***Instructions for use of this template***

***This template ICON COLLABORATION AGREEMENT MARKET CONDITIONS is solely intended to serve as an example. Whether the State aid rules are respected, will depend on the concrete configuration and application of the arrangements between the project partners. Therefore, no guarantee can be given that this template is in accordance with the State aid rules. The project partners always should consider which regime is best applied in function of the compliance with the State aid rules, and research organisations must keep in mind that they should make always arrangements that could as well be made between industrial partners.***

***This template is drafted from a template collaboration agreement for a Cluster related ICON project; however it can be used for all kind of ICON programmes provided that the Cluster related terms are replaced or deleted.***

 **[CLUSTER ORGANISATION] ICON COLLABORATION AGREEMENT**

This ICON Collaboration Agreement (the “**Agreement**”) is entered into on [DATE] (the “**Effective Date**”) by and between the following parties:

The following companies:

**PARTY 1**, having its offices at [address], registered under legal entity number [number], duly represented by [name + title] (“[Party 1]”); and

**PARTY 2**, having its offices at [address], registered under legal entity number [number], duly represented by [name + title] (“[Party 2]”); and

**PARTY 3**, having its offices at [address], registered under legal entity number [number], duly represented by [name + title] (“[Party 3]”).

Prementioned parties in this paragraph are hereafter individually called the ‘Company’ and collectively the ‘Companies’.

The following research organisations:

**PARTY 4**, having its offices at [address], registered under legal entity number [number], duly represented by [name + title] (“[Party 4]”); and

**PARTY 5**, having its offices at [address], registered under legal entity number [number], duly represented by [name + title] (“[Party 5]”).

Prementioned parties in this paragraph are hereafter individually called the ‘Research Organisation’ and collectively the ‘Research Organisations’.

Companies and Research Organisations are hereafter individually called the “Party” and collectively the “Parties”.

The Cluster Organisation:

[Cluster Organisation], [address], registered under company number BE [registry number], duly represented by [name and title] (hereafter called “[Cluster Organisation]”).

**RECITALS**

**WHEREAS**, the parties have submitted through [CLUSTER ORGANISATION] a project proposal for funding to the Hermes Fund, entitled “*[name of the ICON project] ([abbreviation])*”;

**WHEREAS**, the proposal has been approved by the Hermes Fund (the approved ICON project hereinafter the “**Project**”) and an agreement has been entered into between the Hermes Fund and the parties (hereinafter the "**Hermes Fund Agreement**");

**WHEREAS,** the parties have signed a Term Sheet on [date];

WHEREAS, the parties have signed a Term Sheet on [date], in which they commit themselves to act in conformity with the Framework for State aid for Research and Development and Innovation and in which they demonstrate the project will be performed as an “Effective Collaboration” and agree the terms and conditions as regards access to and rules for allocation of IP.

**WHEREAS**, the parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the Hermes Fund Agreement and the Term Sheet;

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

# Definitions

## As used in this Agreement, the following capitalized terms will have the meanings set forth in this article:

## “Access Right”: means a non-exclusive, non-sublicensable (except to subcontractors working on behalf of a party) license to use Foreground or Background (as the case may be) of another party. An Access Right to Software does not include any right to receive source code, object code ported to a certain hardware platform or Software documentation in any particular form or detail, but only as available from the party granting the Access Right or as described in Exhibit 2.

## “Affiliate”: means any undertaking which is, on or after the Effective Date from time to time, an affiliate as this term is defined in article 1:20 of the Belgian Code of Companies and Associations, and/or which is listed on Exhibit 3 hereto.

## “Background”: means in respect of each party those of its intellectual property rights and non-public information, data, know-how, trade secrets, Software and materials listed in Exhibit 2.

## “Consortium”: means all parties to this Agreement.

## “Defaulting Party”: means a party which the Steering Committee has identified to be in breach of this Agreement as specified in article 12.5.

## “Exploitation”: means utilisation other than for the purposes of the performance of the Project or Research Use.

## “Field of interest”: means the respective technical and commercial field constituting the focus of interest for each Company in the Project, as described hereafter:

## [Party 1]: [complete];

## [Party 2]: [complete]; and

## ....

## “Foreground”: means the results, including information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions), data, know-how, trade secrets, Software and material, whether or not they can be protected, which are generated under the Project, including rights related to Software, databases, design rights, patent rights, plant variety rights, or similar forms of intellectual property rights.

