



**Project no. SSPE-CT-2003-502329**

**PANDA**

Permanent network to strengthen expertise on infectious diseases of aquaculture species and scientific advice to EU policy

Coordination Action

Scientific support to policies

**Deliverable 16 - Consortium agreement**

Due date of deliverable: Month 1

Actual submission date: Month 44 (but not completed)

Start date of project:01/01/04

Duration:44 months

Dr Barry Hill,  
Centre for Environment, Fisheries and Aquaculture Science  
United Kingdom

Revision [1.0]

<b>Project co-funded by the European Commission within the Sixth Framework Programme (2002-2006)</b>		
<b>Dissemination Level</b>		
<b>PU</b>	Public	
<b>PP</b>	Restricted to other programme participants (including the Commission Services)	
<b>RE</b>	Restricted to a group specified by the consortium (including the Commission Services)	
<b>CO</b>	Confidential, only for members of the consortium (including the Commission Services)	CO

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## 1. Explanatory Note

A template consortium agreement was adapted by CEFAS administration, and circulated for partners to sign in early 2004. Concerns were expressed by one partner (NUI Galway) over contractor liability for up to double the project share in the event of default, and as a consequence, declined to sign without this being reduced to a maximum of the total project share. NUI Galway indicated that even if they did sign the consortium agreement, the double liability would have no legal standing as they are a public body.

CEFAS management considered this clause as beneficial to the consortium as a whole in the light of the large amount of specialist work all contractors are carrying out on a limited budget. As a result, a deadlock was reached. All other partners signed the agreement without significant comment at the time.

A letter was circulated on the 9<sup>th</sup> June 2005 by CEFAS to all contractors explaining the reasons for this liability and requesting a vote on whether the double liability should be changed. A vote was not agreed to by all partners, so none was held. At this point, DFVF reconsidered their position and also declined to accept this double liability.

Nevertheless, both NUIG and DFVF accepted the consortium agreement in principle aside from the double liability clause. All other partners remain signed up to the original consortium agreement. No further attempts have been made to remedy the situation due to time constraints. The lack of a consortium agreement has not caused any problems.

2. Consortium agreement

**DRAFT CONSORTIUM AGREEMENT**  
For Coordination Action  
under the Sixth Framework Programme of the European  
Community (2002-2006)

For the Project called

*Permanent network to strengthen expertise on infectious  
diseases of aquaculture species and scientific advice to EU  
policy (PANDA)*

Proposal Number 502329

This Consortium Agreement (“Consortium Agreement”) is made and entered into this  
xx day of xx month/ year (the “Effective Date”) by and among:

The Secretary of State for Environment Food and Rural Affairs acting through The  
Centre for Environment, Fisheries & Aquaculture Science;  
of Lowestoft Laboratory, Pakefield Road, Lowestoft, Suffolk NR33 OHT, UK  
-Hereinafter referred to as “CEFAS”-

and

Danish Veterinary Institute;  
of Hangøvej 2, Aarhus N, Aarhus, Denmark, 8200.  
-Hereinafter referred to as “DVI”-

and

Institut Français de Recherche pour l’Exploitation de la Mer;  
of Rue Jean Jacques Rousseau, 155, Issy Les Moulineaux, 92138, France.  
-Hereinafter referred to as “IFREMER”-

and

Centraal Instituut DierziekteControle Lelystad, part of DLO foundation;  
of PO Box 2004, Edelhertweg, 15, 8219 PH Lelystad, the Netherlands.  
-Hereinafter referred to as “CIDC Lelystad”-

and

National Veterinary Institute;  
of PO Box 8156, Ullevålsveien 68, Oslo 0033, Norway.  
-Hereinafter referred to as “NVI-Norway”-

and

National University of Ireland, Galway;  
of University Road, Galway City, Ireland.  
-Hereinafter referred to as “NUIG”-

and

Federation of European Aquaculture Producers;  
of Rue Nicolas Fossoul 54, Bonnelles B-1400 Belgium.  
-Hereinafter referred to as “FEAP”-

and

L’Institut de Recerca i Tecnologia Agroalimentàries;  
of South Kensington Campus, London, SW7 2AZ, UK.  
-Hereinafter referred to as “IRTA”-

Hereinafter referred to individually or collectively as the “Contractor (s)”

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### **Preamble**

WHEREAS, in consideration of the Decision No. 1513/2002/EC of the European Parliament and of the council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006). OJEC L 232/1 and of the Regulation of the European Parliament and of the Council concerning the Rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community sixth framework programme 2002-2006, the Contractors, having considerable experience in the field of the Project concerned have submitted a common Proposal entitled '*Permanent network to strengthen expertise on infectious diseases of aquaculture species and scientific advice to EU policy (PANDA)*' for the Project to the Commission under the Sixth Framework Programme for Policy-orientated research (FP6-2002-SSP-1) under the specific programme for research, technological development and demonstration : 'Integrating and strengthening the European Research Area' (2002/C 315/01)

WHEREAS the Contractors have decided and agreed to execute and perform the Contract (as such term is defined in the above-mentioned Regulation) to be awarded by the Commission for the Project in the event the Commission accepts their Proposal.

WHEREAS the Contractors in accordance with the provisions of the Commission contractual rules, Annex II General Conditions, Article II.3, wish to specify or supplement, between themselves, the provisions of the anticipated Contract, with respect to the carrying out thereof. The terms of this Consortium Agreement should not conflict with the requirements set out in the Contract, but in the event of any inconsistency between this Consortium Agreement and the Contract, the provisions of the Contract shall take precedence.

**Therefore, the Contractors hereby agree as follows:**

### **Preliminary Article**

This Consortium Agreement is concluded subject to the condition that the Contract between the European Commission and the Contractors is signed.

Consequently, in the event of signature of the Contract with the European Commission, the Contract will be appended to this Consortium Agreement, forming an integral part of it and, in particular, shall specify the length and details of the work and how it shall be carried out and financed.

Consequently, in the event that the PANDA Project (Proposal Number 502329) is not accepted by the European Commission, this Consortium Agreement shall automatically become null and void in its entirety and shall be deemed to have produced no effect and obligation, except for the confidentiality clause Article 12 which shall remain in full force for all information disclosed during the proposal and negotiation stages and for the duration indicated in Article 12.

Further, in the event that the Contract with the European Commission is not signed by a Contractor this Consortium Agreement shall automatically become null and void in its entirety vis-à-vis any such Contractor, except the confidentiality clause Article 12 which shall remain in full force for all information disclosed during the proposal and negotiation stages and for the duration indicated in Article 12.

The Contractors agree that this agreement constitutes the entire Agreement, both written and oral between the Contractors with respect to the subject matter hereof, and that all prior agreements either written or oral shall be abrogated, cancelled and are void and of no effect, except for the Model contract.

