

COMMIT

COMMIT CONSORTIUM AGREEMENT

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This Consortium Agreement (hereinafter referred to as “CA”) is made on July 15, 2011.

The parties,

1. **Stichting COMMIT**, established at Science Park 904, (1098 XH) Amsterdam, the Netherlands, and legitimately represented by prof.dr.ir. A.W.M. Smeulders, hereinafter: “Commit”,

and

2. **Almende B.V.**, established at Westerstraat 50 , (3016 DJ) Rotterdam, the Netherlands;
3. **Ambient Systems B.V.**, established at Colosseum 15d, (7521 PV) Enschede, the Netherlands;
4. **F.O.M. Instituut (AMOLF)**, established at Science Park 104, (1098 XG) Amsterdam, the Netherlands;
5. **Academisch Medisch Centrum (AMC)**, established at Meibergdreef 9, (1105 AZ) Amsterdam, the Netherlands;
6. **B.V. Algemeen Nederlands Persbureau (ANP)**, established at Verrijn Stuartlaan 7, (2288 EK) Rijswijk, the Netherlands;
7. **Arcadis Nederland BV**, established at Nieuwe Stationsstraat 10, (6811 KS) Arnhem, the Netherlands;
8. **Auxilium BV**, established at Oude Delft 48, (2611 CD) Delft, the Netherlands;
9. **Axini B.V.**, established at Fazantenhoeve 7, (3831 TJ) Leusden, the Netherlands;
10. **Broadfield Security Services (BSS Holland)**, established at Strekkerweg 75, (1033 DA) Amsterdam, the Netherlands;
11. **Capgemini Nederland B.V.**, established at Papendorpseweg 100, (3528 BJ) Utrecht, the Netherlands;
12. **Centric TSolve B.V.**, established at Het Zuiderkruis 37, (5215 MV) ‘s-Hertogenbosch, the Netherlands;

13. **Stichting Cinop; Centrum voor Innovatie van Opleidingen**, established at Pettelaarspark (5216 PC), 's-Hertogenbosch, the Netherlands;
14. **CIT Collections Information Technology**, established at Zeestraat 80-82, (2518 AD), Den Haag, the Netherlands;
15. **Cybermind Interactive Nederland**, established at Rijksweg 74a, (6228 XZ) Wageningen, the Netherlands;
16. **Coöperatie Devlab, Development Laboratories U.A.**, established at Den Dolech 2 LG 0.01, (5612 AZ) Eindhoven, the Netherlands;
17. **Stichting Centrum Wiskunde & Informatica (CWI)**, established at Science Park 123, (1098 XH) Amsterdam, the Netherlands;
18. **Elsevier**, established at
19. **Stichting Embedded Systems Institute**, established at located at the university campus in Eindhoven, Laplace Building 0,10, Den Dolech 2, (5612 AZ) Eindhoven, the Netherlands;
20. **Erasmus Universiteit**, established at Burgemeester Oudlaan 50, (3062 PA) Rotterdam, the Netherlands;
21. **Erfgoed Delft en Omstreken**, established at Schoolstraat 7, (2611 HS) Delft, the Netherlands;
22. **Ericsson Telecommunicatie B.V.** established at Ericssonstraat 2, (5121 ML) Rijen, the Netherlands;
23. **Euclid Vision Technologies B.V.**, established at Overtoom 480 4hg, (1054 JZ) Amsterdam, the Netherlands;
24. **Stichting Europeana**, established at Pr Willem Alexanderhof 5, (2595 BE) Den Haag, the Netherlands;
25. **Food & Biobased Research**, institute within the legal entity Stichting Dienst Landbouwkundig Onderzoek, Bornse Weiland 9, (6708 WG) Wageningen, the Netherlands;
26. **GridLine BV**, established at Keizersgracht 520, (1017EK) Amsterdam, the Netherlands;
27. **Stichting Hogeschool van Amsterdam**, established at Spui 21, (1012 WX) Amsterdam, the Netherlands,
28. **Hyves (Starphone Limited)**, established at Frederiksplein 42, (1017 XN) Amsterdam, the Netherlands;

29. **Ilse media** (Sanoma Digital The Netherlands B.V.), established at Maassluisstraat 2, (1062 GC) Amsterdam, the Netherlands;
30. **Irdeto B.V.**, established at Jupitersstraat 42, (2132 HD) Hoofddorp, the Netherlands;
31. **Stichting Katholieke Universiteit Brabant**, established at Warandelaan 2, (5037 AB) Tilburg, the Netherlands;
32. **Stichting Katholieke Universiteit (Radboud University Nijmegen)** established at Comeniuslaan 4, (6525 HP) Nijmegen, the Netherlands;
33. **KITT Engineering**, established at Pantheon 16, (7521 PR) Enschede, the Netherlands;
34. **Korps Landelijke Politiediensten (KLPD)**, established at Hoofdstraat 54, (3972 LB) Driebergen, the Netherlands;
35. **De Koninklijke Nederlandse Akademie van Wetenschappen (KNAW)**, established at Kloveniersburgwal 29, (1011 JV) Amsterdam, the Netherlands, acting for the purpose of Data Archiving and Networked Services (DANS);
36. **Koninklijk Nederland Meteorologisch Instituut (KNMI)**, established at Wilhelminalaan 10, (3732 GK) De Bilt, the Netherlands;
37. **Koninklijke Bibliotheek**, established at Prins Willem-Alexanderhof 5, (2595 BE) 's - Gravenhage, the Netherlands;
38. **Logica Nederland B.V.**, established at Laan van Kronenburg 2, (1183 AS) Amstelveen, the Netherlands;
39. **Leids Universitair Medisch Centrum (LUMC)**, established at Albinusdreef 2, (2333 ZA) Leiden, the Netherlands;
40. **M0tek Medical B.V.**, established at Keienbergweg 77, (1101 GE) Amsterdam, the Netherlands;
41. **MAG Productions Holding B.V - Eurocottage.**, established at Kortelandstraat 22, (7511 RW) Enschede, the Netherlands;
42. **Monet DB**, established at
43. **Stichting Nederlands Centrum voor Sociale Innovatie**, established at Beursplein 37, (3011 AA) Rotterdam, the Netherlands;
44. **Nederlands Instituut voor Beeld en Geluid**, established at Sumatralaan 45, (1217 GP) Hilversum, the Netherlands;
45. **Noldus Information Technology B.V.**, established at Nieuwe Kanaal 5, (6709 PA) Wageningen, the Netherlands;