## “Hermes Fund Agreement”: shall have the meaning ascribed to such term in the Recitals.

## “Member”: shall have the meaning ascribed to such term in article 3.1.

## “Project”: shall have the meaning ascribed to such term in the Recitals.

## “Project Budget”: means the budget for the Project as set forth in the Hermes Fund Agreement, as may be amended from time to time.

## “Project Manager”: means the individual appointed by the Coordinator as responsible for the day-by-day fulfilment of the tasks of the Coordinator.

## “Project Plan”: means the description of the work and the related agreed Project Budget, as approved by the Hermes Fund and referred to in the Hermes Fund Agreement, as may be amended from time to time.

## “Research Use”: means use for a party’s internal research, internal development, academic teaching and academic research activities.

## Software”: means a computer program as referred to in article XI.294-295 of the Code of Economic Law (*Codex Economisch Recht*).

## “Steering Committee”: shall have the meaning ascribed to such term in article 3.1.

# SUBJECT

## **Performance of the Project.** Each party will use its reasonable endeavours to carry out the Project in a timely and efficient manner. Each party shall perform the tasks allotted to it in the Project Plan and provide the human resources, materials, facilities and equipment that are designated as its responsibility in the Project Plan.

## **No warranty regarding outcome of scientific research.** Although each of the parties will use reasonable endeavours to carry out the Project in accordance with the Project Plan, no party undertakes that any research will lead to any particular result, nor does it guarantee a successful outcome to the Project.

## **Information and materials.** Each party undertakes to promptly notify the Project Manager of any significant information, fact, problem or delay likely to affect the Project. Each party shall promptly provide all information reasonably required by the Coordinator to carry out its tasks. Subject to article 11.1, each party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other parties.

## **Involvement of third parties.** A party that subcontracts part of its work under the Project to a third party (including but not limited to Affiliates) remains solely responsible for the carrying out of these tasks and for such third party’s compliance with the applicable provisions of this Agreement and the Hermes Fund Agreement. It will ensure that the involvement of a third party does not affect the rights of the other parties.

## **Subordinate to Hermes Fund Agreement.** Current Collaboration Agreement gives further elaboration to the commitments and obligations of the Parties stipulated in the Hermes Fund Agreement. Nothing in this Collaboration Agreement shall be understood as limitation of any of these obligations or commitments. In case the provisions listed in this Collaboration Agreement conflict with the provisions of the Hermes Fund Agreement, the provisions of the Hermes Fund Agreement, with special attention to but not limited to those related to the Proposal, the Innovation Goal, and Exploitation plan are leading and will be respected integrally.

# Steering Committee AND COORDINATOR

##  Steering Committee

### **Members.** At the Effective Date, the parties establish a steering committee (the “**Steering Committee**”) consisting of at least one representative of each party (a “**Member**”). The Steering Committee will continue to exist until one (1) year after the end of the Project.

### **Representation in meetings.** Any Member

## (a) may be present or represented at any meeting of the Steering Committee;

## (b) may appoint a substitute or a proxy to attend and vote at any meeting.

[CLUSTER ORGANISATION] shall have the right to attend all meetings, but shall have no voting power.

### **Meetings.** The Project Manager shall chair all meetings of the Steering Committee, unless decided otherwise in a meeting of the Steering Committee. The Project Manager shall convene meetings of the Steering Committee. Ordinary meetings will take place at least four (4) times a year and extraordinary meetings may be convened at any time upon written request of one-third (1/3) of the Members. The Project Manager shall give notice in writing of a meeting with the agenda to each Member no later than fourteen (14) calendar days in advance.

### **Quorum, voting power and majorities.** The Steering Committee can only deliberate and decide validly if two-thirds (2/3) of the parties are present or represented. Each party will have one vote.Decisions shall be taken by a majority of two-thirds (2/3) of the votes in attendance, except that the decisions referred to in article 3.1.5 (f), 3.1.5 (i), 3.1.5 (j), 3.1.5 (l) and 3.1.5 (m) require unanimity of all votes in attendance. A party will have no voting right on a decision concerning its qualification as a Defaulting Party.

