

CONSORTIUM AGREEMENT for Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes – **REACTION Project**.

THIS CONSORTIUM AGREEMENT is based upon

REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) hereinafter referred to as Rules for Participation and the EC Grant Agreement, adopted on 10 April 2007 hereinafter referred to as the Grant Agreement and Annex II adopted on 10 April 2007 hereinafter referred to as Annex II of the Grant Agreement and is made on 2010-07-01, hereinafter referred to as “Effective Date”

BETWEEN:

ATOS ORIGIN SOCIEDAD ANÓNIMA ESPAÑOLA

the Coordinator

CNET SVENSKA AB

DANISH ELECTRONICS, LIGHT & ACOUSTICS

INSTITUT FUER MIKROTECHNIK MAINZ GMBH

FOUNDATION FOR RESEARCH AND TECHNOLOGY HELLAS

FRAUNHOFER-GESELLSCHAFT ZUR FOERDERUNG DER ANGEWANDTEN FORSCHUNG E.V. as legal entity for its FRAUNHOFER INSTITUTE FOR SECURE INFORMATION TECHNOLOGY SIT

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SOLIANIS MONITORING AG

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

hereinafter, jointly or individually, referred to as "Parties" or "Party"

relating to the Project entitled

Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes.

in short

REACTION

hereinafter referred to as "Project"

WHEREAS:

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

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

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Definitions

1.1 Definitions

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

1.2 Additional Definitions

"Affiliate"

any entity falling into the definitions of the documents listed in Article 1.1 above and specified in Attachment 4 to this Consortium Agreement.

"Consortium Plan"

Consortium Plan means the Description of the Work (Annex I to the Grant Agreement) and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the Project Board.

"Consortium Budget"

Consortium Budget means the allocation of all the resources in cash or in kind for the activities as defined in Annex I of the Grant Agreement and in the Consortium Plan thereafter.

"Defaulting Party"

Consortium Agreement based on DESCA Model

Defaulting Party means a Party which the Commission or the Project Board has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in the Grant Agreement and in Article 4.2 of this Consortium Agreement.

“Grant Agreement” means
after its signature by all Contractors, the contract (including its Annexes) for the Project identified in this CA, for the undertaking by the Parties of the Project;
before such signature, the model contract proposed by the Commission at the date of this Consortium Agreement in the Seventh Framework Programme for Research and Technological Development for which the Proposal has been submitted. “Grant Agreement” shall, as applicable, also mean any amendment to it.

“Needed” means:

For the implementation of the Project:

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

For Use of own Foreground:

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

“Project Bank Account”:

Bank Account provided by the Coordinator for the administration of the Project Funds, mentioned in the GPF (Grant Preparation Form).

“Project Funds”:

Funds provided by the European Commission to the Coordinator aimed at covering the European Commission’s Financial Contribution to the Parties as stated in the Grant Agreement.

“Sideground”:

Intellectual property that is developed by a partner in relation to the object of the project but in parallel to project’s efforts and resources.

“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 and indemnification, 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.

A new Party enters the Consortium upon signature of the Accession document [Attachment 3] 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 may be terminated in accordance with the terms of this Consortium Agreement and Annex II of the Grant Agreement (Grant Agreement Article II.37. and II.38.).

3.3 Survival of rights and obligations

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

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Project 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 provide promptly all information 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

Consortium Agreement based on DESCA Model

In the event the responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement, the Coordinator will give written notice requiring that such breach be remedied within 30 calendar days. If this does not occur, the Coordinator will raise this issue to the Project Board which may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof, in accordance with clause 12.2.2.

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 solely 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 use of third parties does not affect the rights and obligations of the other Parties regarding Background and Foreground under this Consortium Agreement and the Grant Agreement (the other Parties' Access Rights are the same as would have been the case had the contracting Party performed its share of the Project and/or those obligations itself) and that third Party shall not have access to any other Party's Foreground or Background without the owner Party's prior written consent.

Section 5: Liability towards each other

5.1 No warranties

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

The recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials 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 Affiliates) exercising its Access Rights.

5.2 Limitations of contractual liability

Each Party shall indemnify each of the other Parties in respect of the acts or omissions of itself, its employees, agents and sub-contractors, provided always that no Party shall be responsible to any other Party for punitive damages, indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts.

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

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

5.3 Damage caused to third parties

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

5.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure (as defined in Grant Agreement, Annex II article 40.1). Each Party will notify the competent Consortium Bodies of any Force Majeure as soon as possible. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

Section 6: Governance structure

The Main Governance Body of the project is the Project Board

6.1 General structure

The organisational structure of the Consortium shall comprise the following Consortium Bodies:

Project Board as the ultimate decision-making body of the Consortium

Technical Board as management groups for work packages.

The Coordinator is the legal entity acting as the intermediary between the Parties and the European Commission. 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 General operational procedures for all Consortium Bodies

6.2.1 Representation in meetings

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

6.2.2 Preparation and organisation of meetings

Convening meetings:

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

	Ordinary meeting	Extraordinary meeting
Project Board	At least quarterly	At any time upon written request of the Project Board

Technical Board	At least quarterly	or 1/3 of the members of the Project Board At any time upon written request of any member of the respective Work Packages
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Notice of a meeting:

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

	Ordinary meeting	Extraordinary meeting
Project Board	45 calendar days	15 calendar days
Technical Board	10 calendar days	7 calendar days

Sending the agenda:

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

Project Board	21 calendar days
Technical Board	7 calendar days

Adding agenda items:

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

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

Project Board	14 calendar days
Technical Board	2 calendar days

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

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

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

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

6.2.3 Voting rules and quorum

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

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

Defaulting Party members with a written qualification of "Substantial Breach", according to Section 12.2.2, cannot vote.

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

6.2.4 Veto rights

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

When the decision is foreseen on the original agenda, a member may veto such a decision during the meeting only.