46. **Stichting Novay**, established at Brouwerijstraat1, (7523 XC) Enschede, the Netherlands;
47. **De Persgroep Printing Amsterdam B.V.**, established at Van der Madeweg 40, (1099 BT) Amsterdam, the Netherlands;
48. **Philips Electronics Nederland B.V.**, acting through its Philips Research Laboratories, located at High Tech Campus 34 (5656 AE) Eindhoven, the Netherlands;
49. **Philips Medical Systems Nederland B.V.**, established at Veenpluis 4-6, (5684 PC) Best, the Netherlands;
50. **Politie Regio Gelderland Zuid**, established at Stieltjesstraat 1, (6511 AB) Nijmegen, the Netherlands;
51. **re-lion**, established at Rigtersbeek-Aalten 35, (7521 RA) Enschede, the Netherlands;
52. **Rijksmuseum Amsterdam**, established Stadhouderskade 42, (1071 ZD) Amsterdam, the Netherlands;
53. **Roessingh Research and Development**, established at Roessinghbleekweg 33b, (7522 AH) Enschede, the Netherlands;
54. **Serious Toys B.V.**, established at Kooikersweg 2, (5223 KA) 's-Hertogenbosch, the Netherlands;
55. **Talking Trends B.V.**, established at Joan Muyskenweg 58, (1099 CK) Amsterdam, the Netherlands;
56. **Technische Universiteit Delft**, established at Stevinweg 1, 5th floor, (2628 CN) Delft, the Netherlands;
57. **Technische Universiteit Eindhoven**, established at Den Dolech 2, (5612 AZ) Eindhoven, the Netherlands;
58. **Teezir B.V.**, established at Kanaalweg 17 L-E, (3526 KL) Utrecht, the Netherlands;
59. **Textkernel B.V.**, established at Nieuwendammerkade 28A 17, (1022 AB) Amsterdam, the Netherlands;
60. **Thales Nederland B.V.**, established at Zuidelijke Havenweg 40, (7554 RR) Hengelo, the Netherlands;
61. **Thales/T-Xchange** , established at Colloseum 13, (7521 PV) Enschede, the Netherlands;
62. **ThirdSight B.V.**, established at Science Park 904, (1098 XH) Amsterdam, the Netherlands;
63. **Stichting TI-COAST**, established at Urmonderbaan 22, (6167 RD) Geleen, the Netherlands;

64. **Stichting Top Institute Food and Nutrition (TIFN)**, established at Nieuwe Kanaal 9 a, (6709 PA) Wageningen, the Netherlands;
65. **TNO**, established at Schoemakersstraat 97, gebouw A, (2628 VK) Delft, the Netherlands;
66. **TomTom International B.V.**, established at Oosterdoksstraat 114, (1017 CT) Amsterdam, the Netherlands;
67. **TrendLight Netherlands B.V.**, established at Joan Muyskenweg 58, (1099 CK) Amsterdam, the Netherlands;
68. **Universiteit van Amsterdam**, established at Spui 21, (1012 WX) Amsterdam, the Netherlands;
69. **Universiteit Twente**, established at Drienerlolaan 5, (7522 NB) Enschede, the Netherlands;
70. **Universiteit Utrecht**, established at Heidelberglaan 8, (3584 CS) Utrecht, the Netherlands;
71. **Stichting V2_Instituut voor de instabiele media**, established at Eendrachtstraat 10, (3012 XL) Rotterdam, the Netherlands;
72. **VDG Security BV**, established at Radonstraat 10-14, (2718 TA) Zoetermeer, the Netherlands;
73. **VectorWise B.V.**, established at Science Park 140, (1098 XG) Amsterdam, the Netherlands;
74. **VicarVision**, established at Singel 160, (1015 AH) Amsterdam, the Netherlands;
75. **Video Dock B.V.**, established at Panamalaan 1b, (1019 AS) Amsterdam, the Netherlands;
76. **Vrije Universiteit**, established at De Boelelaan 1105, (1081 HV) Amsterdam, the Netherlands;
77. **VTS Politie NL**, established at Hoofdstraat 54, (3971 KB) Driebergen, the Netherlands;
78. **Stichting Waag Society**, established at Nieuwmarkt 4, (1012 CR) Amsterdam, the Netherlands;
79. **Wageningen University**, Department Agrotechnology and Food Sciences, Bomenweg 2, (6703 HD) Wageningen, the Netherlands;
80. **WCC Development B.V.**, established at Savannahweg 17, (3542 AW) Utrecht, the Netherlands,

hereinafter both together and individually also referred to as the “**Parties**”, respectively “**Party**”.

Whereas:

- The Parties, having expertise in specific areas of research in the ICT field, have jointly submitted a proposal for a Program entitled COMMIT (FES Program in Information and Communication Technology, dated on October 1st, 2009) in the framework of FES 2009 to the Subsidizer;
- The Subsidizer has approved the Proposal and has granted a subsidy to the Program by means of the Grant Decision (as defined hereunder);
- The Parties, which have accepted the rules and regulations for the Program as laid down in the Grant Decision of the Subsidizer dated 27 May 2011, wish to define in addition thereto certain of their rights and obligations between them with respect to the carrying out of the Program;

have agreed as follows:

Article 1 Definitions

Academic Party means a party which falls within the scope of a public financed research institute as referred to in the Dutch Higher Education Act (“*Wet op het Hoger Onderwijs en Wetenschappelijk Onderzoek*”), and/or a “*Kennisinstelling*” within the criteria of the Dutch Ministry of Economic Affairs.

