

## European Partnership on Metrology Consortium Agreement<sup>1</sup>

### **BETWEEN:**

**Aalto University Foundation Sr, School of Electrical Engineering, Department of Electrical Engineering and Automation, Otakaari 1 B, FI-02150, Espoo, Finland, VAT no. FI22283574 as EURAMET Designated Institute (DI), the Coordinator,**

**Cesky Metrologický Institut (CMI) - established in Okružní 31, CZ-638 00 Brno, Czech Republic, VAT no. CZ00177016 as 'EURAMET National Metrology Institute' (NMI),**

**CENTRAL OFFICE OF MEASURES (GUM), established in Elektoralna 2, 00-139, Warsaw, Poland, VAT no. PL5251008361 as 'National Metrology Institute' (NMI)**

**Istituto Nazionale di Ricerca Metrologica (INRiM), established in Strada delle Cacce, 91, IT-10135 Torino, Italy, VAT no. IT09261710017 as 'National Metrology Institute' (NMI),**

**Instituto Português da Qualidade, I.P. (IPQ), established in Rua António Gião, 2, PT-2829-513 Caparica, Portugal, VAT no. PT502225610 as 'National Metrology Institute' (NMI),**

**Physikalisch-Technische Bundesanstalt (PTB), established in Bundesallee 100, DE-38116 Braunschweig, Germany, VAT no. DE811240952 as 'National Metrology Institute' (NMI),**

**RISE Research Institutes of Sweden AB, Box 857, 501 15 Borås, Sweden, VAT no. SE556464687401 as National Metrology Institute' (NMI),**

**Slovenský Metrologický Ústav (SMU), established in Karloveská 63, SK-842 55 Bratislava 4, Slovakia, VAT no. SK2020908230 as 'National Metrology Institute' (NMI),**

**Türkiye Bilimsel ve Teknolojik Araştırma Kurumu (TUBITAK), established in Atatürk Bulvarı 221, TR-06100 Ankara, Türkiye, VAT no. TR1750003600 as 'National Metrology Institute' (NMI),**

**Bulgarian Institute of Metrology (BIM) established in 52-B, G. M. Dimitrov Blvd., 1797 Sofia, Bulgaria,**

**DMDM, MINISTARSTVO PRIVREDE – DIREKCIJA ZA MERE I DRAGOCENE METALE, Mike Alasa 14, 11000 Belgrade, Serbia VAT no. RS107679582,**

**I.P. Institutul Național de Metrologie (INM), established in Str. Eugen Coca nr. 28, mun. Chișinău MD2064, Republic of Moldova,**

**State Enterprise "All-Ukrainian State Research and Production Center for Standardization, Metrology, Certification and Consumers Rights Protection" – SE**

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<sup>1</sup> The EPM Consortium Agreement is based upon the DESCA-Horizon Europe Model Consortium Agreement as amended by Aalto University.

**“UKRMETRTESTSTANDART” (UMTS), established in Metrologichna str., 4, 03143, Kyiv, Ukraine, VAT no. 025681826500,**

hereinafter, jointly or individually, referred to as “Beneficiaries” or “Beneficiary”,

**AGILENT TECHNOLOGIES LDA UK LIMITED registered in England and Wales with company registration number 08815891 and a registered office at 5500 Lakeside, Cheadle Royal Business Park, Cheadle SK8 3GR, United Kingdom as ‘Associated Partner’,**

hereinafter, jointly or individually, referred to as “Associated Partners” or “Associated Partner”,

all of the above hereinafter, jointly or individually, referred to as “Parties” or “Party”

relating to the Action entitled

**Establishing European traceability for medical measuring devices through optical absorbance liquid filters  
ETraceAbs**

hereinafter referred to as “Project”

#### Preamble

EURAMET e. V. (“EURAMET”) which was established in 2007 under German law as a non-profit association is the dedicated implementation structure of the European Partnership on Metrology (for the purpose of this Consortium Agreement: “EPM”). It is the European Regional Metrology Organisation, which coordinates the cooperation of National Metrology Institutes (NMI) and Designated Institutes (DI) of Europe.

According to Decision (EU) 2021/2084 of the European Parliament and of the Council on the participation of the Union in the European Partnership on Metrology jointly undertaken by several Member States (the “Decision”), EURAMET implements the EPM, jointly funded by the European Union and the participating states.

