

## **CONSORTIUM AGREEMENT FOR EXPReS**

This AGREEMENT is made on the 2nd day of October 2006

BETWEEN

**Joint Institute for VLBI in Europe (JIVE)**  
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**The Netherlands**

**Hereinafter referred to as the Co-ordinator**

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**Limestone Avenue**  
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Hereinafter referred to as “the Consortium Members”

**WHEREAS:**

The Parties will conclude a contract no. 026642 EXPRES (hereinafter referred to as “*the Contract*”), with the Commission of the European Communities (hereinafter referred to as the *Commission*) for an Integrated Infrastructure Initiative (I3) entitled “Express Production Real-Time *e*-VLBI Service (EXPR*e*S) (hereinafter referred to as “*the Project*”) within the Sixth Framework Programme.

The Parties wish to co-operate with each other and to define their rights and obligations with respect to the execution and subsequent fulfilment of the *Contract*.

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## **Preamble**

WHEREAS, in consideration of Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006), (OJEC L 232/1) and of Regulation (EC) No 2321/2002 (OJEC L355) of the European Parliament and of the Council concerning the Rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community sixth framework programme 2002-2006, the Consortium Members, having considerable experience in the field of the Project, have submitted a Proposal for the Project to the Commission.

WHEREAS the Consortium Members have decided and agreed to execute and perform the Contract (as such term is defined in the above-mentioned Regulation) to be awarded by the Commission for the Project in the event the Commission accepts their Proposal.

WHEREAS the Consortium Members in accordance with the provisions of the Commission contractual rules, Annex II General Conditions - Part A, Article II.3, wish to specify or supplement, between themselves, the provisions of the anticipated Contract, with respect to the carrying out thereof.

WHEREAS the Consortium Members have agreed on a project called EXPReS to be carried out in the framework of the specific research and technological development programme "Structuring the European Research Area".

## **NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS**

### **PRELIMINARY ARTICLE**

This Consortium Agreement is concluded subject to the condition that the Contract between the European Commission and the Consortium Members is signed.

Consequently, in the event of signature of the Contract with the European Commission, it will be appended to this Consortium Agreement, forming an integral part of it and, in particular, shall specify the length and details of the work and how it is to be carried out and financed.

Consequently, in the event that the Contract with the European Commission is not signed by a Consortium Member, this Consortium Agreement shall automatically become null and void in its entirety vis-à-vis this Consortium Member, except the confidentiality clause (article 9.1) which shall remain in full force for all information disclosed during the proposal and negotiation stages and for the duration indicated in article 9.1.

## **CONTROLLING PROVISIONS**

In case of inconsistency between the contractual provisions signed by the Consortium Members in connection with this Project, the provisions of the EC Contract shall prevail over those of this Consortium Agreement, which shall themselves prevail over any special contract or agreement signed for its application.

### **Article 1. Definitions**

#### **1.1. General Definitions**

For sake of clarity, words used in this Consortium Agreement will have the same meaning as that defined in the second article of Regulation (EC) No 2321/2002 (OJEC L355) of the European Parliament and of the Council concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community sixth framework programme 2002-2006 and the same definition and meaning as that contained in the Contract with the European Commission, including its Annex II General Conditions unless otherwise defined herein.

#### **1.2. Additional Definitions**

**"Commission" or "EC"** means the Commission of the European Communities.

**"EC Contract"** means the Contract between the Coordinator, the Consortium Members and the Commission regarding the performance of the Project.

**"Hardware"** means any physical or electronic device whether it be a prototype or operational version

**"Programme of Activities"** means the "Joint Programme of Activities" for the Integrated Infrastructure Initiative specific targeted research programmes.

**"Project"** means (notwithstanding the definition given in the EC Contract) the I3, called EXPReS, with project reference 026642 EXPRES as set out in the Programme of Activities attached to this Consortium Agreement and to the EC Contract.

**"Project Deliverables"** means:

- the periodic -reports and the final reports and all documents to be submitted to the Commission , in accordance with the General Conditions, provision II 7 and, if appropriate annex III.

**“Software”** means:

- (a) software programmes, i.e., 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 and in any code form (including Source Code form);
- (b) software information, i.e., technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a software programme; and/or
- (c) software documentation, i.e., software information in documentary form.

For the avoidance of doubt, Software may be Knowledge or Pre-existing Know-How.

**“Source Code”** means Software in human-readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.

**“Object Code”** means Software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in the form of machine-readable libraries used for linking procedures and functions to other Software.

## **Article 2. Purpose**

The purpose of this Consortium Agreement is to specify the organisation of the work between the Consortium Members, to organise the management of the Project, to define the respective rights and obligations of the Consortium Members, including, but not limited to, their liability and indemnification, to supplement the provisions of the EC Contract concerning Access rights and to set out rights and obligations of the Consortium Members supplementing but not conflicting with those of the EC Contract. The Consortium Members agree to cooperate pursuant to the terms of this Consortium Agreement in order to execute and fulfil the EC Contract with the EC and perform the tasks designated in the Programme of Activities in Annex I.

## **Article 3. Scope of the Project**

The scope of the Project is set out in the Programme of Activities and the performance of the Project shall be shared between the Consortium Members according to the allocation of tasks and according to the allocation of the Community’ s contribution by the Governing Board.

## **Article 4. Organisational Structure**

### **4.1. Decision-making body**

#### **4.1.1. Governing Board**

##### Composition of Governing Board:

The Governing Board is composed of institutional representatives.

Each Consortium Member appoints its representative.

The Coordinator of EXPReS shall attend Governing Board meetings with the role of advisor.