Access Rights means licenses and user rights to Foreground and/or Background, as described in article 9 of this CA.

Affiliate means any legal entity directly or indirectly Controlling, Controlled by, or under common Control with a Party, for so long as such Control lasts. For the above purposes

“**Control**” of any entity shall exist through the direct or indirect:

- (i) ownership of more than 50% of the nominal value of the issued share capital of the entity or of more than 50% of the issued share capital entitling the holders to vote for the election of directors or persons performing similar functions, or
- (ii) right by any other means to elect or appoint directors of the entity (or persons performing similar functions) who have a majority vote,

and as far as listed per Project on the signature page of the CA.

Background means: information which is Held by Parties prior to their accession to the CA and/or generated outside the CA (as defined below) as well as trade secrets or IPRs pertaining to such information and which is Needed to carry out each of the Projects under the Program or for Use of the Foreground.

Commit means Stichting Commit, appointed and authorized by the Parties as the “penvoerder” of the Program.

Consortium agreement or **CA** means this consortium agreement.

Contributors has the meaning as defined in Article 8 sub (3).

Controlled License Terms means terms in any license that require that the use, copying, modification and/or distribution of Software or another copyright work ("**Work**") and/or of any copyright work that is a modified version of or is a derivative work of such Work (in each case, "**Derivative Work**") be subject, in whole or in part, to one or more of the following:

- (a) (where the Work or Derivative Work is Software) that the Source Code be made available as of right to any third party on request, whether royalty-free or not;
- (b) that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
- (c) that a royalty-free license relating to the Work or Derivative Work be granted to any third party.

For the avoidance of doubt, terms in any license that merely permit (but do not require any of) these things are not Controlled License Terms.

Declaration of Accession means a declaration, in the form provided for in Attachment 2 to this CA, signed by a Party in order to join the Program.

Defaulting Party means a Party which is in breach of any of its obligations under this CA or its obligations as set out in the Grant Decision.

Effective Date means the date of entering into force of the subsidy as set forth in the Grant Decision.

Force Majeure means any one or more events beyond the control of the relevant Party which occur after the date of signing of this CA or Declaration of Accession, were not reasonably foreseeable at the time of signing of this CA, and the effects of which are not capable of being overcome without unreasonable expense and/or unreasonable loss of time to the Party concerned. Events of Force Majeure shall include (without limitation) war, civil unrest, acts of government, natural disasters, exceptional weather conditions, breakdown or general unavailability of transport facilities, accidents, fire, explosions, and general shortages of energy.

Foreground means the results, including information, whether or not these can be protected, which are generated under a Project, as well as trade secrets or IPRs pertaining to such information.

Grant Decision means Grant Decision of the Subsidizer concerning the Program dated on 27 May 2011, attached to this CA as Attachment 3.

References to Background or Foreground being "**Held**" or "**Hold**" by a Party mean that such party can legally grant, or require someone other than any of the other Parties to grant, Access Rights under and/or to such Background or Foreground without the consent of, and without being obliged to account to or make any payment to, any third party.

Intellectual Property Right(s) or IPR(s) means: patents, patent applications and other statutory rights in inventions; copyrights (including without limitation copyrights in Software); registered design rights, applications for registered design rights, unregistered design rights and other statutory rights in designs; and other similar or equivalent forms of statutory protection, wherever in the world arising or available; but excluding rights in confidential information or trade secrets.

International Advisory Board Commit or IABC means the independent advisory board already involved in the assessment of the Grant Proposal and involved in the evaluation of the Program. IABC's members have been appointed by Commit in consultation with the Subsidizer.

Joint Foreground has the meaning as defined in Article 8 sub (3).

Kaderbesluit EZ subsidies means "Besluit van 21 november 2008, houdende regels voor het verstrekken van subsidies door de Minister van Economische Zaken op het gebied van het technologiebeleid, het beleid met betrekking tot het midden- en kleinbedrijf en het ruimtelijk economisch beleid".

Needed and Necessary in respect of executing or carrying out the Project or in respect of Use of Foreground mean technically essential and:

- (i) where IPRs are concerned, mean that those IPRs would be infringed absent the Access Rights granted under this CA;
- (ii) where confidential information is concerned, only confidential information which has been disclosed during the Project will be considered as technically essential, except as otherwise agreed between Parties.

PA means the Project Assembly as defined in article 5.

Project party or Project parties means a Party or Parties to the Project, as identified in Attachment 1.

Program party or Program parties means a Party or Parties to another project – i.e. a project other than the Project – under the Program.

Project means a project under the Program.

Project Leader has the meaning as defined in Article 5.

Program Share of a Party shall mean that Party's share of the total budgeted cost of the Program as shown in the Program plan.

Program means the program of the COMMIT initiative.

Program plan means the program plan of 3 May 2011- in which the Proposal has been further elaborated - of which the Projects form part, submitted by the Parties to the Subsidizer. The Program plan shall, as applicable, also mean any amendment thereto proposed by the Parties and accepted by the Subsidizer.

Software means a software program being 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.

Subsidizer means the Ministry of Economic Affairs.

Subsidy means the funds paid by the Subsidizer.

Use means the direct or indirect utilization of Foreground in further research activities other than those covered in the Project, or for developing, creating and marketing a product or process, or for creating and providing a service.

Article 2 Purpose and Scope of the Cooperation

- (1) The Parties undertake to co-operate under the conditions of the Grant Decision and this CA in order to achieve the goals of the Program.
- (2) The scope of the Program is defined in the Program plan (Attachment 1). The Program plan, including the description of the Projects form an integral part of this CA. In case of inconsistencies between the description of the Projects and the Program plan, the Program plan shall prevail.
- (3) The Parties agree and undertake reasonable endeavours to perform those parts of the Program and to contribute such resources as are allocated to each of them in the Program plan.
- (4) Any reference herein to Background Held by a Party is deemed to incorporate a reference to Background Held by any Affiliates of such Party.
- (5) Any reference herein to Access Rights granted to a Party is deemed to incorporate a reference to Access Rights to any Affiliates of such Party, subject to the relevant terms set out herein.
- (6) Any reference herein to an obligation of a Party is deemed to incorporate a reference to an obligation on the part of such a Party to procure that the relevant obligation is performed by any of the relevant Affiliates of that Party, subject to the relevant terms set out herein.