## **Article 1 – Definitions**

### **1.1 General**

The words bearing a capital letter in this Consortium Agreement shall have the same definition and meaning as those contained in the Contract, including its Annex II General Conditions or shall have the meaning ascribed to them in any Article of this Consortium Agreement.

### **1.2 Additional Definitions**

#### **1.2.1. “Affiliate”**

“Affiliate” shall mean any undertaking listed in Annex A hereto and meeting the following conditions:

- (i) Which is directly or indirectly owned or controlled by or owning or controlling or under the same ownership or control as any of the Contractors;
- (ii) Which is incorporated and resident in, and subject to the laws of, a Member State of the Community , or an Associated State or has an ultimate owning or controlling company so incorporated and resident.

Ownership or control exists through the direct or indirect:

- Ownership of more than 50% of the nominal value of the issued equity share capital, or
- Ownership of more than 50% of the shares entitling the holders either to vote for the election of directors or persons performing similar functions or to the right by any other means to elect or appoint directors, or persons performing similar functions, who have a majority vote, or
- Ownership of 50% or more of the shares and the right to control management or operation of the company through contractual provisions.

Ownership or control by public investment corporations, institutional investors or venture-capital companies, funds, and public bodies shall not, in itself, constitute a relationship as an Affiliate.

Ownership or supervision by the same public body shall not, in itself, constitute a relationship as an Affiliate.

The undertakings listed in Annex A shall be deemed Affiliates only as long as the above defined ownership or control lasts.

It is also agreed by the Contractors that any undertaking shall no more be regarded as an Affiliate where there has been a change in the ownership or control of the Contractor unless the Contractors mutually agree otherwise and subject also to the Commission having been provided with the details of the change, in accordance with the Commission contractual rules, Annex II General Conditions – Part A, Section 1, Article II.3. 1 (c), and Section 2 Article II.15 5(c) and the Commission having indicated in writing that it does not intend to terminate the Contract in accordance with said Article.

Each Contractor shall have the right to update the list of its Affiliates in the case of reorganisation, provided that all the criteria defined in this section are still met. Any other modification of Annex A shall require the approval of the Contractors in the Project Co-ordination Group.

### **1.2.2 Software terminology**

“API” or “Application Programming Interface” shall mean an interface or other means provided for by a Software application, component or library for the purpose of interfacing or interaction of other Software with such application, component or library.

“Software” shall mean software programs either in “Object Code”, i.e. in machine-readable, compiled and/or executable form, or in “Source Code”, i.e. in human readable form

“Software Documentation” shall mean software information being technical information relating to the design, development, use or maintenance of any version of a software program.

### **Article 2 – Purpose**

The purpose of this Consortium Agreement is to specify the organisation of the work between the Contractors, to organise the management of the Project, to define the rights and obligations of the Contractors, including, but not limited to, their liability and indemnification, to supplement the provisions of the Contract concerning Access Rights and to set out rights and obligations of the Contractors supplementing but not conflicting with those of the Contract.

### **Article 3 – Proposal preparation, Proposal submission and evaluation, negotiations of the Contract, signature of the Contract**

Without prejudice to the provisions of Article 5.2.3 relating to the role of the Co-ordinator, the following shall apply.

#### **3.1 Proposal preparation**

*3.1.1 Each Contractor shall, within its respective scope of supplies and services for the Project (“Work Package”), as agreed by the Contractors and as shown in Annex B “Project Plan” and Annex C “Allocation of Resources”, use its necessary and reasonable efforts to prepare the Proposal.*

To support this goal, each Contractor shall support and assist the Co-ordinator in finalising the Proposal, in the form and according to the schedule necessary for the Co-ordinator to submit the Proposal in due time to the Commission.

Each Contractor shall provide the Co-ordinator with all pertinent technical and cost data, which they or the Contractor deem necessary for the preparation of the Proposal as well as technical support or such other support as may be mutually agreed upon. The Proposal is legally binding on all Contractors.

**3.1.2** The Co-ordinator shall not modify the technical and cost data supplied by the other Contractors without their respective prior written consent.

**3.1.3** The Co-ordinator shall make available to each Contractor a copy of all significant letters, emails, faxes or documents relating to the Proposal sent to, or received from the Commission, before the submission of the Proposal

**3.1.4** It is understood that the Co-ordinator will, in the Proposal and in all relevant discussions with respect thereto, identify each Contractor as the source of the corresponding technology and designs.

## **3.2 Proposal submission and evaluation, negotiations of the Contract**

**3.2.1** The Co-ordinator shall be responsible for the submission of the Proposal and the conduct of both the hearings of the Contractors for evaluation of the Proposal before the panel of experts of the Commission and of negotiations of the Proposal with the Commission, after completion of the hearings.

**3.2.2** Each Contractor shall be kept fully informed of the progress of the evaluation of the Proposal and of any negotiations and, as far as its Work Package is concerned,

shall attend and participate in the evaluation hearings and in the Contract negotiations only upon request from the Co-ordinator.

**3.2.3** The Co-ordinator shall put at the disposal of the Contractors all significant letters, emails, faxes or documents relating to the evaluation and/or negotiations and shall also keep each Contractor informed of everything relevant to its Work Package until the award of the Contract.

**3.2.4** The Co-ordinator shall not, without the prior written agreement of each relevant Contractor, propose or accept any deviation or variation to the conditions or scope of said Contractor's Work Package.

**3.2.5** In case the negotiations with the Commission result in conditions in the Contract which substantially deviate from those of the Proposal and/or this Consortium Agreement, the Contractors shall in good faith negotiate in view of adapting the conditions of this Consortium Agreement to those of the Contract.

### **3.3 Signature of the Contract**

As per the Commission contractual rules, the Contract will enter into force upon signature by the Co-ordinator and the Commission.

The Co-ordinator shall therefore not sign the Contract unless and until all other Contractors have approved in writing the Contract terms and such approval shall not be unreasonably withheld or delayed.

### **Article 4 - Contractors' obligations for the implementation of the Contract**

Without prejudice to the provisions of Article 5.2.3 relating to the role of the Coordinator, the following shall apply.

**4.1** Without prejudice to any other obligations under this Consortium Agreement, the Contractors shall take all necessary measures to perform, fulfil promptly and in due time all their obligations so that the Project is carried out in accordance with the terms and conditions of the Contract and this Consortium Agreement.

**4.2** The Contractors shall provide the Co-ordinator with the deliverables, information, and reports as the Co-ordinator requires in order to perform its duties under this Consortium Agreement and under the Contract or as the Commission may request (and in such case the relevant Contractor shall keep the Co-ordinator informed of any such request from the Commission).