Any expert or qualified person may be invited to attend meetings of the Governing Board with a role of advisor.

##### The Chairman and Vice-Chairman of the Governing Board :

Are elected by a majority decision of the representatives among the members of the Governing Board for a period of two years.

The Chairman sets the agenda for meetings of the Governing Board;

The Chairman chairs meetings of the Governing Board. In his/her absence, the Vice-Chairman will be acting chairman;

The Chairman ensures that the Coordinator implements the decisions taken by the Governing Board.

##### Meetings :

The Chairman shall convene the Governing Board as often as the interests of the Consortium so require, and at least once a year.

The Chairman shall also convene meetings at any time:

- upon written request of any Consortium Member in case of an emergency situation;
- upon request of the Coordinator;
- upon request of 1/3 of the Consortium Members.



The Chairman shall give each of the Consortium Members at least thirty (30) calendar days written advance notice of such meetings or fifteen (15) calendar days notice in case of an emergency situation.

Any decision requiring a vote at a Governing Board meeting must be identified as such on the notice of meeting.

However, any decision of the Governing Board may be taken in accordance with the above (I) in meetings via teleconference (II) without a vote, if a written consent, setting forth the decision so taken, is signed, even by electronic means, by representatives of the Consortium Members having at least the minimum number of votes that would be necessary to take such decision.

The Chairman of the Governing Board shall draft the minutes of each meeting, even those referred above, to formalise in writing all decisions taken and shall dispatch them to all Consortium Members within fifteen (15) calendar days of the concerned meeting.

The minutes shall be considered as accepted by the Consortium Members if, within fifteen (15) calendar days from receipt thereof, no Consortium Member present or represented at the said meeting has objected in writing to the Chairman of the Governing Board.

#### Quorum requirements:

The Governing Board may validly meet if two-thirds ( $\frac{2}{3}$ ) of its members are present or represented.

In case quorum is not met, the Governing Board will be convened once again within no more than three (3) weeks from this date, and may validly deliberate even in the absence of quorum.

All of the members of the Governing Board may grant a power of attorney to other members to represent them as their proxies, with a limit of one (1) proxy per member.

In case of written consultation, the letter of the Chairman is required to specify the deadline for response imparted. Failure to respond within this deadline shall be deemed a non-vote for the application of the quorum and majority vote requirements.

#### Role:

The Governing Board is the Consortium's decision-making and arbitration body and shall decide, *inter alia*, on the following matters:

Political and strategic orientation of the Project;

The Consortium's "Programme of Activities" and "Plan for using and disseminating the Knowledge" ;

The Consortium's budget and the financial allocation of the EU's contribution between the various activities on the one hand, and between the various Consortium Members on the other;

Annual validation of the realised expenditure in accordance to the budget;

Modifications to the "Programme of Activities", including, but not limited to, decisions to abandon a research programme or to reduce the budget allocated to it;

The Governing Board may vote the inclusion of a new participant on a unanimous basis;

The Governing Board may authorise, by unanimous vote minus that of the Consortium Member concerned, the withdrawal of a Consortium Member after the signature of the EC Contract, pursuant to the terms set forth in Article 6 : "Withdrawal of a Consortium Member";

The Governing Board decides on the exclusion, by unanimous vote minus that of the Consortium Member concerned, of a Consortium Member pursuant to the terms set forth in Article 6: "Exclusion of a Consortium Member";

The Governing Board shall appoint the Project Coordinator who may be removed at any time without prior notice ;

The Coordinator, project manager, the leaders of SA1, SA2, JRA1 and the administrative assistant will form the EXPReS Management Team (EMT). The EMT will be responsible for the day-to-day management of the project.

The Governing Board decides on the commitments proposed by the Management Team;

The Governing Board is the arbitration body for all decisions of the Management Team. Thus, any Consortium Member may submit for arbitration by the Governing Board any decision by the Management Team it deems to be contrary to its interests;

The Governing Board is the decision-making body for any issue concerning the proper operation of the Consortium.

The secretary of the Governing Board shall be appointed by the Coordinator.

#### Voting rules:

Each member of the Governing Board shall have one (1) vote.

Subject to the cases set forth above expressly requiring a unanimous vote, decisions by the Governing Board shall be taken upon a majority of  $\frac{2}{3}$  of the votes of the Consortium Members present or represented.

## **4.2 Operational bodies**

### **4.2.1. Coordinator**

The position of Coordinator is entrusted to the Joint Institute for VLBI in Europe.

### **4.2.2. Management Team**

#### Composition:

The Management Team is composed of the heads of the Specific Service Activities, head of the Joint Research Activity, the Project Manager, the Project Coordinator, and the Administrative Assistant.

#### Head of the Management Team:

The Project Coordinator is the head of the Management Team.

He/she shall set the agenda for meetings of the Management Team as well as chair them.

He/she shall also monitor the implementation by subprojects of decisions taken by the Management Team.

In emergency situations the head of the Management Team is authorised to take any decision required by the circumstances, which must then be validated by the Governing Board.

#### Meetings:

The head of the Management Team convenes teleconferences/video conference and/or face-to-face meetings of the Management Team as often as the interests of the Consortium so requires and at least four (4) times a year.

The head of the Management Team shall also convene meetings:

- upon written request of any Consortium Member in case of an emergency situation,
- upon request of any subproject Committee,

Any decision requiring a vote at a Management Team meeting is required to be identified as such on the notice of meeting.

