



Introduction to CA

This document is the consortium agreement which binds the partners of the EuropeanaPhotography project consortium. It develops and clarifies the roles, responsibilities and relationships of the EuropeanaPhotography partners, as outlined in the EuropeanaPhotography Contract with the European Commission under the CIP program (ref. 297158). The consortium agreement has the same duration as the EuropeanaPhotography Contract with the Commission – namely the duration of the Europeana content enrichment phase of the EuropeanaPhotography project (Feb. 1, 2012 - January 31, 2015).

This agreement binds the full partners, or contractors, of the EuropeanaPhotography project and it is made by 15 pages, including this one.

This consortium agreement is one of a possible series of commercial documents produced and agreed by the EuropeanaPhotography consortium, governing the commercial issues which arise in the development of a new, profit-making service on the international market. Other documents in this series may address:

- Management of third party content by the EuropeanaPhotography repository
- Third party and regional distributors of access rights to the EuropeanaPhotography repository
- End user subscription and digital rights management, including copyright protection techniques
- Business plan for the commercial service, if any.

EuropeanaPhotography CONSORTIUM AGREEMENT

Introduction

The aim of this document (CA) is to develop and clarify the roles, duties, obligations and rights of each partner and member of the EuropeanaPhotography content enrichment CIP project (ref. 297158), as outlined and signed in the main EU contract (Grant Agreement). This agreement is valid for the duration of the EuropeanaPhotography project.

A written agreement, from now on the Contract, was signed on the 01/02/2012 between the parties committing to this Consortium Agreement and the European Commission, which agreed to support EuropeanaPhotography (contract number **297158**) in the framework of the CIP program.

All the Parties have accepted to participate in the project with full acknowledgment by the European Commission of their respective roles, as defined in the Contract.

Consortium Composition

The partners making up the EuropeanaPhotography project's consortium are:

- 1 ALINARI 24 ORE SPA
- 2 TOPHAM PARTNERS LLP
- 3 IMAGNO Brandstätter Images KG
- 4 SAEML PARISIENNE DE PHOTOGRAPHIE
- 5 Istituto Centrale per il Catalogo Unico delle biblioteche italiane e per le informazioni bibliografiche
- 6 JP/POLITIKENS HUS AS
- 7 Ajuntament de Girona
- 8 Departament de Cultura - Generalitat de Catalunya
- 9 United Archives Gesellschaft fur Archivmanagement und Verwertung mbH
- 10 National Academic Library Information System
- 11 Muzeum Historii Fotografii im. Walerego Rzewuskiego w Krakowie
- 12 ARBEJDERMUSEET MED ARBEJDERBEVAEGELSENS BIBLIOTEK OG ARKIV
- 13 DIVADELNY USTAV
- 14 STOWARZYSZENIE MIEDZYNARODOWE CENTRUM ZARZADZANIA INFORMACJA
- 15 NATIONAL TECHNICAL UNIVERSITY OF ATHENS
- 16 KONINKLIJKE MUSEA VOOR KUNST EN GESCHIEDENIS KMKG-MRAH
- 17 KATHOLIEKE UNIVERSITEIT LEUVEN, for the purposes of this agreement represented by KU Leuven Research & Development, with offices at Waaistraat 6, 3000 Leuven
- 18 LIETUVOS DAILES MUZIEJUS
- 19 Promoter di Masi Pietro & C S.N.C

from now on the *Parties*.

The Parties hereby agree to the following “Consortium Agreement”, from now on the *Agreement*:

WHEREAS

The project called “EuropeanaPhotography” aims to make available a range of services targeted to the consumer market, enabling them to access the photographic heritage through the web. It aims to digitize and make available a large selection of masterpiece photography and related metadata to the general public, enabling them to access the photographic heritage through the Europeana website.”

The aim of this Consortium Agreement is to develop and clarify the duties and obligations of the parties involved with this agreement.

Article 1 Definitions

Sect. 1 - Contract definitions

Words defined in the Contract have the same meaning in this Agreement.