**4.3** On request of the Co-ordinator, all deliverables, information, and reports shall be submitted in electronic form in DOC or PDF format, graphics in GIF or JPEG format or any other format mutually agreed.

**4.4** Each Contractor undertakes:

- i. to notify the Co-ordinator promptly of any delay in performance or of any event that may impact the Project;
- ii. to inform the Co-ordinator of relevant communications it receives from third parties in relation to the Project;
- iii. to ensure the accuracy of any information or materials it supplies to the other Contractors or under the Contract and to promptly correct any error therein of which it is notified. The recipient Contractor shall be responsible for the use to which it puts such information and materials;
- iv. not to use knowingly any proprietary rights of a third party for which such Contractor has not acquired the corresponding right of use and/or to grant licenses;
- v. to act at all times in good faith and in a manner that reflects the good name, goodwill and reputation of the other Contractors and in accordance with good business ethics;
- vi. to participate in a co-operative manner to the meetings of the different bodies under this Consortium Agreement and not to exercise veto rights, which are absolute, inappropriately.

## **Article 5 - Organisation of the Project**

### **5.1 General Principles**

The Project is structured by Work Packages allocated among the Contractors. The Steering Group shall be in charge of the overall governance of the Contract and shall handle major changes in Work Packages, particularly creation, reallocation, or termination.

### **5.2 Project Bodies**

#### **5.2.1 The Steering Group**

The Steering Group shall consist of the technical contacts from CEFAS, DVL and IFREMER and the Co-ordinator shall chair all the meetings of this group. Each representative shall have one vote and may appoint a substitute to attend and vote at any meeting.

The Co-ordinator shall convene meetings of the Steering Group as often as the interests of the Consortium so require, and at least once a year. The Co-ordinator shall also convene meetings at any time upon written request of any Contractor in the case of an emergency situation.

The Steering Group shall be in charge of managing the Project and of major decisions relating thereto and shall in particular be responsible for:

Deciding upon the allocation of the Project's budget to Work Packages in accordance with the Contract, including the Project Plan, and reviewing and proposing to the Contractors budget transfers;

ii. Deciding upon a change of the list of Affiliates, when requested as per the rules of Article 1 hereof;

iii. Making proposals to the Contractors for the review and/or amendment of terms of the Contract and/or this Consortium Agreement;

iv. Deciding to suspend all or part of the Project or to terminate all or part of the Contract, or to request the Commission to terminate the participation of one or more Contractors;

- v. In case of default of a Contractor agreeing on actions to be taken against the Defaulting Contractor (as defined in Article 9), including a request to the Commission for an audit or for the assistance of the Commission, and making proposals to the other Contractors to assign the Defaulting Contractor's tasks, and if appropriate to agree upon a new entity to join the Project for that purpose;
- vi. In case of default of the Co-ordinator in the performance of its tasks as a coordinator, agreeing on actions to be taken and possible nomination of a new Co-ordinator;
- vii. Deciding upon the entering into the Contract and the Consortium Agreement of new Contractors;
- viii. Without prejudice to Article 7, agreeing procedures and policies in accordance with the Commission contractual rules, Annex II General Conditions - Part C for the management of the Knowledge;
- ix. Deciding upon the designation of the depository and rules for the management of the funds received from the Commission and for the management and co-ordination budgets rules in accordance with Article 6;
- x. Deciding upon major changes in Work Packages.
- xi. Deciding on technical roadmap for the Project;
- xii Approving funding for organising scientific workshops.
- xiii. Reviewing and funding the selection of additional expertise (i.e sub contractors and advisors);
- xiv. Without prejudice to Article 7, agreeing press releases and publications by the Contractors or by the Commission or with the Commission with regard the Project as per the Commission contractual rules, Annex II General Conditions - Part A, Section 1, Article II.12;
- xv. Supporting the Co-ordinator in preparing meetings with the Commission and related data and deliverables.

*The Steering Group shall not deliberate and decide validly unless at least two of the three members, including the Co-ordinator, are present or represented. Where decisions are to be taken unanimously, all members must be present or represented at the meeting.*

*In the cases of sub paragraphs i to x, decisions shall be taken unanimously by the Steering Group (excluding decisions regarding any default of the Co-ordinator in vi.). In other cases, the Co-ordinator shall make the final decision, provided always that a*

*Contractor which Work Package, time for performance, costs or liabilities, or intellectual property rights are impacted or whose information is to be published, may veto such decisions and such veto shall be duly justified.*

The Contractors agree to abide by all decisions of the Steering Group. The Co-ordinator shall draft the minutes of each meeting to formalize in writing all decisions taken and shall dispatch them to all Contractors within fifteen calendar days of the concerned meeting.

The minutes shall be considered as accepted by the Contractors if, within fifteen (15) calendar days from receipt thereof, no Contractor has objected in writing to the Coordinator.

### **5.2.2 Consortium meetings**

Representatives of each Contractor will be invited to a Consortium meeting which will be held approximately three times during each year of the Project to ensure that the Contractors are communicating effectively and contribute to the aims of PANDA.

Each Contractor will be responsible for the local organisation of at least one Consortium meeting for representatives of each of the other Contractors.

The Contractors may invite third party expert or qualified advisors to attend any scientific workshops which may be held in parallel with Consortium meetings. Financial costs associated funding these workshops or with the attendance of any such third party experts must be approved in advance by Co-ordinator.

Should a Contractor suggest adding a discussion/decision to the proposed agenda of a Consortium meeting, it shall do so in writing to all other Contractors at least two calendar days prior to the meeting date.

### **5.2.3 Co-ordinator**

The Co-ordinator shall be the CEFAS Technical contact, and shall be the intermediary between the Contractors and the Commission and shall perform all tasks assigned to it as described in the Contract and hereunder.

In particular, the Co-ordinator shall be responsible for:

- i. Submitting reports and other deliverables to the Commission;
- ii. The administration and preparation of minutes of the Steering Group, and the follow up of its decisions.;
- iii. The transmission of any documents and information connected with the Project to and between the Contractors concerned;
- iv. The payments and transferring of sums allocated among the Contractors as per the agreed budget and to keep related records identifying what portion of the payments made by the Commission have been allocated and/or paid to each Contractor;
- v. For the purpose of Article 6.4, reviewing deliverables at each agreed step under the Project Plan concerned and to advise the Contractors of any delay in delivery that could not be remedied or any major discrepancy.
- vi. Ensure the signature, by all Contractors, of the EC Contract.

The Co-ordinator shall neither be entitled to act or to make legally binding declarations on behalf of any other Contractor nor to enlarge its role beyond the one described herein and in the Contract.

#### **5.2.4 Scientific Secretariat Service**

The Co-ordinator will provide a scientific secretariat service reporting to the Co-ordinator.