Article 3 Role of Commit

- (1) The Parties have appointed and authorized Commit to be the so-called “penvoerder” (as identified in Kaderbesluit EZ-subsidies and the Grant Decision) of the Program and to fulfil all tasks that are allocated to the “penvoerder” as laid down in the Grant Decision.

The Parties shall enable Commit to fulfil those tasks. The Parties accept that the executive board and the supervisory board of Commit have the tasks and powers as laid down in the bylaws of Commit and the Program plan.

- (2) Commit has the right to start, discontinue and/or adjust the Projects in case of (i) a material breach of the Parties' obligations of the Grant Decision in the Projects or this CA or (ii) for major technical or economic reasons substantially adversely affecting the completion of the Projects. In case of (i) Commit has the right, after permission of the Subsidizer, to re-allocate budgets.
- (3) Commit shall:
 - (a) keep the records and financial accounts making it possible to determine at any time what portion of the Subsidy has been paid to each Program party for the purpose of this CA;
 - (b) monitor the compliance by the Parties with their obligations under the Grant Decision and CA;
 - (c) be the intermediary for efficient and correct communication with the Subsidizer on the progress of the Program and the Projects;
 - (d) review reports to the Subsidizer to verify consistency with the Projects before transmitting them to the Subsidizer;
 - (e) notify the Parties via the Project leaders in writing of any proposal for new parties to a Project within 15 (fifteen) days after receipt of such proposal of the PA concerned;
 - (f) be responsible for reporting and reviewing at the Program level to the Subsidizer.
- (4) Commit may contract certain of its administrative and other tasks to a third party.
- (5) Commit shall in consultation with the IABC decide on the additional spending of the reserved Program budget for "Dissemination" and "Valorization and Synergy", which reserved budget is set forth in the Grant Decision.

Article 4 Funding

- (1) The Subsidy shall be distributed by Commit according to the actual payments made by the Subsidizer in accordance with the Program plan and the budgets stated in Attachment 1 and subject to the requirements of the Subsidizer as stated in the Grant Decision. and further detailed in the "Administratieve organisatie Commit" (A.O.) (Attachment 4).
- (2) Each Party shall be solely responsible for justifying its costs with respect to the Project towards the Subsidizer. Neither Commit nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Subsidizer and each Party indemnifies the other Parties and Commit from any claims from the Subsidizer in that respect.
- (3) A Party shall be funded only for its tasks carried out in accordance with Attachment 1. A Party which spends less than its allocated share of the Subsidy will be funded in accordance with its actual duly justified eligible costs only. A Party that spends more than its allocated share of the Subsidy will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

(4) Payments to Parties are the exclusive tasks of Commit.

In particular, Commit shall:

- transfer, in accordance with the Grant Decision, the appropriate sums received from the Subsidizer and due to the respective Parties with minimum delay, and not later than 30 days from receipt thereof.
- 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.

(5) Commit is entitled to withhold any payments due to a Party identified by the respective Project Leader in accordance with article 15 sub (4), to be in breach of its obligations under this CA or the Grant Decision. Commit is entitled to recover any payments already paid to a Defaulting Party.

Article 5 Organization of the Projects

(1) The Program consists of 16 Projects and each Project is led by a Project Leader, appointed by Commit in consultation with the concerning Project parties. The Project leader shall assume overall responsibility for, be in charge of and decide about:

- managing the Project;
- liaising between the Project parties and the various bodies of Commit;
- monitoring and coordination of the scientific content and coherence within the Project;
- monitoring and coordination of IPR and valorisation targets of the Project;
- monitoring the balance of information exchange in respect of contributions and outputs;
- organizing and monitoring the mechanism of information exchange by e.g. experts meetings and workshops;
- exchange of reports, documents, software, test procedures, etc
- stimulation of cross experiments between Projects;
- common use of services supplied by the Project parties or third parties;
- stimulation and facilitation of the general information flow between the Project parties;

Each Project Leader performs its tasks in consultation with the Project parties and reports to Commit.

(2) The Project parties shall establish, per Project, within thirty days after the Effective Date of this CA a Project Assembly (hereinafter referred to as “PA”) composed of one representative of each of the Project parties and the respective Project Leader.

(3) Each representative shall have one vote. After having informed the others, each Project party shall have the right to replace its representative. Each representative shall have a deputy replacing him or her in case of absence.

The PA shall be chaired by the Project Leader.

- (4) The PA shall meet at least once per year and at any other time when necessary at the request of one of the Project parties. Meetings shall be convened by the Project Leader with at least seven days prior notice accompanied with an agenda. Minutes of the meetings of the PA shall be drafted by the Project Leader and transmitted to the other Project parties without delay. The minutes shall be considered as accepted by the other respective Project parties if, within fifteen (15) days from receipt, none of them has objected in writing to the Project leader.
- (5) The PA shall be in charge of
 - (a) reviewing and/or amending the respective Project plan and propose such amendments to Commit.
 - (b) making proposals to Commit for sending a written notice to a Defaulting Party requiring remedy of breach and terminating this CA with respect to that Defaulting Party, all in accordance with Article 15 sub (4).
 - (c) making proposals to Commit for withdrawal of a Project party or accession of a new party to the Project concerned.
- (6) Decisions in relation to the items listed in Article 5 sub (5) (a) and 5 sub (5) (b) shall be taken by a majority of 75% of the total votes of the Project parties, provided that any Project party, the scope of whose work or the time for performance of it, or whose costs or liabilities, are thereby affected, may veto such decisions. Decisions in relation to the item listed in Article 5 sub (5) (c) shall be taken unanimously by the Project parties with the exception of the withdrawing Party.
- (7) For the avoidance of doubt, Program parties shall not be involved in decisions in relation to the item listed in Article 5 sub (5) (c). Nonetheless, if a Program party can substantiate that its commercial interests are substantially damaged by a decision under Article 5 sub (5) (c) regarding accession of a new party to a Project, such Program party shall be relieved from its obligation to grant Access Rights pursuant Article 9 to such new party. The Program parties concerned shall notify Commit of its substantiation within 15 (fifteen) days after receipt of the notification of Commit as referred to in Article 3 (3) sub (e).