Based on this Decision and Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination (hereinafter referred to as “Rules for Participation”), and the European Commission Multi-beneficiary Metrology Partnership Grant Agreement and its Annexes, EURAMET manages the European Union’s financial contribution to the EPM and distributes funds to the Parties through its bodies.

The Parties have submitted a proposal for a Joint Research Project (JRP) to EURAMET as part of the Targeted Programme (TP) Research Potential within the EPM. The proposal for this Project was selected in accordance with the EURAMET process following a public call for proposal.

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the Project Grant Agreement to be signed by the Beneficiaries and EURAMET (hereinafter "Grant Agreement").

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

## **Section 1: Definitions**

### **1.1 Definitions**

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules for Participation or in the Grant Agreement including its Annexes.

### **1.2 Additional Definitions**

#### **"Collaborator"**

Collaborator means an entity that does not sign the Grant Agreement nor delivers any work necessary for the completion of the Project but has a formal relationship with the Consortium which can be exercised to the benefit of the Project. Collaborators are not regarded as partners or participants in the Project.

#### **"Consortium"**

Consortium means the Parties together with the Coordinator.

#### **"Consortium Body"**

Consortium Body means any body of the Consortium described in Section 6 of this Consortium Agreement.

#### **"Defaulting Party"**

Defaulting Party means a Party which has been identified by the Management Board (defined in Section 6.2) to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Section 4.3 of this Consortium Agreement.

#### **"Deliverables"**

Deliverables means items listed in the "List of deliverables" of Annex 1 to the Grant Agreement.

#### **"EURAMET NMIs / EURAMET DIs"**

EURAMET NMIs and/or DIs means the National Metrology Institutes and/or Designated Institutes that are members or associates of EURAMET according to the EURAMET Byelaws.

#### **"Needed"**

means:

For the implementation of the Project:

Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources.

For Exploitation of own Results:

Access Rights are Needed if, without the grant of such Access Rights, the Exploitation of own Results would be technically or legally impossible.

**“Participating State”**

Participating State means any country considered to be a Participating State under Article 1 of the Decision.

**“Software”**

Software means sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression.

## **Section 2: Purpose**

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

## **Section 3: Entry into force, duration and termination**

### **3.1 Entry into force**

This Consortium Agreement shall have effect from June 1, 2024, hereinafter referred to as the “Effective Date”.

An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

An entity acceding to the Project at a later date becomes a new Party to the Consortium Agreement upon signature of the accession document (Attachment 2) by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

### **3.2 Duration and termination**

#### **3.2.1**

This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the Grant Agreement and under this Consortium Agreement. However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.

#### **3.2.2 Beneficiary termination**

If

- the Grant Agreement is not signed by EURAMET or a Beneficiary, or
- the Grant Agreement is terminated, or
- a Beneficiary’s participation in the Grant Agreement is terminated;

this Consortium Agreement shall automatically terminate in respect of the affected Beneficiary/Beneficiaries, subject to the provisions surviving the expiration or termination under Section 3.3 of this Consortium Agreement.

#### **3.2.3 Associated Partner termination**

If an Associated Partner is no longer associated to any Beneficiary, this Consortium Agreement shall automatically terminate in respect of the affected Associated Partner, subject to the provisions surviving the expiration or termination under Section 3.3 of this Consortium Agreement.

### 3.3 Survival of rights and obligations

The provisions relating to Data Protection (Section 4.5.), Export Control (Section 5.5.), Results (Section 8), Access Rights (Section 9), Dissemination of Results (Section 10) and Non-disclosure of information (Section 11), for the time period mentioned therein, as well as for Liability (Section 5), Applicable law (Section 12.7) and Settlement of disputes (Section 12.8) shall survive the expiration or termination of this Consortium Agreement.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Management Board and the leaving Party. This includes the obligation to provide all input, Deliverables and documents for the period of its participation.

## **Section 4: Responsibilities of Parties**

### 4.1 General principles

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

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

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator.

Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

### 4.2 Deliverables

All Deliverables must be circulated between the Parties prior to submission to EURAMET providing each Party has an opportunity to approve those elements of the reports containing their input. This is to ensure that commercial or strategic sensitivities (including, but not limited to: protection of intellectual property rights, patentable and/or confidential information) are not infringed and all obligations regarding third party rights are respected. If the Parties have not indicated their disapproval within 14 (fourteen) calendar days upon receipt of the Deliverables by way of a written notification, such approval is considered as given. A disapproval shall be accompanied by a description of changes and/or amendments the affected Party deems necessary and a proposal to overcome the objection.

### 4.3 Breach

In the event that the Management Board identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement, the Coordinator, or, if the Coordinator is in breach of its obligations, the Party appointed by the Management Board will give written notice to such Party requiring that such breach will be remedied within thirty (30) calendar days after the date of receipt of the written notice.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Management Board may decide to declare the Party to be a Defaulting Party and decide on the consequences thereof which may include termination of its participation.

#### 4.4 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the Grant Agreement. Such Party has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the Grant Agreement.

#### 4.5 Data Protection

Each Party shall comply with its legal obligations arising under applicable data protection laws (e.g. the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR") and relevant national data protection law applicable to said Party) within the scope of the performance and administration of the Project and of this Consortium Agreement.

In particular, the Parties concerned shall, where necessary, conclude a separate data processing and/or joint controller agreement(s) before any personal data processing takes place.

#### 4.6 Associated Partners

Associated Partners participating in the Project and their association to the Beneficiaries are described in Article 9.1 of the Grant Agreement. They have no right to charge costs or claim contributions to the Project and the costs for their tasks are not eligible under the Grant Agreement.

The Coordinator will share a copy of the signed Grant Agreement, and information on any amendments to it, with the Associated Partners.

Associated Partners hereby commit to properly implement the tasks attributed to them in Annex 1 of the Grant Agreement in accordance with its Article 11, and in compliance with all legal obligations under applicable EU, international and national law.

In particular, they must implement their tasks in compliance with Articles 12 (conflict of interests), 13 (confidentiality and security), 14 (ethics), 17.2 (visibility), 18 (specific rules for carrying out action), 19 (information) and 20 (record-keeping) of the Grant Agreement including the specific rules set out in its Annex 5 where such provisions refer to Beneficiaries' rights and obligations as if it were their own rights and obligations.

They shall also be subject to the provisions of Article 16 (Intellectual Property Rights (IPR) – Background and Results – Access Rights and Rights of Use) and the remaining sections of Article 17 (Communication, Dissemination and Visibility) of the Grant Agreement

including the specific rules set out in its Annex 5, provided however that they shall not be subject to any obligations pertaining explicitly to Beneficiaries on the grounds that they have received funding under the grant.

The Associated Partners support the Beneficiaries regarding their exploitation, dissemination and Open Science obligations and commit to contribute to the technical and continuous reporting during and after the implementation of the Project.

Furthermore, the Associated Partners explicitly agree to cooperate with and grant access to bodies according to Article 25 of the Grant Agreement (EURAMET e.V., the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO), the European Court of Auditors (ECA)), so that these bodies can carry out checks, reviews, audits and investigations also towards the Associated Partners.

Any Associated Partner from a non-EU-country undertakes to comply additionally with any other obligation arising from Art. 10.1 of the Grant Agreement.

In case of termination or being declared a Defaulting Party, an Associated Partner shall, within the limits specified in section 5.2 of this Consortium Agreement, bear any reasonable and justifiable costs occurring to the other Parties for performing this Associated Partners tasks and the costs for additional efforts necessary to implement the Project.

Should the Associated Partner(s) be obliged to sign a separate agreement concerning its funding for the Project, it is the responsibility of the Associated Partner to ensure such agreement is not in conflict with this Consortium Agreement.

Associated Partner(s) must ensure their own funding for the implementation of the Project. If the Associated Partner(s) cannot ensure funding to properly implement the tasks attributed to them in Annex 1 of the Grant Agreement, or such funding is withdrawn from the Associated Partner(s), they shall notify the Coordinator without undue delay. The Coordinator shall convene a meeting of the Management Board to take the necessary decisions in accordance with Section 6.

Associated Partners are - within the limits specified in Section 5.2 - obliged to compensate the Beneficiaries for any damage resulting from a justified claim of EURAMET e.V. according to Grant Agreement Section 5 against them, caused by this Associated Partner's actions or omissions during Grant Agreement preparation, Project implementation or after Project end.

