

Decisions shall be taken by the simple majority of the votes cast. In case of parity the coordinator's vote is decisive.

6.3.4 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 the Steering Board 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 draft minutes of the meeting are sent.

In case of exercise of veto, the Members shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all 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.

6.3.5 Minutes of meetings

The chairperson shall produce written minutes of each meeting which shall be the formal record of all decisions taken. She/He shall send draft minutes to all 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 sent an objection in writing to the chairperson with respect to the accuracy of the draft of the minutes.

The chairperson shall send the accepted minutes to all the Members of the Steering Board, and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

6.3.6 Decisions of the Steering Board

The Steering Board 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 Steering Board:

- content, finances and intellectual property rights;
- proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Funding Authority;
- changes to the Consortium Plan;
- modifications to Attachment 1 (Background Included);
- additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.2);
- evolution of the Consortium, relating to:
 - * entry of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party;
 - * withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal;
 - * identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement;
 - * declaration of a Party to be a Defaulting Party;
 - * remedies to be performed by a Defaulting Party;
 - * termination of a Defaulting Party's participation in the Consortium and measures relating thereto;
 - * proposal to the Funding Authority for a change of the Coordinator;
 - * proposal to the Funding Authority for suspension of all or part of the Project;
 - * proposal to the Funding Authority for termination of the Project and the Consortium Agreement.

In the case of abolished tasks as a result of a decision of the Steering Board, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

6.4 Coordinator

The Coordinator shall be the intermediary between the Parties and the Funding Authority 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 and submitting information on the progress of the Project and reports and other deliverables (including financial statements and related certification) to the Funding Authority;
- preparing the meetings, proposing decisions and preparing the agenda of Steering Board meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings;
- transmitting promptly documents and information connected with the Project;

- administering the financial contribution of the Funding Authority and fulfilling the financial tasks described in Section 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 one or more of the Parties is late in submission of any project deliverable, the Coordinator may nevertheless submit the other parties' project deliverables and all other documents required by the Grant Agreement to the Funding Authority in time.

If the Coordinator fails in its coordination tasks, the Steering Board may propose to the Funding Authority to change the Coordinator.

The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement.

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 Financial Contribution

The financial contribution of the Funding Authority to the Project shall be distributed by the Coordinator according to:

- the Consortium Plan,
- the approval of reports by the Funding Authority, and
- the provisions of payment in Section 7.3.

A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.

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 Funding Authority. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Funding Authority.

7.1.3 Funding Principles

A Party which spends less than its allocated share of the budget as set out in the Consortium Plan or – in case of reimbursement via unit costs – implements less units than foreseen in the Consortium Plan will be funded in accordance with its actual duly justified eligible costs only.

A Party that spends more than its allocated share of the budget as set out in the Consortium Plan will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

7.1.4 Financial Consequences of the termination of the participation of a Party

A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by the Funding Authority or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Section 5.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks.

7.2 Budgeting

The budget set out in the Consortium Plan shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

7.3 Payments

7.3.1 Payments to Parties

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;
- undertake to keep the Community financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

With reference to Articles 21.2 and 21.3.2 of the Grant Agreement, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount from which the amounts retained by the Funding Authority for the Guarantee Fund and for the final payment have been deducted.

7.3.2 Payment schedule

The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following: funding of costs included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority without undue delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the Funding Authority will be paid to the Party concerned. The amount of pre-financing will be divided among Parties proportionally to the total budget of each Party.

The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or to a Beneficiary which has not yet signed this Consortium Agreement.

The Coordinator is entitled to recover any payments already paid to a Defaulting Party. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Funding Authority.

Section 8: Results

8.0 Ownership of Results

Results are owned by the Party that generates them.

8.1 Joint ownership

Results shall be equally accessible and reusable by all European citizens and organisations, with the exception of confidential deliverables, as listed in the Grant Agreement, Annex 1, Section 1.3.2. Therefore the Project work will be published under free/open licenses and its raw data as Open Data, conforming to the EU directive on reuse of PSI information (Directive 2003/98/EC), thus facilitating the reuse and distribution by any interested party.