When a decision has been taken on a new item added to the agenda before or during the meeting, a member may veto such decision during the meeting and within 15 days after the Minutes of the meeting are sent.

In case of exercise of veto, the members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its members. A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.

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

6.2.5 Minutes of meetings

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

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

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

6.3 Specific operational procedures for the Consortium Bodies

6.3.1 Project Board

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

6.3.1.1 Members

The Project Board shall consist of the Coordinator and one representative of each Party (hereinafter Project Board Member).

Each Project Board Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.1.2. of this Consortium Agreement.

The Coordinator shall chair all meetings of the Project Board.

The Parties agree to abide by all decisions of the Project 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.

6.3.1.2 Tasks

The Project Board shall:

- initiate, coordinate and have organised the Work Packages(s)
- prepare the content and timing of press releases and joint publications by the Consortium or proposed by the European Commission in respect of the procedures of the Grant Agreement Article II 30.3.
- make proposals about the termination of a Defaulting Party's participation in the Consortium Agreement and/or in the project and measures relating thereto

6.3.1.3 Decisions

The Project 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 Project Board:

Content, finances and intellectual property rights

- Proposals for changes to Annex I of the Grant Agreement to be agreed by the European Commission
- Changes to the Consortium Plan (including the Consortium Budget)
- Withdrawals from Attachment 1 (Background included)
- Additions to Attachment 2 (Background excluded)

- Additions to Attachment 4 (Listed Affiliated Entities)

Evolution of the Consortium

- Entry of a new Party to the Consortium and approval of the settlement on the modalities and conditions of the accession of such a new Party
- Withdrawal of a Party from the Consortium and the approval of the settlement on the modalities and conditions of the withdrawal
- Declaration of a Party to be a Defaulting Party
- Corrective measures to be required from a Defaulting Party
- Termination of a Defaulting Party's participation in the Consortium and measures relating thereto
- Suspension of all or part of the Project
- Termination of the Project and/or the Consortium Agreement

Appointments

On the basis of Annex I, the appointment if necessary of:

- Work Package Leaders
- Project Board Members

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

6.3.2 Technical Board

In addition to the rules in Section 6.2, the following rules shall apply:

6.3.2.1 Members

The Technical Board will comprise the Technical Manager and all Workpackage Leaders, Task Leaders and team members as necessary. The Project Manager, the Clinical Manager, and the Medical Engineering Manager will participate as needed

6.3.2.2 Tasks

The Technical Board shall manage the different Work Packages, in particular with regard to:

- the timely delivery of reports and Work Package results to the Project Board and the Coordinator
- formulating an implementation plan for the activities within the Work Package for the future period, which can imply proposing to the Project Board changes to the Consortium Plan and/or Annex I of the Grant Agreement
- making proposals to the Project Board for the admission of new Parties to the Grant Agreement and to the Consortium Agreement in order for said new Parties to participate in the Work Package.

Consortium Agreement based on DESCA Model

- alerting the Project Board and the Coordinator in case of delay in the performance of the Work Package or in case of breach of responsibilities of any Party under said Work Package.
- analysing and documenting, at the request of the Project Board, a presumed breach of responsibilities of a Party under the Work Package and preparing a proposal of remedies to the Project Board
- deciding upon any exchange of tasks and related budgets between the Parties in a Work Package when such exchange has no impact beyond the scope of the Work Package and its budget.
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Other specific tasks will include, but are not limited to, the following:

- Provide day-to-day co-ordination of the technical aspects of the project
- Provide technical leadership and team management support for the work package leaders
- Organise technical meetings and secure that all technical issues and risks are identified and managed and that decisions are properly recorded
- Support the Project Manager in validating that the project's technical objectives are fully met
- Support the Project Manager in co-ordination with other EU-funded or other international projects
- Advise the partners, the Project Manager and the Project Board on the projects technical aspects throughout the project
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6.3.2.3 Work Package Leader

The Work Package Leader of each Work Package is appointed by the Project Board.

The Work Package Leader shall have the following functions only:

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

6.4 Coordinator

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

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations

- performing the interface role between the Consortium and the European Commission. No Party would contact the European Commission in relation to the project without knowledge, permission or agreement of the Coordinator
- keeping the address list of members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting reports and other deliverables (including financial statements and related certifications) to the European Commission. If one or more of the *Parties* is late in submission of *Project Deliverables*, the *Coordinator* may submit the other *Parties' Project Deliverables* to the *European Commission*.
- transmitting documents and information connected with the Project, including copies of Accession documents and changes of contact information to and between Work Package Leaders, as appropriate, and any other Parties concerned
- administering the Community financial contribution and fulfilling the financial tasks described in 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 the Coordinator fails in its coordination tasks, the Project Board may propose to the European Commission to change the Coordinator.

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

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

6.5 Possible statuses of a Party

The Project Board will decide to change the status of a Party. Four possible statuses are foreseen:

Normally Operating Party
Slightly Underperforming Party
Underperforming Party
Breaching Party

All parties start the project with the a) "Normally Operating Party" status.

The Project Board may decide to appoint a Party as b) status (Slightly Underperforming Party) when several performance problems appear in the compliance of its duties, and these performance problems do not imply a serious deviation of the project plan, resources, or critical path.

The Project Board may decide to appoint a Party as c) (Underperforming Party) when at least one performance problem appears in the compliance of its duties to the Project which implies a serious deviation of the project plan, resources, or critical path. The c) status (Underperforming Party) implies financial consequences as specified in chapter 7.

The d) status (Breaching Party) is regulated in Section 12.2.2.

The status changes do not necessarily have to be sequential. An a) status Party may be appointed to d) status at the Project Board decision.

Each status change has to be communicated in writing and indicating the reasons to the concerned Party upon termination of the Project Board meeting in which the status change decision was made.

It is agreed and understood that each Party that remains in statuses b), c) or d) will strengthen its efforts to recover status a).