The head of the Management Team will make sure that minutes of each meeting are drafted in order to formalise in writing all decisions taken and shall dispatch them to all the Management Team members within fifteen (15) calendar days of the concerned meeting.

The minutes shall be considered as accepted by the Consortium Members if, within fifteen (15) calendar days from receipt thereof, no Consortium Member presented or represented at the said meeting has objected in writing to the head of the Management Team, provided that objection shall be either on such formalisation.

#### Quorum requirements :

The Management Team may validly meet if 2/3 of its members are present or represented. In case quorum is not met, Management Team will be convened once again within no more than fifteen (15) days from this date, and may validly deliberate even in the absence of quorum.

All of the members of the Management Team may grant a power of attorney to other members to represent them as their proxies, with a limit of one (1) proxy per member.

In case of written consultation, the letter of the Head of Management Team is required to specify the deadline for response imparted. Failure to respond within this deadline shall be deemed a non-vote for the application of the quorum and majority vote requirements.

#### Role:

The role of the Management Team shall be to:

Manage the administrative, legal, financial and other non-technical aspects of the Project;

Implement the scientific decisions of the Governing Board;

Assist the Coordinator in preparing Project Deliverables;

Ensure the secretary of the Governing Board.

#### Concerning the Programme of Activities:

- prepare the Programme of Activities;
- make progress reports on the state of advancement of the Project to the Governing Board;
- establish the Project Deliverables for the Commission;
- propose the Project budget to the Governing Board as well as the allocation of funding between the Consortium Members.

Concerning Intellectual Property :

Make proposals to the Consortium Members on licensing projects pursuant to the terms of Article 9 “Intellectual Property Rights”;

Decide on terms and conditions of Access rights to Pre-Existing Know-How not listed prior to the signature of the EC Contract;

Decide on terms and conditions of access to Knowledge and Pre-Existing Know-How by Affiliates not listed prior to the signature of the EC Contract;

Make proposals to the Management Team concerning the management of the network knowledge portfolio;

Ensure a review of Project Knowledge;

Make proposals on the acquisition of rights from third parties.

Concerning Project monitoring:

Make proposals to the Governing Board to suspend all or part of the Project or to terminate all or part of the EC Contract, or to request the Commission to terminate the participation of one or more Consortium Members;

In case of default by a Consortium Member including the Coordinating institution, review and prepare proposals for submission to the Governing Board, concerning measures to be taken against the Defaulting Consortium Member, including, through a request to the Commission, for an audit, and assignment of the Defaulting Consortium Member's tasks, a staggered payment of the financial part of this Consortium Member's contribution, and suggestions as to any new entity to replace the Defaulting Consortium Member;

Concerning the use of reserves, make all decisions regarding their use and refer to the Governing Board;

Authorise any Consortium Member to subcontract certain elements of its tasks in accordance with provisions of article 5.4 (vii);

The Management Team shall more generally take any and all decisions required for the proper conduct of the Project.

The secretary of the Management Team is appointed by the Coordinator.

Voting rules:

Each member of the Management Team has one (1) vote and decisions shall be taken upon a simple majority of members present or represented.

The Coordinator shall :

Vis-à-vis the Commission:

Be responsible for carrying out the specific coordination task specified in the EC Contract;

Communicate all information in connection with the Project to the Commission;

Receive the entire financial contribution from the Commission. The Coordinator shall manage this contribution by allocating it to the Consortium Members pursuant to the “Programme of Activities” and the decisions taken by the appropriate bodies;

Prepare annual accounts as requested by the Commission and prepare, within a reasonable time, an actual statement upon request of the Commission or any of the Consortium Members;

Inform the Commission and the Governing Board of the distribution of the funds among the Consortium Members, specifically the amounts allocated and the dates of payment to each Consortium Member;

Ensure the signature, by all Consortium Members, of the EC Contract.

Vis-à-vis the other Consortium Members:

Act as intermediary between the Consortium Members and the Commission.

Prepare for the Governing Board the Project Deliverables based on the reports, the supporting documents and audit certificates to be provided to the Coordinator by the Consortium Members.

Address the Project Deliverables to the Commission, after prior validation by the Governing Board.

Except in the Coordinator’s capacity as representative of the Consortium Members as defined in the EC Contract and for any mandate duly given by the Governing Board, the Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Consortium Members.

## **Article 5. Consortium Members' obligations for the implementation of the EC Contract**

**5.1.** The Consortium Members agree to participate in and collaborate on the Project and will inform the other Parties of any collaboration in other programmes or networks which are likely to compete with the Project.

**5.2.** Notwithstanding any other obligations provided herein, the Consortium Members shall take all reasonably necessary measures to perform, fulfil, promptly and in due time all their obligations so that the Project is carried out in accordance with the terms and conditions of the EC Contract and this Consortium Agreement. Any failure in doing so may lead to postponement, by the Coordinator, of the payment of their relevant EC-contribution.

**5.3.** The Consortium Members shall provide the Coordinator or the head of the subproject, as appropriate, with the Deliverables, information and reports they require in order to perform their duties under this Consortium Agreement and under the EC Contract or as the Commission may request.

The Consortium Members shall advise the Coordinator or the head of the concerned subproject of any request from the Commission.

Deliverables, information and reports shall include, inter alia, the supporting documents evidencing expenditures incurred by the Consortium Members for the purposes of the Project.

Each Consortium Member shall address to the Coordinator an audit certificate in accordance with the relevant article of the EC Contract no later than sixty (60) days after the end of each certification period.

The Consortium Members shall submit to the Coordinator, every twelve (12) months, a cost statement of expenses incurred, together with the supporting documents. The Coordinator has thirty (30) days to validate them.