Article 6 Performance of the Projects

- (1) Each Project party undertakes to use reasonable endeavours:
 - (a) to perform on time the tasks assigned to it in the Program plan and to make available required rights and information on time to other Project parties under the terms and conditions of Article 7 and 9;
 - (b) to participate actively with the relevant other Project party or parties in the performance of, or to perform itself as the case may be, such organisational tasks as are assigned to it jointly or solely;
 - (c) to promptly notify its respective Project Leader and each of the other Project parties of any delay in performance in accordance with (a) and (b) above
 - (d) to promptly notify its respective Project Leader of the filing or declaration of bankruptcy, being granted suspension of payment, termination of its activities, ceasing of its existence or offering an out of court settlement to its creditors.

- (2) Each Project party hereby undertakes reasonable efforts to promptly supply to its respective Project Leader and the PA all such information or documents as the Project Leader and the PA may require to fulfil their obligations as provided for in this CA.
- (3) Each Project party shall send such reports about the Project to Commit to enable Commit to comply with all requirements of the Subsidizer as stated in the Grant Decision.
- (4) Each Project party shall, on request of Commit, undertake its reasonable efforts to participate in and contribute to general meetings and seminars concerning the Program as organized by Commit.
- (5) Each Project Party shall bear its own costs in connection with the carrying out of its part of the Project.

Article 7 Confidentiality

- (1) Subject to Article 7 sub (5), all information of whatever nature or form disclosed by a Party (the "Disclosing Party") to any other Party (the "Receiving Party") in connection with the Program after the Effective Date, and which:
 - (a) if disclosed in tangible form, was marked as "Confidential" at the time of such disclosure; or
 - (b) if disclosed orally, was identified as confidential at the time of such disclosure and confirmed as confidential in writing within 30 days after disclosure; is "Confidential Information".
- (2) Each Receiving Party undertakes not to use Confidential Information for any purpose other than:
 - (a) in accordance with the terms of this CA; and
 - (b) for the purpose of performing obligations or as Necessary for exercising rights granted by or pursuant to this CA.
- (3) Each Receiving Party undertakes to apply for the security of Confidential Information at least the same degree of care as it applies for the security of its own Confidential Information (but in any case shall apply not less than reasonable care) and, subject to Article 7 sub (5), not to disclose Confidential Information to any third party, excluding, subject to Article 7 sub (7), Affiliates who need it for the purposes mentioned in Article 7 sub (2), without the prior written consent of the Disclosing Party.
- (4) For any Confidential Information, the period of confidentiality shall be until 5 years after the end of the Program.
- (5) No information disclosed by any Disclosing Party shall be deemed to be (or to remain) Confidential Information for the purposes of this CA, to the extent that any Receiving Party can show that the information concerned:

- (a) was publicly available at the time of disclosure or has become publicly available by no wrongful act or omission on the part of the Receiving Party or any of its Affiliates;
- (b) was in the possession of the Receiving Party or one of its Affiliates without confidentiality obligation at the time of disclosure;
- (c) was lawfully obtained by the Receiving Party or any of its Affiliates from a third Party without an obligation of confidentiality; or
- (d) was developed by the Receiving Party or any of its Affiliates independently from the other Parties' Confidential Information.

For the sake of clarity, nothing in this Article 7 sub (5) grants any right to any Affiliate of any Party to receive any Confidential Information save pursuant to the provisions of Article 7 sub (7).

- (6) 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: (i) notify the Disclosing Party; and (ii) comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.
- (7) With respect to any permitted disclosure of any of the Confidential Information referred to in Article 7 sub (3) above by a Receiving Party to an Affiliate, the Receiving Party will: (i) ensure that appropriate arrangements are in place prior to any such disclosure, to protect the Confidential Information to a similar degree as provided in Article 7 sub (1); (ii) ensure that the Confidential Information is used only for the proper carrying out of this CA and (iii) use reasonable endeavours to ensure compliance with such arrangements.

8 Ownership

- (1) Background – general principle
Except for the obligations explicitly stated in this Consortium Agreement, nothing in this Consortium Agreement will affect the rights and title each Party has in the Background it Holds or the Foreground it will Hold.
- (2) Foreground – general principle
Foreground shall be owned by the Party who carried out the work generating the Foreground or on whose behalf such work was carried out by a subcontractor. Each Party is free to use its own Foreground as it sees fit.
- (3) Jointly generated Foreground
Foreground created by or on behalf of two or more Project parties (the “Contributors”) for which the contributions to or features of such Foreground form an indivisible part thereof (“Joint Foreground”), will be jointly owned by the Contributors, each Contributor having an equal, undivided interest in and to such Joint Foreground or any IPRs protecting such Foreground. Notwithstanding the foregoing the Contributors will in all cases be at liberty to agree in writing on a different arrangement regarding Joint Foreground, as long as such different arrangement does not i) prejudice the Access Rights of the other Project parties or ii) conflict with Kaderbesluit EZ-subsidies.