The Project Board will promptly change a Party status to a) when the Party has corrected its performance problems and the Project evolution is not in danger because of its underperformance.

Section 7: Financial provisions

7.1. Justification of Costs

7.1.1. Cost Justification Principles

The Grant Agreement includes the maximum distribution of funding for each Party for the whole Project time life, related to the cost share of each Party in the project budget.

During the preparation of the Grant Agreement the Consortium will develop a detailed budget including a distribution of efforts in monthly bases for each partner in each task, called Consortium Plan.

Each Party will provide at the end of each 6 months period a summary of the resources consumed in each task, in addition to a complete list of all eligible costs incurred in the period. In this template, the Parties will also be able to report any foreseen deviation of the budget forecasted for the next 6 months period. The Coordinator shall provide templates for these financial summaries.

In accordance with its own usual accounting and financial principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the European Commission, which should be provided for each period as defined in the Grant Agreement covering at least the eligible costs declared in the 6 monthly summaries. Neither the Coordinator nor any other Party shall be in any way liable or responsible for such justification of costs towards the European Commission.

The 6-monthly summary must include a breakdown of the costs according to the same categories included in the Grant Agreement (equipment, travel, personnel categories and their cost, etc.).

Information about exact personnel costs are confidential and only the Coordinator and the concerned Party can access the information about exact personnel cost. The Coordinator will

keep confidentiality about the exact personnel costs of each Party and will not distribute that information across the consortium.

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

All resources made available for the Project shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties and shall be budgeted.

Each Party is responsible for justifying its costs, which should be related to the forecast approved by the consortium and the European Commission. Any major deviation of the forecast should be justified and approved by the Main Governance Body of the project.

- A Party whose costs justified and accepted by the European Commission are less than its allocated share of funds in the Grant Agreement will be funded in accordance with its actual duly justified and accepted eligible costs only. A Party whose costs justified and accepted by the European Commission are more than its allocated share of funds in the Grant Agreement will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

7.1.2. Specific conditions on budgeted costs eligible for 100% reimbursement

These management costs shall be budgeted in the Consortium Budget in the following order of priority:

- o banking and transaction costs related to the handling of any financial resources made available for the Project by the Coordinator
- o a reasonable costs of Parties related to
- o the delivery of certification of financial statements according to the Grant Agreement
- o the certification of the financial/administrative methodology, unless the methodology has already been used by the Beneficiary in a previous Grant Agreement and has not changed (Grant Agreement Article II.4.4 and II.14.1) and/or
- o the certification of the simplified method of calculation of a Party's full indirect eligible costs (Grant Agreement Article II.15.2.a), if any
- o costs related to calls for new Beneficiaries
- o costs related to updating this Agreement
- o management costs of the Coordinator
- o any other costs eligible for 100% reimbursement upon decision of the Main Governance Body

Costs of coordination of research which are not allowed as management cost according to Annex II of the Grant Agreement (Grant Agreement Article II.16.5) have to be budgeted separately.

7.2. Operation of Project Funds

The Coordinator receives from the European Commission the Project Funds aimed at covering the Financial Contribution from the European Commission to all Parties for the performance of the Project tasks as stated in the Annex I of the Grant Agreement.

Fund transfers to Parties are the exclusive tasks of the Coordinator.

The Coordinator will provide a specific Bank Account for the administration of the Project Funds.

7.2.1 Pre-financing payment scheme

Parties should have an acceptable financial status, and not have a negative cash flow when the pre-financing from the *Commission* is available. All *Parties* should have sufficient funds in advance to fund their work. The Co-ordinator undertakes to transfer, in accordance with the *EU Contract* and the budget allocation, the sums due to the respective *Parties*. The Co-ordinator shall transfer such sums to the respective Party without undue delay, but not later than forty-five (45) calendar days from its receipt thereof from the *Commission*, and the Co-ordinator will notify each other *Party* promptly of the date and amount transferred to its respective bank account and shall give the relevant references.

7.2.2. Payment scheme for subsequent payments apart from the pre-financing

The Co-ordinator will guarantee to pay 100% of the relevant amount without undue delay, but not later than within forty-five (45) days of the receipt of the payment from the *Commission* to each *Party* for the work done in the corresponding completed reporting period only if the *Party's* deliverables and share of work for the period have been completed according to the *EU Contract* Annex I and have been endorsed by the respective *Work package Leader* and submitted to and approved by the Co-ordinator. The Co-ordinator shall always have the right to call upon the *REACTION Project Board* for its approval, in which case the *REACTION Project Board* decision shall replace the *Project Manager's* decision. The responsible *Party* for the submission of the deliverable has the obligation to submit this deliverable at least 20 days before the deadline stated in Annex I of the contract.

In the case that one or more of the deliverable(s) has/have not been approved, then the Co-ordinator shall bring the issue to a quorate *REACTION Project Board* meeting), which can decide with a single majority vote of all votes present in the meeting to withhold the payment to this *Party* or *Parties* until the relevant deliverable(s) is/are re-submitted and approved. If the relevant work had to be performed by other *Parties* in order to fulfill a deliverable, the *REACTION Project Board* may shift the whole or portion of the relevant payments to these parties. Each deliverable(s) is/are considered approved by default if no objections are raised by the Co-ordinator and/or the *REACTION Project Board*, in accordance with the aforementioned, within forty-five (45) working days of a traceable receipt of the deliverable(s). In any case that payment is available and a deliverable(s) has/have not been accepted by the European Commission in a previous official review, then the Co-ordinator will withhold this payment of this party or parties until the deliverable(s) is/are re-structured according to the reviewers guidelines and re-submitted and accepted by the *Commission*.

7.3 Property of the Project Funds

It is understood by all Parties, included the Coordinator, that the total or partial reception by a Party of the Project Funds from the European Commission through the Coordinator does not imply the property of these funds.