**5.4.** Each Consortium Member undertakes:

To promptly notify any delay in performance or any event that may impact the Project to the appropriate body;

To inform the appropriate body of relevant communications it receives from third parties in relation to the Project;

To use reasonable endeavours to ensure the accuracy of any information it supplies to the other Consortium Members and to promptly correct any error therein of which it is notified. The recipient Consortium Member shall however be entirely responsible for the use made of such information;

Not to use knowingly any proprietary rights of a third party for which it has not acquired the corresponding right of use and/or to grant licences;

To act at all times in good faith and in a manner that reflects the good name, goodwill and reputation of the other Consortium Members and in accordance with good business ethics;

To participate in a cooperative manner to the meetings of the different bodies under this Consortium Agreement.

To organise a competitive tender for any subcontract and to comply with the requirements of the General Conditions provision II 6. In addition, the Consortium Member - shall obtain the prior approval of the Management Team, for all subcontracts of an amount lower than 50,000€ but greater than 5,000€ and the prior approval of the Governing Board for all subcontracts of an amount equal to or higher than 50,000€

## **Article 6. Change to the Consortium**

### **6.1. Inclusion of a new Consortium Member**

#### **6.1.1. Inclusion of new Consortium Members without any additional contribution from the Commission**

A new Consortium Member may only be admitted to the EXPReS Consortium by unanimous approval of the Governing Board.

#### **6.1.2. Entry of new Consortium Members with an additional contribution from the Commission**

The Commission may increase the Community's financial contribution to the Project during the course of its conduct in view of extending it to cover new activities that could involve new Consortium Members.

The Commission does so through calls for additional proposals, which it publishes in accordance with the rules of participation. The Commission shall evaluate and select these proposals in agreement with the Consortium.

#### **6.1.3. Conditions of participation in the Project by the new Consortium Members**

By joining the Project a new Consortium Member agrees to participate (through human, material and/or financial means) in the Programme of Activities and to pay the entrance fee, if any, determined by the Governing Board.



The entrance into the Consortium of a new Consortium Member becomes effective on the date it adheres to the EC Contract by the signature of the Accession of New Legal Entities (Form B) and to the Consortium Agreement by the signature of an amendment and after any entrance fee has been duly paid.

Nevertheless, any Consortium Member pursuant to the provisions of EC Regulation article 25.3 shall have the right to exclude some of its Pre-Existing Know How from the new Consortium Member.

### **Access rights.**

The new Consortium Member has access to the Knowledge prior to its arrival for the purpose of research activities after the end of the project, use and dissemination at market conditions.

## **6.2. Withdrawal, exclusion of a Consortium Member**

### **6.2.1. Withdrawal of a Consortium Member**

Any Consortium Member may request to terminate its participation in the EC Contract and the Consortium Agreement, by giving three (3) months written notice of termination to the other Consortium Members, by registered mail with acknowledgement of receipt, indicating the reasons for termination.

The Governing Board may object to such termination by unanimous vote minus the vote of the withdrawing Consortium Member, indicating the reasons for objection, within a period of forty-five (45) days from receipt of notification.

If the Governing Board agrees, the Coordinator shall inform the Commission by registered mail with acknowledgement of receipt in accordance with the provisions of the EC Contract.

The Commission has six (6) weeks from receipt to issue an objection.

Where the Consortium disagrees, the Coordinator shall submit to the Commission a request for assistance, in accordance with the provisions of the EC Contract.

### **Consequences of withdrawal:**

#### Confidentiality

The Consortium Member agrees to treat as confidential all confidential information, as defined in article 9 hereinafter, for a period of five (5) years from the date of its withdrawal.

## Access rights

Any Consortium Member withdrawing from the Consortium:

Loses Access rights to Knowledge produced and Pre-Existing Know-How identified, after its withdrawal;

Keeps Access rights to Pre-Existing Know-How and to the Knowledge of the other Consortium Members (in the state existing on the date of withdrawal), provided that (i) it is required, for the use of the Knowledge of which it is the owner or co-owner and (ii) such Access rights are requested at least within two years after its withdrawal;

Keeps its entitlement to royalties generated by the use by the other co-owners or third parties of the Knowledge produced in the scope of the Project of which it is the owner or co-owner. Royalties will be calculated proportionally to its co-ownership share, or pursuant to the co-ownership agreement(s) or licence(s) concluded prior to its withdrawal;

The other Consortium Members keep, for the purposes of the research carried out in the scope of the Project, Access rights pursuant to the terms set forth in Article 9: “Intellectual property rights” to the Pre-Existing Know-How (in the state existing on the date of withdrawal) of the withdrawing Consortium Member and to the Knowledge produced by it in the scope of the Project pursuant to the terms set forth in Article 26 and 27 of the Regulation concerning the rules for participation.

A withdrawing Consortium Member shall return all equipments or materials provided by the other Consortium Members, or destroy them upon their written request, at its own costs.

## Financial consequences for the withdrawing Consortium Members.

The Consortium Member is required to honour its financial commitments contracted prior to the effective date of its withdrawal;

The Consortium Member is required to refund all advances paid to it from the EC contribution except the amount spent for the performance of the Project, with appropriate justifications;

The Consortium Member is not reimbursed for any part of the reserves constituted for the Consortium.

Consequences on access to research infrastructures acquired with project co-financing: these shall be defined in the loan for use agreements and the co-ownership rules, if any.

The Consortium Member agrees to provide justifications in connection with the period during which it participated in the Project and any other element required to prepare the Project Deliverables, even after the date of its withdrawal.