## **Section 5: Liability**

### **5.1 No warranties**

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

Therefore,

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

- no Party granting Access Rights shall be liable in case of infringement of intellectual property or other proprietary rights of a third party resulting from any other Party (or its entities under the same control) exercising its Access Rights.

#### 5.2 Limitations of contractual liability

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

A Party's total aggregate liability under or in relation to this Consortium Agreement towards the other Parties collectively shall be limited to:

- For Beneficiaries: once the Party's share of the total eligible costs of the Project as identified in Annex 2 of the Grant Agreement,
- For Associated Partner (Agilent Technologies Lda UK Limited): 10,000.00 €<sup>2</sup>,

provided such damage was not caused by a wilful act or gross negligence.

#### 5.3 Damage caused to third parties

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

#### 5.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure.

Each Party will notify the Management Board of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the Management Board.

#### 5.5 Export Control

Each Party represents and warrants, that it is not subject to any embargo, sanction, or any other applicable export control restriction at the time of the conclusion of this Consortium Agreement. Each Party shall promptly notify the other Parties in writing if it becomes aware that it will no longer be able to undertake the aforementioned.

Each Party shall be responsible for its own activities and compliance with sanctions, export control laws and regulations in force time to time (hereinafter referred to as "Export Control Laws") applicable to that Party.

The Parties shall provide each other any relevant information (including but not limited to ECCN number) in their possession which the other Parties reasonably require in order to comply with their obligations under Export Control Laws.

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<sup>2</sup> E.g. The amount of national funding the Associated Partner receives, or the project share as indicated by the Financial Summary of the Project's Workbook, column: "Costs/Total".



Each Party undertakes to notify the other Party/-ies in advance if it intends to transfer, disclose or deliver to the other Party/-ies any Background, Confidential Information or Results subject to Export Control Laws, and to prevent any such transfer, disclose or delivery without the other Party/-ies' prior express written permission.

If a Party's performance in accordance with this Consortium Agreement requires an export authorization given by the competent authority and such authorization is not granted, or that Party's performance is otherwise impeded or delayed as a result of Export Control Laws, that Party is released from its obligations under this Consortium Agreement in this respect.

Each Party shall have the right to extend the project schedule, suspend its performance, or terminate this Consortium Agreement without any liability to the other Parties, if the extension, suspension or termination is unavoidable due compliance with Export Control Laws, subject to any amendment of the Grant Agreement, if necessary.

Each Party will notify the Management Board of any such restriction without undue delay. If the consequences of such restriction for the Project are not overcome within 6 weeks after such notice, the transfer of tasks - if any - shall be decided by the Management Board.

## **Section 6: Governance structure (6.3 is not negotiable!)**

The Consortium forms the following Consortium Bodies:

- The (ETraceAbs) Coordinator (6.1)
- The (ETraceAbs) Management Board (6.2)
- The (ETraceAbs) Committee of EURAMET NMIs and DIs (6.3)

### **6.1 Coordinator**

#### **6.1.1**

The Coordinator is the legal entity acting as the intermediary between the Parties and EURAMET and shall, in addition to its responsibilities as a Party, perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.

The Parties agree to abide by the instructions given by the Coordinator based on the terms of the Grant Agreement and the Consortium Agreement.

#### **6.1.2**

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations under this Agreement and the Grant Agreement
- keeping the address list of Members, Associate Members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting reports and other Deliverables (including financial statements and related certifications) and specific requested documents to EURAMET
- transmitting documents and information connected with the Project to any other Parties concerned

- 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
- providing a copy of the Grant Agreement, its Annexes and any amendments thereto to the Associated Partners.

If one or more of the Parties is late in submission of any project deliverable, the Coordinator may nevertheless submit the other Parties' project Deliverables and all other documents required by the Grant Agreement to EURAMET in time.

#### 6.1.3

If the Coordinator fails in its coordination tasks, the Committee of EURAMET NMIs and DIs may propose to EURAMET to change the Coordinator.

#### 6.1.4

The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement.

#### 6.1.5

Each Party shall ensure that no Confidential Information is disclosed to Collaborators prior to the execution of a Letter of Agreement (Attachment 3) between the Coordinator and the Collaborator. Except for the name of the Collaborator, the Coordinator is not allowed to implement any changes to Attachment 3 without the prior written consent of the Parties. The Coordinator shall provide the Parties with all executed Letters of Agreement without undue delay.