The scientific secretariat service shall:

- maintain the Project web site and experts database;

- provide assistance to the Contractors in the organisation of Consortium meetings and scientific workshops;
- edit and format scientific workshop reports;
- advise on aspects of knowledge management, intellectual property and other innovation related activities as requested by the Co-ordinator.
- be in charge of providing assistance to the Co-ordinator, as specified by the Co-ordinator, with regard to the Co-ordinator's day-to-day tasks, such as preparation of meetings of the Steering Group.

## **Article 6 - Costs, budget and payments**

**6.1** Each Contractor shall bear all its own costs incurred in connection with the performance of this Consortium Agreement and of the Contract and incurred in connection with the implementation of the Project.

**6.2** The costs for the management of the Project shall be separated from the research and development work and these costs shall command a contribution rate from the Commission of 100%. These management activities shall include only the costs and expenses for the Management of the consortium, defined as per the rules referred to in the foregoing paragraph. The Contractors will ask the Commission that the following costs and expenses fall into the Management of the consortium costs and expenses category in the Contract:

- The audit certificates (up to 4000 euros per audit maximum);
  - Opening and operating the account to receive the Commission's contribution/payments as described in Article 6.3, including for the appointment of the notary public or other depository;
  - The launch of competitive calls for selection of a new participant;
  - The travels and accommodations for meetings with the Commission;
  - The travels and accommodations for Steering Group and Participant meetings.
  - The hours of the staff involved in the management activities
  - The costs of consumables associated with management activities

**6.3** *The Co-ordinator shall receive all payments made by the Commission. Subject to withholding of advance payments according to the rules set out in the Consortium Agreement, the Co-ordinator undertakes to transfer, in accordance with the Contract and the budget set out in Annex C, the appropriate sums to the respective Contractors with minimum delay, but not later than thirty (30) calendar days from its receipt thereof from the Commission, and the Co-ordinator will notify each Contractor promptly of the date and amount transferred to its respective bank account and shall give the relevant references.*

**6.4** The Contractors agree that the first part (“Tranche 1”) of the Community financial contribution shall only be distributed in third to the Contractors as follows:

- The first third upon receipt of the advance payment from the Commission,
- The second third upon expiry of a six-month period and against receipt by the Co-ordinator of relevant deliverables as mutually defined by the Contractors in the Project Plan, for the purpose of checking the Project implementation progress;
- The last third upon receipt of the last payment of Tranche 1 (“retention rate”) from the Commission, against receipt by the Co-ordinator of the first period deliverables for the Commission and following the Commission’s approval of such deliverables.

The Contractors agree that the subsequent parts or “tranches” of the Community financial contribution shall only be distributed in half to the Contractors as follows:

- One half upon receipt of the advance payment from the Commission;
- One half upon receipt of last payment of the concerned subsequent part or tranche (“retention rate”) from the Commission, against receipt by the Coordinator of the concerned year deliverables for the Commission and following the Commission’s approval of such deliverables.

In case that a Contractor did not provide the Co-ordinator with its deliverables (whether the ones for payment of the second third or the ones for payment of the last third or the ones for the second half) or provide them late or provide non compliant deliverables, such Contractor shall not receive its concerned contribution allocation, until it remedies such non delivery, late delivery or non compliant delivery or unless the Co-ordinator decides otherwise. In any case, the Steering Group shall be informed and may take additional appropriate action with respect to the concerned Contractor.

It is also agreed that no distribution of any advance payment from the Commission will be made for a subsequent part or “tranche” before the prior ones are fully paid.

## **Article 7 - Intellectual property rights provisions**

### **7.1 General**

Each Contractor is bound by the terms and conditions of the Commissions contractual rules, Annex II General Conditions - Part C entitled “Intellectual Property Rights” as hereby complemented or amended.

### **7.2 Ownership and protection of Knowledge**

**7.2.1.** Knowledge shall be the property of the Contractor generating it.

**7.2.2.** If, in the course of carrying out work on the Project, a joint invention, design or work is made (and at least two Contractors are contributors), 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 in force the protection of the relevant intellectual property right, the Contractors concerned (the “Contributors”) agree that they may jointly apply to obtain and/or maintain the relevant rights and shall strive to set up amongst themselves appropriate agreements in order to do so. The share of each of the Contributors to the development of the Knowledge shall be defined proportionally to the resources implemented by each, whether human, financial or intellectual. Joint agreements may include arrangements on territorial divisions, markets and licensing to external parties.

So long as any such rights are in force, such Contributors shall be entitled to use, without owing any financial compensation to or requiring the consent of the other Contributors, and to license such rights in accordance with the set up agreements.

**7.2.3** In the case where a Contractor (“Originator”) would decide in its sole discretion that it does not intend to seek adequate and effective protection of its Knowledge from the Project, then, the Originator shall inform in writing the other Contractors, through

the Co-ordinator, and any Contractor interested in applying to obtain and maintain such protection shall advise the other Contractors through the Co-ordinator and in writing within one month of receipt of the relevant notice. In case several Contractors are interested in so applying, they shall strive to set up amongst themselves and with the Originator appropriate agreements in order to do so.

Should no other Contractor show an interest to so apply, the Co-ordinator shall inform the Commission in accordance with the Commission contractual rules, Annex II General Conditions - Part C, Article II.33.

The foregoing shall be without prejudice to the Access Rights of all Contractors that will remain unaffected.

### **7.3 Publication of Knowledge**

The Contractors accept the need to publish and disseminate the results of the research according to the Contract. Publication of the results, shall only take place in accordance with the provisions of secrecy and the possibilities of protecting intellectual property rights. It is the duty of the Contractors to ensure that all publications of work carried out as part of this Contract are submitted for approval to the Steering Group and that this approval should be given within 30 days of request.

**7.3.1** A Contractor may publish Knowledge generated by another Contractor or any Pre Existing Know How of such other Contractor, even if such Knowledge or Pre-Existing Know How is amalgamated with such Contractor's Knowledge, only with the other Contractor's prior written approval.

For the avoidance of doubt, for the period of secrecy needed for a successful patent application, there cannot be any publication during such period without prior written approval of the Contractor owner of the Knowledge.

**7.3.2** A Contractor shall provide the other Contractors and the Commission with a 30-day prior notice of any planned publication on its Knowledge and, if requested, with a

copy of the relevant publication data. Adequate publication references shall be given in the publication.

Unless it has granted prior written publication approval, any Contractor may object to the publication within thirty calendar days from receipt of the data, if it considers and can reasonably show that the protection of its own Knowledge could thereby be adversely affected.

Objection shall be made both to the issuing Contractor, with a copy to the Coordinator and to the Commission.

### **7.3.3 Dissemination of Knowledge after the end of the Project**

If dissemination of Knowledge does not adversely affect its protection or use and subject to legitimate interests, the Contractors shall ensure further dissemination of their own Knowledge as provided under the Contract and this Consortium Agreement.