The Consortium Members agree to make a special endeavour to pursue doctoral dissertations commenced in the scope of the Project under the best possible conditions.

The relevant consequences of the withdrawal of a Consortium Member are the same for its Affiliates.

### **6.2.2. Exclusion of a Consortium Member**

The exclusion of a Consortium Member may be decided by the Governing Board by unanimous vote minus the vote of the concerned Consortium Member and pursuant to the terms set forth in the EC Contract.

The exclusion of a Consortium Member has the same consequences as a withdrawal.

## **Article 7. Consortium Resources**

### **7.1. Financial means**

#### **7.1.1. Budget**

The budget comprises the resources and expenses of the Consortium. Resources comprise the financial contribution from the Community and the resources allocated by the Consortium Members.

The amount of the Community's financial contribution is set in the EC Contract and may be reviewed annually by the Commission.

The Consortium Members shall contribute to the Budget by providing the following:

- human resources (number of researchers by category and by network);
- material resources (equipment, infrastructures, etc.);
- financial contributions;
- know-how, as described and valued in the budget.

Provisional Expenses are set in the budget in accordance with the Programme of Activities.

A contingency fund, to be used at the discretion of the Governing Board will be established in the following manner. All Consortium Members receiving funds shall withhold 10% as part of a general contingency; it is expected that these funds will, under normal circumstances, be allocated to the projects for which they are identified. However, they can only be disbursed with the authority of the Governing Board.

The Consortium's rolling forecasted budget is established annually for an 18-month period and attached to the Programme of Activity as an annex. It shall be periodically reviewed by the Governing Board, based on Project requirements.

#### **7.1.2. Criteria for allocation of the Community's financial contribution**

Upon decision of the governing Board, the Community's financial contribution is allocated by the Coordinator between the Consortium Members receiving a financial contribution from the community ('Funded Members'), based on the forecasted budget, proportionally to their respective contributions for research and/or demonstration and/or other activities as defined in the EC decision no. 1513/2002 at the respective rate of 50%, 35% and 100%.

The Governing Board may decide on staggered payments of the contribution to a Funded Member for justified reasons. No distribution of funds to a Funded Member may take place prior to the signature of the Consortium Agreement and of the EC Contract by the said Funded Member.

#### **7.1.3. Method of payment of the Community's financial contribution**

The Consortium Members agree that all parts of the Community's financial contribution shall be distributed in full to the Consortium Members within 30 days of receipt. The Coordinator shall notify each Consortium Member promptly of the date and amount transferred to its respective bank account.

In case a Consortium Member has not provided the Coordinator with its Project Deliverables or has provided them late or provided non-compliant Project Deliverables, such Consortium Member shall not receive its concerned contribution allocation, until it remedies such non-delivery, late delivery or non-compliant delivery or unless the Governing Board, decides otherwise. The Governing Board shall be kept informed under all circumstances and may decide on additional appropriate measures with respect to the concerned Consortium Member.

It is also agreed that no distribution of any advance payment from the Commission will be made for a subsequent part or "tranche" before the prior ones are fully paid.

#### **7.1.4. Management of Community's financial contribution**

All financial management and accounting acts in connection with the Community's contribution shall be made by the Coordinator in accordance with the relevant rules and in compliance with the rules defined by the Community in this field.

The Coordinator shall identify in its accounts the Community's contribution to the Programme of Activities and provide all required justifications upon the release of the funds.

Where permitted by law, the Coordinator will open a separate bank account to receive the Commission's contribution and make payments to Consortium Members.

This bank account will be closed when all of the contributions have been remitted to the Consortium Members and in any event by no later than one (1) year after the termination of this Consortium Agreement.

## **7.2. Material resources**

### **7.2.1. Equipment**

The Consortium does not own any assets.

Equipment belonging to a Consortium Member may be allocated for the purposes of the Consortium's Programme of Activities and the other Consortium Members' employees may have access thereto. A loan for use shall generally not be requested.

A list of this equipment held up to date may be attached to the Consortium Agreement and specifies:

- the names and references of the equipment;
- the name of the owner,
- place of allocation;
- the purpose of their allocation , so as to be able to define in the Programme, what Consortium Member will have access thereto.

The Consortium Member owner of the equipment will guarantee its proper operation and compliance with safety and use standards pursuant to the laws of the country where the equipment is located.

For scientific equipment (other than lap-top P.C. computer equipment), the Consortium Member having responsibility for the place of allocation shall have custody thereof.

The Consortium Member having responsibility for the place of allocation shall organise access to the premises and to the equipment. Any maintenance costs for this equipment may be shared between the Consortium Members in the Consortium's budget, on the basis of the allocation criteria defined and validated by the competent technical committee.

### **7.2.2. Real estate infrastructures**

Buildings shall remain the property of the Consortium Members, who may make them available for use by the other Consortium Members.

### **7.3. Human resources**

Mobility actions may be carried out on a case-by-case basis depending on the laws, regulations and status applicable to each Consortium Member

The Consortium Members shall make the hiring of any persons required for the administration and the implementation of the Consortium's Programme of Activities their personal business, as well as their loaning out to Consortium Members.

In case of employee mobility within the Consortium, the employees of each Consortium Member shall retain the status they originally had, and their organisation of affiliation shall retain its duties as employer, and pay and manage this person pursuant to the applicable legislation and internal policies.

Each Consortium Member shall ensure the coverage of its employees in accordance with the legislation applicable to social security coverage, work-related accidents and occupational diseases and shall carry out all legal or regulatory requirements related to it.