#### 6.1.6

The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.

### 6.2 Management Board

#### 6.2.1 Composition

The Management Board shall consist of one representative of each Beneficiary (hereinafter referred to as "Member") and one representative of each Associated Partner (hereinafter referred to as "Associate Member").

Each Member and Associate Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.2.3 of this Consortium Agreement.

The Coordinator shall chair all meetings of the Management Board.

The Parties agree to abide by all decisions of the Management Board, provided that they are not in conflict with or inconsistent with the terms and conditions of this Consortium Agreement or the Grant Agreement.

This does not prevent the Parties from exercising their veto rights according to Section 6.2.2.4 or from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Section 12 of this Consortium Agreement.

#### 6.2.2 Operational procedures for the Management Board

##### 6.2.2.1 Representation in meetings

Any Member and Associate Member:

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

#### 6.2.2.2 Preparation and organisation of meetings

##### 6.2.2.2.1

Convening meetings:

The Coordinator shall convene ordinary meetings of the Management Board at least once every nine (9) months and shall also convene extraordinary meetings at any time upon written request of any Member or Associate Member.

The Coordinator shall give notice in writing of a meeting to each Member and Associate Member as soon as possible and no later than thirty (30) calendar days preceding any ordinary meeting and no later than fourteen (14) calendar days preceding any extraordinary meeting.

An agenda containing any items requiring decision by the Members shall be included. Any Member or Associate Member may add items to the agenda by written notice to all other Members no later than 7 calendar days preceding the meeting. New items may be added during meetings.

##### 6.2.2.2.2

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

#### 6.2.2.3. Voting rules and quorum

##### 6.2.2.3.1

The Management Board shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum). The Management Board will attempt to reach decisions by consensus whenever possible.

All Members and Associate Members present or represented in the meeting shall have one vote.

Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast.

##### 6.2.2.3.2 Defaulting Parties may not vote.

#### 6.2.2.4. Veto rights

##### 6.2.2.4.1

A Member or Associate Member which can show that its own work, time for performance, costs, intellectual property rights or other legitimate interests would be severely affected by a decision of the Management Board may exercise a veto during the meeting and within fifteen (15) calendar days after the draft minutes of the meeting are sent with respect to the corresponding decision or relevant part of the decision.

##### 6.2.2.4.2

In case of exercise of veto, the Members shall make every reasonable effort to resolve the matter which occasioned the veto to the general satisfaction of all Members and Associate Members.

##### 6.2.2.4.3

A Party may not veto decisions relating to its identification to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or the declaration of the Party as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.

#### 6.2.2.4.4

A Party requesting to leave the Consortium may not veto decisions relating thereto.

#### 6.2.2.5 Minutes of meetings

##### 6.2.2.5.1

The Coordinator shall produce written minutes of each meeting which shall be the formal record of all decisions taken within two (2) months.

##### 6.2.2.5.2

The minutes shall be considered as accepted if, within fifteen (15) calendar days from sending, no Member present in the meeting has sent an objection to the Coordinator by written notice with respect to the accuracy of the draft of the minutes.

##### 6.2.2.5.3

The Coordinator shall send the accepted minutes to all the Members and Associate Members of the Management Board, and shall safeguard them.

#### 6.2.2.6

##### Written voting

Any decision may also be taken without a meeting if

- the Coordinator circulates to all Members a written document containing the suggested decision with a deadline for responses of at least 10 calendar days
- which is then approved and signed by the defined majority of Members (see Section 6.2.2.3).

The Coordinator shall inform all Members and Associate Members of the outcome of the vote.

A veto according to Section 6.2.2.4 may be submitted within fifteen (15) calendar days after receipt of this information.

The decision will be binding after the Coordinator sends a notification to all Members and Associate Members. The Coordinator will keep records of the decision and make them available to the Parties on request.

#### 6.2.3. Decisions of the Management Board

The Management Board is responsible for all matters with which the Consortium is concerned unless the responsibility for such matters has been entrusted to another Consortium Body by this Consortium Agreement. The Management Board shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein.