The Party acquires the property of the corresponding funds when all these three conditions are fulfilled:

the European Commission has approved the Party's Financial Statement Reports for each period

the Financial Statement Report has been successfully audited by an external audit, when applicable according FP7 regulations.

the European Commission has approved the Party's technical work in each Technical Audit, comprising Project deliverables and activities by each Party

Only after all a), b) and c) conditions have been fulfilled, the Party may claim property over the funds. This property claim can only be performed over the funds related to the time period whose Financial Statement Report has been approved by the European Commission, successfully audited, and whose technical work has been approved by the European Commission.

7.4. Exceptional cases

- If any of these two cases happens:
 - o at any moment the Project Board, with explicit approval of the European Commission, decides to change the maximum share of a Party, or
 - o there are unused funds at the end of the project and the Main Governance Body, with explicit approval of the European Commission, decides to redistribute these funds for enlarging a Party's share,
 - o then the same rules of 7.2 are applied, considering that the Party's funding limit is its new share's top limit.
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- If a Party's status is changed to "c) Underperforming Party" or "d) Defaulting Party" according to the conditions expressed in chapter 6, the Coordinator will stop any payment to the Party until its status changes back to status a) or b).
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A Party leaving the Consortium, either under voluntary withdrawal or by termination in accordance with clause 12.2.2, shall refund all funds received except the amount of actual eligible costs accepted by the European Commission in a period no longer than 15 days after the official exit date from the Consortium. Otherwise, the leaving Party will be obliged to pay to the Consortium an additional amount due to interest corresponding to the interest rate determined by the European Central Bank times the amount of days elapsed since the official date when it left the Consortium.

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

7.5. Rights and obligations of the Parties

During the Operation of Project Funds, 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

The Coordinator is entitled to withhold any payment due to a Party whose status has formally changed to “c) Underperforming Party” or “d) Defaulting Party” according to the conditions expressed in chapter 6 and clause 12.2.2 of this Consortium Agreement and in Grant Agreement, II.4.

The Coordinator is entitled to recover any Pre-financing already paid to a Defaulting Party and its interests produced in accordance with clause 7.4.

- The Parties other than the Coordinator should:
 - o Before being transferred any payment, and as a condition “sine qua non” for its reception, every Party will provide the Coordinator with all necessary administrative information that the Coordinator’s country legislation and its internal payment procedures require, comprising at least an original bank certificate confirming each Party’s bank transfer data.
 - o Provide the cost justification as described in section 7.1.

Section 8: Foreground

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

8.1 Joint ownership

In case of joint ownership, and where no joint ownership agreement has yet been concluded, each of the joint owners shall be entitled to use the joint Foreground as it sees fit, and to grant non-exclusive licenses, to third parties, without any right to sub-licence, to the following conditions: at least 45 days prior notice must be given to the other joint owner(s); and fair and reasonable compensation must be agreed with the other joint owner(s) following commercialisation of the Joint Foreground.

The joint owners shall agree on all protection measures and the division of related cost in advance.

8.2 Special clause on Intellectual property

Any intellectual property

regarding the concept, design and set-up of the Solianis Multisensor System, including the sensor configuration, sensor set-up, sensor integration, algorithms for data analysis, firmware to run the system, software running on the system , and whether created before the start of the project, during or after the project, and

regardless of it being considered as Background, Sideground or Foreground, and generated by Solianis Monitoring AG, without the contribution of any other party, shall be the exclusive property of Solianis Monitoring AG.

The other beneficiaries waive their Access Rights to any such intellectual property generated by Solianis except if such intellectual property is Needed for the implementation of the Project, as stated in the Grant Agreement and/or in this Consortium Agreement.

8.3 Transfer of Foreground

Each Party may transfer ownership of its own Foreground following the procedures of the Grant Agreement Article II 27.

8.4 Dissemination

8.4.1 Publication

Dissemination activities including but not restricted to publications and presentations shall be governed by Article II.30 of the Grant Agreement.

Prior notice of any planned publication shall be made 45 days before the publication. Any objection to the planned publication shall be made in accordance with the GA in writing to the Coordinator and to any Party concerned within 30 days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

The Party objecting a publication has to show that its legitimate interests will suffer disproportionately great harm and shall include a request for necessary modifications.

An objection is justified if

- (a) the objecting Party's legitimate academic or commercial interests are compromised by the publication; or
- (b) the protection of the objecting Party's Foreground or Background is adversely affected.

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 actions are performed following the discussion.

8.4.2 Publication of another Party's Foreground or Background

For the avoidance of doubt, a Party may not publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the Party's Foreground, without the other Party's prior written approval.

8.4.3 Cooperation obligations

The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Foreground or Background. However, confidentiality and publication clauses have to be respected.

Where a person carrying out work on the project on behalf of a Party (the “Relevant Party”) needs to include Background or Foreground of another Party in a publication to qualify for a degree, approval for Use shall be obtained from the appropriate *Party* owning such rights or affected by the *Use*. To ensure that the planned date of publication can be met the approval of the relevant parties shall be sought at least three months before the latest date on which (pursuant to the qualification procedures) the contents of the planned publication can be altered. In the event that a dissertation or thesis contains Foreground or Background belonging to another Party, then at the request of the Party owning such Foreground or Background the dissertation or thesis may be submitted to external examiners in confidence and deposited in the library of the Party which is an academic institution under restricted access conditions.

However, except as stated below, no such publication will be made under the above procedure -without a majority agreement of the *Parties* and provided no *Party* who would be adversely affected by the publication has vetoed such publication.

8.4.4 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 covered

The Parties shall identify in the Attachment 1 the Background to which they are ready to grant Access Rights, subject to the provisions of this Consortium Agreement and the Grant Agreement. Such identification may be done by e.g.

- naming a specific department of a Party
- and/or by subject matter.
-

The owning Party may add further Background to Attachment 1 during the Project by written notice.