Employees of a Consortium Member working, for the purposes of the fulfilment of the Consortium's Programme of Activities, and away from their normal place of work, in the premises of another Consortium Member are required to comply with the internal policies as well as with all general or special rules of health and hygiene applicable in the premises of the host Consortium Member.

Each of the Consortium Members shall make the arrangements in connection with the hosting of third party employees within the scope of the Project its personal business.

The host Consortium Member agrees to inform the employer of any risks to which its employees may be exposed on the host premises.

The employer of mobilised employees is required to be in a position to justify to the host Consortium Member the compliance of the status of all of its employees under labour and employment law rules or other rules applicable to them.

## **Article 8. Liability/Insurance**

### **8.1. General Principles**

The Consortium may have Non-Funded Members. Non-Funded Members do not receive any financial contribution from the Community. Funded Members receive a financial contribution.

The Funded Members, except for Funded Members who are Public Bodies, severally accept all liability for any loss or damage caused to them by any Consortium Member or any third party as a result of their participation in this Consortium Agreement.

Each Consortium Member is responsible for personnel insurance coverage according to its domestic law including social security law and accident at work and occupational diseases regulations.

## **8.2. Exclusion of indirect damages**

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

## **8.3. Liability towards the Commission**

Public bodies are responsible, in accordance with the participation rules and the EC Contract, only for their own debts.

Notwithstanding any joint and several liabilities of the Consortium Members which may exist towards the Commission, each Consortium Member shall be liable towards the others for any losses or damages suffered by the Commission, as a consequence of any failure to perform all or part of its obligations under the EC Contract or under this Consortium Agreement. Accordingly, should the Commission, in accordance with the provisions of the EC Contract, claim any reimbursement, indemnity or payment of damages from one or more Consortium Members, the Consortium Members agree that:

I) each Consortium Member whose default has caused or contributed to cause such claim shall indemnify each of the other Consortium Members against such claim, provided always that the total and cumulative limit of liability of that Consortium Member towards all the other Consortium Members collectively, in respect of any and all such claims shall not exceed the contribution it is entitled to receive as per the EC Contract. After payment of the Commission, any excess shall be apportioned between all the Consortium Members having suffered damages from the failure of the Defaulting Consortium Member(s), proportionally to their Project Shares; and

II) in the event it is not possible to attribute the default to any Consortium Member under (I), the amount claimed by the Commission shall be apportioned between all the Consortium Members, except public bodies, proportionally to the contribution they are entitled to receive.

## **8.4. Liability towards third parties**

Subject always to such other undertakings and warranties as are provided for in this Consortium Agreement and the EC Contract, each Consortium Member shall be solely liable for any loss, damage or injury to third parties resulting solely from the performance of its work packages.

## **Article 9. Intellectual Property Rights**

### **9.1. Confidentiality**

During the term of the Project and for a period of five (5) years thereafter, the Consortium Members shall treat as confidential any information which is designated as proprietary by the disclosing Consortium Member by an appropriate stamp, legend or any other notice in writing, or when disclosed orally, has been identified as confidential at the time of disclosure and has been promptly (thirty (30) days at the latest) confirmed and designated in writing as confidential information by the disclosing Consortium Member.

Accordingly, each Consortium Member undertakes (in addition and without prejudice to any commitment under the EC Contract) that:

I) the receiving Consortium Member shall not use any such information for any purpose other than in accordance with the terms of the EC Contract and this Consortium Agreement, and

II) the receiving Consortium Member shall not disclose any such confidential information to any third party except with the disclosing Consortium Member's prior written consent, and

III) such information shall neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication has not been specifically authorised in writing by the disclosing Consortium Member.

The confidentiality obligation stipulated above does not extend to information which the beneficiary party can prove:

had a public nature prior to its communication by the other party or fell within the public domain after its communication by the other party but through not fault of its own;

was already in its possession at the time of signature of the Consortium Agreement;

it received from a third party to the receiving party's best knowledge without breach of any secrecy obligation;

is disclosed to comply with the law or legal process to which the receiving Party is subject and the receiving Party has exercised its best efforts to obtain reliable assurance that confidential treatment will be accorded to the information disclosed within that process;

it has independently developed without use of other party's confidential information.



The Consortium Members shall contractually impose the same obligations on all of their employees or any other personnel working for a Consortium Member, who may have access to confidential information, to the maximum extent and for the maximum duration authorised by law, including upon the end or the termination of their employment or work.

The Consortium Members shall impose the same obligations on their Affiliates and sub-contractors.

## **9.2. General principles regarding Pre-Existing Know-How (PEKH)**

### **9.2.1. Ownership**

Each Consortium Member is and remains the sole owner of its intellectual and industrial property rights over its PEKH.

### **9.2.2. Identification of Pre-Existing Know-How**

The Consortium Members have identified and listed in the Annexes the Pre-Existing Know-How over which they may grant Access rights for the Project (Annex III) and the PEKH explicitly excluded (Annex IV).

The Consortium Members agree that all other Pre-Existing Know-How shall be considered as unnecessary for the implementation of the Project, provided however that the Consortium Members may update Annex III to extend the listed Pre-Existing Know-How brought to the Project.

## **9.3. General principles applicable to Knowledge**

### **9.3.1. Ownership and protection of Knowledge**

Knowledge shall be the property of the Consortium Member carrying out the work leading to that Knowledge.

When several Consortium Members have jointly carried out work generating the Knowledge and where their respective share of work cannot be ascertained, they shall have joint ownership of that Knowledge.