The following decisions shall be taken by the Management Board:

- Proposals for changes to Annexes 1 (Description of the action) and 2 (Estimated budget for the action) of the Grant Agreement to be agreed by EURAMET;
- Modifications to or removal of Background from Attachment 1 (Background included);
- Entry of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party;
- Approval of Collaborators to be included in the Project through Attachment 3
- Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement;
- Declaration of a Party to be a Defaulting Party;
- Remedies to be performed by a Defaulting Party;

- Termination of a Defaulting Party's participation in the Consortium and measures relating thereto;

Associate Members are excluded from voting on and vetoing the following decisions of the Management Board:

- Proposals for changes to Annex 2 of the Grant Agreement
- Decisions on the distribution of the EURAMET contribution among the Beneficiaries

Associate Members are not counted towards the quorum where such decisions are to be taken.

### 6.3 Committee of EURAMET NMIs and DIs

The EURAMET NMIs and EURAMET DIs of Participating States accepted in relation to the European Commission to bear the financial risk and liability for the implementation of the EPM. Therefore, the EURAMET NMIs and DIs which participate in the Project form the Committee of EURAMET NMIs and DIs and will be given specific responsibilities in the Consortium as set out in Section 6.3.3.

The Parties agree to abide by all decisions of the Committee of EURAMET NMIs and DIs.

#### 6.3.1 Composition

The Committee of EURAMET NMIs and DIs consists of one representative of each EURAMET NMI and DI of a Participating State which participates in the Project.

The Coordinator shall chair all meetings of the Committee of EURAMET NMIs and DIs.

#### 6.3.2 Operational procedures for the Committee of EURAMET NMIs and DIs

The provisions of 6.2.2.1 (Representation in meetings), 6.2.2.2 (Preparation and organisation of meetings), 6.2.2.3 (Voting rules), 6.2.2.4 (Veto rights) and 6.2.2.5 (Minutes of the meetings) apply correspondingly.

#### 6.3.3 Responsibilities

The following decisions shall be taken by the Committee of EURAMET NMIs and DIs:

- Proposal to EURAMET to change the Coordinator;
- Proposal to EURAMET for suspension of the Project implementation in part or in full;
- Proposal to EURAMET for termination of the Project
- Termination of this Consortium Agreement.

## **Section 7: Financial provisions**

### 7.1 General Principles

A Beneficiary shall be funded by EURAMET only for tasks it has carried out in accordance with Annex 1 of the Grant Agreement.

### 7.2 Justifying Costs

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

### 7.3 Financial Consequences of the termination of the participation of a Beneficiary

A Beneficiary leaving the Consortium shall refund to EURAMET all payments it has received from EURAMET except the amount of contribution accepted by EURAMET.

#### 7.4 Financial Consequences of a breach of obligations

A Defaulting Party shall, within the limits specified in Section 5 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform the leaving Party's tasks and necessary additional efforts to fulfil them as a consequence of the Party leaving the Consortium.

### **Section 8: Results**

#### 8.1 Ownership of Results

Results are owned by the Party that generates them.

#### 8.2 Joint ownership

Where several Parties have jointly carried out work and where it is not possible to establish the respective contribution of each Party, or separate them for the purpose of applying for, obtaining or maintaining their protection, they have joint ownership of such Results.

Joint owners must establish a written agreement regarding the allocation and terms of exercising their joint ownership, in particular the use, the application for protective rights, division of related cost and the dissemination.

Each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research activities and educational purposes on a royalty-free basis.

Unless otherwise agreed, each of the joint owners shall be entitled to grant non-exclusive licenses to jointly owned Results to third parties, without any right to sub-license, subject to the following conditions:

- at least 45 calendar days prior notice must be given to the other joint owner(s); and
- fair and reasonable compensation must be provided to the other joint owner(s).

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

#### 8.3 Transfer of Results

##### 8.3.1

Each Party may transfer ownership of its own Results, including its share in jointly owned Results, following the procedures of Article 16.4 of the Grant Agreement and its Annex 5.

##### 8.3.2

The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, it may be impossible under applicable EU and national laws on mergers and acquisitions for a Party to give the forty-five (45) calendar days prior notice for the transfer as foreseen in the Grant Agreement.

##### 8.3.3

The obligations above apply only for as long as other Parties still have - or still may request - Access Rights to the Results.

### **Section 9: Access Rights**

#### 9.1 Background included

##### 9.1.1

In Attachment 1, the Parties have identified and agreed on each Party's Background for the Project and have, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.

