**PARTNERSHIP AGREEMENT**

***Section 1*** ***LEGAL FRAMEWORK***

THIS PARTNERSHIP AGREEMENT is based on the following legal base:

1. European Economic Area Agreement signedon 17 March 1993 (OJ No L 1, 3.1.1994) and the Agreement ontheparticipationof Bulgaria and Romania, 25 July 2007 (OJ No L 221, 25.8.2007),
2. REGULATION on the implementation of the European Economic Area (EEA) Financial Mechanism 2009-2014 adopted by Romania on 21.03.2013, and its Annex 12,
3. EEA Financial Mechanism Project Contract, hereinafter referred to as the ‘Project Contract’,

***Section 2 PARTIES***

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Programme Operator as part of the Research within Priority Sectors Programme of the EEA Grants Framework.

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

The Project Contract regulates provisions between Project Promoter and Programme Operator.

The Partnership Agreement regulates provisions between Project Promoter and Project Partners.

[Official name of the project promoter as identified in the project contract and contact details], *the Project Promoter,*

[Official names of the project partners as identified in the project agreement and contact details, *the Project Partners,[[1]](#footnote-1)*

hereinafter, jointly or individually, referred to as ”*Parties*” or ”*Party*” -

relating to the Project entitled »………………………«, acronym »………………..«, hereinafter referred to as “Project”, IT IS HEREBY AGREED AS FOLLOWS

***Section 3: DEFINITIONS***

*3.1 Definitions*

Words beginning with a capital letter shall have the meaning defined either herein or in the Regulation including its Annexes or in the Project Contract including its Annexes without the need to replicate said terms herein.

*3.2 Additional Definitions*

“*Partnership Plan*” - means the description of the work and the related agreed Partnership Budget, including the payment schedule, according to approved funding application (updated based on Programme Operator funding decision);

“*Partnership Budget*” - means the allocation of all the resources from the Programme budget or/and from own budget for the activities as defined in the Partnership Plan.

“*Needed* 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.

“*Needed* for the 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.

“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 4: PURPOSE***

The purpose of this Partnership Agreement is to specify with respect to the Project the relationship among the Parties, in particular concerning the organization of the work between the Parties, the management of the Project and the rights and obligations of the Parties concerning, inter alia, liability, Access Rights and dispute resolution.

***Section 5: ENTRY INTO FORCE, DURATION AND TERMINATION***

*5.1 Entry into force*

An entity becomes a Party to this Partnership Agreement upon signature of this Partnership Agreement by a duly authorized representative.

This Partnership Agreement shall have effect from the date of signing of the Project Contract.

*5.2 Duration and termination*

This Partnership Agreement shall continue in full force and effect until complete fulfillment of all obligations undertaken under the Project Contract and under this Partnership Agreement.

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

If the Programme Operator does not award the Project Contract or terminates the Project Contract or a Party's participation in the Project Contract, this Partnership Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Art. 5.3 of this Partnership Agreement.

*5.3 Survival of rights and obligations*

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

Termination shall not affect any rights or obligations of a Party leaving the Partnership incurred prior to the date of termination. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

***SECTION 6: RESPONSIBILITIES OF PARTIES***

*6.1 General principles*

Each Party undertakes to take part in the efficient implementation of the Project, and to cooperate, perform and fulfill, promptly and on time, all of its obligations under the Project Contract and this Partnership Agreement as may be reasonably required from it and in a manner of good faith as prescribed by national law.

Each Party undertakes to notify promptly, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the Project.

Each Party shall promptly provide all information reasonably required by Executive Board of the Project or by the Project Promoter 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.

*6.2 Interruption*

In the event the Executive Board of the Project identifies an interruption by a Party of its obligations under this Partnership Agreement (e.g.: a partner producing poor quality work), the Project Promoter or the Party appointed by the Executive Board if the Project Promoter is in breach of its obligations under this Partnership Agreement or the Project Contract will give written notice to such Party requiring that such breach be remedied within 30 calendar days.