Sect. 2 – Other definitions

- *Project* means the EuropeanaPhotography Project
- *Party* or *Parties* means one Principal Contractor or all the Principal Contractors that signed the Contract;
- *Agreement* means this Consortium’s Agreement and any proper amendments thereof;
- *Participating Countries* refer to the countries involved in the Project, ie. Italy, Austria, Belgium, Bulgaria, Denmark, France, Germany, Greece, Lithuania, Poland, Slovakia, Spain, United Kingdom,
- *Co-ordinator* means Alinari 24 Ore s.p.a.
- *Defaulting parties* means a Party substantially breaching its obligation under the Contract and/or under the current Agreement
- *Background* means *Pre-existing know-how* as defined in Annex II of the Contract, i.e. information owned by the Parties and resulting from their own activities prior to the conclusion of the Contract or acquired in parallel with it and necessary for carrying out the Project.
- *Foreground* means *Knowledge* as defined in Annex II of the Contract, i.e. any results arising, including information, from the Project as well as from any other co-funded project.

Photographs means Images supplied to EuropeanaPhotography by various content providers, each of which retains the intellectual property rights. The images' usage is regulated by the appropriate commercial documents, as outlined above.

Article 2

Purpose and Duration

Sect. 1

The current Agreement establishes how the Project will be managed as well as developing and clarifying the Parties' obligations, rights and liabilities as set out in the Contract.

Sect. 2

This Agreement shall come into force as of the date of its last signature, but shall have retroactive effect as from 1st February 2012, date of the beginning of the project, and shall continue into full force and effect until complete discharge of all the obligations undertaken by the Parties under the Contract and current Agreement, as well as and under any amendment or extension thereof (31 January 2015).

Article 3

Project Co-ordinator

It is hereby agreed that EuropeanaPhotography Co-ordinator shall manage and direct the Project, assuming the overall responsibility for relationships between the Parties and the Commission related to the Project, as well as the implementation of the Contract. To this effect, the Co-ordinator shall discharge on behalf of the Parties specific functions as defined by the Contract, the current Agreement and, occasionally, by the Project Board.

The Project Coordinator appoints a Project Manager (PM), agreed with the all EuropeanaPhotography Consortium. The Project Manager is responsible for the proper application of the procedures and monitors the carrying out of the partners' activities. He has the overall responsibility for the running of the project, ensuring delivery to time, cost and required quality.

The EuropeanaPhotography Coordinator role is played by Alinari 24 Ore s.p.a.. The appointed Project Manager is Mr. Andrea De Polo.

Article 4

Project Management Board

A Project Board (PB) will be formed to provide overall technical and financial planning and control. The Project Board will consist of one representative for each Party. The board works with the coordinator team on strategic and policy issues, modifications to the work plan, changes to partnerships and the overall financial and technical performance of the project. The board is chaired by the Project Manager.

The project management board is the highest decision making body in the EuropeanaPhotography project. In the event of disputes between partners, and/or disagreement with the suggestions of the project manager during the execution of the project, such conflicts shall be decided by the project management board. Exceptions and extensions to this are discussed only Article 21 (Arbitration).

Article 5 Project Management

Sect. 1

The Project Coordinator will have the overall responsibility for the organisation, planning and control of the project. The Project Coordinator will be the contact person for the project with the Commission and will ensure delivery of deliverables. The Project Coordinator will have to deal with the following aspects of the project:

- To discuss and solve all contractual and administrative topics
- To control and review financial and technical progress
- To verify the correct development of the project and, where necessary, to adopt appropriate actions to correct deviation from the schedule
- To promote and stimulate the establishment of contacts with other projects and relevant external projects

Sect. 2

Management will be conducted at two levels, namely taking into consideration the local and the overall project management. At local level each partner will be responsible for the local management of its time and resources ensuring a proper support to the PM and to the WP leader. Specifically each partner will :

- submit correct financial and administrative data to the PM;
- support the PM and WP leader in carrying out the project activities;
- be responsible for the availability of adequate resources to fulfill the project objectives.
- control its own expenditure and resources.

Article 6 Technical Coordinator

The Technical Coordinator will work in close contact with the Project Manager in order to assure the best quality on managing the overall project and assuring on-time and quality delivery to the Commission. The Technical Coordinator is dr. Antonella Fresa, experienced on managing and assisting EU project consortia,

Article 7 Decision Procedures

Sect. 1

The Project Board will meet whenever necessary at venues to be decided at previous Project Board meetings. Each contractor will be represented at the project management board meetings. The meetings will enable the project management board to :

- exchange information about existing or coming activities
- detect deficiencies in the running activities
- discuss problems of personnel, budgetary, operational or technical nature.

