

MEMORANDUM OF UNDERSTANDING – MODEL

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Organismes publics français de recherche

## MEMORANDUM OF UNDERSTANDING

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Between

XXX ..... having its registered address at.....  
Represented by .....

hereafter called to as .....

and

.....  
., having its registered office at.....  
, hereafter called

and

.....  
., having its registered office at.....  
, hereafter called

Individually or collectively referred to as the "Party" or the "Parties".

Whereas the Parties are aiming to develop a competitive proposal for an integrated project , a *network of excellence* or .....in response to the call number..... published the ....., under the Sixth Framework Programme of the European Community for research, technological development and demonstration activities for the period 2002 to 2006 (hereinafter called "FP 6") in the field of :

Whereas for the purpose of the proposal preparation, the Parties will provide each other with all necessary relevant information.

The Parties agree upon the following :

### **CONFIDENTIALITY**

- 1 As used in this Agreement the term "Confidential Information" shall mean any information whether of financial, commercial, scientific, or technical nature disclosed by the disclosing Party to the receiving Party under this Agreement, provided, however, that information disclosed by the disclosing Party hereunder shall not be Confidential Information if:
  - (a) it is already in the public domain by publication or otherwise or becomes available to the public through no breach of this Agreement by the receiving Party ; or
  - (b) It is in the receiving Party's possession prior to receipt from the disclosing Party as proven by its written documents ; or
  - (c) It is disclosed to the receiving Party by a third party without breach of any obligation of confidentiality.
  - (d) it had to be communicated to comply with applicable laws or regulations or with a court of administrative order provided that insofar as reasonably possible the

receiving Party shall have informed the disclosing Party of such need and shall have complied with the disclosing Party's reasonable instructions designed to protect the confidentiality of such information;

2 Nothing in this Agreement shall be construed as compelling a Party to disclose any Confidential Information to the others.

3 The Confidential Information, all copies thereof and all rights thereto, shall remain the exclusive property of the disclosing Party.

All Confidential Information, whether original or copies thereof shall be promptly returned to the disclosing Party on receipt of the disclosing Party's written request.

4 The receiving Party undertakes during the term of this Agreement and for a period of five years after the date of expiry or termination :

- to safeguard Confidential Information as it would use for its own proprietary information of like importance,
- to keep all documents bearing or incorporating any Confidential Information at its principal place of business at the address stated in this Agreement,
- to keep all Confidential Information disclosed under this Agreement separate from its own documents and records,
- to divulge Confidential Information to its personnel for internal evaluation purposes only and on a "need to know" basis,
- not to duplicate or otherwise reproduce Confidential Information except for such copies as the receiving Party may require for internal purposes as aforesaid, provided that all copies shall contain the same proprietary and confidential notices and legends as appear on the original Confidential Information,
- not to use Confidential Information for other purposes than those of this Agreement,
- not to divulge Confidential Information to any third party or any other Party to this Agreement for any purpose, unless and until expressly authorized in writing to do so by the disclosing Party,
- not to use, reproduce or store any information disclosed under this Agreement in any externally accessible computer or electronic information retrieval system or transmit it outside of its principal place of business.

5 The Parties agree that Confidential Information shall be used solely for the purpose for which it was submitted. The receiving Party undertakes not to claim any property right on the Confidential Information.

## **PROPOSAL PREPARATION**

6 The Parties state that no other commitment has been and will not be made with any third party to establish a proposal on:

- *thematic priority of the FP 6 :*
- *call for proposal :*
- *object :*
- *Project name :*
- ....

**Commentaire [G1] :** Ne pas omettre de faire signer le même engagement aux éventuelles filiales qui pourraient concurrencer le projet avec d'autres partenaires. Bien entendu l'exclusivité est optionnelle. Si elle retenue, ses conséquences pour l'organisme sont à considérer au cas par cas.

- 7 Each Party shall, within its respective scope of supplies and services, make its necessary and best efforts to concur in a competitive FP 6 proposal through the preparation of all needed documents.
- 8 The Parties shall designate one Party as coordinator (hereafter called the "Coordinator") to represent the interest of the Parties vis-à-vis the Commission.
- 9 Each Party shall support and assist the Coordinator in finalising the proposal, in the form and according to the schedule to submit the proposal in due time to the Commission.

The Parties shall provide the Coordinator with all pertinent technical and cost data, which are necessary for the preparation of the proposal, as well as all technical support or such other support as may be mutually agreed upon.