If such interruption is substantial and is not remedied within that period or is not capable of remedy, the Executive Board must inform the Programme Operator which decides on.

*6.3 Involvement of third parties*

A Party that enters into a subcontract 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 Partnership Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Partnership Agreement and the Project Contract.

***Section 7: RESPONSIBILITY TOWARDS EACH OTHER***

*7.1 No warranties*

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

Therefore,

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

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

*7.2 Limitations of contractual liability*

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

The terms of this Partnership Agreement shall not be construed to amend or limit any Party’s statutory liability.

*7.3 Damage caused to third parties*

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

*7.4 Force Majeure*

No Party shall interrupt this Partnership Agreement if such interruption is caused by Force Majeure. Each Party will notify the Executive Board of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the Executive Board and the Programme Operator will be informed in due time.

***SECTION 8: GOVERNANCE STRUCTURE***

*8.1 General structure*

The Executive Board is the decision-making body of the Partnership.

The Project Promoter is the legal entity acting as the intermediary between the Parties and the Programme Operator. The Project Promoter shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Project Contract and this Partnership Agreement.

*8.2 Members*

The Executive Board consists of Principal Investigator as representative of Project Promoter and the research team leader from each Project Partners (hereinafter referred to as “Member”).

Each Member shall be deemed to be duly authorized to deliberate, negotiate and decide on all matters listed in Article 8.3.6 of this Partnership Agreement.

The Principal Investigator shall chair all meetings of the Executive Board, unless decided otherwise by the Executive Board.

The Parties agree to abide by all decisions of the Executive Board. This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes.

*8.3 Operational procedures for the Executive Board*

8.3.1 Representation in meetings

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

8.3.2 Preparation and organization of meetings

8.3.2.1 Convening meetings:

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

8.3.2.2 Notice of a meeting:

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

8.3.2.3 Sending the agenda:

The chairperson shall send each Member a written original agenda. Any Member may add an item to the original agenda by written notification to all of the other Members.

8.3.2.4 Any decision may also be taken without a meeting if the chairperson circulates to all Members a written document which is then signed by the defined majority of Members

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

8.3.3 Voting rules and quorum

8.3.3.1 The Executive Board shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).
In projects with two project partners, one of which is the Project Promoter, the Executive Board shall not deliberate and decide validly unless both Members are present or represented.

8.3.3.2 Each Member shall have one vote.

8.3.3.3 Defaulting Parties may not vote.

8.3.3.4. Members shall seek an amicable resolution of disagreements. In projects with more than two partners, decisions shall be taken by a majority of two-thirds (2/3) of the votes.

8.3.4 Veto rights

8.3.4.1 A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of the Executive Board may exercise a veto with respect to the corresponding decision or relevant part of the decision.

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

8.3.5 Minutes of meetings

8.3.5.1 The chairperson shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send draft minutes to all Members.

8.3.5.2 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.

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

8.3.6 Decisions of the Executive Board

The Executive 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 Executive Board:

a) Content, finances and intellectual property rights

- Proposals for changes to Project Contract to be agreed by the Programme Operator

- Changes to the Partnership Plan (including the Partnership Budget)

b) Evolution of the Partnership

- Withdrawal of a Party from the Partnership and the approval of the settlement on the conditions of the withdrawal

- Declaration of a Party to be a Defaulting Party

- Remedies to be performed by a Defaulting Party

- Termination of a Defaulting Party’s participation in the Partnership and measures relating thereto

- Proposal to the Programme Operator for a change of the Project Promoter

- Proposal to the Programme Operator for suspension of all or part of the Project

- Proposal to the Programme Operator for termination of the Project and the Partnership Agreement

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

*8.4 Project Promoter*

8.4.1 The Project Promoter shall be the intermediary between the Parties and the Programme Operator and shall perform all tasks assigned to it as described in the Project Contract and in this Partnership Agreement.