All Background shall remain the exclusive property of that Party or a third party owned or/and designated by that Party, as well as any rights related thereto, including but not limited to any intellectual property rights.

Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background. The Parties agree, however, to negotiate in good faith additions to Attachment 1, if a Party asks them to do so and if they are Needed.

#### 9.1.2

The owning Party may add further Background to Attachment 1 during the Project by written notice to the Management Board. Any Party may propose to the Management Board to remove or modify any of its Background included in Attachment 1.

### 9.2 General Principles

#### 9.2.1

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

#### 9.2.2

Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.

#### 9.2.3

Access Rights shall be free of any administrative transfer costs.

#### 9.2.4

Access Rights are granted on a non-exclusive basis.

#### 9.2.5

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

#### 9.2.6

All requests for Access Rights shall be made in writing.

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

#### 9.2.7

The requesting Party must show that the Access Rights are Needed.

#### 9.2.8

Any Access Rights to Results and Background granted on a royalty-free basis under this Consortium Agreement shall be deemed requested and granted by this Consortium Agreement without any further agreement needed. Any exercise of Access Rights granted under this sub-section shall be notified to the granting Party. Such notification shall show that the Access Rights are Needed.

### 9.3 Access Rights for implementation

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

### 9.4 Access Rights for Exploitation

#### 9.4.1

Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable conditions.

Access rights to Results for non-commercial research activities and educational purposes shall be granted on a royalty-free basis.

#### 9.4.2

Access Rights to Background if Needed for Exploitation of a Party's own Results, including for research on behalf of a third party and educational activities, shall be granted on Fair and Reasonable conditions.

#### 9.4.3

A request for Access Rights may be made up to twelve (12) months after the end of the Project or after the termination of the requesting Party's participation in the Project.

### 9.5 Additional Access Rights

The Parties agree to negotiate in good faith any additional Access Rights to Results as might be asked for by any Party upon adequate financial conditions to be agreed.

### 9.6 Access Rights for Parties entering or leaving the Consortium

#### 9.6.1 New Parties entering the Consortium

As regards Results developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.

#### 9.6.2 Parties leaving the Consortium

##### 9.6.2.1 Access Rights granted to a leaving Party

###### 9.6.2.1.1 Defaulting Party

Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the Management Board to terminate its participation in the Consortium.

###### 9.6.2.1.2 Non-defaulting Party

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Results developed until the date of the termination of its participation. It may request Access Rights within the period of time specified in Section 9.4.3.



#### 9.6.2.2 Access Rights to be granted by any leaving Party

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

#### 9.7 Specific Provisions for Access Rights to Software

The general provisions for Access Rights provided for in this Section 9 are applicable also to Software.

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

### **Section 10: Dissemination of Results**

#### 10.1 Dissemination of Results

##### 10.1.1

During the Project and for a period of one (1) year after the end of the Project, the dissemination and publication of Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 17.4 of the Grant Agreement including its Annex 5 subject to the following provisions.

Prior written notice of any planned publication shall be given to the other Parties at least thirty (30) calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement in writing to the Coordinator and to the Party or Parties proposing the dissemination within twenty-one (21) calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

##### 10.1.2

An objection is justified if the intended publication

- a) would prevent patenting or other protection of the objecting Party's Results or Background or
- b) the proposed publication includes Background, unpublished Results or Confidential Information of the objecting Party.

The objection has to include a precise request for necessary modifications.

##### 10.1.3

If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

The objecting Party can request a publication delay of not more than in case of Section 10.1.2 a) 90 calendar days and in case of Section 10.1.2 b) 30 calendar days from the time it raises such an objection. After 90 or 30 calendar days respectively the publication is permitted, provided that the objections of the objecting Party has been removed from the publication as indicated by the objecting Party, and that the objections of the objecting Party have been

addressed. Results that have once been approved for publication may be published again without the publication review procedure. Any doctoral thesis, dissertations or other works with similar effect that may be prepared in connection with the Project shall be public documents. The review procedure described above shall be applied to the theses, doctoral dissertations or other similar works. Copyright to any thesis, dissertation or other similar works shall always be vested in the author or creator of the said works.

#### 10.2 Dissemination of another Party's unpublished Results or Background

A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval in accordance with Section 10.1.1 unless they are already published.