8.2 Transfer of Results

Each Party may transfer ownership of its own Results following the procedures of the Grant Agreement Article 30.

It may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (3) to this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to a transfer to listed third parties according to the Grant Agreement Article 30.1.

The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment (3) after signature of this Agreement requires a decision of the Steering Board.

The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, it may be impossible under applicable EU and national laws on mergers and acquisitions for a Party to give the full 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.

The obligations above apply only for as long as other Parties still have - or still may request - Access Rights to the Results.

8.3 Dissemination

8.3.1 Dissemination of own Results

During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 29.1 of the Grant Agreement subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties at least 45 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement in writing to the Coordinator and to the Party or Parties proposing the dissemination within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

An objection is justified if:

- (a) the protection of the objecting Party's Results or Background would be adversely affected,
- (b) the objecting Party's legitimate academic or commercial interests in relation to the Results or Background would be significantly harmed.

The objection has to include a precise request for necessary modifications.

If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted, provided that Confidential Information of the objecting Party has been removed from the Publication as indicated by the objecting Party.

8.3.2 Dissemination of another Party's unpublished Results or Background

A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published.

8.3.3 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 Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

8.3.4 Use of names, logos or trademarks

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

Section 9: Access Rights

9.1 Background included

9.1.1 In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits. Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.

9.1.2 Any Party can propose to the Steering Board to modify its Background in Attachment 1.

9.2 General Principles

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

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

9.2.3 Access Rights shall be free of any administrative transfer costs.

9.2.4 Access Rights are granted on a non-exclusive basis.

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

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

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

9.3 Access Rights for implementation

Access Rights to Results and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.

9.4 Access Rights for Exploitation

9.4.1 Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable conditions. Access rights to Results for internal research activities shall be granted on a royalty-free basis.

9.4.2 Access Rights to Background if Needed for Exploitation of a Party's own Results, including for research on behalf of a third party, shall be granted on Fair and Reasonable conditions.

9.4.3 A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

9.6 Additional Access Rights

For the avoidance of doubt any grant of Access Rights not covered by the Grant Agreement or 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.

9.7 Access Rights for Parties entering or leaving the Consortium

9.7.1 New Parties entering the Consortium

As regards Results developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.

9.7.2 Parties leaving the Consortium

9.7.2.1 Access Rights granted to a leaving Party

9.7.2.1.1 Defaulting Party: Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the

formal notice of the decision of the Steering Board to terminate its participation in the Consortium.

9.7.2.1.2 Non-defaulting Party: A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Results developed until the date of the termination of its participation. It may request Access Rights within the period of time specified in Section 9.4.3.

9.7.2.2 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.

9.8 Specific Provisions for Access Rights to Software

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

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

Section 10: Non-disclosure of information

10.1 All information in whatever form or mode of communication, 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" at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of 4 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. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations.

10.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

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

- 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 to the best knowledge of the Recipient 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 or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.7 hereunder.

10.5 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.

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

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

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

Section 11: Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and:

- Attachment 1 (Background included),
- Attachment 2 (Accession document),
- Attachment 3 (List of Third Parties for simplified transfer according to Section 8.2).

In case the terms of this Consortium Agreement are in conflict with the terms of the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.

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

Except as otherwise provided in Section 6.4, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium. 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.

Formal notices: if it is required in this Consortium Agreement (Sections 4.2, 9.7.2.1.1, and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

Other communication: other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

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.

11.4 Assignment and amendments

Except as set out in Section 8.2, 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 not explicitly listed in Section 6.3.6 require a separate written agreement to be signed between all Parties.

11.5 Mandatory national 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, arbitral proceedings and processes relative thereto.

11.7 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.

11.8 Settlement of disputes

The parties shall endeavour to settle their disputes amicably.