8.4.2 In particular, the Project Promoter shall be responsible for:

- monitoring compliance by the Parties with their obligations

- keeping the address list of Members and other contact persons updated and available

- collecting, reviewing to verify consistency and submitting reports and other deliverables (including financial statements and related certifications) to the Programme Operator

- Transmitting documents and information connected with the Project to any other Parties concerned

- Administering the financial contribution and fulfilling the financial tasks

- Providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Project Promoter when such copies or originals are necessary for the Parties to present claims.

8.4.3 If the Project Promoter fails in its coordination tasks, the Executive Board may propose to the Programme Operator to change the Project Promoter.

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

8.4.5 The Project Promoter shall not enlarge its role beyond the tasks specified in this Partnership Agreement and in the Project Contract.

***SECTION 9: FINANCIAL PROVISIONS***

*9.1 General Principles*

9.1.1 Distribution of Financial Contribution

The financial contribution of the Programme Operator to the Project shall be distributed by the Project Promoter according to:

 - the Partnership Budget as included in the Partnership Plan

 - the approval of reports by the Programme Operator, and

 - the provisions of payment in Article 9.3.

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

9.1.2 Justifying Costs

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the Programme Operator. Neither the Project Promoter nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Programme Operator.

9.1.3 Indirect costs

Each party chooses one of the following methods of calculating indirect costs:

a. Entities which have participated in EU FP7 projects:

Project Promoters and/or project partners who have had their legal and financial data, including their Indirect Cost Model (ICM), validated in the Unique Registration Facility (URF) of the European Framework Programme for research, and have received a Participant Identification Code (PIC), shall apply the same indirect cost model.

Note: If your institution has taken part in EU FP7 project(s), you will use the same cost model and overhead rate as were used in these projects.

b. Entities with an analytical accounting system (without an FP7 code)

Project Promoters or project partners that have an analytical accounting system which allows them to identify the indirect expenditures of a particular project can use the actual indirect expenditures in their budgets.

c. Entities without analytical accounting systems (without an FP7 code)

1. Research organisations and SMEs: 60% flat rate

Project Promoters and project partners that are research organisations and SMEs which, due to the lack of analytical accounting, are unable to identify with certainty their real indirect expenditures for the project, may opt for a flat rate of 60 % of their total direct eligible expenditures, excluding direct eligible expenditures for subcontracting and the expenditures of resources made available by third parties which are not used on the premises of the Project Promoter or project partner.

2. Others: 20% flat rate

Project Promoter and project partners which lack analytical accounting systems may opt for a flat rate of 20 % of their total direct eligible expenditures, excluding its direct eligible expenditures for subcontracting and the expenditures of resources made available by third parties which are not used on the premises of the Project Promoter or project partner.

The appropriate method of calculating the indirect cost is indicated in the budget breakdown for each Party.

9.1.4 Funding Principles

A Party which spends less than its allocated share of the Partnership Budget will be funded in accordance with its actual duly justified eligible costs only.

A Party that spends more than its allocated share of the Partnership Budget will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

The Funding of each Party is in accordance with the State Aid Scheme approved for the Programme.

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

The Programme Operator will initiate an intermediary evaluation of the project implementation when a Party is leaving the Partnership. The Programme Operate decides if the Party refunds all payments received except the budget spend already and accepted by the Programme Operator. Furthermore a Defaulting Party shall, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks. Any additional costs which are not covered by the Defaulting Party shall in principle be apportioned to the remaining Parties pro rata to their share in the total costs of the Project as identified in the Partnership Budget.

*9.2 Budgeting*

The Partnership Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

*9.3 Payments*

9.3.1 Payments to Parties are the exclusive tasks of the Project Promoter

In particular, the Project Promoter shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references

- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts

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

9.3.2 The payment schedule, which contains the transfer of advance payments and interim payments to Parties, will be handled according to the following:

The Project Promoter shall ensure that all appropriate payments to the Parties of funds received from the Programme Operator are made without unjustified delay, and not later than 15 days after the Project Promoter has received payment from the Programme Operator. Costs accepted by the Programme Operator will be paid to the Party concerned, taking into account the amounts already paid for the reporting period concerned.

Payments to the Project Promoter are made according to the time schedule of the project implementation included in the contract signed with PO. The rate of the advanced payment is set out in the project contract.

The Project Promoter can request an annual advance payment of up to 90% of the budget for the respective year in the first year and any interim years of the project. The balance of the annual budget shall be paid after the approval of the interim report for the year in question. The advance payment to the PP in the last year of the project shall not exceed 70% of the budget for the respective year. The balance of the annual budget shall be paid after the approval of the final report. The advance payment shall be offset against expenditures reported in the interim or financial reports. The PO may retain at least 30% of the budget for the last year of the project until the final report is approved.

The PO will make payments to project promoters not later than 10 working days after the project promoter’s payment claim has been verified.

After receiving the advance payment and the balance of the annual budget from the Programme Operator, the Project Promoter makes the payments for each Party in 15 days, according with the same rules of proportion already specified (advance payment of up to 90% of the budget for the respective year in the first year and any interim years of the project and up to 70% of the budget for the last year).

The Project Promoter is entitled to withhold any payments due to a Party identified by the Executive Board to be in breach of its obligations under this Partnership Agreement.

9.3.2. Currency exchange rules

The payment to the Project Promoter is made in Romanian LEI (RON) and is calculated using the Euro exchange rate published by the European Central Bank on the date of launching the call (15th of November 2013).

[Please choose one of the following options]

[OPTION 1:]

The payment from the Project Promoter to the Donor state partners is made in LEI.

[OPTION 2:]  (For partners who depend on receiving the transfer in Euro)

The payment from the Project Promoter to the Donor state partners is made in Euro, representing the equivalent to settlements in LEI established between Project Promoter and Project Partners.

During the implementation of the project, the amount received by all the partners of the consortium, can be updated in accordance with the exchange rate (contract agreement provision).

***SECTION 10: FOREGROUND***

Regarding Foreground, shall apply with the following additions:

*10.1 Joint ownership*

In case of joint ownership, each of the joint owners shall be entitled, with prior notification, to Use the joint Foreground as it sees fit, and to grant non-exclusive licenses without any right to sub-license, unless otherwise agreed between the joint owners.

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

*10.2 Transfer of Foreground*

 Each Party may transfer ownership of its own Foreground following the procedures of the Project Contract.

The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer.

*10.3 Dissemination*

10.3.1 Publication

10.3.1.1 Dissemination activities including but not restricted to publications and presentations shall be governed by the procedure of the Project Contract subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties concerned at least 45 days before the publication. Any objection to the planned publication shall be made in accordance with the GA in writing to the Project Promoter 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.

10.3.1.2 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.

10.3.1.3 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.

10.3.2 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 subject to the confidentiality and publication provisions agreed in this Partnership Agreement.

10.3.3 Use of names, logos or trademarks

Nothing in this Partnership 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 11: ACCESS RIGHTS**

*11.1 Background covered*

[Please choose one of the following options]

[OPTION 1:]

11.1.1 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 Partnership Agreement and the Project Contract. Such identification may be done by e.g.

 - subject matter and possibly in addition by

 - naming a specific department of a Party.

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

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

11.1.3 The Parties agree that all Background not listed in Attachment 1 shall be explicitly excluded from Access Rights. The Parties 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.

11.1.4 In addition, if a Party wishes to list specific Background as excluded, it shall identify 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 Executive Board can permit a Party to add Background to Attachment 2.

[OPTION 2:]

In accordance with and subject to the provisions of the Project Contract, any Party may enter in Attachment 2 any specific Background excluded from the obligation to grant Access Rights in accordance with the provisions of this Partnership Agreement. All other Background except that listed in Attachment 2 shall be available for the granting of Access Rights in accordance with the provisions of this Partnership Agreement.

[END OF OPTION 2:]

*11.2 General Principles*

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

11.2.2 As provided in the Project Contract Parties shall inform the Partnership as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Project).

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

11.2.4 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 Project Contract.

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

11.2.6 All requests for Access Rights shall be made in writing.

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

11.2.7 The requesting Party must show that the Access Rights are needed.

*11.3 Access Rights for implementation*

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

*11.4 Access Rights for Use*

[Please choose one of the following options for Art. 11.4.1]

[OPTION 1:]

11.4.1 Access Rights to Foreground if Needed for Use of a Party's own Foreground including for third-party research shall be granted on Fair and Reasonable conditions.

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

[OPTION 2:]

11.4.1 Access Rights to Foreground if Needed for Use of a Party's own Foreground shall be granted on a royalty-free basis.

[end of OPTION 2:]

11.4.2 Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on Fair and Reasonable conditions.

11.4.3 A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Art. 11.7.2.1.2, after the termination of the requesting Party’s participation in the Project.

*11.5 Additional Access Rights*

[Please choose one of the following options]

[OPTION 1:]

For the avoidance of doubt any grant of Access Rights not covered by the Project Contract or this Partnership Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

[OPTION 2:]

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.

[END OF OPTION 2:]

*11.6. Parties leaving the Partnership*

11.6.1 Access Rights granted to a leaving Party

*11.7 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 Executive Board to terminate its participation in the Partnership.

*11.8 Non-defaulting Party*

A non-defaulting 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.

*11.9 Access Rights to be granted by any leaving Party*

Any Party leaving the Project shall continue to grant Access Rights pursuant to the Project Contract and this Partnership Agreement as if it had remained a Party for the whole duration of the Project.

*11.10 Specific Provisions for Access Rights to Software*

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 11 are applicable also to Software.

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

***SECTION 12: NON-DISCLOSURE OF INFORMATION***

12.1 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 from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

12.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Project Contract, for a period of 3 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.

12.3 The Recipients shall be responsible for the fulfillment 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.

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

 - the Confidential Information becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations;

 - the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;

 - the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is 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 Project Contract;

 - the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or

 - the Confidential Information was already known to the Recipient prior to disclosure or

 - the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order.

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

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

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

12.8 The confidentiality obligations under this Partnership Agreement and the Project Contract shall not prevent the communication of Confidential Information to the Programme Operator.

***SECTION 13: AUDITING***

Each Party provides auditing reports in accordance with rules and requirements stipulated in Regulation of Implementation of EEA Financial Mechanism 2009-2014 and Annex 12.

***SECTION 14: MISCELLANEOUS***

*14.1 Attachments, inconsistencies and severability*

This Partnership Agreement consists of this core text and attachments:

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

Should any provision of this Partnership Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Partnership 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.

*14.2 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 Partnership 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.

*14.3 Notices and other communication*

Any notice to be given under this Partnership Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Project Promoter.

Formal notices:

If it is required in this Partnership Agreement that a formal notice, consent or approval shall be given, such notice shall be signed by an authorized representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

Other communication:

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

Any change of persons or contact details shall be notified immediately by the respective Party to the Project Promoter. The address list shall be accessible to all concerned.

*14.4 Assignment and amendments*

No rights or obligations of the Parties arising from this Partnership 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 Partnership Agreement.

*14.5 Mandatory national law*

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

*14.6 Language*

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

*14.7 Applicable law*

This Partnership Agreement shall be in accordance with the legal framework governing the SEE Financial Mechanism. In the case of conflicts that cannot be solved with an amiable solution, the Belgian law will be applicable for conflicts.

*14.8 Settlement of disputes*

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Brussels unless otherwise agreed upon. The language to be used in the mediation shall be English unless otherwise agreed upon.

AS WITNESS:

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

[INSERT NAME OF PARTY]

Signature(s)

Name(s)

Title(s)

Date

[INSERT NAME OF PARTY]

Signature(s)

Name(s)

Title(s)

Date

[INSERT NAME OF PARTY]

Signature(s)

Name(s)

Title(s)

Date

**[Attachment 1: Background included]**

Access Rights to Background made available to the Parties:

a.

b.

...

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

**[Attachment 2: Background excluded]**

Background excluded from Access Rights:

a.

b.

...

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

1. To be included all project partners [↑](#footnote-ref-1)