### **Tasks and Decisions**. The following tasks will be fulfilled and decisions taken by the Steering Committee:

1. monitor the effective and efficient implementation of the Project
2. collect information at least every six (6) months on the progress of the Project, examine that information to assess the compliance of the Project with the Project Plan and, if necessary, propose a modification of the Project Plan to [CLUSTER ORGANISATION] to the extent the Hermes Fund Agreement requires such modification to be approved by the Hermes Fund
3. determine the policy for press releases, joint publications and other public disclosures of Foreground
4. keep a register of Foreground generated within the Project and patent applications filed thereon
5. register all requests for licenses to Background (except for third party requests for non-exclusive licenses to Background) and Foreground and all granted licenses, and requests for transfer of Foreground
6. approve withdrawals from or additions to Exhibit 2 (“Background included”), additions to Exhibit 3 (“Affiliates”) and additions to Exhibit 4 (“Third Parties”)
7. approve a change of Project Manager
8. propose to [CLUSTER ORGANISATION] a change of Coordinator
9. propose to [CLUSTER ORGANISATION] major changes in work under the Project (e.g., termination, creation, or reallocation of top level work packages) to the extent the Hermes Fund Agreement requires such changes to be approved by the Hermes Fund
10. propose to [CLUSTER ORGANISATION] the accession of a new party to the Consortium and approval of settlement on conditions of accession
11. withdrawal of a party from the Consortium (subject to Article 12.4) and approval of settlement on conditions of withdrawal, and rearrangement of tasks and budgets of the party that withdraws (any resulting changes in the budgets of the remaining parties shall be subject to an amendment to the Hermes Fund Agreement, and - if need be - this Agreement and will be signed by the authorized representatives of the parties to said agreements)
12. declaration of a party to be a Defaulting Party, remedies to be performed by a Defaulting Party and proposal to [CLUSTER ORGANISATION] for termination by the Hermes Fund of a Defaulting Party’s participation in the Project and measures relating thereto
13. escalation of a matter to [CLUSTER ORGANISATION] if a party deems that its legitimate interests are adversely affected by a decision of the Steering Committee and no amicable resolution has been found at the level of the Steering Committee
14. propose to [CLUSTER ORGANISATION] the suspension by the Hermes Fund of all or part of the Project
15. propose to [CLUSTER ORGANISATION] the termination by the Hermes Fund of the Project

### **Written decision-making.** Any Member may participate in meetings by teleconference, video-conference or any other technology that enables everyone participating in the meeting to communicate interactively and simultaneously with each other. Any decision may be taken without a meeting if the Project Manager circulates to all Members a written document which is then unanimously accepted and signed by all Members.

### **Minutes of meetings.** Thechairperson shall produce written minutes of each meeting and will send the draft minutes to all Members within ten (10) calendar days of the meeting. The minutes shall be considered as accepted and become binding if, within fourteen (14) calendar days from sending, no Member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes. The chairperson shall send the accepted minutes to all the Members.

##  The Coordinator

### **Tasks.** The Coordinator acts as the intermediary between the parties and [CLUSTER ORGANISATION] and will further be responsible for:

1. providing direction and leadership to the Steering Committee
2. establishing communication with and between all parties
3. transmitting documents and information connected with the Project to and between the parties
4. collecting, reviewing to verify consistency and submitting reports and other deliverables (including financial statements and related certifications) to [CLUSTER ORGANISATION]
5. providing, upon request, the parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the parties to present claims or for other legitimate interests
6. keeping an address list of Members and other contact persons updated and available

### **Authority.** The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other party.

# Financial provisions

The parties shall strictly abide by the financial provisions of the Hermes Fund Agreement.

# ReporTING

## In accordance with the Hermes Fund Agreement, the Coordinator will be responsible for all reporting towards [CLUSTER ORGANISATION]. To enable the Coordinator to timely and efficiently fulfil its reporting obligations, each party shall provide the Coordinator with a report pertaining to its specific tasks under the Project no later than fifteen (15) days before the applicable deadline. These reports must conform to all requirements imposed by the Hermes Fund for reporting as set forth in the Hermes Fund Agreement and any additional written guidelines that may be issued by the Hermes Fund.

# Foreground

## **Ownership.** Foreground will be the property of the party generating that Foreground. Where any third party such as a student or subcontractor is involved in the Project, the party engaging that third party will ensure that said third party assigns any rights it may have in the Foreground to the party concerned in order to enable the party concerned to give effect to the provisions of this Agreement.

## **Protection of Foreground.** Each party may take such steps as it may decide from time to time to register and maintain any protection for its Foreground, including filing and prosecuting patent applications. The filing party shall inform the other parties of such filing at the Steering Committee meeting immediately following such filing and provide the other parties the abstract and other details as needed to enable the other parties to assess whether they need to ask Access Rights pursuant to article 7.4 and to trace the patent application after publication. This obligation will survive termination of the Project for a period of twelve (12) months.

## **Joint ownership.** Where two or more parties have jointly carried out work generating Foreground and where it is impossible to segregate each party's contribution for the purposes of further use or exploitation, they shall have joint ownership of such Foreground.

## **Non-patented joint Foreground.** The joint owners of Foreground will establish an agreement regarding the allocation and terms of exercising their joint ownership. However, where no joint ownership agreement has yet been concluded, each joint owner shall have the right to

### use such Foreground for Research Use in accordance with article 7.4.3 and for Exploitation (other than through the granting of licenses) in accordance with article 7.4.5, without being required to account to any other joint owner.

### grant the other parties Access Rights for the performance of the Project in accordance with article 7.4.1 and Research Use in accordance with article 7.4.3;

### grant the other parties Access Rights for Exploitation in accordance with article 7.4.5, subject to the following conditions: (i) at least forty-five (45) days prior notice must be given to the other joint owner(s), and (ii) the market price must be payed to the other joint owner(s); and

### grant non-exclusive licenses to third parties for research and Exploitation, subject, however, to the conditions contained in section (c) above.

## **Protection of patentable joint Foreground.** The owners of joint Foreground may take such steps as they may decide from time to time to register and maintain any protection for their joint Foreground, including filing and prosecuting patent applications. The filing parties shall inform the other parties of such filing at the Steering Committee meeting immediately following such filing and provide the other parties the abstract and other details as needed to enable the other parties to assess whether they need to ask Access Rights pursuant to article 7.4 and trace the patent application after publication. This obligation will survive termination of the Project for a period of twelve (12) months.

### The joint owners will establish an agreement regarding the financing of the patent application, the responsibilities for patent prosecution, the exploitation of the patent rights and the distribution of revenues obtained. However, where no such joint ownership agreement has yet been concluded, the following rules will apply:

1. All decisions regarding the filing, prosecution and maintenance of patent rights will be made by mutual agreement between the joint owners;
2. The joint owners shall appoint one of them as responsible for patent management and will agree on the patent attorney to be retained for the preparation, filing, prosecution and maintenance of the patent rights;
3. The other joint owners undertake to provide their assistance and to fulfil all formalities which are necessary to file, prosecute and maintain the patent rights;
4. The out-of-pocket expenses related to the patent rights will be borne equally by all joint owners; and
5. In the event an owner of joint Foreground is not (or no longer) willing to contribute to these expenses in one or more jurisdictions, it shall transfer its co-ownership rights in the patent rights for the jurisdictions concerned to the other joint owners and shall fulfil all formalities and sign all documents required to perfect the transfer of its rights to the other joint owners. Such party will retain a non-exclusive, irrevocable, non-transferable, license to use the joint Foreground that is subject to the patent rights in these jurisdictions for Research Use in accordance with article 7.4.3. and for Exploitation in accordance with article 7.4.5 with the right to sublicense only to its Affiliates in accordance with article 7.2.

## **Transfer of Foreground.** Notwithstanding articles 2.5 and 13.3 each party may transfer ownership of its own Foreground (including its rights in jointly owned Foreground, subject to article 6.4 and 6.5) to any third party against market price, if it ensures that the rights of the other parties will not be affected by such transfer. Such transferring party must thereto pass on its obligations regarding that Foreground to the assignee (including the obligation to pass those obligations on to any subsequent assignee). The transferring party shall give at least thirty (30) days prior notice to the other parties of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the Foreground to permit the other parties to exercise their Access Rights.

# Access Rights

## General principles

### **Identification of Background.** Theparties shall agree on and identify in Exhibit 2 the Background to which they are ready to grant Access Rights, subject to the provisions of this Agreement. Subject to article 7.1.2, all intellectual property rights and non-public information, data, know-how, trade secrets, Software and materials not listed in said Exhibit 2 are explicitly excluded from Access Rights.

### **Additions and withdrawals of Background.** Only the Steering Committee can permit a party to withdraw any of its Background from Exhibit 2 or to add additional items to its Background. Each party will notify the Steering Committee in due time if it is willing to introduce certain of its intellectual property rights, information, data, know-how, trade secrets, Software or materials in the Project in such a way that another party will need Access Rights thereto for the performance of the Project, for Research Use or for Exploitation (as further detailed in and conditioned by Article 7.4 below) and an addition to Exhibit 2 would be needed. If no such notification has taken place or if the Steering Committee has rejected the addition of such an item to that party’s Background, and that party introduces such item in the Project in such a way that another party will need any of these Access Rights thereto, such item will be deemed to be added to such a party’s Background.

### **Restrictions to Access Rights.** The parties shall inform the Steering Committee as soon as possible of any limitation to the granting of Access Rights to their Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source Software in the Project).

### **Use of Access Rights.** An Access Right to Background or Foreground shall be used only for the purposes for which it has been granted.

### **Requests for Access Rights.** All requests for Access Rights must be made in writing, must explain why Access Rights are needed and will be granted upon written agreement, except that the Access Rights under article 7.4.1 are automatically when requested.

### **No implied licenses.** No Access Right or license to use any Background, Foreground or any other technology, intellectual property right, invention, information data, know-how, trade secrets, Software or materials that are not Foreground is granted or implied by this Agreement except the rights explicitly granted in this Agreement. This Agreement does not affect the ownership of any Background and rights therein will remain the property of the party that contributes it to the Project.

## Access Rights for Affiliates

### **Requests by Affiliates.** An Affiliate will pay the market price for Access Rights to Background or Foreground.

### **Termination of Affiliates’ Access Rights.** Access Rights granted to an Affiliate are subject to the continuation of the Access Rights of the party to which it is affiliated, and automatically terminate upon termination of the Access Rights granted to such party. Upon cessation of the status as an Affiliate, any Access Rights granted to such former Affiliate will lapse.

## Access Rights for parties entering or leaving the Consortium

### **New parties entering the Consortium.** Subject to payment of an accession fee equal to the market price, all Foreground developed under the Project before the accession of a new party to the Consortium will be considered Background with regard to that new party.

### **Parties leaving the Consortium.** Access Rights granted to a Defaulting Party and such party's right to request Access Rights shall cease immediately upon termination of the Defaulting Party’s participation in the Consortium. A non-defaulting party leaving voluntarily and with the other parties' consent may request Access Rights up until twelve (12) months after having left the Consortium to the Foreground developed until the date of the termination of its participation against market price. Any party leaving the Project shall continue to grant Access Rights pursuant to this Agreement as if it had remained a party for the whole duration of the Project.

## Access Rights for performance of the Project, Research Use and Exploitation

### **Access Rights for performance of the Project.** If a party needs access to Background or Foreground of another party for the performance of its tasks in the Project, it is hereby granted Access Rights to such Background or Foreground at no cost.

### **Access Rights to Background for Research Use.** During and up until twelve (12) months after completion of the Project, each party may apply for Access Rights for Research Use to Background that is needed for Research Use of Foreground developed under the Project. Such Access Rights shall be granted against market price.

### **Access Rights to Foreground for Research Use.** During and up until twelve (12) months after completion of the Project, each party may apply for Access Rights for Research Use to the Foreground developed under the Project. Such Access Rights shall be granted against market price.

### **Access Rights to Background for Exploitation.** If a party needs access to Background of another party for the Exploitation of its own Foreground in its Field of Interest, it may apply for Access Rights with that party up until six (6) months after the end of the Project. Such Access Rights shall be granted against market price. Notwithstanding the foregoing, if Background consists of a patent (application), Access Rights may only be applied for up until the earlier of (i) eighteen (18) months after the priority date of the patent (application), or (ii) termination of the Project.

### **Access Rights to Foreground for Exploitation.** If a party needs access to Foreground of another party for the Exploitation of its own Foreground in its Field of Interest, it may apply for Access Rights with that party up until twelve (12) months after termination of the Project. Such Access Rights shall be granted against market price.

### **Expertise Procedure.** In case no agreement on the price is reached within six (6) months from the initiation of negotiations under article 7.4.2, 7.4.4 or 7.4.5, the parties concerned agree to submit the determination of the price to an expert appointed in accordance with the CEPANI Rules of Technical Expertise, which Rules shall apply to said procedure. The expertise procedure will be conducted in the Dutch language and the costs will be borne in equal shares by the parties involved in the procedure. The findings and conclusions of such expert will bind these parties. However, the party requesting Access Rights may revoke its request if the price as determined by the expert is in its view not acceptable, but will in such case bear the full cost of the expert procedure.

# Non-disclosure of information

## **Definition.** All information in whatever form or mode of transmission, which is disclosed by a party (the “**Disclosing Party**”) or its Affiliates to any other party (the “**Receiving Party**”) or its Affiliates in connection with the Project and which has been marked as “confidential”, or when disclosed orally or in any other intangible form, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within fifteen (15) days from oral disclosure at the latest as confidential information by the Disclosing Party, is “**Confidential Information**”. The information which is not identified as confidential must nevertheless be treated as Confidential Information by the Receiving Party, if it knows or should reasonably be expected to know about the secret and confidential nature of such information.

## **Restrictions.** The Receiving Party shall up until seven (7) years after the end of the Project:

1. not use the Disclosing Party’s Confidential Information otherwise than for the purposefor which it was disclosed;
2. not disclose such Confidential Information to any third party other than its Affiliates without the prior written consent of the Disclosing Party.

## **Internal use.** The Receiving Party shall internally distribute the Disclosing Party’s Confidential Information on a strict need-to-know basis and apply the same degree of care with regard to the Confidential Information as with its own confidential information, but in no case less than reasonable care. The Receiving Party shall have its and its Affiliates’ employees, collaborators (including students), advisors, consultants and subcontractors comply with the confidentiality provisions hereof and shall ensure that they continue to do, as far as legally possible, during and after the end of the Project and/or after the termination of employment or the agreement with the advisor, consultant or subcontractor.

## **Exceptions.** The foregoing obligations of this Article 8 do not apply to disclosure or use of information, if and in so far as the Receiving Party can show that:

1. the information was or later became public other than through a breach of the Receiving Party’s confidentiality obligations;
2. the information is received by the Receiving Party without any obligation of confidence from a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
3. the information was already known to the Receiving Party prior to disclosure;
4. the information was developed by the Receiving Party completely independently of any such disclosure by the Disclosing Party;
5. the disclosure or communication of the information is foreseen by provisions of the Hermes Fund Agreement;
6. the Disclosing Party informs the Receiving Party that the information is no longer confidential.

## **Disclosure required by Law.** If a Receiving Party becomes aware that it will be required, or is likely to be required, to disclose the Disclosing Party’s 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 reasonably comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.

## **Unauthorized use or disclosure.** A Receiving Party shall promptly advise the Disclosing Party in writing of any unauthorised disclosure, misappropriation or misuse of the Disclosing Party’s Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

## **Return.** A Receiving Party shall return to the Disclosing Party on demand all Disclosing Party’s Confidential Information which has been supplied to or acquired by the Receiving Party including all copies thereof and delete all information stored in a machine readable form. If needed for the recording of ongoing obligations or the implementation of Access Rights granted or exercisable hereunder, the Receiving Party may however keep a copy solely for these purposes.

## **Disclosure to [CLUSTER ORGANISATION] and the Hermes Fund.** The confidentiality obligations under this Agreement do not prevent the communication of Confidential Information to [CLUSTER ORGANISATION] or the Hermes Fund, if required by the Hermes Fund Agreement.

# Material Transfer

If any materials (the **Materials**”) are transferred from or on behalf of a party (the “**Provider**”) to another party (the “**Recipient**”), each Recipient shall be bound by the following provisions and shall be responsible for ensuring that its Affiliates or other third parties that perform part of its work under the Project comply with such provisions:

## **Authorisations.** The Recipient has all the required authorisations under all applicable laws and regulations to perform the experimental work in vitro at the place of investigation using the Materials.

## **Compliance with the Law.** The Materials will be used in full compliance with all applicable laws and regulations.

## **Restricted Use.** The Materials will be used solely for performance of the Project in accordance with this Agreement. The Materials will under no circumstances be administered to humans. The Materials will under no circumstances be used as food for humans or animals. The Materials will not be analyzed or modified except as necessary for the purpose of the Project.

## **No Transfer; Destruction.** The Materials will not be transferred or made available to any individual other than those under the supervision and control of the Recipient, its Affiliates or other third parties that perform part of its work under the Project. Upon completion of the Project, or the expiry or termination of this Agreement, any unused or remaining Materials will, at the Provider’s sole option, either be returned to the Provider or destroyed in accordance with all applicable laws and regulations.

# Publication

## **Prior notice of dissemination.** At least forty-five (45) days prior notice of any publication or other dissemination activity relating to the Project shall be given to the Steering Committee (or to the other parties, if the Steering Committee has ceased to exist), including sufficient information concerning the planned publication or dissemination activity and the data envisaged to be published or disseminated. Within thirty (30) days of the notification, any of the parties may object to the envisaged dissemination or publication if such dissemination or publication would adversely affect the protection of its Confidential Information, Background or Foreground. Any objection to the planned dissemination or publication must be made in writing to the party concerned with a precise request for necessary modifications. If an objection has been raised the involved parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting party will not unreasonably continue the opposition if appropriate actions are performed following the discussion. Any delay imposed on publication shall not last longer than is reasonably necessary to obtain the required protection; and shall not exceed three (3) months from the date of receipt of the publication. If no objection is made within the thirty (30) days time limit stated above, the publication or dissemination is permitted.

## **Publication of another Party’s Background or Foreground.** A party may not publish Foreground or Background of another party, even if such Foreground or Background is amalgamated with the party’s Foreground, without the other party’s prior written approval. The mere absence of an objection according to article 10.1 is not considered as an approval.

## **Cooperation obligation.** The parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree.

# WARRANTIES AND Liability

## **No warranties.** In respect of any information or materials (including but not limited to Background and Foreground) supplied by one party to another under the Project, no warranty or representation of any kind is made 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, (i) the recipient will in all cases be entirely and solely liable for the use to which it puts such information and materials, (ii) no party granting Access Rights will be liable in case of infringement of proprietary rights of a third party resulting from any other party (or its Affiliates) exercising its Access Rights, and (iii) the Recipient shall bear all risk to it and/or any others resulting, directly or indirectly, from its use, application, storage or destruction of the Materials. Materials are to be used with caution and prudence in any experimental work, since not all of the characteristics are necessarily known. Notwithstanding the foregoing, each party will bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party property rights or cause other parties to infringe such rights.

## **Indirect damages.** No party will be liable 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 wilful act.

## **Limitation of liability.** A party’s aggregate liability towards the other parties collectively will be limited to the party’s share of the Project Budget, provided such damage was not caused by gross negligence (*zware fout*) or a wilful act (*opzet*).

# Entry into force, duration and termination

## **Entry into force.** This Agreement becomes effective on the date of signing by all Parties with retroactive effect from the starting date as stipulated in the Hermes Fund Agreement .

## **New parties.** A new party to the Project will be required to sign the accession document in Exhibit 1 hereto jointly with the Coordinator before the Coordinator can submit its request for admission to the Project to [CLUSTER ORGANISATION] for approval by the Hermes Fund. The accession shall have effect as from approval by the Hermes Fund of the admission of the new party to the Project.

## **Duration.** This Agreement shall continue in full force and effect until the end of duration of the Hermes Fund Agreement.

## **Withdrawal.** A party which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be adversely affected by a decision of the Steering Committee or an amendment to the Hermes Fund Agreement and who is unable to solve the matter at the level of the Steering Committee may terminate this Agreement by giving two (2) months prior written notice to the Coordinator.

## **Termination for Breach.** In the event the Steering Committee identifies a breach by a party of its obligations under this Agreement or the Hermes Fund Agreement, the Coordinator will give written notice to such party requiring that such breach be remedied within thirty (30) calendar days. If such breach is substantial and is not remedied within that period or is not capable of remedy, the Steering Committee may decide to declare the party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation. In relation to the role of the Steering Committee and the Coordinator as set forth above and except where the Defaulting Party would be the Coordinator, each party hereby waives its individual right to put another party on notice for non-compliance with the provisions of this Agreement.

## **Termination in accordance with the Hermes Fund Agreement.** This Agreement or the participation of one or more parties may be terminated in accordance with the Hermes Fund Agreement. If the Hermes Fund terminates the Hermes Fund Agreement or a party's participation in the Hermes Fund Agreement, this Agreement will automatically terminate in respect of the affected party(ies).

## **Survival of rights and obligations.** The termination of this Agreement in respect of one partyshall not affect the existence of this Agreement, which will continue in full force and effect between the remaining parties. The provisions of Article 2.5, Article 3.1, Article 6.2, Article 7 and Article 8 for the time period mentioned therein, as well as the provisions of Article 6.4, Article 6.5 , Article 10, Article 11 and Article 13 and any other provisions that are by their wording or nature intended to survive will survive the expiration or termination of this Agreement. Termination will not affect any rights or obligations of a party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Steering Committee and the leaving party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

# Miscellaneous

## **Force Majeure.** No party shall be considered to be in breach of this Agreement if such breach is caused by force majeure. Each party will notify the Steering Committee of any Force Majeure as soon as possible. If the consequences of force majeure for the Project are not overcome within six (6) weeks after such notification, the transfer of tasks (if any) shall be decided by the Steering Committee.

## **Use of names, logos or trademarks.** Nothing in this Agreement will be construed as conferring rights to use in advertising, publicity or otherwise the name of (collaborators of) a party or any of its logos or trademarks without its prior written approval.

## **Entire agreement**. This Agreement, consisting of this core text and

1. Exhibit 1: Accession document
2. Exhibit 2: Background Included
3. Exhibit 3: Affiliates
4. Exhibit 4: Third parties to which transfer of Foreground is possible without prior notice

constitutes the entire agreement between the parties relating to its subject matter. In case the terms of this Agreement are in conflict with the terms of the Hermes Fund Agreement, the terms of the latter shall prevail. In case of conflicts between the Exhibits and the core text of this Agreement, the latter shall prevail.