(4) Rights for Contributors

- (a) Subject to any different arrangement as referred to in Article 8 sub (3), each Contributor shall have a non-exclusive, royalty free right to utilize the Joint Foreground for its own (internal) research and education activities. Moreover each Contributor shall have a non-exclusive, royalty-free right to utilize the Joint Foreground for developing, creating and marketing a product or process or for creating and providing a service. A Contributor has the obligation to notify Contributors on these commercial activities without any delay. A Contributor has the right to grant non-exclusive licenses, without the right to grant sublicenses, under the Joint Foreground and under any IPR's protecting such Joint Foreground, subject to the following conditions:
- a. after prior written permission of the joint owner(s); and
 - b. fair and reasonable compensation must be provided to the other joint owner(s), taking into account each owner's relative ownership.
- (b) Each Contributor that is joint owner of IPRs protecting such jointly owned Foreground shall have the right to bring an action for infringement of any such jointly owned IPRs only with the consent of the other Contributors that are owner(s). Such consent may only be withheld by such other Contributor that demonstrates that the proposed infringement action would be prejudicial to its commercial interests.
- (c) Within a reasonable period following creation of any Joint Foreground, the Contributors shall enter into good faith discussions in order to agree on an appropriate course of action for filing applications for patent protection or other protection, including the decision as to which Contributor is to be entrusted with the preparation, filing and prosecution of such applications and in which countries or territories such applications are to be filed. Except for any priority applications, the filing of any applications for IPRs on Joint Foreground shall require mutual agreement between the Contributors (but excluding any Contributors who choose pursuant to paragraph (d) below not to contribute to the cost of such application). All external costs related to applications for patent protection or other protection resulting from such applications and the fees for maintaining such protection shall be shared equally between the Contributors, subject to paragraph (d) below.
- (d) If and when a Contributor decides not to contribute, or not to continue its contribution, as the case may be, to the costs of application for or maintenance of any IPR protecting the Joint Foreground, for one or more countries or territories, it shall be entitled not to contribute, or to discontinue its contribution, provided however that:
- (i) it shall promptly notify the other Contributor(s) in writing of its decision;
 - (ii) it shall forthwith relinquish all its title to and interest in such jointly owned IPR protecting such Joint Foreground for the countries or territories concerned to the other owner(s) who contribute or continue their contribution, as the case may be, to such costs in accordance with paragraph (c) above; and
 - (iii) it shall lose its rights under paragraph (a) and (b) above with respect to such jointly owned IPRs for the countries or territories concerned as of the moment of notification, but subject, however, to the retention of a non-transferable, non-exclusive, royalty-free and fully paid-up license, without the right to grant sublicenses, for the lifetime of such jointly owned IPRs for the countries or

territories concerned in favor of, and for the Use by, the relinquishing Contributor and its Affiliates.

(5) Assignment of Foreground

Each Party is free to assign its rights in and to the Foreground it Holds (including without limitation its share in any Joint Foreground) to any of its Affiliates, to any assignee of the assignor's relevant business or a substantial part thereof, or to another third party, subject to:

- (i) Access Rights and the rights to obtain Access Rights that are granted to the other Project parties
- (ii) the assignor passing on its obligations regarding the assigned Foreground to the assignee, including an obligation to pass on these to any subsequent assignee.

9 Access Rights

(1) For execution of the Project

- (a) Each Project party shall grant the other Project parties royalty-free, non-exclusive, world-wide and fully paid-up Access Rights to Foreground and Background it Holds in as far as Needed by such other Project parties to carry out their own work under the Project
- (b) Subject to the rights of each Party under article 5 sub (7), each Project party shall grant the Program parties world-wide, non-exclusive and fully paid-up Access Rights at royalty-free conditions to Foreground it Holds to the extent Needed for the execution of the Projects such Program parties contribute to.

(2) Non-exclusive Access Rights for Use of a Project party's own Foreground

- (a) Each Project party shall grant the other Project parties world-wide, non-exclusive Access Rights to Foreground it Holds to the extent Needed by such other Project parties for Use of Foreground they Hold. Such Access Rights will be granted against a fair and reasonable compensation minus the net contribution ("matching") of the requesting Party to the work that the Party granting the Access Rights has carried out under the Project that has led to the Foreground concerned.
- (b) Each Project party subject to Article 9 sub (5) (c) below, shall grant the other Project parties world-wide, non-exclusive, non-transferable Access Rights on fair and reasonable market conditions to Background it Holds to the extent Needed by such other Parties, in the respective field of business of such other Project parties, for Use of Foreground, such other Project parties Hold.

(3) Exclusive Rights under Foreground or Background for Use

Subject to Article 9 sub (5) below, a Project party may request exclusive Access Rights for Use of certain Foreground or Background in a certain field of use. If a Party requests so, it will be against market price taking into account the relative

contribution of the requesting Party to the work that the Party granting the Access Right has carried out under the Project that has led to the Foreground concerned (e.g. in a certain Project) and on otherwise fair and reasonable conditions. If two or more Project parties request such exclusivity for the same field of use, these will have co-exclusivity. Any grant of exclusive Access Rights to Foreground or Background is subject to prior confirmation by the other Project parties (including the Project party that Holds the Foreground or Background) that they waive their own Access Rights thereto in the field of use concerned.

Subject to the Access Rights and obligations of the Project parties pursuant to this CA, and subject to prior written notification of the other Project Parties a Project party receiving such a request for exclusive Access Rights may decide at its own discretion whether or not to grant such exclusive Access Rights and on the terms and conditions under which it grants such exclusive Access Rights.

(4) Exclusion of Background

Prior to the start of a Project, each Project party may exclude certain Background from its obligation to grant Access Rights to other Project parties (and Program parties) by identifying such excluded Background specifically or by indicating specific technical areas where it may Hold excluded Background. Such Background is stated in an additional document, determined by the PA. After the start of a Project, each Project party may amend this document only upon written agreement of all Project parties.

(5) Common provisions for Access Rights

- (a) The provisions of this Article 9 (5) apply to all Access Rights granted or obligations to grant Access Rights pursuant to this Consortium Agreement.
- (b) Access Rights are granted upon written request only, except the Access Rights granted on a royalty-free and fully paid-up basis that are deemed to be granted by the CA.
- (c) Access Rights to Background Needed for the Use of Foreground shall be granted on fair and reasonable conditions subject to the following:
 - (i) The Party requiring the granting of such Access Rights (the Requesting Project party) shall make a written request to the Party (the Granting Project party) from which it requires the Access Rights.
 - (ii) The written request shall identify the Foreground concerned and shall provide reasons why Access Rights to such Background are Needed for the Use of such Foreground.
 - (iii) 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.
 - (iv) Any Access Rights granted shall be limited to those strictly Needed for the Use of the relevant Foreground as such.
- (d) Any obligation to grant Access Rights ends after a period of one year after completion of the Program except for the Access Rights for the execution of a Project or the Program granted on a royalty-free and fully paid-up basis. These rights will end at the date of completion of the respective Project.