Sect. 2

If any problem arises in the fulfillment of the obligations of the partners, related to the prompt execution of their work, corrective measures should be agreed between the partners concerned and the project manager.

At all times resources use reported by the project partners should correspond with the actual work performed during the reporting period.

Corrective measures taken to address problems related to the fulfilment of the obligations of the partners may lead to amendments to the Project Plan. Any resulting changes in the Work Plan or amendments to the Contract have to be proposed by the Project Board and need a written approval by all contractors as well as the formal agreement of the Commission Services (as outlined in the project contract).

Sect. 3

Each contractor is individually liable to the Commission for all funding they receive.

Sect. 4

Meetings will be convened by the Project Manager. At least fifteen days notice will be provided to the partners, by letter, fax or e-mail. A draft agenda will accompany the notice. Five days will be allowed for partners to suggest topics for the meeting agenda. The agreed agenda of the meeting must be circulated at least five days prior to the meeting.

For ad-hoc meetings, two-thirds of the partners can agree to meet at any time. In such cases, the above provisions for notice and agenda do not apply.

Sect 5

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

Decisions shall be taken by the majority of the votes of the Parties present or represented by proxy at a quorate meeting.

Decisions regarding the work to be done or budget to be allocated to any partner cannot be taken unless the partner is represented at the meeting. For such purposes, a partner may appoint any other partner as his proxy representative.

Sect. 6



Minutes of the meetings will be sent, without delay, by the Project Manager to all Parties. Minutes shall be considered as accepted by all the Parties if, within twenty calendar days from the sending date, no Party has objected them in writing to the Project Manager.

Article 8

Conflict resolution procedure

In case of conflicts arising within the consortium regarding the carrying out of the project the following steps will be taken:

- 1) The parties will try to resolve the conflict issue amicably between them;
- 2) If this attempt fails the question will be brought to the first scheduled meeting of the PMB, or in case of urgency, an ad hoc meeting of the Project Board will be called for by the Project Manager.
- 3) The question will be discussed within the Project Board, and the Project Manager will try to solve it by consensus.
- 4) If consensus cannot be reached, a vote of the Project Board will take place.
- 5) Final arbitration is covered in Article 21.

Article 9

Work Packages Leaders

Sect. 1

The Work Packages Leaders will report directly to the Project Coordinator and will perform the overall management activities in their respective work packages, in a close working relationship with the Project Coordinator.

Sect. 2

The Work Packages Leaders will be responsible for informing the Project Coordinator of any delay in performance related to the work package that they co-ordinate and will agree, with the project manager, immediate actions to be taken to solve the problem. Such reporting and solution of delays should not be held off until the next project meeting, but dealt with as soon as possible.

Article 10

Responsibilities of Principal Contractors

Sect. 1

Each Principal Contractor commits itself to promptly supply the Coordinator and/or the Project Board with all the information or documents that those may require in connection with the Contract or the current Agreement to fulfill their obligations. Each Principal Contractor also commits itself to promptly inform the Coordinator and/or Project Board on any issue specifically raised by the Commission and that requires an adequate and timely response.

Sect. 2

Subject to force majeure, each Principal Contractor undertakes to use reasonable endeavours itself, or jointly with others, to participate actively and to perform within schedule the work package tasks assigned to it alone or with the said others in conformity with the Contract (Article 1) and the current Agreement. Any delay in performance must be promptly notified to the relevant WP Leader by the Principal Contractor(s) involved, indicating how the problem is being taken care of and when the delay will be solved.

Sect. 3

Each Principal Contractor undertakes to prepare and present the reports and deliverables, or the relevant part for which they are responsible, to be submitted to the Commission or to be kept at its disposal, as required by the Contract, both in reasonable time and in accordance with the format required, to allow the Coordinator to submit them to the Commission.

The Principal Contractors also undertake to participate in the peer review process as agreed in the project plan and/or with the Project Manager.

Article 11

Synergy Agreements with Third Parties

Sect. 1

The Project will establish and create synergies with some other similar projects. Any form of co-operation with other projects or initiatives at local, regional, national or transnational level will require a written agreement stating clearly that this Synergy Agreement is under the authority and subject to the provisions and clauses of the Contract and the current Agreement.

Sect. 2

All Synergy Agreements must be agreed with the project management board, and shall be submitted to the Commission, when requested.