#### 10.3 Cooperation obligations

The Parties undertake to cooperate to support the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

#### 10.4 Use of names, logos or trademarks

Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

### **Section 11: Non-disclosure of information**

#### **11.1**

All information in whatever form or mode of communication, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential" at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within fifteen (15) calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information". All Confidential Information shall remain the exclusive property of the Disclosing Party or a third party designated by the Disclosing Party, as well as any rights related thereto, including but not limited to any intellectual property rights.

#### **11.2**

The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of five (5) years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information to any third party (other than those who have signed the non-disclosure undertaking in Attachment 3 thereof) without the prior written consent by the Disclosing Party;
- to ensure that any disclosure of Confidential Information by a Recipient to its employees shall take place on a strict need-to-know basis;
- not to decompile, modify, reverse engineer or create derivative works out of Confidential Information in any manner and
- to return to the Disclosing Party or destroy on the written request of the Disclosing Party all Confidential Information which has been supplied to or acquired by the

Recipients including all copies thereof and to delete all information stored in a machine-readable form to the extent practically possible. The Recipients may keep a copy of Confidential Information to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable mandatory laws and regulations or for the proof of on-going obligations herein provided that the Recipient complies with the confidentiality and non-use obligations herein contained with respect to such copy.

#### 11.3

The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

#### 11.4

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

- the Confidential information has become at the time of its disclosure or becomes publicly available after its disclosure by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party or
- The Confidential Information was already known to the Recipient prior to disclosure without restrictions on its disclosure or use,
- the Recipient may disclose the Confidential Information in order to comply with applicable mandatory laws or regulations or with a court or administrative order, subject to the provision Section 11.7 hereunder.

#### 11.5

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

#### 11.6

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

#### 11.7

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order or – in the case an Associated Partner - with a reporting requirement

from its national funding authority, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

- notify the Disclosing Party, and
- comply with the Disclosing Party's reasonable instructions to protect the confidentiality of Confidential information.

## **Section 12: Miscellaneous**

### **12.1 Inconsistencies and severability**

In case the terms of this Consortium Agreement are in conflict or inconsistent with the terms of the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the terms of attachments of this Consortium Agreement and the core text of this Consortium Agreement, the latter shall prevail.

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

### **12.2 No representation, partnership or agency**

Except as otherwise agreed, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium.

Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

### **12.3 Notices and other communication**

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

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be made accessible to all Parties by the Coordinator.

Formal notices:

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

Written notices and other communication:

Where written notice is required by this Consortium Agreement, such notice may also be effected by other means of communication such as e-mail with acknowledgement of receipt.

### **12.4 Assignment and amendments**

Except as set out in Section 8.3, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.

Amendments and modifications to the text of this Consortium Agreement require a separate written agreement to be signed between all Parties.

Any amendment to the Grant Agreement, having verified all the approval procedures established in the Article 39 of the Grant Agreement and after final circulation to all its Beneficiaries and the Associated Partners, will be considered an integral part of this Consortium Agreement without any need to further modifications and will not require amendment or additional signature of this Consortium Agreement.

#### 12.5 Language

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

#### 12.6 Mandatory national law

Each Party shall ensure that at the time of signature of this Consortium Agreement nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law it is subject to. To the extent any future mandatory law forbids or restricts any of the activities contemplated hereunder, the Party concerned agrees to inform the other Parties thereof and discuss the consequences thereof.

#### 12.7 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the law of Belgium excluding its conflict of law provisions.

#### 12.8 Settlement of disputes

Any dispute under this Consortium Agreement will be settled amicably as far as possible.

In case an amicable solution cannot be found within the Consortium, the courts of Brussels shall have exclusive jurisdiction.

#### **Attachments:**

This Consortium Agreement consists of this core text and:

Attachment 1: (Background included) – *model provided*

Attachment 2: (Accession document) – *model provided*

Attachment 3: (Letter of Agreement) – *model provided*

#### **SIGNATURES**

#### **AS WITNESS:**

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages. This Consortium Agreement may be executed in as many originals as there are Parties or by electronic signature or transmission, or in Adobe Portable Document Format (PDF) sent by electronic mail to each other. Signature in the PDF copy or in the electronic copy of this Consortium Agreement will be as enforceable as an original.