However, only the Project Board can permit a Party to withdraw any of its Background from Attachment 1.

The Parties agree that all Background not listed in Attachment 1 shall be explicitly excluded from Access Rights. They agree, however, to negotiate in good faith additions to Attachment 1 if a Party asks them to do so and those are needed.

For the avoidance of doubt, the owner is under no obligation to agree to additions of his Background to Attachment 1.

In addition, if a Party wishes to exclude specific Background, it shall list such Background in the Attachment 2.

The owning Party may withdraw any of its Background from Attachment 2 during the Project by written notice.

However, only the Project Board can permit a Party to add Background to Attachment 2.

Access Rights to Background Needed for the Use of own Foreground shall be granted on fair, reasonable, non-exclusive and non-discriminatory conditions.

Any granting of Access Rights for Use shall be subject to the following:

- The Party requiring the granting of such Access Rights (the Requesting Party) shall make a written request to the Party (the Granting Party) from which it requires the Access Rights.
- The written request shall identify the Foreground concerned and shall provide reasons why Access Rights to the relevant Background and/or own Foreground are needed for the Use of such own Foreground.
- Any Access Rights shall only be granted upon the signature of a written agreement between the Granting Party and the Receiving Party and shall not be otherwise deemed granted.
- Any Access Rights granted shall be limited to those strictly Needed for the Use of the relevant own Foreground as such.

9.2 General Principles

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 infringe third party property rights.

As provided in the Grant Agreement Article II.32.3. Parties shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background (additionally to the limitations in Articles 8.1 and 9.1) or of any other restriction which might substantially affect the granting of Access Rights

If the Project Board considers that the restrictions have such impact, which is not foreseen in the Consortium Plan, it may decide to update the Consortium Plan accordingly.

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

Access Rights shall be free of any administrative transfer costs.

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

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

All Access Rights shall be granted upon written request.

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

The requesting Party must show that the Access Rights are Needed if so requested by the owning Party.

9.3 Access Rights for implementation

Except as otherwise provided in Article 9.1, Access Rights to Foreground and Background Needed for the execution of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed in Attachment 1.

9.4 Access Rights for Use

Except as otherwise provided in Article 9.1., Access Rights to Foreground if Needed for Use of a Party's own Foreground shall be granted on fair and reasonable conditions.

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

Except as otherwise provided in Article 9.1, Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on fair and reasonable conditions.

9.5 Access Rights for Affiliated Entities

Except as otherwise provided in Article 9.1, Affiliated Entities have Access Rights under the conditions of the Grant Agreement Article II.34.3.

Such Access Rights to Affiliated Entities shall be granted on fair and reasonable conditions and upon written bilateral agreement.

Affiliated Entities which obtain Access Rights in return grant Access Rights to all Parties and fulfil all confidentiality and other obligations accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliate Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Foreground.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.

9.6 Additional Access Rights

Except as otherwise provided in Article 9.1, the Parties agree to negotiate in good faith any additional Access Rights to Foreground as might be asked for by any Party, upon adequate financial conditions to be agreed.

9.7 Access Rights for Parties entering or leaving the Consortium

9.7.1 New Parties entering the Consortium

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

9.7.2 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 Project Board to terminate its participation in the Consortium.

9.7.2.1.2 Non-defaulting Party

A Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Foreground developed until the date of the termination of its participation. The time limit for its right to request these Access Rights shall start on the same date.

9.7.2.2 Access Rights to be granted by any leaving Party and a defaulting party.

Any Party leaving the Project voluntary and any defaulting party 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

9.8.1 Definitions relating to Software

“Application Programming Interface” - API

means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.

“**Object Code**” means software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for

linking procedures and functions to other software and the Software Documentation necessary for use of such Object Code.

“Software Documentation” means software information, being technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a software programme for use of Source Code or Object Code.

“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 and the Software Documentation necessary for use of such Source Code.

9.8.2. General principles

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software as far as not modified by this Section 9.8.

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 Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

9.8.3. Access to Software

Access Rights to Software which is Background or Foreground shall comprise:

- Access to the Object Code; or,
- where normal use of such an Object Code requires an Application Programming Interface (hereafter API), Access to the Object Code and such an API; or,
- if a Party can show that the Source Code is Needed, that is to say that the execution of its tasks under the Project or the Use of its own Foreground is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary.

9.8.4. Software license and sublicensing rights

9.8.4.1 Object Code

9.8.4.1.1 Foreground - Rights of a Party

Where a Party has Access Rights to Object Code and/or API which is Foreground for Use, such Access shall, in addition to the access for Use foreseen in Section 9.4, as far as Needed for the Use of the Party's own Foreground, comprise the right:

to make an unlimited number of copies of Object Code and API; and
to distribute, make available, market, sell and offer for sale such Object Code and API in connection with products or services of the Party having the Access Rights;

provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to use Object Code and API for its own Foreground.

The granting of these Access Rights shall be subject to a previous written agreement with the owner Party.

If it is intended to use the services of a third party for the purposes of this Section 9.8.4.1.1, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.

9.8.4.1.2 Foreground - Rights to grant sublicenses to end-users

In addition, Access Rights to Object Code which is Foreground shall, as far as Needed for the Use of the Party's own Foreground, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a non-exclusive sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:

- to maintain such product/service;
- to create for its own end-use interacting interoperable software in accordance with the Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC).

The granting of these Access Rights shall be subject to a previous written agreement with the owner Party.

9.8.4.1.3 Background

For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API which is Background for Use, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.4.2 Source Code

9.8.4.2.1 Foreground - Rights of a Party

Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code which is Foreground for Use, Access Rights to such Source Code, as far as Needed for the Use of the Party's own Foreground, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service.

The granting of these Access Rights shall be subject to a previous written agreement with the owner Party.