The Consortium Members concerned (“Contributors”) agree to jointly apply to obtain and/or maintain the relevant intellectual property rights and shall strive to set up amongst themselves appropriate agreements in order to do so.

These co-ownership agreements shall specify, inter alia, the applicable arrangements in case of the extension of rights as well as those applicable to the allocation and assumption of expenses in connection with the requested protection. The share of each of the Contributors to the development of the Knowledge shall be defined proportionally to the resources implemented by each, whether human, financial or intellectual.

So long as any such rights are in force, such Contributors shall be entitled to use and to licence such right on a non-exclusive basis with a financial compensation decided on a case-by-case basis in accordance with the agreements concluded with the prior consent of the other Contributors.

In case a Consortium Member (“Originators”) decides in its sole discretion that it does not intend to seek adequate and effective protection over certain pieces of its Knowledge issuing from the Project, then, the Originator shall inform in writing the other Consortium Members, through the Coordinator, and any Consortium Member interested in applying to obtain and maintain such protection shall advise the other Consortium Members through the Coordinator and in writing within one (1) month of receipt of relevant notice.

In case several Consortium Members are interested in so applying, they shall strive to set up amongst themselves and with the Originator appropriate agreements to this end. The investor shall assign against reasonable compensation to the other Parties all necessary rights which it owns.

Should no other Consortium Member show an interest in so applying, the Coordinator shall inform accordingly the Commission in accordance with Annex II General Conditions - Part B, Article II.33.

The foregoing shall be without prejudice to the Access rights of all Consortium Members that will remain unaffected.

The agreement concluded between the Consortium Member and a sub-contractor is required (I) to prohibit the sub-contractor from patenting or from applying for any intellectual property right protection related to the results obtained; (II) to transfer the ownership of any results obtained by a sub-contractor in the performance of its work; all results belonging to the prime Consortium Member.

### **9.3.2. Use and dissemination**

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

## **9.4. Access rights**

### **9.4.1. General principles**

Each Consortium Member shall take appropriate measures to ensure that it can grant Access rights and fulfill its obligations under the EC Contract and this Consortium Agreement notwithstanding any rights of its employees, or any person it assigns or engages to perform its own work package for the Project.

The Consortium Members agree that Access rights are granted on a non-exclusive basis. The Consortium Members also agree that, if not otherwise provided in this Consortium Agreement or granted by the owner of the Knowledge or Pre-Existing Know-How, Access rights shall not include the right to grant sub licences.

The Consortium Members agree that when applied to Software, Access rights do not include access to source code. Access rights to source code may be granted on request. Any such request may be rejected by the Consortium Member owner of the source code unless needed as described below.

The Consortium Members also agree that Access rights to Software are granted exclusively on a domain defined before the commencement of the Project.

Needed Access rights shall be granted upon request as described below and in accordance with the provisions of Annex II General Conditions - Part B, Article II-35.

Access rights are regarded as necessary when a Consortium Member reasonably believes that, without Access rights to another Consortium Member's Pre-Existing Know-How or Knowledge, the performance of its own work package for the Project or the Use of its own Knowledge resulting from the Project would be technically impossible or significantly delayed such that completion within the period of the EC Contract would be impossible, or require significant additional financial or human resources not envisioned by either the EC Contract, or, regarding the Use of its own Knowledge resulting from the Project, such Use would be technically or legally impossible. Such Consortium Member shall then promptly request in writing Access rights from said other Consortium Member, identify the extent of the Access rights and provide reasonable evidence of its needs.

### **9.4.3. Access rights for execution of the Project**

The Consortium Members agree that the Access rights to the Pre-existing Know-How needed for carrying out their own work under the Project shall be granted on a royalty-free basis. The Consortium Members agree that the Access rights to the Knowledge needed for carrying out their own work under the Project shall be granted on a royalty-free basis.

#### **9.4.4. Access rights for Use of Knowledge**

The Consortium Members agree that the Access rights to the Pre-Existing Know-How needed for the requesting Consortium Member in order to use its own knowledge shall be granted on fair and non-discriminatory conditions.

The Consortium Members agree that the Access Rights to the Knowledge needed for the requesting Consortium Member in order to use its own Knowledge shall be granted at preferential conditions

Each Consortium Member (the "First Consortium Member") may enter into a technical cooperation or licensing arrangement with a third party in respect of any minor amount of Knowledge of another Consortium Member (the "Second Consortium Member") which have been unavoidably incorporated into or amalgamated with the First Consortium Member's own Knowledge.

In such circumstances and upon request of the First Consortium Member, the Second Consortium Member shall grant to the First Consortium Member non-exclusive licences over its Knowledge against terms and conditions to be agreed, provided that no legitimate interests of the Second Consortium Member oppose the grant of such licence.

### **Article 10. Miscellaneous provisions**

#### **10.1. Entire agreement**

This Consortium Agreement, the Annexes, the EC Contract, the Forms of Accession and – when such exist(s) - Complementary Contract(s), constitute the entire agreement between the Consortium Members in respect of the Project, and supersede all previous negotiations, commitments and documents concerning the Project including any memorandum of understanding between the Consortium Members (whether or not with others) which relate to the Project or its proposal to the European Commission.

The annexes to this Consortium Agreement, which form an integral part thereof are:

- ANNEX I: Description of Programme of Activities
- ANNEX II: Detailed Joint Programme of Activities/Implementation Plan for the first 18 months
- ANNEX III: List of Pre-Existing Know-How brought to the Project
- ANNEX IV: List of excluded Pre-Existing Know-How
- ANNEX V: Use and Dissemination Plan
- ANNEX VI: First budget of the proposed Allocation of Resources
- ANNEX VII: EC Contract

## **10.2. Transfer or Assignment**

No Consortium Member shall, without the prior written consent of the Governing Board and in accordance with the provisions of the EC contract, assign or otherwise transfer partially or totally any of its rights or obligations under this Consortium Agreement.