- (e) Unless agreed specifically otherwise between the Project parties and/or Program Parties concerned in writing, Access Rights do not comprise the right to grant sub-licenses.
 - (f) If a Party fails to meet its obligations to another Party, such other Party is not required to fulfill its obligation in granting Access Rights vis-à-vis the Party that fails to meet its obligations.
 - (g) All Project parties shall have a non-exclusive right to use the Foreground for (internal) research and teaching purpose and in the frame of EU-, nationally or otherwise subsidized projects (excluded contract research), jointly or jointly with third parties, provided always that such use will not involve the granting of any (user) right to third parties which conflict with any subsisting Access Rights granted by or pursuant to this CA.
 - (h) For the sake of clarity, Program parties do not have Access Rights to Foreground for Use of a Program's party's own Foreground pursuant to this CA.
- (6) Open Source Software
- (a) The Parties acknowledge that the use within the Project of Software that is "open source" (as defined at <http://www.opensource.org/docs/definition.php>), and/or the release of Foreground upon license terms associated with such Software, may have benefits for the conduct of the Project and promote the Use and dissemination of the resulting Foreground. However, they also recognize that certain of such license terms (namely Controlled License Terms) may restrict the options that are available for Use and dissemination of the resulting Foreground, and accordingly they wish to regulate, in the use of Controlled License Terms in relation to the Project and Use and dissemination of the results thereof.
 - (b) Parties acknowledge that the use in the Project or introduction into the Project of Background or other Work held by a Party pursuant to Controlled License Terms may impair or otherwise affect the other Parties' utilization or Use of or Access Rights to Background or Foreground. Each Party undertakes to use all reasonable endeavours to notify the Project parties regarding using in a Project or introducing into a Project any Background or other Work in a manner or upon terms that would or might result in a requirement that all or some of the Foreground, Background or any other Work must, either generally or under certain circumstances, be licensed under Controlled License Terms.
 - (c) No Access Rights to any Background or Foreground shall include the right to sublicense that Background or Foreground upon Controlled License Terms (and accordingly none of them shall be sublicensed upon Controlled License Terms) unless expressly in writing so agreed by the Party granting the Access Rights, or unless the Background is acquired under Controlled License Terms or Foreground is bound by such Controlled License terms itself subject to paragraph 7 (b).
- (7) Project parties may conclude an IPR arrangement (including Access Rights) in addition to and deviating from the articles 8 and 9.

10 Obligation to notify

- (1) **Filing of IPRs on Foreground**
Each Project party has an obligation to notify the other Project parties on any IPR it intends to file on own Foreground.
- (2) **Assignment**
Within a period of one year after completion of the Program each Project party has an obligation to notify the other Project parties of any assignment of ownership of any of its Foreground (including without limitation its share in jointly owned Foreground) to another Project party or to a third party as well as the Program parties who have been granted Access Rights under the Foreground concerned.

11 Publication

- (1) **Right to publish**
Each Project party is free to publish its own results, provided that no Project party shall have the right to publish or allow the publishing of any data which constitutes Foreground, Background or confidential information of another Project party and/or Program party, even where such data is amalgamated with such first Project party's Foreground, Background or other information, document or material.
- (2) **Objections to publication**
A copy of any proposed publication in connection with or relating to the Project shall be sent to the other Project parties at the earliest time possible. Any of the Project parties may object to the publication within 30 days after receipt of a copy of the proposed publication on any of the following grounds: (i) that they consider that the protection of the objecting Project party's Foreground would be adversely affected by the proposed publication, (ii) that the proposed publication includes confidential information of the objecting Project party, or (iii) the publication of such information would be contrary to the commercial interests of the objecting Project party, as sufficiently proven by the objecting Project party. The proposed publication shall not take place until the expiry of the above period of 30 days. In the absence of any objection within the above mentioned period, it is deemed that the Project parties agree to the proposed publication.

In the event parts of the publication are objected to on ground (i) the publication will be permitted after expiry of a period of three (3) calendar months following the first submission of the proposed publication. In the event parts of a publication are objected on grounds (ii) the objection(s) will be deemed withdrawn in the event the Party proposing the publication removes the parts objected to from the intended publication, provided that the scientific quality is maintained. In the event that an objection is raised under sub (2) under (iii) above within the above period of 30 days, the Project party proposing the publication and the Project party (or Project parties) objecting shall seek in good faith to agree a solution on a timely basis whereby such objection is resolved and the scientific quality is maintained. In any case, subject to the confidentiality obligations under Article 7, Foreground

generated solely by the Project party wishing to publish may be published six months after the above period of 30 days, even if no solution is found.

12 Warranty and liability

- (1) In supplying any information or materials to any of the other Parties each Party undertakes to use all reasonable endeavours to ensure the accuracy thereof and (in the event of any error therein) promptly on becoming aware, to correct the same, but the supplying Party shall be under no further obligation or liability in respect of the same, and no warranty condition or representation of any kind is made, given or to be implied in any case as to the sufficiency, accuracy of fitness for purpose of such information or materials, or the absence of any infringement of statutory monopoly or intellectual property rights of third parties by the use of such information and materials, and the recipient Party shall in any case be entirely responsible for the use to which it puts such information and materials.
- (2) In any event is the aggregate liability of a Party towards the other Parties (collectively) limited to once the Program Share of such Party , except in the event a Party participates in more than one Project. In that case the aggregate liability of such a Party is limited to once the project share of such a Party (meaning the total budgeted costs of a Party in the Project as shown in the Program Plan (Attachment 1) in the Project under which the Party concerned is held liable for the breach of its obligations. In no event shall Parties be liable towards each other for indirect or consequential loss or damages such as but not limited to loss of profit, revenue, contracts or the like.
- (3) Each Party shall be solely liable for any loss incurred by, or damage or injury to third parties resulting from the carrying out by it or on its behalf of a Project and/or from its Use of Foreground and/or Background and shall indemnify the other Parties from claims from third parties for such damage or injury.
- (4) No Party shall have any liability in respect of infringement of any patent or other right of any third party resulting from any other Party (or any of its Affiliates) exercising any of the Access Rights granted under this CA.