Article 12

Costs – Common charges - Payment

Sect. 1

The Commission's contribution will be received by the Project Coordinator. The Coordinator is responsible for the transfer to each Party of the relevant sum, according to the Contract.

Sect. 2

Whenever funds are received from the Commission, the Coordinator will communicate to each Party the exact amount received within fifteen calendar days from the date that the sum is deposited in the Coordinator's bank account.

Money will be transferred to the individual partners by the Coordinator within fifteen calendar days from the date of the reception, by fax or post mail, of the request for transfer made by the relevant Party.

The Coordinator will notify promptly the date and amount transferred to the relevant bank account in any case where the Party has requested such notification.

Article 13 Confidentiality

Regarding all information (including Foreground and Background Information and whether oral, written or electronic information) disclosed to a Party on confidential basis by any other Party, whether pending or after execution of the Contract, each Party undertakes to each other Party that:

- a) it will not use, during a period of 5 years from the date of disclosure, any of this information for any other purpose than the execution of the Project as mentioned in the Contract and current Agreement, provided that this information has not been published or otherwise become generally available to the public and unless the information was independently acquired from a third party with a legal right to disclose the same;
- b) it will, during the same period, consider this information as confidential and use reasonable means to guarantee its confidentiality and will not disclose it to any person without the prior consent of its author, provided that this information has not been published or otherwise become generally available to the public and unless the information was independently acquired from a third party with a legal right to disclose the same.

Article 14 Liabilities

Sect. 1

Each Party shall be solely liable for any loss, damage or injury to Third Parties resulting from carrying out the parts of EuropeanaPhotography under its responsibility.

Sect. 2

If a Party does not fulfill, and cannot refer to force majeure, one of its substantial obligation under the Contract or current Agreement and if the breach is irremediable or not remedied within forty-five days from the written notice of the other Parties, the EuropeanaPhotography Consortium may terminate the participation of the defaulting Party with one month prior written notice.

Sect. 3 – Notice of such termination shall be sent to the Commission in order for this institution to officially terminate the Contract with the defaulting partner.

Article 15 Force majeure

Sect. 1

The provisions of the Contract relating to force majeure shall apply to the current Agreement.

Sect. 2

Each Party will notify the other Parties in writing of any event of Force Majeure as soon as possible. The Parties shall discuss in good faith the possibilities of a transfer of tasks affected by the event. No transfer of tasks or budget shall take place without the consent of the concerned party, except under arbitration (see Article 21).

Article 16 Access Rights

Access Rights to Background and Foreground Information shall be granted in accordance with the following general principles :

- Background information remains the property of the partner contributing it to the project. Access to this information is on a need-to-know basis within the project consortium, unless otherwise agreed with the owner.
- Foreground information is created by the project and shall be accessible to all partners, unless otherwise agreed.

All non-disclosure agreements and confidentiality agreements take precedence over this article.

Article 17 Ownership, Parties Rights, of EuropeanaPhotography system

Sect. 1

Foreground material shall be owned by the Party or Parties generating it, unless otherwise agreed by the Party or Parties that generated said Foreground material;

Sect.2

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

Sect. 3

Each Party concerned must take appropriate actions to protect the Project's online solution results developed in its own country according to the related national legal system, including and without limitation copyrights and any other similar statutory rights, and to protect such system results as proprietary information to the extent reasonably possible.

Sect.4

A Party shall notify the other Parties (via the Coordinator if practical) if it does not intend to seek adequate and effective protection (as required by the Contract) of certain of its Knowledge from the Project or if that Party intends to waive such protection. If another Party (or Parties) informs the notifying Party in writing within one calendar month of such notice that it wishes to obtain or maintain such protection, the notifying Party shall assign to such other Party(ies) all necessary rights which it owns. .

Article 18 **Standards**

No confidentiality undertaking hereunder regarding standards shall prevent the communication of information to standardization bodies if such communication is explicitly required in the Contract.

Article 19 **Assignment**

No Party shall, without prior written agreement of the other Parties, assign or otherwise transfer partially or entirely any of its rights and obligations under the current Agreement.