If it is intended to use the services of a third party for the purposes of this Section 9.8.4.2.1, the Parties shall agree on the terms thereof, with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.

9.8.4.2.2 Foreground – Rights to grant sublicenses to end-users

In addition, Access Rights to Source Code which is Foreground, as far as Needed for the Use of the Party's own Foreground, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.

Further sublicensing of Source Code is explicitly excluded.

The granting of these Access Rights shall be subject to a previous written agreement with the owner Party.

9.8.4.2.3 Background

For the avoidance of doubt, where a Party has Access Rights to Source Code which is Background, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.5 Specific formalities

Each sublicense granted according to the provisions of Section 9.8.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.

9.8.6 Open License Terms.

9.8.6.1 The Parties acknowledge that Background held by a Party pursuant to Open License Terms may impair or otherwise affect the other Parties' Access Rights to that Background and/or to the Parties' use of or Access Rights to any Foreground which is wholly or in part based on that Background. Each Party shall therefore abstain from introducing into the Project any Background that is held by that Party pursuant to Open License Terms in a manner that would require all or some of the Foreground to be licensed under Open License Terms, unless all Parties have unanimously approved in writing such introduction. The Party that is seeking such approval shall provide the other Parties with sufficient information regarding the Background in question and the Open License Terms that are applicable to it, to enable the Parties to determine whether the impairments and other effects the Open License Terms may have on Access Rights to such Background and to the use of or Access Rights to any Foreground that is wholly or in part based on such Background, may be accepted. However, no such approval shall also constitute agreement pursuant to Section 9.8.6.5 that Foreground may be sub-licensed on Open Licence Terms.

Existing approvals are set out in Attachment 6 to this PCA. This Attachment 6 can only be amended by the agreement of all the involved Parties. All Parties shall comply with the terms of the approvals in Attachment 6 (i.e. the approval only applies within the scope of the stated license terms, description of use and for use in the stated Project).

9.8.6.2 No Access Rights to Foreground or Background shall include the right to sub-license that Foreground or Background under Open License Terms unless unanimously agreed by the Party seeking to sub-license and the grantor(s) of such Access Rights.

This Section 9.8.6.2 shall not be interpreted as giving the right to grant sub-licences to any wider extent than as allowed by such an agreement, other than in accordance with the provisions of this Consortium Agreement.

This Section 9.8.6.2 shall not be interpreted as limiting the scope of Section 9.8.6.1, nor shall Article 9.8.6.1 be interpreted as limiting the scope of this Article 9.8.6.2.

This Section 9.8.6.2 shall continue to apply notwithstanding completion of the Project or any termination of this Consortium Agreement.

9.8.6.3 No Party will be allowed to change the open license terms during the implementation of the Project, in a manner that, in the opinion of any of the Parties, could prejudice in any way, either directly or indirectly, the right of the other Parties to the Background or Foreground owned by each of them or restrict in any manner their right to Use the Background or Foreground.

9.8.6.4 Should a Party be in breach of the obligations set forth in this section, it will assume full liability towards the other Parties for any damage or prejudice that could arise to the other Parties from that no fulfilment, including (but not limited to) the claims that may arise from the non-fulfilment, or a delay in the fulfilment of the obligations previously undertaken by any and /or all the Parties under the Grant Agreement and this Consortium Agreement. In addition, the breaching Party will immediately implement one of the following measures which may be decided by the other Parties at their exclusive discretion:

Either

a) change the terms and conditions of the open source license in a manner that it cannot other impair or otherwise affect the right of the other Parties to the Background or Foreground owned by each of them;

or

b) procure a similar software with identical functionalities governed by license terms and conditions not impairing or affecting the other Parties rights in respect to their Background or Foreground, and that shall be previously accepted by all Parties.

9.8.6.5 No Access Rights to Foreground or Background shall include the right to sub-license that Foreground or Background on Open License Terms unless unanimously so agreed by the Party seeking to sub-license and the grantor(s) of such Access Rights.

This Section 9.8.6.5 shall not be interpreted as giving the right to grant sub-licences to any wider extent than as allowed by such an agreement, other than in accordance with the provisions of this Consortium Agreement

This Section 9.8.6.5 shall not be interpreted as limiting the scope of Section 9.8.6.1, nor shall Section 9.8.6.1 be interpreted as limiting the scope of this Section 9.8.6.5.

This Section 9.8.6.5 shall continue to apply notwithstanding completion of the Project or any termination of this Consortium Agreement.

9.9 Protection

9.9.1 Apply for protection of other Party's Foreground

In case a Contractor ("Originator") decides in its sole discretion that it does not intend to seek adequate and effective protection over certain of its Foreground issuing from the Project, then, the Originator shall inform in writing the other Contractors, through the Coordinator, and any Contractor interested in applying to obtain and maintain such protection shall advise the other Contractors through the Coordinator and in writing **[within one (1) month]** of receipt of relevant notice.

In case several Contractors are interested in so applying, they shall strive to set up amongst themselves and with the Originator appropriate agreements to this end. Should no other Contractor show an interest in so applying, the Coordinator shall inform the European Commission in accordance with Article II.28.3 of the Grant Agreement. The foregoing shall be without prejudice to the Access Rights of all Contractors that will remain unaffected

9.9.2 Subcontractors ownership of Foreground prohibited

Any agreement concluded between a Party and each one of its subcontractors is required to prohibit the subcontractor from patenting or in any other form protecting the results obtained. All results belong to the Party.

9.9.3 Protection of acronym of the Project and filing of a domain name

After having carried out all searches for prior rights that may be required, the Contractors may agree that the Coordinator or any other Contractor shall be in charge of proceeding, in its own name, with the filing of the acronym for the Project as a trademark as well of a corresponding domain name. The Contractors shall agree on the extent of the protection sought.

The non-filing parties shall benefit from a non-exclusive licence to use this trademark under financial terms corresponding to an amount no higher than that resulting from an equal share of the cost of filing, obtaining and maintaining the trademark.