### **7.3.4 Dissertation or thesis**

The Parties agree to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree, which includes their Knowledge and Pre-Existing Know-How.

## **7.4 Access Rights**

### **7.4.1 General principles**

In addition to the obligations pursuant to the Commission contractual rules, Annex II General Conditions - Part C, Article 35, each Contractor shall take appropriate measures to ensure that it can grant Access Rights and fulfil the obligations under the Contract and this Consortium Agreement notwithstanding any rights of its employees, or any person it assigns or engages to perform its own Work Package for the Project.

*The Contractors agree that Access Rights are granted on a non-exclusive basis.*

In relation to the grant of Access Rights “needed” or “need” shall mean that, without the grant of such Access Rights:

a) in the case of Access Rights granted for execution of the Project, carrying out the tasks assigned to the recipient Contractor would be impossible, significantly delayed, or require significant additional financial or human resources.

b) in the case of Access Rights granted for Use, the Use of a defined and material element of the recipient Contractor’s own Knowledge would be technically or legally impossible.

The Contractors also agree that, if not otherwise provided in this Consortium Agreement or granted by the owner of the Knowledge or Pre Existing Know-how, the Access Rights shall not include the right to grant sub-licenses.

Save as in exceptional circumstances, no costs shall be charged for the granting of Access Rights.

#### **7.4.2 Identification of Pre-Existing Know-How**

The Contractors have identified and listed in Annex D the Pre-Existing Know-How needed for the Project and to which they may grant Access Rights.

The Contractors agree that all other Pre-Existing Know-How shall be considered as unnecessary for the implementation of the Project and thereby excluded from Access Rights, provided however that the Contractors may update Annex D with further development of the listed Pre-Existing Know-How that would have been developed between the date of submission of the Proposal and the date of award of the Contract.

It is also agreed and understood that, without prejudice to the provisions of Article 7.4.7, such list may also be updated to include that part of Pre-Existing Know-How not identified in Annex D and that would prove to be needed for the performance of a Contractor’s work package for the Project or for the Use of a Contractor’s own Knowledge resulting from the Project.

### **7.4.3 Identification of incompatible or restrictive commitments**

Any Contractor shall notify the others of any limitation on Access Rights as per the provisions of the Commission contractual rules, Annex II General Conditions – Part C, Article II-36, promptly and in writing before the contract is signed with the Commission.

### **7.4.4 Access Rights needed for carrying out the Project**

The Contractors agree that the Access Rights on the Pre-Existing Know-How needed for carrying out the Project shall be granted on a royalty-free basis.

However the Contractors concerned may decide, before signature of the Contract, to agree otherwise and to grant such Access Rights against payment of fees, especially in the case where the “exchanges” are unbalanced.

The Contractors agree that the Access Rights on the Knowledge needed for carrying out the Project shall be granted on a royalty-free basis.

### **7.4.5 Access Rights needed for Use of a Contractor’s own Knowledge arising from the Project**

#### **7.4.5.1 Needed Use of Pre-Existing Know-How**

The Contractors agree that the Access Rights on the Pre-Existing Know-How needed for the use of a Contractor’s own Knowledge shall be granted on fair and non-discriminatory market conditions.

However the Contractors concerned may decide, before submission of the Proposal or signature of the Contract to the Commission, to agree otherwise and to grant such Access Rights on more favourable conditions.

#### **7.4.5.2 Needed Use of Knowledge**

The Contractors agree that the Access Rights on the Knowledge needed for the use of another Contractor’s own Knowledge shall be granted on preferential conditions or royalty-free.

Each Contractor hereby undertakes, before entering the Contract, to inform in writing the other Contractors of its decision to allow access to others on anything other than a royalty free basis.

#### **7.4.6 Minor amount of Knowledge amalgamated**

Each Contractor (the “First Contractor”) may enter into a technical cooperation or licensing arrangement with a third party in respect of any minor amount of Knowledge of another Contractor (the “Second Contractor”) which have been unavoidably incorporated into or amalgamated with the First Contractor’s own Knowledge.

In such circumstances and upon request of the First Contractor, the Second Contractor shall grant to the First Contractor non-exclusive licenses on its Knowledge against terms and conditions to be agreed, provided that no Legitimate Interests of the Second Contractor opposes the grant of such license.

#### **7.4.7 Written request for needed Access Rights**

Needed Access Rights shall be granted upon written request as described below and in accordance with the provisions of the Commission contractual rules, Annex II General Conditions - Part C, Article II-35.

Should a Contractor reasonably believe that, without Access Rights on another Contractor’s Pre-Existing Know-How or Knowledge, the performance of its own work package for the Project or the Use of its own Knowledge resulting from the Project would be technically impossible or significantly delayed, such Contractor shall then promptly request in writing Access Rights from said other Contractor, identify the extent of the Access Rights and provide reasonable evidence on its needs.

#### **7.4.8 Affiliates Access Rights**

Each Contractor hereby grants Access Rights to all Affiliates of the other Contractors as if such Affiliates were parties hereto, provided all such Affiliates fulfil all

confidentiality and other obligations of the Contractors under the Contract and under this Consortium Agreement.

Upon the date of cessation of an Affiliate to meet all criteria defined in Article 1 of this Consortium Agreement:

- All Access Rights granted **to** such an Affiliate in respect of Knowledge or Pre-existing Know-How shall lapse, provided however that, except as otherwise agreed by the relevant Contractors, any Knowledge which has been incorporated into the products or services of said Affiliate or which has been amalgamated with said Affiliate's own information may continue to be used (exclusively in the manner it was used upon) by said Affiliate under a non exclusive license agreement to be negotiated with the relevant Contractor(s), upon such ex Affiliate's written request, provided however that no Legitimate Interests of such Contractor(s) oppose the grant of such licenses.
- All Access Rights granted **by** such Affiliate hereunder shall continue in full force and effect.

#### **7.4.9 Software**

The Contractors agree that Access Rights (under all the rules herein defined) when applying to Software do not comprise access to Source Code but only to Object Code, unless otherwise expressly provided herein below.

For Software, which is either Pre-Existing Know-How or Knowledge, the Contractors also agree that they shall have Limited Source Code Access for carrying out their Work Package under the Project but they shall not have any access to Source Code for Use.

Limited Source Code Access shall mean Source Code access (i.e. access to Source Code (as available from the Contractor granting such access) and also to Software Documentation), provided in any case that an API including Software Documentation for the respective Software is not available; and also that use of the Software in Object Code form alone is not meaningful.

Each Contractor licensing its Software shall have the right to ask for a prior written agreement with the Contractor(s) licensed specifying and protecting its proprietary rights.