The Coordinator shall not modify the technical and cost data supplied by the other Parties without their respective prior consent.

The Coordinator shall make available to each Party a copy of all significant letters, emails, faxes or documents relating to the proposal sent to or received from the Commission before the submission of the proposal.

- 10 Each Party is fully aware that the FP 6 programme covers only a part of the expenses that have to be made during the course of the Project.  
Each Party will bear its own costs involved in the preparation of the Proposal.
- 11 In accordance with the rules established by the Commission, the Parties shall negotiate a Consortium Agreement that will stipulate the Consortium commitments and the governance of the project (which could be divided in sub-projects, and/or workpackages).

### **NEGOTIATION OF THE PROPOSAL**

- 12 The Coordinator shall be responsible for the submission of the proposal and the conduct of negotiations of the proposal with the Commission.
- 13 Each Party shall be kept fully informed of the progress of any negotiation and, as far as its subproject and/or its workpackage is concerned, shall attend and participate in the EC Contract negotiations only upon request from the Coordinator.

The Coordinator shall make available to the Parties, all significant letters, emails, faxes or documents relating to the negotiations and shall also keep each Party informed of everything relevant to its workpackage until the award of the EC Contract.

- 14 The Coordinator shall not, without the prior written agreement of each relevant Party, propose or accept any deviation or variation to the conditions or scope of said Party's subproject and/or workpackage.

In case the negotiations with the Commission imply substantial modification of the project as described in this memorandum of understanding, the Parties shall in good faith negotiate in view of adapting the project.

## **CONSORTIUM AGREEMENT PREPARATION**

- 15** Each Party shall provide the Coordinator with all pertinent documents, which it deems necessary for the preparation of the Consortium Agreement, and at least :
- the legal form of the Party
  - means the Party wants to bring to the project (patents, secret know-how, software, biologic materials...)
  - *pour les REX: the pre-existing know-how the Party wants to explicitly exclude from the obligation to grant access rights in conformity with the EC contract*
  - *the pre-existing know-how the Party want to explicitly exclude from the obligation to grant access rights in conformity with the EC contract and the pre-existing know-how the Party is willing to bring to the project. All other pre-existing know-how shall be considered as unnecessary for the implementation of the Project.*
  - *pour les REX : number and identity of researchers and doctoral students who may be involved in the network of excellence.*
  - cost model used by the Party
  - documents giving details of Party's bank account
  - *For IP if necessary : the list of party's affiliates for which same rights and duties as contractors are solicited regarding to access to knowledge and pre-existing know-how.*

**Commentaire [C2]** : Cette clause est facultative et à insérer ou modifier en fonction de l'état d'avancement de la proposition et de la construction de l'accord de consortium lui-même.

- 16** The Parties undertake to negotiate and to sign a Consortium Agreement before the signature of the EC Contract between the Coordinator and the Commission.
- 17** Each Party will perform its services and share of work with due care, efficiency and diligence, and undertakes to make all reasonable efforts to concur in a competitive FP 6 proposal.

## **GENERAL PROVISIONS**

- 18** This memorandum of understanding shall come into force on the date of its signature and shall remain in force for a six-month period. The obligations of confidentiality herein stated shall remain in force for a period of five years after the date of expiry or termination.
- 19** Disputes that might arise concerning this memorandum of understanding shall be settled amicably. In case of disputes for which no amicable solution is possible, settlement will exclusively take place by the competent court of Paris, France.
- 20** This memorandum of understanding and its effects are subject to and shall be construed and enforced in accordance with the laws of Belgian.
- 21** This memorandum of understanding shall be executed in .....(..) counterparts, all of which together shall constitute one and the same instrument. Every Party shall sign two (2) original counterparts and return them to the *Coordinator* for counter-signature.

The *Coordinator* shall collect the signed counterparts and have an obligation to send copies of all signed counterparts to each Party within sixty (60) days of receipt of the signed counterparts from the Parties.

**SIGNATURE PAGE**

PARTICIPANT # 1 &  
COORDINATOR:

Authorised to sign on behalf of

By (signature):

Name (block letters):

Position:

PARTICIPANT # 2

Authorised to sign on behalf of

By (signature):

Name (block letters):

Position:

Date:

**SIGNATURE PAGE**

PARTICIPANT # 1 &  
COORDINATOR:

Authorised to sign on behalf of By (signature):

Name (block letters):

Position:

PARTICIPANT # 3

Authorised to sign on behalf of

By (signature):

Name (block letters):

Position:

Date: