CONSORTIUM AGREEMENT

This AGREEMENT is made on April 11, 2000

BETWEEN

(1) Universität Konstanz, Konstanz, Germany

(2) Swiss Federal Institute of Technology, Zurich, Switzerland

(3) Technical University of Denmark, Lyngby, Denmark

(4) Computer Technology Institute, Patras, Greece

(5) Università di Roma "La Sapienza", Rome, Italy

(6) Stichting Mathematisch Centrum, Amsterdam, The Netherlands

relating to the *Project* entitled

AMORE – Algorithmic Methods for Optimizing the Railways in Europe

WHEREAS:

(A) The *Parties*, having considerable experience in the field concerned, have submitted or intend to submit a *Proposal* for a *Project* entitled

AMORE – Algorithmic Methods for Optimizing the Railways in Europe

To the *Commission* in the Fifth Research And Technological Development Framework Programme

(B) The *Parties* have entered into the *Contract*, as *Principal Contractors*.

(C) The *Parties* wish to specify or supplement, between themselves, the provisions of the *Contract* in line with the *Contract* Annex II Articles 1.15 and 2.2 b.

(D) The *Parties* recognise that the *Project* may have *Assistant Contractors* and, where this is the case, each relevant *Party* intends to enter into an appropriate arrangement with its respective *Assistant Contractor* to provide the supervision required by the *Contract* and to enable certain benefits and obligations to be shared between *Assistant Contractors* and the *Parties.*

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

Section 1 Definitions

A. 1.1 *Contract* Definitions

Words defined in the *Contract* or in the *Contract* Annex II Article 1 have the same meaning in this *Consortium Agreement* and appear in italics.

B. 1.2 Additional Definitions

"*Affiliate*" of a *Party* means:

(a) any legal entity directly or indirectly controlling, controlled by, or under common control with a *Party*, for so long as such control lasts and provided that the said *Affiliate* or the ultimate controlling entity is incorporated and resident in, and subject to the law of, a Member State of the Community, or an *Associated State*.

Control of an entity shall exist through the direct or indirect:

- control of 50% or more of the nominal value of the issued equity share capital of the entity or of 50% or more of the equity's shares entitling the holders to vote for the election of directors or persons performing similar functions, or

- right by any other means to elect or appoint directors of the entity (or persons performing similar functions) who have a majority vote,

(b) any other organisation specified in the agreed Schedule to this *Consortium Agreement* to be an *Affiliate* of the *Party*.

Common control through government does not, in itself, create affiliated status unless otherwise specified in accordance with paragraph (b) above.

Consortium Agreement means this Consortium Agreement entered into in respect of the *Project.*

"*Contract*" means (i) after its signature by all *Contracting Parties*, the Contract No HPRN-CT-1999-00104 (including its Annexes) for the undertaking by the *Parties* of the *Project*; (ii) before such signature, the model contract proposed by the *Commission* at the date of this *Consortium Agreement* for projects in the fifth research and development framework programme for which the *Proposal* has been or is to be submitted. "*Contract"* shall as applicable also mean any *Contract* amendment.

"*Defaulting Party*" means a *Party* breaching its obligations mentioned in Section 8.7 of this *Consortium Agreement* or withdrawing from the *Project*.

"*Party*" or "*Parties*" means a party or the parties to this *Consortium Agreement*.

"*PCC*" means the Project Coordination Committee established in accordance with Section 4.

"*Project Share*" means for each *Party*, that *Party's* share of the total cost of the *Project* as shown in the *Contract*.

"*Proposal*" means the proposal for the *Project* submitted or intended to be submitted (as the case may be) by the *Parties* (in conjunction with the relevant *Assistant Contractors* (if any))to the *Commission*. "*Proposal*" shall as applicable also mean any amendment to a *Proposal* which is so submitted or intended to be submitted.

"*Software*" means:

(a) software programs 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 and in any code form (including source code form);

(b) software information being technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a software program; and/or

(c) software documentation being software information in documentary form.

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

C. 1.3 Further Understandings

(i) "indirect use of *Knowledge*" in the *Contract's* definition of *Exploitation* includes, for and on behalf of the *Party* concerned, use by having products and/or services developed, made and/or provided;

(ii) “preferential conditions” means more favourable than the market conditions;

(iii) “held” in the *Contract* Annex II Article 1(22) means that the holder of the *Pre-Existing Know-How* can legally grant, or require a party other than the *Contractors* to grant, *Access Rights* under and/or to the same;

(iv) “needed” and "necessary" in the *Contract* and in this *Consortium Agreement* means where technical matters are involved "technically essential", otherwise it means "essential".

(v) "*Knowledge*" in the *Contract* Annex II Article 12(1) first paragraph is actually "*Knowledge* from the *Project*".

Section 2 Purpose and Duration

A. 2.1 Purpose

The purpose of this *Consortium Agreement* is to specify the organisation of the work between the *Parties*, supplement the provisions of the *Contract* concerning *Access Rights* and to set out rights and obligations of the *Parties* supplementing but not conflicting with those of the *Contract*.

B. 2.2 Duration

This *Consortium Agreement* shall come into force as of the date of its signature by the *Parties* but shall have retroactive effect as from March 1st, 2000 and shall continue in full force and effect until terminated in accordance with Section 15 or complete discharge of all obligations for the carrying out of the *Project* undertaken by the *Parties* under the *Contract* and under this *Consortium Agreement*, whichever is the earlier.

Section 3 Coordinator

3.1 In addition to the *Coordinator's* functions pursuant to the *Contract,* the *Coordinator* shall have the following functions only :

(a) administration, preparation of minutes and provision of the chairman of the *PCC*, and follow-up of its decisions;

(b) transmission of any documents and information connected with the *Project* between the *Parties* and (as appropriate) to the *Assistant Contractors* concerned.

3.2 Except for the capacity as representative of the *Contractors* described in the *Contract* Annex II Article 2.1d), the *Coordinator* shall not be entitled to act or to make legally binding declarations on behalf of any other *Party*.

3.3 If one or more of the *Parties* is late in submission of *Project Deliverables*, the *Coordinator* may submit the other *Parties' Project Deliverables* to the *Commission.*

Section 4 Project Coordination Committee

4.1 The *Parties* shall establish, within thirty days after the date of this *Consortium Agreement*, the *PCC* composed of one duly authorised representative of each of them. After having informed the others in writing, each *Party* shall have the right to replace its representative and/or to appoint a proxy although it shall use all reasonable endeavours to maintain the continuity of its representation.

Each representative shall have a deputy.

4.2 The *PCC* shall be chaired by the *Coordinator's* representative.

Meetings of the *PCC* shall be convened by the chairman with at least fifteen (15) calendar days prior notice with an agenda.

Minutes of the meetings of the *PCC* shall be transmitted to the representatives of the other *Parties* without delay. The minutes shall be considered as accepted by the other *Parties* if, within fifteen (15) calendar days from receipt, no *Party* has objected in a traceable form to the *Coordinator*.

If necessary, the PCC may invite representatives of the *Assistant Contractors* to observe (but not to participate in) the meetings of the PCC.

4.3 Without prejudice to the *Contract* Annex II Article 2, the *PCC* shall be in charge of overall direction of the *Project*. To that end, the PCC shall be responsible for :

(a) reviewing and proposing to the *Parties* and *Assistant Contractors* budget transfers in accordance with the *Contract*.

(b) making proposals to the *Parties* and *Assistant Contractors* for the review and/or amendment of the terms of the *Contract*, including Annex I;

(c) agreeing press releases and (without prejudice to Section 12) joint publications by the *Parties* with regard to the *Project*

(d) assisting the *Coordinator* to prepare reports on the whole *Project* and in particular agreeing whether a report referred to in the *Contract* Annex II Articles 4(1)(a)(i)-(iii) should be publishable;

(e) without prejudice to Section 12, agreeing procedures and policies in accordance with the *Contract* Article 10 for *Dissemination* of *Knowledge* from the *Project* which is not to be *Used* by the *Parties*;

(f) making proposals to the *Parties* (other than the *Defaulting Party*) and *Assistant Contractors* to service of notices on a *Defaulting Party* in accordance with Section 8.6 and to assign the *Defaulting Party's* tasks to specific entity(ies) (preferably chosen from the remaining *Parties)*.

4.4 In voting, each *Party* shall have one vote. A quorum shall be a minimum of 2/3 of the *Parties*. Where decisions are to be taken unanimously, all *Parties* must be represented at the meeting.

In the case of Section 4.3(a) to (d) and in other cases not referred to below, decisions shall be taken by the majority of the votes of the *Parties* present or represented by proxy at a quorate meeting, provided always that any *Party* whose scope of work, time for performance, costs or liabilities are changed or whose information is to be published, may veto such decisions.

In the case of Section 4.3 (e), decisions shall be taken unanimously by all of the Parties. In the case of Section 4.3(f), the decision shall be taken unanimously by all of the non-*Defaulting Parties*.

Any decision requiring a vote at a *PCC* meeting must be identified as such on the pre-meeting agenda, unless there is unanimous agreement to vote on a decision at that meeting and all *Parties* are present or represented.

However, any decision required or permitted to be taken by the *PCC* may be taken in accordance with the above (i) in meetings via teleconference and/or via email; (ii) without a meeting without prior notice and/or (iii) without a vote, if, in any such case, a consent in writing, setting forth the decision so taken, is signed by the representatives of the *Parties* having not less than the minimum number of votes that would be necessary to take such decision at a meeting at which all *Parties* entitled to vote on such decision were represented and voted, and provided the consent has been delivered for signature to all *Parties'* representatives.

Section 5 Responsibilities of each *Party*

A. 5.1 General Responsibilities

Each *Party* undertakes to each other *Party* to use reasonable endeavours to perform and fulfil, promptly, actively and on time, all of its obligations under the *Contract* and this *Consortium Agreement* (including in particular the submission to the *Commission* of the forecasts and statements pursuant to the *Contract* Annex II Article 17(3)).

B. 5.2 Towards the *Coordinator* and the *PCC*

Each *Party* hereby undertakes to use reasonable endeavours to supply promptly to the *Coordinator* all such information or documents as the *Coordinator* and the *PCC* need to fulfil obligations pursuant to this *Consortium Agreement* and the *Contract.* In particular descriptions required by the *Contract* Annex II Article 4(2)b) shall be submitted via the *Coordinator* and the *Parties* shall assist the *Coordinator* to provide the *Technological Implementation Plan* summary.

C. 5.3 Towards each other

5.3.1(a) Each *Party* undertakes to use reasonable endeavours:

(i) to notify each of the *Parties* promptly of any significant delay in performance;

(ii) to inform other *Parties* (and via them their *Assistant Contractors*) of relevant communications it receives from third parties in relation to the *Project.*

(b) Each *Party* shall use reasonable endeavours to ensure the accuracy of any information or materials it supplies hereunder or under the *Contract* and promptly

to correct any error therein of which it is notified. The recipient *Party* shall be entirely responsible for the use to which it puts such information and materials.

(c) In addition to the obligations specified in the *Contract* Annex II Article 21.2, each *Party* agrees not to use knowingly, as part of a deliverable or in the design of such deliverable or in any information supplied hereunder or under the *Contract*, any proprietary rights of a third party for which such *Party* has not acquired the right to grant licences and user rights to the other *Parties* in accordance with the *Contract*, unless all of the other *Parties* have accepted such use in writing, such acceptance not to be unreasonably withheld.

(d) Each *Party* shall be fully responsible for the technical supervision of its *Assistant Contractors* and shall enter into appropriate arrangements for such purpose with its *Assistant Contractors*. These arrangements shall as appropriate require the obligations in this *Consortium Agreement* also apply to, and (where they apply) be fulfilled by, such *Assistant Contractors*. Each *Party* shall use reasonable endeavours to enforce such arrangements and obligations as necessary and shall endeavour to ensure such arrangements enable an affected *Party* to enforce the relevant obligation.

(e) Acting in good faith, when a *Party* believes that for carrying out the *Project* or *Use* of *Knowledge* from the *Project*

(i) it might require *Access Rights* to another *Party's* or an *Assistant Contractor's Pre-Existing Know-How* or to another *Party's* or an *Assistant Contractor's Knowledge* which is not from the *Project*, or

(ii) another *Party* or an *Assistant Contractor* might need *Access Rights* to that *Party's Pre-Existing Know-How* or *Knowledge* which is not from the *Project*,

it will promptly notify such other *Party* or *Assistant Contractor* of the *Pre-Existing Know-How* or *Knowledge* not from the *Project* required, and in particular, where possible it shall do so before submission of the *Proposal* to the *Commission* or entering into the *Contract*. Failure to so notify another *Party* or an *Assistant Contractor* shall not be a breach of this *Consortium Agreement* unless such failure is due to an action in bad faith.

(f) When a *Party* is unable to grant *Access Rights* which it reasonably believes that another *Party* will require, it will promptly notify such other *Party* and in particular where possible shall do so before submission of the *Proposal* to the *Commission* or entering into the *Contract*.

5.3.2 If this *Agreement* conflicts with the *Contract* Annex I, unless the *Parties* agree otherwise, they shall cooperate in requesting the *Commission* to change the *Contract* Annex I to accord with this *Agreement*.

Section 6 Costs - Payment

6.1 Each *Party* shall bear its own costs in connection with the making of the *Proposal*, the negotiation of the *Contract* and the carrying out of the *Project*.

The *Coordinator* undertakes to transfer appropriate sums within a minimum of delay from its receipt thereof from the Commission and the Coordinator will notify each other *Party* and each *Assistant Contractor* promptly of the date and amount transferred to its respective bank account and shall give the relevant references.

Section 7 Confidentiality

7.1 As respects all information of whatever nature or form as is

(a) disclosed to a *Party* in connection with the submission to the *Commission* of a proposal for a project under the fifth framework programme pending the signing of the *Contract*;

(b) disclosed to a *Party* in connection with the *Project* after the signing of the *Contract*, but which

(i) is clearly marked "confidential";

(ii) if disclosed orally, was at the time of disclosure indicated to be "confidential" and within thirty days reduced to physical form and marked "confidential" by the discloser; or

(iii) is obviously of a confidential nature,

each *Party* agrees such information is communicated on a confidential basis and its disclosure may be prejudicial to the owner of the information, and undertakes that:

(A) it will not during a period of five (5) years from the date of disclosure to the *Party* use any such information for any purpose other than in accordance with the terms of the *Contract* and of this *Consortium Agreement*; and

(B) it will during the period of five (5) years treat the same as (and use reasonable endeavours to procure that the same be kept) confidential and not disclose the same to any other third party without the prior written consent of such owner in each case;

provided always that:

(i) such agreement and undertaking shall not extend to any information which the receiving *Party* can show:

(A) was at the time of disclosure to the *Party* published or otherwise generally available to the public, or

(B) has after disclosure to the *Party* been published or become generally available to the public otherwise than through any act or omission on the part of the receiving *Party*, or

(C) was already in the possession of the receiving *Party*, without any restrictions on disclosure, at the time of disclosure to the *Party*, or

(D) was rightfully acquired from others without any undertaking of confidentiality, or

(E) was developed independently of the work under the *Contract* by the receiving *Party*;

(ii) nothing in this Section 7.1 shall prevent the communication of information

(A) as is needed to be communicated to comply with applicable laws or regulations or with a court of administrative order provided that insofar as reasonably possible the complying *Party* shall have informed the owner of the information of such need and shall have complied with such owner's reasonable instructions designed to protect the confidentiality of such information;

(B) subject to Section 7.2, to any *Affiliate* or to any other third party (including the Commission) insofar as needed for the proper carrying out of the *Contract* and/or this *Consortium Agreement*;

(C) subject to Section 7.2, to any third party (including to the public) as strictly needed for technical reasons and insofar as needed for proper *Use* of *Knowledge* from the *Project.*

7.2 As respects any permitted communication of any of the information referred to in Section 7.1 by the recipient *Party* to a third party (including but not limited to its *Affiliates*) such *Party* will use reasonable endeavours to procure due observance and performance by such third party of the undertakings referred to in Section 7.1, (A) and (B) and all relevant undertakings in the *Contract*.

Section 8 Liabilities

A. 8.1 Liability towards each other

In respect of information or materials supplied by one *Party* to another hereunder or under the *Contract*, the supplier *Party* shall be under no obligation or liability other than as stated in Section 5.3.1(b) and no warranty condition or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or fitness for purpose of such information or materials, or, subject to Section 5.3.1(c), the absence of any infringement of any proprietary 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.

B. 8.2 Indemnification of each other

Each *Party* shall indemnify each of the other *Parties*, within the limits set out in Sections 8.3 and 8.7, in respect of liability resulting from acts or omissions of itself, its employees or its agents provided always that such indemnity shall not extend to claims for indirect or consequential loss or damages such as but not limited to loss of profit, revenue, contracts or the like.

C. 8.3 Claims of the *Commission*

If the *Commission*, in accordance with the provisions of the *Contract*, claims any reimbursement, indemnity or payment of damages from one or more *Parties* (except for claims relating to the matters mentioned in the *Contract* Annex II Articles 6(2), 6(3), 7(3)b), c) or e), 26, 27 or 28 which claims shall be solely for the account of the relevant *Party(ies)* or where the *Commission* states the claim is to be solely for the account of a certain set of *Parties*):

(a) each *Party* whose default has caused or contributed to the claim being made shall indemnify each of the other *Parties* against such claims provided always that the total limit of liability of that *Party* to all of the other *Parties* collectively in respect of any and all such claims shall not exceed twice that *Party's Project Share* - any excess shall be apportioned between all the *Parties* pro rata to their *Project Share*s; and

(b) in the event that it is not possible to attribute default to any *Party* under (a) above, the amount claimed by the *Commission* shall be apportioned between all the *Parties* pro rata to their *Project Share*s.

D. 8.4 Liability towards Third Parties

Subject always to such other undertakings and warranties as are provided for in this *Consortium Agreement* and the *Contract*, each *Party* shall be solely liable for any loss, damage or injury to third parties resulting from its carrying out its parts of the *Project* and from its *Use* of *Knowledge* and/or *Pre-existing Know How.*

E. 8.5 Third Parties

(a) Each *Party* shall be fully responsible for the performance of any part of its share of the *Project* , or other *Contract* obligation, in respect of which it enters into any contract with a third party (e.g. a *Subcontractor*) and shall ensure (i) such contracts enable fulfilment of the *Contract*; (ii) the other *Parties*' *Access Rights* are the same as would have been the case had the contracting *Party* performed its share of the *Project* and/or those obligations itself; and (iii) the third party shall not have access to any other *Party's Knowledge* or *Pre-Existing Know-How* without that *Party's* prior written consent.

(b) Each *Party* shall in writing inform the other *Parties* if it intends to enter into a contract referred to in Section 8.5(a) (giving the rationale therefor) if such an event has not been detailed in the *Contract* Annex I and the contract is other than for a minor or trivial part of its share of the *Project*. Such Party shall consider in good faith comments made, pursuant to the *Contract* Annex II Article 5, in relation to such contract.

(c) Each *Party* hereby grants *Access Rights* to all *Affiliates* of any other *Party* as if such *Affiliates* were *Parties* provided all such *Affiliates* grant *Access Rights* to all *Parties* (and their *Affiliates*) and (without prejudice to the *Parties'* obligations to carry out the *Project* and to provide *Project Deliverables*) fulfil all confidentiality and other obligations accepted by the *Parties* under the *Contract* or this *Consortium Agreement* as if such *Affiliates* were *Parties*.

(d) In addition to the obligations pursuant to the *Contract* Annex II Article 8, each *Party* shall ensure that it can grant *Access Rights* and fulfil the obligations under the *Contract* notwithstanding any rights of its employees, or persons it engages to perform part of its share of the *Project*, in the *Knowledge* or *Pre-Existing Know-How* they create after the *Project Commencement Date*.

F. 8.6 Defaults and Remedies (1)

A *Party* in default of its obligations under the *Contract* which default causes lawful withholding of payments by the *Commission* to other *Parties*, shall pay to the other *Parties* interest on the amount withheld at an annual rate equal to one (1) percentage point above the prime rate of interest on overdrafts charged according to Euro Interbank Rate (EURIBOR) on the last working day before the *Commission* informed the other *Parties* of such withholding or on the last working day before which the *Parties or the Coordinator* became aware of such withholding (whichever was the earlier). Such interest shall accrue on a daily basis until the *Commission* has effectively transferred the withheld amount to the *Coordinator.*

G. 8.7 Defaults and Remedies (2)

In the event of (i) a substantial breach, but not in case of force majeure, by a *Party* of its obligations under this *Consortium Agreement* or the *Contract* which is irremediable or which is not remedied within one month of written notice from the other *Parties* requiring that it be remedied, or (ii) if Section 15.4 applies, or (iii) if the *Commission* terminates the *Contract* in respect of a *Party*, the other *Parties* may jointly terminate this *Consortium Agreement* with respect to the *Defaulting Party* concerned by not less than one month's prior written notice.

Such termination shall take place with respect to such *Defaulting Party* as of the date of such notice, subject to the provisions in (a) to (b) below.

Notice of such termination pursuant to (i) or (ii) above shall be given to the *Commission* and the *Commission* shall be requested to terminate the *Contract* with respect to the *Defaulting Party* pursuant to the *Contract* Annex II Article 7(3)(b) or to state it does not object to the withdrawal from the *Project* of the *Defaulting Party* in accordance with the *Contract* Annex II Articles 7(2)(b), provided always that:

(a) the *Access Rights* granted to the *Defaulting Party* pursuant to this *Consortium Agreement* shall cease immediately;

(b) the *Access Rights* granted and the obligations to grant *Access Rights* pursuant to this *Consortium Agreement* or the *Contract* by the *Defaulting Party* shall remain in full force and effect;

(c) the *Defaulting Party* shall:

(i) be responsible for and pay all reasonable direct cost increase (if any) resulting from the assignment referred to in Section 4.3(f) in comparison with the costs of the tasks of the *Defaulting Party* as specified in the *Contract* Annex I at the date of termination of this *Consortium Agreement* with respect to the *Defaulting Party*; and

(ii) be liable for any so resulting additional direct cost incurred by the other *Parties*, up to a total amount which taken together with any liability to the *Commission* under Section 8.3 shall not exceed the total maximum limit of liability specified in that Section in respect of the *Defaulting Party*, and any excess amount shall be shared between the *Parties* (including the *Defaulting Party*) pro rata to their *Project Shares* at the date of termination of this *Consortium Agreement* with respect to the *Defaulting Party*.

The *Defaulting Party* shall be deemed to have agreed as the case may be to the termination pursuant to the *Contract* Annex II Article 7(3) (b) or its withdrawal from the *Project* pursuant to the *Contract* Annex II Article 7(2)(b) with the proviso that such deemed agreement shall be without prejudice to the rights of the *Defaulting Party* to appeal against such termination or withdrawal as the case may be.

Section 9 Force Majeure

A failure in the performance of this *Consortium Agreement* cannot be imputed or assumed to a *Party* to the extent it is due to "Force Majeure".

The expression "Force Majeure" shall mean any unforeseeable and insuperable event affecting the *Party* fulfilling its obligations hereunder.

Each *Party* will notify the other *Parties* in writing of any "Force Majeure" or *Force Majeure* as soon as possible. The *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.

Section 10 Access

A. 10.1 Protection of Knowledge

10.1.1 If, in the course of carrying out work on the *Project*, a joint invention, design or work is made (and one or more *Parties* are contributors to it), and if the features of such joint invention design or work are such that it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining the relevant patent protection or any other intellectual property right, the *Parties* concerned agree that they may jointly apply to obtain and/or maintain the relevant right together with any other parties concerned (which usually will be *Assistant Contractors*).

The *Parties* concerned shall seek to agree between them and the other parties concerned arrangements for applying for, obtaining and/or maintaining such right on a case-by-case basis. Where the parties concerned are solely *Parties*, so long as any such right is in force, the *Parties* concerned shall be entitled to use and to license such right without any financial compensation to or the consent of the other *Parties* concerned.

For the avoidance of doubt, joint ownership of an invention, design or work shall not affect the obligations arising under this *Consortium Agreement* or the *Contract*.

10.1.2 In respect of a country either specified by the *Commission* or agreed by the *Parties,* a *Party* shall notify the other *Parties* (via the *Coordinator* if practical) if it does not intend to seek adequate and effective protection (as required by the *Contract)* of certain of its *Knowledge* from the *Project* or if that *Party* intends to waive such protection. If another *Party* (or *Parties*) informs the notifying *Party* in writing within one calendar month of such notice that it wishes to obtain or maintain such protection, the notifying *Party* shall assign to such other *Party(ies)* all necessary rights which it owns. Such assignment shall ensure the *Access Rights* of all *Parties* will be unaffected except that the *Party(ies)* shall not enforce the resultant rights acquired pursuant to the assignment against the *Party* which assigned its rights, nor against such *Party's Affiliates* or licensees under the assigned rights. For the avoidance of doubt, the *Party* which

assigned its rights shall have at least the same *Access Rights* as the non-involved *Parties*.

B. 10.2 General principles relating to *Access Rights*

10.2.1 All *Access Rights* for carrying out of the *Project* and for *Use* are granted on a non-exclusive basis.

10.2.2 Save in exceptional circumstances, no transfer costs (as referred to in the *Contract* Annex II Article 11(5)) shall be charged for the granting of *Access Rights*.

C. 10.2.3 Change of Control

Upon cessation of the control of an *Affiliate* any *Access Rights* granted to such *Affiliate* in respect of *Knowledge* or *Pre-existing Know How* shall lapse, provided however that information which is *Knowledge* which has been incorporated into the products, processes, software or services of such *Affiliate* or which has been amalgamated with such *Affiliate's* own information may continue to be used (in the manner it was then being used) by such *Affiliate* provided it is not practical to do otherwise. In such event, at the request of such *Affiliate*, each requested *Party* shall grant to such *Affiliate* non-exclusive licences under that *Party's* intellectual property rights which are *Knowledge* against terms and conditions to be agreed, provided that no *Legitimate Interests* of such *Party* oppose the grant of such licences. Upon such cessation of control, *Access Rights* granted by such *Affiliate* shall continue in full force and effect.

D. 10.3 *Access Rights* for carrying out the *Project*

10.3.1 Subject to Sections 8 and 10.3.3, *Access Rights* to *Pre-Existing Know-How* needed for carrying out the *Project* shall be deemed granted, as of the date set out in the *Contract* Article 2, on a royalty-free basis to and by all *Parties.*

10.3.2 Subject to Section 10.3.3, *Access Rights* to *Pre-Existing Know-How* and *Knowledge* needed for carrying out the *Project* shall be deemed granted, as of the date set out in the *Contract* Article 2, on a royalty-free basis to all *Assistant Contractors* which similarly grant such *Access Rights* to all *Parties* and other *Assistant Contractors*.

10.3.3 Conditions as set out in the *Contract* Annex II Article 12 can be applied by a *Party* if as soon as reasonably possible and preferably before submission of the *Project* proposal to the *Commission* but in any case prior to entering into the *Contract*, the granting *Party* has in writing notified the *Assistant Contractors* and other *Parties* of the conditions that will apply to such *Access Rights*.

10.3.4 For the avoidance of doubt, *Software* will be available only insofar as, and in the form which it is, needed for carrying out the *Project*. Notwithstanding the foregoing and save as set out in the *Contract* Annex 1, the supplying *Party* shall have no obligation to port the *Software* to any particular equipment or to change it from the form in which the supplying *Party* has it.

E. 10.4 Access Rights for Use

10.4.1 Unless a *Party* has as soon as reasonably possible and preferably before submission of the *Project* proposal to the *Commission* but in any case prior to entering the *Contract* or the *Consortium Agreement* (whichever is the later) notified in writing the other *Parties* of its intention to invoke the following provisions of (i) the *Contract* Annex II, Article 13.1, second paragraph (where possible stating the conditions it proposes), and/or (ii) the *Contract* Annex II Article 14 (stating the details mentioned in the *Contract* Annex II Article 14) and/or (iii) the *Contract* Annex II Article 15 (giving the necessary rationale therefor) each *Party* hereby agrees not to invoke any of them in respect of which it has not so given such notification, except with unanimous agreement of the *Parties*.

10.4.2 *Access Rights* for *Use* which are to be granted on royalty-free terms shall be deemed granted on the date set out in the *Contract* Article 2 for the lifetime of the relevant *Knowledge*.

10.4.3 Save as set out in the *Contract* Annex 1, no *Party* shall have any obligation to port any *Software* to any particular equipment but:

(i) each *Party* shall make *Software* resulting from the *Project* available to other *Parties* in any form needed, including source code

(a) to *Use* it (including without limitation by adapting, modifying, converting, translating and copying or having such acts carried out on its behalf) directly or indirectly - in research, or to create and market a product or process, or to create and provide a service

and

(b) to sublicense it as is normal in the course of the relevant trade to end-user customers buying/using the product/services but only to enable them to use and, as needed, (i) to maintain such product/service, and (ii) to create for its own end-use interacting interoperable *Software* in accordance with the Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC).

(ii) each *Party* shall make other *Software* available and shall grant, on preferential terms, *Access Rights* which are additional to those set out in the *Contract* Annex II, 13(2) but which are needed for Section 10.4.3(i)(b) .

(a) each such sublicence shall when practical be made by a traceable agreement specifying and protecting the proprietary rights of the *Party* or *Parties* concerned; and

(b) each sublicensing *Party* and *Affiliate* shall obtain the previous written approval of the owner of the *Software* before sublicensing the source code or any relating design data , except that such approval is not required to the extent that the source code or the relating design data is sublicensed solely

for the third party's own adaptation, error correction, maintenance and/or support of the *Software* sublicensed to him or rightfully further sublicensed by him.

10.4.4 Notwithstanding the provisions of Section 7.1, each *Party* may enter into a technical cooperation or licensing arrangement with a third party in respect of its own information even if unavoidably incorporated into or amalgamated with such information,there are minor amounts of information which is *Knowledge* from the *Project* of another *Party* (and there are minor amounts of information which is *Pre-Existing Know How* or other *Knowledge* of the other *Party*, but which is associated with that information which is *Knowledge* from the *Project* of the other *Party*). In such circumstances and upon request of the *Party* entering the cooperation or arrangement, the other *Party* shall grant non-exclusive rights to permit such cooperation or arrangement against terms and conditions to be agreed, provided that no *Legitimate Interests* of the other *Party* opposes the grant of such rights.

10.4.5 Recognising the *Parties'* obligations to act in good faith and in accordance with Section 7.1(ii)(C) the *Parties* agree the *Access Rights* for using *Knowledge* in subsequent research activities as indicated in the *Contract* Annex II Article 13(3) are to be as follows:

Parties are deemed to be granted as of the date set out in the *Contract* Article 2 a right to use free of charge *Knowledge* from the *Project* for -

(A) internal research;

(B) third party research, provided the third party does not have direct access to confidential *Knowledge* from the *Project* generated by other *Parties* (as examples - producing research results which are available to the third party but which contain hermetically-sealed *Knowledge* from the *Project*; using *Knowledge* from the *Project* for in-house testing or diagnosis purposes in doing research.)

In the case of research in collaboration with and/or for a third party where the third party needs *Access Rights* to confidential *Knowledge* from the *Project* of another *Party,* the researching *Party* shall in a traceable form (before starting or committing to start the research) inform the third party of such need, and shall use reasonable endeavours to inform the owner of that *Knowledge* of such need in a traceable form. If the owner has been so informed, he shall (i) not unreasonably delay his decision on whether or not to refuse to grant the needed third party *Access Rights* and (ii) not unreasonably refuse to grant such rights on fair and reasonable terms but may, in good faith, so refuse on the grounds of business interest.

However, if despite such reasonable efforts on behalf of the researching *Party,* the owner has not been so informed, the researching *Party* may carry out the research without prejudice to the owner's rights to enforce its rights in any way it deems fit against such third party.

Section 11 Standards

11.1 If one of the main explicit objectives of the *Project* is to contribute to the establishment of a particular European standard, the *Parties* hereby agree to make available to third parties, needed licences relating to *Knowledge* and *Pre-existing Know How* in conformance with the rules of the standards body setting such standard provided such third party similarly makes needed licences available under its intellectual property rights.

11.2 The Parties agree that the *Contract* Annex II Article 20 (2) only refers to actions required by a *Party* in respect of its own information or information which is not subject to any obligation of confidence.

Section 12
Publications, Press Releases and Reports to the Commission

12.1 Without prejudice to any obligation of confidentiality in respect of another *Party's* information, publications and oppositions pursuant to the *Contract* Annex II Article 9(3) shall accord with the following.

(i) When the *Contractors* have agreed a *Project Deliverable* is to be available to the public, any *Party* may publish information from that *Project Deliverable* without reference to any other *Party*.

(ii) In respect of other publications, a copy of the planned publication shall be supplied together with the prior warning required by the *Contract*. Any opposition to the planned publication shall be made in accordance with the *Contract* in writing to the *Coordinator* and to any *Party* concerned. If no such opposition is made within the time limit set in the *Contract*, the publication is permitted.

When there is an opposition, the involved *Parties* shall discuss how to overcome the justified grounds of the opposition (for example by amendment to the planned publication) and the opposing *Party* shall not unreasonably continue the opposition if appropriate actions are performed following the discussion.

The justified grounds of opposition are:

(a) for business reasons concerning the inclusion of the opposing *Party's Knowledge* or *Pre-Existing Know-How*.

(b) for protection reasons concerning *Knowledge* or *Pre-Existing Know-How* and the publication of the material identified in opposition would adversely affect such protection.

In the case of (b) above,

(i) the *Parties* concerned shall cooperate to achieve such protection in respect of *Knowledge* (whether invoking the provisions of Section 10.1.2 or otherwise) and to overcome such barrier to publication.

(ii) provided it does not significantly adversely affect the timing or content of the publication, the publishing *Party* shall delay for an agreed period and/or modify the publication to enable the protecting *Party* to take prompt action to avoid the proposed publication prejudicing the eventual grant of such protection in respect of *Pre-Existing Know-How*; and

(iii) the opposing *Party* shall use all reasonable endeavours to overcome such barrier to publication as quickly as possible. The publishing *Party* shall postpone the publication of such material until such barrier has been overcome. However, the maximum time of postponement shall be three (3) months from the date of the opposition unless (exceptionally) the *Parties* involved agree (or are required by law or enforceable regulation) to extend the postponement.

12.2 Where a person carrying out work on the *Project* on behalf of a *Party* (the "Relevant *Party*") needs to include *Pre-Existing Know-How* or *Knowledge* of another *Party* in a publication for a qualification for a degree, the above procedures shall be followed save that the planned date of publication shall be deemed to be the date three months before the last date on which (pursuant to the qualification procedures) the contents of the planned publication can be altered.

However, except as stated below, no such publication will be made under the above procedure -

(i) without a majority agreement of the *Parties* and

(ii) provided no *Party* who would be adversely affected (as indicated in Section 12.1 (a) or (b)) by the publication has vetoed such publication.

Notwithstanding the foregoing, such a publication can be made if the Relevant *Party* has as soon as reasonably possible (preferably before submission of the *Project* proposal to the *Commission*, but in any case prior to entering the *Contract* or the *Consortium Agreement* (whichever is the later)) notified in writing the other *Parties* of the intention to make such a publication.

12.3 In addition to the *Contract* Annex II Article 18,

(i) all information provided to the *Commission*, publications and press releases shall have a disclaimer saying "The information in this document is provided as is and no guarantee or warranty is given that the information is fit for any particular purpose. The user thereof uses the information at its sole risk and liability.";

(ii) confidential information provided to the *Commission* will be marked stating the information is confidential and may be used only for information purposes by Community Institutions to whom the *Commission* has supplied it.

Section 13 No partnership or agency

Nothing in this *Consortium Agreement* shall create a partnership or agency between the *Parties* or any of them.

Section 14 Assignment

No *Party* shall, without the prior written consent of the other *Parties*, assign or otherwise transfer partially or totally any of its rights and obligations under this *Consortium Agreement*. Such consent shall not be unreasonably withheld when such assignment or transfer is in favour of an *Affiliate* of that *Party*.

Section 15 Termination

15.1 Before signature of the *Contract*,

(i) any *Party* may withdraw from and terminate this *Consortium Agreement* in respect of itself by informing the other *Parties* in writing of such termination (which shall take effect as of the latest date of such notice) if at its sole option

(a) it decides it will not participate either in the submission of the *Proposal* or in the carrying out of the *Project* or

(b) it decides to be an *Assistant Contractor* and enters into a contract to that effect;

(ii) the *Parties* may by agreement terminate this *Consortium Agreement* forthwith;

(iii) this *Consortium Agreement* shall terminate if and on the date that

(a) the *Parties* agree not submit a *Proposal* to the *Commission* or

(b) the *Commission* rejects the *Proposal.*

15.2 After signature of the *Contract*, no *Party* shall be entitled to withdraw from this *Consortium Agreement* and/or participation in the *Project* unless:

(a) that *Party* has obtained the prior written consent of the other *Contractors* (such consent not to be unreasonably withheld), and also of the *Commission*, to the withdrawal from, or termination of, the *Contract*; or

(b) that *Party's* participation in the *Contract* is terminated by the *Commission* pursuant to the provisions of the *Contract* Annex II Article 7; or

(c) the *Contract* is terminated by the *Commission* for any reason whatsoever, provided always that a *Party* shall not by withdrawal or termination be relieved from

(i) its responsibilities under this *Consortium Agreement* or the *Contract* in respect of that part of that *Party's* work on the *Project* which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or

(ii) any of its obligations or liabilities arising out of such withdrawal or termination.

15.3 If any *Party's* participation in the *Contract* is terminated by the *Commission* pursuant to the provisions of the *Contract* Annex II, Article 7, or a *Party* withdraws from the *Project*, then, without prejudice to any other rights of the other *Parties* the provisions of Sections 4.3(f), 8.6 and 8.7(a) and (b) shall apply correspondingly.

15.4 If any *Party* enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors the other *Parties* shall, subject to approval by the *Commission*, be entitled to take over the fulfilment of such *Party's* obligations and to receive subsequent payments under the *Contract* in respect thereof.

In such event all rights and obligations under the *Contract* and this *Consortium Agreement* shall in good faith be redistributed among the remaining *Parties* and the affected *Party* on the basis of the work performed by the affected *Party* prior to the occurrence of the above circumstance.

15.5 The provisions of Sections 1, 5.3.1(e), 7, 8, 10, 11, 15 and 16 shall survive the expiration or termination of this *Consortium Agreement* to the extent needed to enable the *Parties* to pursue the remedies and benefits provided for in those Sections.

15.6 Termination of the *Consortium Agreement* and/or cessation of licences granted to the *Defaulting Party* in accordance with Section8.7(a) and (b) shall not terminate any sublicenses granted or agreed to be granted or offered by the *Defaulting Party* in accordance with ~~Article~~ Section 10 prior to the date on which such termination of the *Consortium Agreement* and/or cessation of licences becomes effective, provided that the *Party* or *Parties* which generated the *Knowledge* or *Pre-Existing Know-How* so sublicensed shall have the right to have an assignment of the *Defaulting Party*'s rights under such sublicences.

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

Section 16 Settlement of Disputes

16.1 All disputes or differences arising in connection with this *Consortium Agreement* which cannot be settled amicably shall be subject to the jurisdiction of the appropriate national court of the *Party* who would be the prospective defendant in legal action on the issue.

16.2 The *Parties* may instead elect to resolve by mediation a dispute or difference arising in connection with this *Consortium Agreement* which cannot be settled amicably.

Section 17 Language

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

Section 18 Notices

Any notice to be given under this *Consortium Agreement* shall be in writing to the following addresses and recipients. It shall be deemed to have been served when personally delivered, or, if transmitted by telefax, electronic or digital transmission when transmitted provided that such transmission is confirmed by receipt of a successful transmission report and confirmed by mail.

(1) Universität Konstanz
Helmut Hengstler
Treasurer
78457 Konstanz
Germany
Fax +39 7531 883727

(2) Swiss Federal Institute of Technology
Prof. Dr. Albert Waldvogel
Vice President of research
ETH Zentrum
Raemistrasse 101
8092 Zurich
Switzerland
Fax +41 1 6321237

(3) Technical University of Denmark
Prof. Dr. Hans Peter Jensen
Rector
Anker Engelundsvej 1
2800 Lyngby
Denmark
Fax +45 45 253720

(4) Computer Technology Institute
Prof. Dr. Paul Spirakis
Director
Riga Feraiou Street 61
26221 Patras
Greece
Fax +30 61 222086

(5) Università di Roma “La Sapienza”
Prof. Gianni DiPillo
Director
Piazzale A. Moro 5
00185 Rome
Italy
Fax +39 06 44585361

(6) Stichting Mathematisch Centrum
Dr. Gerard van Oortmerssen
General Director
Kruislaan 413
1090 GB Amsterdam
The Netherlands
Fax +31 20 5924199

or to such other address and recipient as a *Party* may designate in respect of that *Party* by written notice to the others.

Section 19 Applicable Law

This *Consortium Agreement* shall be construed according to and governed by the law provided in the *Contract* Article 5.

Section 20 Entire Agreement - Amendments

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

Amendments or changes to this *Consortium Agreement* shall be valid only if made in writing and signed by an authorised signatory of each of the *Parties*.

Section 21 Counterparts

This *Consortium Agreement* may be executed in any number of counterparts, each which shall be deemed an original, but all of which shall constitute one and the same instrument.

Signatures

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

Authorised to sign on behalf of

Universität Konstanz, Konstanz, Germany

Signature

Name Title

Signature

Name Title

Authorised to sign on behalf of

Swiss Federal Institute of Technology, Zurich, Switzerland

Signature

Name Title

Signature

Name Title

Authorised to sign on behalf of

Technical University of Denmark, Lyngby, Denmark

Signature

Name Title

Signature

Name Title

Authorised to sign on behalf of

Computer Technology Institute, Patras, Greece

Signature

Name Title

Signature

Name Title

Authorised to sign on behalf of

Università di Roma “La Sapienza”, Rome, Italy

Signature

Name Title

Signature

Name Title

Authorised to sign on behalf of

Stichting Mathematisch Centrum, Amsterdam, The Netherlands

Signature

Name Title

Signature

Name Title

Schedule to the Consortium Agreement

Party	*Affiliate* **pursuant to Section 1.2 "*Affiliate*" (b)**

CONTENTS

CONSORTIUM AGREEMENT 1

WHEREAS: 1

SECTION 1 DEFINITIONS 2

1.1 *CONTRACT* DEFINITIONS 2
1.2 ADDITIONAL DEFINITIONS 2
1.3 FURTHER UNDERSTANDINGS 3

SECTION 2 PURPOSE AND DURATION 4

2.1 PURPOSE 4
2.2 DURATION 4

SECTION 3 COORDINATOR 4

SECTION 4 PROJECT COORDINATION COMMITTEE 4

SECTION 5 RESPONSIBILITIES OF EACH *PARTY* 6

5.1 GENERAL RESPONSIBILITIES 6
5.2 TOWARDS THE *COORDINATOR* AND THE *PCC* 6
5.3 TOWARDS EACH OTHER 6

SECTION 6 COSTS - PAYMENT 8

SECTION 7 CONFIDENTIALITY 8

SECTION 8 LIABILITIES 9

8.1 LIABILITY TOWARDS EACH OTHER 9
8.2 INDEMNIFICATION OF EACH OTHER 10
8.3 CLAIMS OF THE *COMMISSION* 10
8.4 LIABILITY TOWARDS THIRD PARTIES 10
8.5 THIRD PARTIES 11
8.6 DEFAULTS AND REMEDIES (1) 11
8.7 DEFAULTS AND REMEDIES (2) 12

SECTION 9 FORCE MAJEURE 13

SECTION 10 ACCESS 13

10.1 PROTECTION OF KNOWLEDGE 13
10.2 GENERAL PRINCIPLES RELATING TO *ACCESS RIGHTS* 14
10.2.3 CHANGE OF CONTROL 14
10.3 *ACCESS RIGHTS* FOR CARRYING OUT THE *PROJECT* 14
10.4 ACCESS RIGHTS FOR USE 15

SECTION 11 STANDARDS 17

SECTION 12 PUBLICATIONS, PRESS RELEASES AND REPORTS TO THE COMMISSION 17

SECTION 13 NO PARTNERSHIP OR AGENCY 19

SECTION 14 ASSIGNMENT 19

SECTION 15 TERMINATION 19

SECTION 16 SETTLEMENT OF DISPUTES 20

SECTION 17 LANGUAGE 21

SECTION 18 NOTICES **21**

SECTION 19 APPLICABLE LAW **22**

SECTION 20 ENTIRE AGREEMENT - AMENDMENTS **22**

SECTION 21 COUNTERPARTS **22**

SIGNATURES **23**

SCHEDULE TO THE CONSORTIUM AGREEMENT **27**

CONTENTS **28**