#### **7.5 “have manufactured” rights**

Each of the Contractors agrees that, before any agreement concerning manufacturing rights is reached with a third party by a Contractor which is not itself or whose Affiliates are not incorporated or established principally to undertake manufacturing activities and, due to its size or nature, is itself unable to commercialise the Knowledge, the other Contractors shall themselves have a prior right to agree to undertake such manufacturing on fair and reasonable terms and conditions.

#### **7.6 Use of Marks**

Each Contractor retains all rights, title and interest in any of its trade and business names, service marks, trade marks, logos or other symbols it uses to identify itself or any of its activities (“Marks”) and no Contractor shall acquire under this Consortium Agreement any general license or any other right, express or implied, by law or otherwise, title or interest in or to any such Marks of any other Contractor.

Each Contractor shall obtain the other Contractor’s (s’) prior written approval of any publication or any press releases or public announcement making reference to said other Contractor(s) and specifically on the Marks of said Contractor(s) to be used and on the manner it will be used.

### **Article 8. Liabilities of the Contractors**

#### **8.1 No implied warranty**

With respect to information or materials supplied by one Contractor to another hereunder or under the Contract, the supplying Contractor shall be under no obligation or liability other than as stated in Article 4.4, 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. The recipient Contractor shall therefore in any event, be entirely responsible for any use whatsoever of such information and materials.

Each Contractor is in charge of its own personnel insurance coverage according to the applicable law including social security law and accident at work and occupational diseases regulations. Each Contractor is liable for any damages caused by its own personnel. Each employer performs its own formalities.

### **8.2 Exclusion of indirect damages**

No Contractor shall be responsible to another for indirect or consequential loss or damages such as but not limited to loss of profit, loss of revenue, or loss of contracts.

### **8.3. Liability towards the Commission**

Notwithstanding any joint and several liability of the Contractors which may exist towards the Commission, each Contractor shall be liable towards the others for any losses or damages suffered by the Commission, as a consequence of any failure to perform the whole or part of its obligations under the Contract or under this Consortium Agreement.

Accordingly, should the Commission, in accordance with the provisions of the Contract, claim any reimbursement, indemnity or payment of damages from one or more Contractors (except for claims relating to the matters mentioned in the Commission contractual rules, Annex II – General Conditions - Part A, Section 2, Article II.15, 5 (b), 5 (g) and Article II.16, 1 and 2, and any reimbursement due by a Contractor under Annex II – General Conditions - Part B, Section 2; II.31), which claims shall be solely for the account of the relevant Contractor(s) or where the claim from the Commission is issued only against a part of the Contractor, that subject to the terms of Annex II – General Conditions – Part A, Section 2, Article II.18 the Contractors agree that:

i. each Contractor which default has caused or contributed to cause such claim shall indemnify each of the other Contractors against such claim, provided always that the

total and cumulative limit of liability of that Contractor towards all the other Contractors collectively, in respect of any and all such claims shall not exceed twice the amount of that Contractor's Project Share (defined as its part of the Community financial contribution as per the Contract ). Any excess shall therefore be apportioned between all the Contractors including the Defaulting Contractor(s) pro rata to their Project Shares (as defined above); and

ii. in the event it is not possible to attribute the default to any Contractor under (i), the amount claimed by the Commission shall be apportioned between all the Contractors prorata their Project Shares.

#### **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 Contractor shall be solely liable for any loss, damage or injury to third parties resulting solely from the performance of its Work Package.

#### **8.5 Liability for Subcontractors**

Each Contractor shall remain fully responsible for the performance of any part of its Work Package, or for the performance of its obligations under the Contract by any Subcontractor, provided that in any case appointment of a Subcontractor shall be with the approval of the Steering Group.

Therefore said Contractor shall ensure that (i) such subcontracts fully comply with the requirements of the Contract; (ii) the other Contractors' Access Rights are fully preserved ; and (iii) the third party shall have no access to any other Contractor's Knowledge or Pre-Existing Know-How without the latter's prior written consent.

### **Article 9 - Defaults and remedies – Exclusion of a Contractor / right to withdraw**

#### **9.1 Default and remedies**

**9.1.1** In the event of a breach by a Contractor ("the Defaulting Contractor ") of its obligations under this Consortium Agreement or the Contract which is irremediable or which is not remedied within sixty calendar days of a written notice from the

Coordinator, according to the decision of the the Steering Group, requiring that such breach be remedied, then the Contractors in the Steering Group may jointly decide to terminate this Consortium Agreement with respect to the Defaulting Contractor following a minimum thirty calendar day prior written notice by the Co-ordinator.

**9.1.2** Such termination shall take place with respect to the Defaulting Contractor and the latter shall be deemed to have agreed to the termination of the Contract in respect of its participation therein under the relevant provisions of Annex II General Conditions- Part A, Section 2, of the Contract as the other Contractors and/or the Commission shall decide, provided always that:

i. any and all Access Rights granted **to** the Defaulting Contractor and its Affiliates by the other Contractors under this Consortium Agreement as well as under the Contract, shall cease immediately; but any and all Access Rights granted **by** the Defaulting Contractor to the other Contractors and their Affiliates under this Consortium Agreement as well as under the Contract shall remain in full force and effect ;

ii. the Work Package of the Defaulting Contractor, shall be assigned to one or several companies and/or entities which are chosen by the other Contractors, are acceptable to the Commission and agree to be bound by the terms of this Consortium Agreement. The preference shall be granted to one or more of the remaining Contractors;

iii. the Defaulting Contractor shall :

- assume all reasonable direct cost increase (if any) resulting from the assignment referred to in ii) above in comparison with the costs of the Work Package of the Defaulting Contractor as specified in the Contract ; and
- be liable for any so resulting additional direct cost caused to the other Contractors, up to a total amount which, together with any liability to the Commission under Article 8.3 above shall not exceed twice the amount of that Contractor's Project Share (defined as its part of the Community financial contribution as per the Contract). Accordingly, any excess amount shall be shared between the Contractors (including the Defaulting Contractor) pro rata their respective shares in the Project at the time of exclusion of the Defaulting Contractor.

## **9.2 Other exclusions of a Contractor / right to withdraw**

The provisions of Article 9.1.2 shall also apply in the events that:

- i. any Contractor's participation in the Contract is terminated by the Commission pursuant to the provisions of the Commission contractual rules, Annex II General Conditions Part A, Section 2: Termination of the Contract and Responsibility, then, without prejudice to any other rights of the other Contractors
- ii. any Contractor enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors and the other Contractors, subject to approval by the Commission, decide to terminate the Consortium Agreement with respect to that Contractor, to take over the fulfilment of such Contractor's obligations and to receive subsequent payments under the Contract in respect thereof.
- iii. A Contractor is entitled to withdraw from the Project or to otherwise request the termination of its participation in the Contract having obtained firstly the prior written consent of the Steering Group (such consent not to be unreasonably withheld), and secondly the consent of the Commission.