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 Brussels 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 in any applicable competent court.

Section 12: Signatures

AS WITNESS:

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

UNIVERSITA CARLO CATTANEO LIUC (LIUC)

Signature: 

Name: CASTELLANI, Gian Claudio

Title: Legal Signatory

Date: 14/01/2015

THE UNIVERSITY OF WESTMINSTER LBG (UOW)

Signature:





Name: PAYNE, Katrina

Title: Director of Commercial Development and Business Support

Date:

AB.ACUS SRL (ABACUS)

Signature:



Via Lorenzo Bartolini, 39
20155 Milano (Italy)
C.F./P.IVA 05266690964

Name: D'AMICO, Enrico

Title: Legal Signatory

Date:

07 GEN. 2015

THE MANCHESTER METROPOLITAN UNIVERSITY (MMU)

X Signature: 

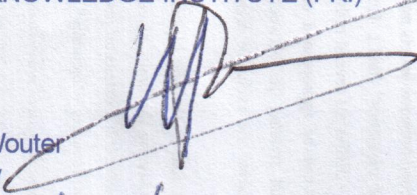
Name: CUNNINGHAM, John

Title: Director of Finance

Date: 14/1/2015

STICHTING FREE KNOWLEDGE INSTITUTE (FKI)

Signature:



Name: TEBBENS, Wouter

Title: Legal Signatory

Date:

23 / 12 / 2014

AMERIKANIKO KOLLEGIO ANATOLIA (AC)

Signature: 

Name: TSORMPATZOGLOU, Ioannis

Title: Legal Signatory

Date: 22/12/2014

POLITECNICO DI MILANO (POLIMI)

Signature:

Name: PIARDI, Silvia

Title: Legal Signatory

Date: 07/01/2015

IL DIRETTORE
Prof.ssa Silvia Piardi



Attachment 1: Background included

According to the Grant Agreement (Article 24) Background is defined as “data, know-how or information (...) that is needed to implement the action or exploit the results”. Because of this need, Access Rights have to be granted in principle, but parties must identify and agree amongst them on the Background for the project. This is the purpose of this attachment.

As to UNIVERSITA CARLO CATTANEO LIUC (LIUC), it is agreed between the parties that, to the best of their knowledge, no data, know-how or information of UNIVERSITA CARLO CATTANEO LIUC (LIUC) shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

As to THE UNIVERSITY OF WESTMINSTER LBG (UOW), it is agreed between the parties that, to the best of their knowledge, no data, know-how or information of THE UNIVERSITY OF WESTMINSTER LBG (UOW) shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

As to AB.ACUS SRL (ABACUS), it is agreed between the parties that, to the best of their knowledge, no data, know-how or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

As to THE MANCHESTER METROPOLITAN UNIVERSITY (MMU), it is agreed between the parties that, to the best of their knowledge, no data, know-how or information of THE MANCHESTER METROPOLITAN UNIVERSITY (MMU) shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

As to STICHTING FREE KNOWLEDGE INSTITUTE (FKI), it is agreed between the parties that, to the best of their knowledge, no data, know-how or information of STICHTING FREE KNOWLEDGE INSTITUTE (FKI) shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

As to AMERIKANIKO KOLLEGIO ANATOLIA (AC), it is agreed between the parties that, to the best of their knowledge, no data, know-how or information of AMERIKANIKO KOLLEGIO ANATOLIA (AC) shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

As to POLITECNICO DI MILANO (POLIMI), it is agreed between the parties that, to the best of their knowledge, no data, know-how or information of POLITECNICO DI MILANO (POLIMI) shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

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

**Attachment 2:
Accession document**

ACCESSION of a new Party to DiDIY Consortium Agreement, version 2014-12-05

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE Grant Agreement]

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting

[date]

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE Grant Agreement]

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

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

Signature(s)

Name(s)

Title(s)

Attachment 3:
List of Third Parties for simplified transfer according to Section 8.2