Section 10: Non-disclosure of information

All information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days at the latest as confidential information by the Disclosing Party, is "Confidential Information".

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

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;

- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only; and
- neither to copy Confidential Information, nor otherwise reproduce nor duplicate in whole or in part where such copying, reproduction or duplication have not been specifically authorised in writing by the Disclosing Party.

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

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

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

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

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

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure notify the Disclosing Party, and comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

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

Section 11: Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this body text and

Attachment 1 (Background included)

Attachment 2 (Background excluded)

Attachment 3 (Accession document)

Attachment 4 (Listed Affiliated Entities)

Attachment 5 (Initial list of members and other contact persons)

Attachment 6 (Open License Terms in Background approved by the Parties)

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

Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

11.2 No representation, partnership or agency

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

11.3 Notices and other communication

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator based on the initial list of members and other contact persons in Attachment 5.

Formal notices:

If it is required in this Consortium Agreement (Section. 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 (e.g. Minutes).

11.4 Assignment and amendments

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

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Section 6.3.1.2 require a separate agreement between all Parties.

11.5 Mandatory statutory law

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

11.6 Language

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

11.7 Applicable law

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

11.8 Settlement of disputes

The parties will treat to resolve amicably any dispute between the Parties with respect to the interpretation of any provision of this Consortium Agreement. In this sense, the parties shall meet as often as they deem necessary during a period of 60 days (or any other period agreed between the parties). The parties shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably as stated above, shall be subject to the jurisdiction of the national court of the country whose law is governing the Grant Agreement.

11.9 Personal Data

For the signing of the Grant Agreement between the European Commission (hereinafter "EC") and the Consortium, the Parties are asked by the EC to hand personal data referred to the project costs. For that reason the Parties have to give in personal data to the Coordinator, in order to give in the data to the EC. The Parties must grant that they accomplish with the European Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The Parties grant that they have collected the consent of the data subject for the treatment of the data as well as for the communication of data to the Coordinator and the EC. The Coordinator will only make the treatment of the personal data in order to give in the data to the EC. Once the data has been given to the EC the Coordinator will erase the data irrevocably. The Coordinator will not be considered liable for the communication of the data

except to the extent any loss or damage results directly from the Coordinator's gross negligence or wilful misconduct.

Except for the provisions of the paragraph above, during the execution of the services the Members of the Consortium will not make the treatment of personal data. If the Members need to make the treatment of personal data, they agree in that the treatment must be governed by a contract or legal act binding the processor to the controller following article 17.3 of the European Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Section 12: Termination

12.1 Termination before Signature of the Grant Agreement by the Coordinator

Before signature of the Grant Agreement by the Coordinator,

- (i) any Party may withdraw from and terminate this Consortium Agreement in respect of itself by informing the other Parties in writing of such termination (which shall take effect as of the latest date of such notice) if at its sole option it decides it will not participate in the submission of the Proposal;
- (ii) the Parties may by agreement terminate this Consortium Agreement forthwith;
- (iii) this Consortium Agreement shall terminate if and on the date that
- (iv) the Parties agree not to submit a Proposal to the European Commission; or
- (v) the European Commission rejects the Proposal.

12.2 Termination after Signature of the Grant Agreement by the Coordinator

12.2.1 After signature of the Grant Agreement by the Coordinator, no Party shall be entitled to withdraw from this Consortium Agreement and/or participation in the Project unless:

(a) subject to the approval procedures provided for in Section 6.3.1.2, hereof, as applicable, and always provided that the notifications set forth in Articles II.35 and 36 of the Grant Agreement are complied with, that Party has obtained the prior consent of the other Contractors, and also of the European Commission, to the termination of its participation in the Grant Agreement; or

(b) that Party's participation in the Grant Agreement or the Grant Agreement is terminated by the European Commission pursuant to the provisions of Article II.38 of the Grant Agreement, provided always that a Party shall not by withdrawal or termination be relieved from its responsibilities under this Consortium Agreement or the Grant Agreement in respect of that part of that Party's work on the Project which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or without prejudice to the provisions of Section 5 hereof any of its obligations or liabilities arising out of such withdrawal or termination.

12.2.2 In the event of a substantial breach which is not due to Force Majeure, by a Party, of its obligations under this Consortium Agreement or under the Grant Agreement. The qualification of "Substantial Breach" has to be granted by the Project Board in an ordinary or extraordinary meeting and reflected in its minutes. If this is deemed as irremediable in the minutes or is not remedied within one month of written notice from the Project Board, in accordance with Section 6.3.1.2 hereof, as applicable, such notice requiring that the default be remedied, the other Parties or the Coordinator (as the case may be) may terminate this Consortium Agreement with

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

respect to the Defaulting Party concerned by not less than fourteen (14) days written notice. Without prejudice to the provisions of Section 8 such termination shall become effective with respect to such Defaulting Party as of the date of such notice.

If any Party's participation in the Grant Agreement is terminated by the European Commission pursuant to the provisions of Article II.38 of the Grant Agreement, or a Party withdraws from the Project, then, without prejudice to any other rights of the other Parties the provisions of Sections 5.2, 8 and 9 hereof shall apply correspondingly.

Section 13: Signatures

AS WITNESS:

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

ATOS Origin

Signature(s):

Name(s) Alberto Gascón Saldaña

Title(s) Business Unit Manager C&BPO

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

CNet Svenska AB

Signature(s)

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Title(s) Managing Director

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

DELTA Danish Electronics, Light and Acoustics

Signature(s)

Name: Per Hartlev

Title: CEO

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

Institut für Mikrotechnik Mainz GmbH

Signature(s):

Name(s). Prof. Dr. Gerhard Wegner

Title(s) CEO

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

FOUNDATION FOR RESEARCH AND TECHNOLOGY HELLAS

Signature(s):

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Title: Vice Chairman of the Board of Directors of F.O.R.T.H.