## **Article 10 - Coming into force – Duration – Earlier termination**

### **10.1 Coming into force**

This Consortium Agreement shall come into force on the Effective Date and when the following three conditions have been fulfilled:

1. The EC Contract with the Commission has been signed by the Coordinator;
2. All of the Contractors have adhered to the EC Contract;
3. All of the Contractors have signed this Consortium Agreement.

### **10.2 Duration**

This Consortium Agreement, shall thereafter remain into force :

- until the fulfilment or termination of the Contract awarded by the Commission and resulting from the Proposal and complete discharge of all obligations of the Contractors under the Contract and/or under this Consortium Agreement as well as any amendment or extension thereof ; or
- until this Consortium Agreement is terminated under any cases under Article 10.3 below;

Whichever occurs first.

### **10.3 Earlier termination**

This Consortium Agreement shall automatically terminate without any further demand and without liability of any Contractor to the others upon the first to occur of the following events:

- i. award by the Commission of a contract for the Project to other parties;
- ii. upon an 18 month period from the date of coming into force hereto, if the Contract has not been awarded to the Contractors before expiration of such period ;
- iii. cancellation of the Project by the Commission ;
- iv. termination of the entire Contract by the Commission;
- v. if the Commission indicates in writing that the award of the Contract pursuant to the Proposal is conditional upon the exclusion of one or more of the Contractors, unless the remaining Contractors decide to pursue their cooperation and agree on all consequences thereof, including taking over the excluded Contractor's (s') Work Package(s);
- vi. should any Contractor enter into bankruptcy or liquidation or any other arrangement for the benefit of its creditors, if the other Contractors decide, subject to approval by the Commission, to terminate the Project.

### **Article 11 – Other consequences of term or termination**

In case of take over of any Contractor's Work Package under Articles 9 or 10, all rights and obligations under the Contract and this Consortium Agreement shall in good faith be redistributed among the remaining Contractors.

Neither Contractor shall by reason of withdrawal or termination be relieved from:

- i. its responsibilities under this Consortium Agreement or the Contract in respect of that part of that Contractor's Work Package 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.

The provisions of the Articles of this Consortium Agreement relating to liability, confidentiality, intellectual property rights and publications shall survive the term or termination of this Consortium Agreement for any reason whatsoever to the extent

needed to enable the Contractors to pursue the remedies and benefits provided for in those Articles.

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

## **Article 12– Confidentiality**

**12.1** During the term of the Project and for a period of three years thereafter, the Contractors shall treat as confidential any information which is designated as proprietary by the disclosing Contractor by an appropriate stamp, legend or any other notice in writing, or when disclosed orally, has been identified as confidential at the time of disclosure and has been promptly (thirty (30) days at the latest) confirmed and designated in writing as confidential information by the disclosing Contractor.

Accordingly, each Contractor undertakes (in addition and without prejudice to any commitment under the Contract) that:

- i. the receiving Contractor shall not use any such information for any purpose other than in accordance with the terms of the Contract and this Consortium Agreement, and
- ii. the receiving Contractor shall not disclose any such confidential information to any third party except with the disclosing Contractor’s prior written consent, and
- iii. such information shall neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication have not been specifically authorized in writing by the disclosing Contractor.

**12.2** No obligation shall apply to any such information that:

- i. has come into the public domain prior to, or after the disclosure thereof and in such case through no wrongful act of the receiving Contractor; or
- ii. is already known to the receiving Contractor, as evidenced by written documentation in the files of the receiving Contractor; or
- iii. has been lawfully received from a third Contractor without restrictions or breach of this Consortium Agreement; or

- iv. has been or is published without violation of this Agreement; or
- v. is independently developed in good faith by employees of the receiving Contractor who did not have access to the Confidential Information; or
- vi. is not properly designated or confirmed as confidential.

**12.3** The Contractors shall impose the same obligations on their employees, who obtain knowledge of confidential information, as far as legally possible even for the time after the end or after the termination of employment.

### **Article 13 - Audit Requirements**

Each Contractor shall supply, as a minimum, to the Co-ordinator one Audit Certificate for the duration of the project within 45 days of the end of the Contract with the Commission. The Commission reserves the right to request further certificates through the Co-ordinating partner.

### **Article 14 – Force majeure**

The Contractors agree that the definition of force majeure and obligations pertaining thereto shall be as per the Commission contractual rules, Annex II General Conditions, Part A, Section 1, Article II.4 and after the conclusion of the Contract, by such rules as they may have been amended as a result of the Contract negotiations.

### **Article 15 - No Partnership or Agency**

Nothing in this Consortium Agreement shall be deemed to create a partnership or agency or any formal business organization or legal entity among the Contractors.

### **Article 16 - Notices**

Any notice to be given under this Consortium Agreement shall require documents duly signed and personally delivered or delivered by mail. They shall be addressed to the attention of the following recipients of the Contractors or to such other address

and recipient as a Contractor may designate in respect of that Contractor by written notice to the other Contractors:

- CEFAS\_\_\_ nominates as contact for technical matters

\_Barry Hill\_\_\_\_\_,

and as contact for administrative matters

. \_Wendy Dawson\_\_\_\_,

and as contact for financial matters

\_Sue Bramford\_\_\_\_,

- \_DVI\_\_\_ nominates as contact for technical matters

\_\_\_\_\_,

and as contact for administrative matters

. \_\_\_\_\_,

and as contact for financial matters

\_\_\_\_\_,

- \_IFREMER\_\_\_\_\_ nominates as contact for technical matters

\_\_\_\_\_,

and as contact for administrative matters

. \_\_\_\_\_,

and as contact for financial matters

\_\_\_\_\_,

- \_CIDC Lelystad\_\_\_ nominates as contact for technical matters

\_\_\_\_\_,

and as contact for administrative matters

. \_\_\_\_\_,

and as contact for financial matters

\_\_\_\_\_,

- \_NVI-Norway\_\_\_ nominates as contact for technical matters

\_\_\_\_\_,

and as contact for administrative matters

· \_\_\_\_\_,  
and as contact for financial matters

\_\_\_\_\_,

- NUIG nominates as contact for technical matters

\_\_\_\_\_,

and as contact for administrative matters

· \_\_\_\_\_,

and as contact for financial matters

\_\_\_\_\_,

- FEAP nominates as contact for technical matters

\_\_\_\_\_,

and as contact for administrative matters

· \_\_\_\_\_,

and as contact for financial matters

\_\_\_\_\_,

- IRTA nominates as contact for technical matters

\_\_\_\_\_,

and as contact for administrative matters

· \_\_\_\_\_,

and as contact for financial matters

\_\_\_\_\_,

**Article 17 - Language**

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

## **Article 18 - Annexes, Conflicts and Inconsistencies**

### **18.1 Entire Agreement**

This Consortium Agreement, the annexes, the EC contract, the letter of intent and – when such exist(s) - Complementary Contract(s), constitute the entire agreement between the Contractors in respect of the Project, and supersede all previous negotiations, commitments and documents concerning the Project including any memorandum of understanding between the Contractors (whether or not with others) which relate to the Project or its proposal to the European Commission.