13 Force Majeure

No failure in the performance of this CA can be imputed or assumed to a Party, to the extent that such failure is due to Force Majeure.

Each affected Project party will notify the other Project parties in writing of any event of Force Majeure as soon as possible. The Project parties shall discuss in good faith the possibilities of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably possible. If such Force Majeure event is not overcome within 6 weeks after such notification, the transfer of tasks shall be carried out.

14 New Parties

The Consortium is open to participation by others than the Parties hereto. This may or may not require additional provision with respect to the inclusion of such new party/ies in the Program. Any new party joining the CA will sign the Declaration of Accession accepting the terms hereof, as attached hereto as Attachment 2. Any new entry of a Project party will require the consent of the respective PA and Commit. Notwithstanding Article 9 of this CA, each Party may withhold granting Access Rights to its Background to such newly entered Project party, on reasonable grounds.

15 Start – Duration – Termination

- (1) This CA shall enter into force at the Effective Date and under the condition for each of the Parties that envisaged funding for the execution of the Projects has been or will be granted.
- (2) This CA expires automatically with the termination of the Program as a whole or the complete discharge of the obligations undertaken by the concerning Project parties under this CA.
- (3) Any Party whose envisaged funding is stopped, has the right to withdraw from the Project and from this CA without any liability to the other Parties, provided that the provisions of the Article 9 hereof with respect to the results achieved before the date of withdrawal and Article 15 sub (4) (a) hereof shall apply accordingly in the case of a withdrawing Party.
- (4) In the event of a Party being in a situation as described in Article 6 sub (1) (d) or of a substantial breach by a Party ("the Defaulting Party") of its obligations under this CA which is irremediable or which is not remedied within sixty (60) days of written notice from the other Project parties requiring that it be remedied, and the other Project parties, subject to consent from Commit and the Subsidizer jointly terminate this CA with respect to the Defaulting Party, such termination shall take place with respect to the Defaulting Party and the Defaulting Party shall be deemed to have agreed to the termination of this CA in respect of its participation therein provided always that:
 - (a) without prejudice to any other rights of the other Parties, the licences granted to the Defaulting Party by the other Parties under this CA shall cease immediately but the licences so granted by the Defaulting Party to the other Parties shall remain in full force and effect;
 - (b) the scope of the tasks of the Defaulting Party shall be assigned to one or several companies and/or entities which are chosen by the other Project parties and Commit and which agree to be bound by the terms of this CA, with preference being granted to one or more of the remaining Project parties;
 - (c) the Defaulting Party shall (i) assume all reasonable direct cost increase (if any) resulting from the assignment referred to in (b) above in comparison with the costs of the tasks of the Defaulting Party and (ii) be liable for any so resulting additional direct cost incurred by the other Project parties up to

the total amount stated in 12.2 and any excess amount shall be shared between the Project parties (including the Defaulting Party) pro rata to the budgets allocated to them as set out in the Project description in the Program plan.

- (5) The provisions, which by nature should survive the expiration or termination of this CA, shall survive.

16 Assignment

The rights and obligations arising from this CA shall not be assigned to third parties, other than Affiliates, without the prior written approval of the other Project parties and Commit.

17 Settlement of Disputes

- (1) In case of dispute or difference between two or among several Parties arising out of or in connection with this CA (other than disputes relating to the infringement and/or validity of IPR), the Parties shall first endeavour to settle it amicably.
- (2) All disputes or differences arising in connection with this CA that cannot be settled as provided for in Article 17 sub (1) shall be finally settled by the competent court in The Netherlands.

18 Applicable Laws

This CA shall be construed according to and governed by the laws of The Netherlands.

19 Amendments - Severability

- (1) Amendments or changes to this CA, excluding the Program plan shall be valid only if made in writing and signed by an authorized signatory of each of the Parties.
- (2) If any of the provisions of this CA is determined to be invalid or unenforceable by the Subsidiser or any court of competent jurisdiction, such finding shall not invalidate the remainder of this CA which shall remain in full force and effect as if the provision(s) determined to be invalid or unenforceable had not been a part of this CA. In the event of such finding of invalidity or unenforceability, the Parties will endeavour to substitute forthwith the invalid, or unenforceable provision(s) by such effective provision(s) as will most closely correspond with the original intention of the provision(s) so voided.

Attachment 1
Program plan including budgets
(see: <http://www.commit-nl.nl/Messiaen53.htm>)

Attachment 2
Declaration of Accession

[name of Party (legal entity)], represented for the purpose hereof by **[name and title of person written out in full (person legally authorised to act on behalf of the legal entity)]** acting as its legal authorised representative, hereby consents to become a Party to the CA **[identification of final version of the CA]** (relating to the Project and accepts all the rights and obligations of a Project party).

Done in 2 copies, of which one shall be kept by the "penvoerder", Commit, and one by **[name of Party (legal entity)]**.

Name of Legal Entity: **Stichting COMMIT**

Name of legally authorised representative: prof. dr.ir. A.W.M. Smeulders

Title: Chairman of the Executive Board of COMMIT

Date:

Signature:

Name of Legal Entity: **[name of Party]**

Name of legally authorised representative
(written out in full)

Title:

Date:

Signature:

Attachment 3
Grant Decision

(see: <http://www.commit-nl.nl/Messiaen53.htm>)

Attachment 4

A.O. Commit

(See: <http://www.commit-nl.nl/Messiaen53.htm>)