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

**FRAUNHOFER-GESELLSCHAFT ZUR FOERDERUNG DER
ANGEWANDTEN FORSCHUNG E.V**

Signature(s):

Name(s): Mr Rüdiger Dorner

Titel(s): Public and EU-Projects

Mr Fabian PERPEET

Legal Affairs and Contracts

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

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Name: Vassilis Spitadakis

Title: R&D Director

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

IN-JET

Signature:

Name Jesper Thestrup:

Title: Managing Director

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

ALL

Signature(s):

Name:

Title:

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

MEDIZINISCHE UNIVERSITÄT GRAZ

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Name: Univ. Prof. Dr. Irmgard Lippe

Title: Vicerector for Research

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Name: Univ. Prof. Dr. Ernst Pilger

Title: Head of the Department of Internal Medicine

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

JOANNEUM RESEARCH Forschungsgesellschaft mbH

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Name(s): Hon.-Prof. Dr. Bernhard Pelzl and Mag. Edmund Müller

Title(s): Managing Directors

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

CHC

Signature(s):

Name(s):

Position(s):

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

BRUNEL UNIVERSITY

Signature(s)

Name: Teresa Waller

Position: Director Research Support and Development

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

VUB

Signature(s):

Name(s):

Position(s):

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

Bayer Technology Services GmbH

Signature(s)

Name(s):	Dr. Helmut Mothes	&	Dr. Stephan Voelkening
Title(s):	Head of PT		Patents & Licensing

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

SOLIANIS MONITORING AG

Signature:

Name: Mr. Mario Stark

Title: CEO

Signature:

Name: Dr. Andreas Caduff

Title: CTO

REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

Attachment 1: Background included

Access Rights to Background made available to the Parties:

Attachment 2: Background excluded

Background excluded from Access Rights. The following specific Background is excluded from the obligation to grant Access Rights:

- a. ATOS will not grant access rights to any background owned by ATOS Origin
- b. FORTH hereby excludes all Background, know-how, technical information, confidential information, whether copyright protected, patented, registered, or not, in the area of Ambient Intelligence and smart environments technologies and facilities (Aml) that are developed by/at FORTH, and which may be brought or used by FORTH in the context of the work of this Consortium. That is to remain to FORTH and FORTH is to retain the exclusive right to exploit it in any way deemed appropriate as well as to publish any related information.
- c. Institut für Mikrotechnik Mainz GmbH excludes the following intellectual property, know-how and information from Access Rights under this Consortium Agreement:
 - a) any and all intellectual property, know-how and information outside the fields of (micro-)fluidics, (micro-)fluidics combined with (micro-)optics or (micro-)fluidics combined with electronics,
 - b) specially developed or third project related technology, (micro-) fluidic solutions, chips / cartridges, process and/or assay control,
 - c) specially developed or third project related optics, optical sensors and/or sensor technology,
 - d) diabetes and/or glucosis monitoring and/or sensor methods and approaches not addressed by Annex I of the Grant Agreement,
 - e) parameters of actual manufacturing processes,
 - f) intellectual property, know-how and information conveyed by third parties to IMM,
 - g) any and all intellectual property, know-how and information acquired in parallel to the REACTION project.
- d. Solianis Monitoring AG will not grant any access rights to Background relating to its device, but will make available a certain number of samples of its device so that the Consortium Partners can carry out their tasks and fulfil their deliverance obligations under this CA and the Grant Agreement and/or use their own Foreground. Solianis Monitoring AG warrants that the samples of the device provided will present the functionalities set out in the description of work.
- e. For the avoidance of doubt only, Fraunhofer excludes all of its Background.
- f. The Medical University of Graz hereby excludes from its obligation to grant *Access Rights* to all *Background* other than generated by Prof. Pieber or other employees of the Medical University of Graz involved in the Plan of Activities for the *Project*. And furthermore Medical University of Graz hereby excludes from its obligation to grant *Access Rights* to all *Background* other than explicitly needed for the *Project* as described in ANNEX 1. The Medical University of Graz also excludes all *Background* that due to existing or future *Third Party* rights it is unable to grant *Access Rights* to.
- g. For the avoidance of doubt only, DELTA excludes all of its Background.

Attachment 3: Accession document

ACCESSION

of a new Party to

REACTION Consortium Agreement, version [..., YYYY-MM-DD]

[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].

ATOS ORIGIN SOCIEDAD ANÓNIMA ESPAÑOLA

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]

ATOS ORIGIN SOCIEDAD ANÓNIMA ESPAÑOLA

Signature(s)

Name(s)

Title(s)

Attachment 4: Listed Affiliated Entities

Affiliates for Atos Origin SAE: none.

Affiliates for Medizinische Universitaet Graz: none.

Affiliates for FOUNDATION FOR RESEARCH AND TECHNOLOGY HELLAS: none

Affiliates for JOANNEUM RESEARCH Forschungsgesellschaft mbH: none

Affiliates for Institut für Mikrotechnik Mainz GmbH: none.

Affiliates for SOLAINIS MONITORING AG: Solianis Holding AG, c/o ATC (Switzerland) SARL, Bahnhofstrasse 28, CH-6300 Zug, Switzerland

Affiliates for Hellenic Telecommunications & Telematics Applications Company: none

Affiliates for FRAUNHOFER-GESELLSCHAFT ZUR FOERDERUNG DER ANGEWANDTEN FORSCHUNG E.V: none

Affiliates for DELTA: none

Affiliates for Bayer Technology Services GmbH: none

Attachment 5: Initial list of members and other contact persons

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

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REACTION: Remote Accessibility to Diabetes Management and Therapy in Operational healthcare Regimes. Dated: 02.10.2009. Consortium Agreement.

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Attachment 6 (Open License Terms in Background approved by the Parties)