The annexes to this Consortium Agreement, which form an integral part thereof are:

Annex A List of AFFILIATES

Annex B PROJECT PLAN

Annex C Allocation of Resources (Budget and Effort Summary)

Annex D Pre Existing Know – How

Annex E EC Contract

Annex F Limitations on Access Rights

In the event of conflict or inconsistency between any provision contained in the body of this Consortium Agreement and any provision contained in its Annexes, the provisions contained in this Consortium Agreement shall prevail.

In the event of conflict or inconsistency between any provision contained in this Consortium Agreement and the provisions of the Contract, the provisions of the Contract shall prevail.

## **Article 19 - Assignments, Amendments**

**19.1** Any rights or obligations of the Contractors arising from this Consortium Agreement may not be assigned or transferred in all or in part to any third party without the other Contractors' prior written approval and such consent shall not be unreasonably withheld if to an Affiliate of the assigning Contractor.

**19.2** All amendments and modifications to this Consortium Agreement require documents duly signed by all Contractors.

**Article 20 - Severability**

Should any provision of this Consortium Agreement prove to be invalid or incapable of fulfilment, or subsequently become invalid or incapable of fulfilment, whether in whole or in part, this shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Contractors shall be entitled to demand that a valid and practicable provision be negotiated which most nearly fulfils the purpose of the invalid or impracticable provision.

**Article 21 – Restrictions**

The activities contemplated by this Consortium Agreement are subject to any mandatory rules or regulations that may be applicable in the countries in which the Contractors' activities occur. Nothing in this Agreement shall be deemed to be an agreement to violate such rules or regulations. To the extent any such rules or regulations forbid or restrict any of the activities contemplated hereunder, the Contractors agree, subject to Article 21, that this Consortium Agreement shall not obligate either Contractor to conduct such activity.

**Article 22 - Applicable Law**

This Consortium Agreement shall be construed in accordance with, and governed by Belgian law.

**Article 23 - Disputes**

The Contractors agree to use reasonable endeavours to try to amicably settle any dispute arising among them in relation to the implementation of the Contract and/ or of this Consortium Agreement and for such purpose, to bring the dispute at the appropriate body level.

Failing to reach an amicable settlement, the dispute arising out of or in connection with the present Consortium Agreement shall be finally settled under the Rules of

Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The place of arbitration shall be Brussels, Belgium.

The language to be used in the arbitral proceedings shall be English.

**IN WITNESS WHEREOF**, the Contractors have executed this Consortium Agreement in **8** original copies.

Authorised to sign on behalf of \_CEFAS\_\_\_\_\_

By (signature):

Name (block letters):

Title:

*Date:*

Authorised to sign on behalf of \_DVI\_

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of \_IFREMER\_\_\_\_\_

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of \_CIDC Lelystad

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of \_NVI-Norway\_\_

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of \_NUIG\_\_\_\_\_

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of \_\_FEAP\_\_\_\_\_

By (signature):

Name (block letters):

Title:

Date:

Authorised to sign on behalf of \_IRTA\_\_\_\_\_

By (signature):

Name (block letters):

Title:

Date:

3. Letter of 9<sup>th</sup> June 2005

**To: Panda Consortium contacts for administrative matters**

Dear Colleagues,

**Re: Panda Consortium Agreement**

I should like to determine your opinions regarding a particular provision, (8.3.i.) of the PANDA Consortium Agreement. This currently reads:

*“each Contractor which default has caused or contributed to cause such claim shall indemnify each of the other Contractors against such claim, provided always that the total and cumulative limit of liability of that Contractor towards all the other Contractors collectively, in respect of any and all such claims shall not exceed twice the amount of that Contractor’s Project Share (defined as its part of the Community financial contribution as per the Contract ). Any excess shall therefore be apportioned between all the Contractors including the Defaulting Contractor(s) pro rata to their Project Shares (as defined above);”*

The Consortium Agreement does not make provision for my current request, but since a contracting body that is not represented on the project Steering Group has an objection to this clause, it does not seem equitable to leave this particular decision to the Steering Group. Equally I do not feel it is appropriate to request a vote concerning an administrative liability clause to the technical contacts of the project.

Accordingly I should like to clarify the issue at hand and then ask you to vote whether or not to change the relevant provision. I propose that each contractor votes on the matter and that all the contractors agree to abide by a simple majority. Since there are eight contractors, in the event that the votes are equal I propose the Co-ordinator shall have the casting vote.

It has been proposed that, in the relevant clause, the limit of liability should be reduced from the existing provision limiting the amount of a defaulting contractor’s liability from twice the amount of such contractor’s project share to the amount of the project share only.

As a representative of the Co-ordinating contractor I recommend that it is in the interests of the consortium to retain existing provision, that is where the limit of liability is twice any defaulting contractor’s project share.

This limit is common to a majority of consortium agreements, and can be found in most of the consortium agreement templates. Although templates are meant to be adapted to fit the requirements of specific projects there is a very good reason for this particular provision.

This clause exists to cover the contingency that a contractor does not perform their obligations under the EC contract. For example, if for some reason a contractor does not complete a work package, the other contractors may need to bring in a new contractor to complete important elements of the project. Such work may need to be completed to a short deadline. It is probable that the cost of completing a defaulting contractor’s work package at short notice would exceed the original project share allocated for such work.

In such an event, any excess costs in fulfilling a defaulting contractor’s obligations would be apportioned between the contractors pro-rata to project share. It is for this reason that I believe that reducing the limit of liability of a defaulting contractor is not in the interests of the consortium as a whole.

I realise that this is a hypothetical issue, and must emphasise that I am not in any way implying that any contractor will not complete their agreed work packages, but would be very grateful if you would assist me in resolving this minor issue.

I would ask you all first to contact me by email at [s.hughes@cefas.co.uk](mailto:s.hughes@cefas.co.uk) to state whether or not you are willing to abide by a majority vote on this matter. If this can be agreed I will then reply asking for your vote on what the limit of liability should be.

I should be very grateful for your earliest response,

Yours truly

Sara Hughes  
Technology Transfer Manager  
Centre for Environment, Fisheries and Aquaculture Science  
[www.cefas.co.uk](http://www.cefas.co.uk)  
+44 (0) 1502 524375