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

## **No representation, partnership or agency.** The parties will not be entitled to act or to make legally binding declarations on behalf of any other party. Nothing in this Agreement will be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the parties.

## **Notices and other communication.** Any notice to be given under this Agreement will be in writing to the addresses and recipients as listed in the party section of this Agreement.

Formal notices:

If it is required in this Agreement that a formal notice, consent or approval shall be given, such notice will be signed by an authorised representative of a party and will 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, which fulfils the conditions of written form.

Any change of contact details will be notified immediately by the respective party to the Coordinator. The address list will be accessible to all concerned.

## **Assignment.** Except as otherwise expressly stated herein, neither this Agreement nor any rights or obligations of the parties arising from this Agreement may be assigned or transferred, in whole or in part, to any third party without the other parties’ prior formal approval, which will not be unreasonably withheld; subject, however, to (i) the prior written approval of such assignment by [CLUSTER ORGANISATION] and the Hermes Fund, and (ii) the confirmation by the assignee that it agrees to be bound by the terms hereof.

## **Applicable law.** This Agreement is construed in accordance with and governed by the laws of Belgium, without regard to any applicable conflict of law rules.

## **Settlement of disputes.** All disputes arising out of or in connection with this Agreement (other than those to which article 7.4.6 applies), which cannot be solved amicably, shall be finally and exclusively settled by the Courts of Brussels. Notwithstanding the foregoing, each party will have the right at any time to commence an action or proceeding in any court of competent jurisdiction in order to seek and obtain a restraining order or injunction, but not monetary damages, to enforce the confidentiality provisions set forth herein.

## **Counterparts**. This Agreement may be signed in counterparts, each of which will be deemed to be an original as against any party whose signature appears thereon and all of which together constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, will bear the signature of all of the parties reflected hereon as signatories. The parties agree that execution of this Agreement by industry standard electronic signature software and/or by exchanging PDF signatures shall have the same legal force and effect as the exchange of original signatures, and that in any proceeding arising under or relating to this Agreement, each party hereby waives any right to raise any defence or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed agreement electronically.

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

**COORDINATOR**

[name]

[title]

Date:

**PARTY 2**

[name]

[title]

Date:

**PARTY 3**

[name]

[title]

Date:

**PARTY 4**

[name]

[title]

Date:

**PARTY 5**

[name]

[title]

Date:

**EXHIBIT 1 - ACCESSION DOCUMENT**

**ACCESSION DOCUMENT TO [CLUSTER ORGANISATION] ICON COLLABORATION AGREEMENT**

**[ENTITY]**, having its offices at [address], registered under legal entity number [number], duly represented by [name + title], hereby consents to become a party to the [CLUSTER ORGANISATION] ICON Collaboration Agreement with Effective Date [Effective Date of the [CLUSTER ORGANISATION] ICON Collaboration Agreement] relating to the Project “[Project name]” concluded between [name Coordinator] (“Coordinator”), having its offices at [address], registered under legal entity number [number], duly represented by [name + title], and [name all other existing parties] and accepts in accordance with the provisions of the [CLUSTER ORGANISATION] ICON COLLABORATION AGREEMENT all the rights and obligations of a party.

Done in 3 copies, of which one will be sent by the Coordinator to [CLUSTER ORGANISATION]; the second and third original, respectively, to be kept by the Coordinator and [entity], respectively.

**[ENTITY]**

Template – not for signature

Name:

Title:

Date:

**COORDINATOR**

Template – not for signature

Name:

Title:

Date:

**EXHIBIT 2 - BACKGROUND INCLUDED**

*[The**parties have to agree on a list of information, data, know-how, trade secrets, Software and material* ***that is not in the public domain****, as well as intellectual property rights, which is held by each party and needed by another party for carrying out its tasks in the Project or for Exploitation of its Foreground. The parties should also mention any restrictions on granting non-exclusive licenses to such items]*

**COORDINATOR**

None

**PARTY 2**

None

**PARTY 3**

None

**PARTY 4**

None

**PARTY 5**

None

**EXHIBIT 3 - AFFILIATES**

**COORDINATOR**

None

**PARTY 2**

None

**PARTY 3**

None

**PARTY 4**

None

**PARTY 5**

None

**EXHIBIT 4 - THIRD PARTIES TO WHICH TRANSFER OF FOREGROUND IS POSSIBLE WITHOUT PRIOR NOTICE**

**COORDINATOR**

None

**PARTY 2**

None

**PARTY 3**

None

**PARTY 4**

None

**PARTY 5**

None