## **10.3. Entry into force – Term of the Consortium Agreement**

This Consortium Agreement shall enter into force once the following three conditions have been fulfilled:

1. The EC Contract has been signed by both the Coordinator and the Commission; and;
2. All of the Consortium Members have signed Accession Forms, consenting to the EC Contract and;
3. All of the Consortium Members have signed this Consortium Agreement.

This Consortium Agreement shall expire on the expiry date of the Contract with the Commission.

The Project will commence on the date of entry into force of this Consortium Agreement.

## **10.4. Language**

This Consortium Agreement is drawn up in English which shall govern all documents, notices and meetings for its application and/or extension or in any other way relative thereto.

## **10.5. Applicable Law**

This Consortium Agreement shall be construed according to and governed by the laws of Belgium.

## **10.6 Settlement of disputes**

All disputes or differences arising from the implementation of this Consortium Agreement which cannot be amicably settled within the Governing Board shall be finally settled through arbitration in Paris under the Rules of the International Chamber of Commerce (ICC). Arbitration shall be conducted in the English language.

The arbitration award, if providing for damages, shall include interest from the date of any breach or other violation of this Consortium Agreement.

The arbitration award shall be final and binding upon the Consortium Members, not subject to appeal, and honoured by the Consortium Members without having resort to any court; however, if the award is not carried out voluntarily and without delay, it shall be referred to and enforced by any court having jurisdiction over the subject matter or any of the parties or their assets.

#### **10.7. Signature of special contracts**

Special contracts may be concluded between the Consortium Members for any issue not covered by the provisions of this Consortium Agreement.

#### **10.8. Amendments**

Amendments or changes to this Consortium Agreement shall be valid only if made in writing and signed by any and all of the Consortium Members. Same applies to any legally binding commitments extending the obligations of the Consortium Members on top of the obligations set out in this agreement. For the avoidance of doubt this applies also to decisions regarding the PEK owned by the Consortium Member.

#### **10.9. Severability**

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

#### **10.10. General provisions relating to termination**

The provisions 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 Consortium Members to pursue the rights and remedies provided for therein.

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

**IN WITNESS WHEREOF**, the Consortium Members have executed this Consortium Agreement in 19 (nineteen) original counterparts.

**Authorised to sign on behalf of :**

**Joint Institute for VLBI in Europe (JIVE)  
Oude Hoogeveensedijk 4  
7991 PD Dwingeloo  
The Netherlands**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**AARNET Pty Ltd  
Building 9  
Banks Street  
Yarralumla  
Canberra ACT 2601  
Australia**

**By (signature):**

**Name (block letters):**

**Position:**



**Authorised to sign on behalf of :**

**Delivery of Advanced Network Technology to Europe Limited (DANTE)  
3 Worcester Street  
Oxford OX1 2PZ  
United Kingdom**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Poznan Supercomputing and Networking Center  
(Instytut Chemii Bioorganicznej pan w Poznaniu)  
Noskowskiego 12/14  
61-704 Poznan  
Poland**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**SURFnet B.V.  
Radboudkwartier 273  
3511 CK Utrecht  
The Netherlands**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Stichting Astronomisch Onderzoek in Nederland (ASTRON)  
Oude Hoogeveensedijk 4  
7991 PD Dwingeloo  
The Netherlands**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Centro Nacional de Informacion Geografica  
c/General Ibanez Ibero 3  
28003 MADRID  
Spain**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Commonwealth Scientific and Industrial Research Organisation  
Limestone Avenue  
CAMPBELL ACT 2612  
Australia**  
(acting through its division of the Australia  
Telescope National Facility)

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**National Research Foundation  
Meiring Naude Road, Brummeria  
Pretoria 001  
South Africa**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Istituto Nazionale di Astrofisica  
Viale del Parco Mellini, 84  
00136 ROMA  
Italy**

**By (signature):**

**Name (block letters):**

**Position:**



**Authorised to sign on behalf of :**

**Max Planck Gesellschaft zur Förderung der Wissenschaften e.V.  
represented by  
Max Planck Institut für Radioastronomie (MPIfR)  
Auf dem Hügel 69  
53121 BONN  
Germany**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Teknillinen Korkeakoulu  
Otakaari 1  
02015 Espoo  
Finland**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Cornell University  
120 Day Hall  
Ithaca, New York 14853  
USA**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Uniwersytet Mikołaja Kopernika  
Ul. Gagarina 11  
87-100 Torun  
Poland**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Chalmers Tekniska Högskola AB  
SE-41296 Goeteborg  
Sweden**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Shanghai Astronomical Observatory  
Chinese Academy of Sciences  
80 Nandan Road  
200030 Shanghai  
China**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**Universidad de Concepcion  
Victor Lamas 1290  
4070386 Concepcion  
Chile**

**By (signature):**

**Name (block letters):**

**Position:**

**Authorised to sign on behalf of :**

**The University of Manchester  
Oxford Road  
Manchester M13 9PL  
United Kingdom**

**By (signature):**

**Name (block letters):**

**Position:**



**Authorised to sign on behalf of :**

**Ventspils University  
Inzenieru Street 101  
Ventspils, LV-3601  
Latvia**

**By (signature):**

**Name (block letters):**

**Position:**