Article 20 **Termination**

Sect. 1

No Party shall be entitled to withdraw from or to terminate its participation in the Project unless:

- a) that Party has obtained the prior written consent of the other EuropeanaPhotography Parties, such consent not to be reasonably withheld, as well as the Commission's approval, or
- b) the termination of the participation is requested by the Commission for any reason whatsoever

Sect. 2

Whatever the reason for the withdrawal or termination of participation of one Party, including Commission request, bankruptcy or liquidation, the other Parties will decide who will replace it, subject to approval of the Commission examining first and if appropriate the option to take over totally or partially the fulfillment of the concerned Party's obligation, receiving subsequent payment under the contract in respect thereof.

Sect. 3

In such event, all rights and obligations under the Contract and current Agreement shall be in good faith redistributed among the Parties or entrusted to the new Party or Parties that take over, on the basis of the work performed by the affected Party prior to the occurrence of the above circumstance.

Article 21

Arbitration

Sect. 1

All collective or individual disputes between the Parties, arising from or in relation with the current Agreement (including any question concerning the validity or enforceability of this arbitration clause) shall be resolved through arbitration carried out by one arbitrator (from now on the Arbitrator).

Sect. 2

The Arbitrator will be appointed by the Parties within thirty calendar days from the date of reception by the Parties of the demand for arbitration from the concerned Party, or failing such agreement by the President of the Tribunal of Brussels.

The Arbitrator's determination shall have the force and effect of an agreement signed by and between the Parties.

Article 22

Language

The current Agreement is drawn up in English, which shall also be used in all documents, notices and meetings for its application, and /or extension or in any other way relevant thereto.

Article 23

Notices

Any notice to be given under the current Agreement shall be in writing and shall be deemed to have been served when personally delivered, when transmitted by fax, e-mail or any other electronic or digital transmission method, provided that such transmission is confirmed by a receipt or successful transmission report.

For confirmation by post mail, the Parties indicate the following addresses:

- 1 ALINARI 24 ORE SPA : Largo Alinari 15, 50123 Firenze, Italy
- 2 TOPHAM PARTNERS LLP , FIRCROFT WAY 1 HOUSE OF JAQUES, EDENBRIDGE, UK
- 3 IMAGNO Brandstätter Images KG , Wurthgasse 14, Vienna, Austria
- 4 SAEML PARISIENNE DE PHOTOGRAPHIE, 3 rue des Arquebusiers, 75003 Paris, France
- 5 Istituto Centrale per il Catalogo Unico delle biblioteche italiane e per le informazioni bibliografiche, Viale del Castro Pretorio 105, Rome, Italy
- 6 JP/POLITIKENS HUS AS, GRONDALSVEJ 3, VIBY J, Denmark
- 7 [Ajuntament de Girona](#), PLACA DEL VI 1, Girona, Spain
- 8 Departament de Cultura - Generalitat de Catalunya, c/ Portaferrissa 1, Barcelona, Spain
- 9 United Archives Gesellschaft fur Archivmanagement und Verwertung mbH, Kartäuser Gasse 16, Köln, Germany
- 10 National Academic Library Information System, 6th of September 51, Sofia, Bulgaria
- 11 Muzeum Historii Fotografii im. Walerego Rzewuskiego w Krakowie, ul. Jozefitow 16, Krakow, Poland
- 12 ARBEJDERMUSEET MED ARBEJDERBEVAEGELSENS BIBLIOTEK OG ARKIV, Romersgade 22, Kobenhavn, Denmark
- 13 DIVADELNY USTAV, JUKUBOVO NAMESTIE 12, Bratislava, Slovakia
- 14 STOWARZYSZENIE MIEDZYNARODOWE CENTRUM ZARZADZANIA INFORMACJA, KRASINSKIEGO 121 b/113, Torun, Poland
- 15 NATIONAL TECHNICAL UNIVERSITY OF ATHENS, Heroon Polytechneiou 9, 15780 Athens, Greece, Electrical Engineering Building - 1st Floor - Room 1.1.23.
- 16 KONINKLIJKE MUSEA VOOR KUNST EN GESCHIEDENIS KMKG-MRAH, JUBELPARK 10, Brussels, Belgium
- 17 KATHOLIEKE UNIVERSITEIT LEUVEN, Waastraat 6, 3000 Leuven, Belgium
- 18 LIETUVOS DAILES MUZIEJUS, BOKSTO 5, Vilnius, Lithuania
- 19 Promoter di Masi Pietro & C S.N.C, VIA BOCCIONI 2, Peccioli, Pisa, Italy



Article 24

Applicable Law

The current Agreement shall be governed and interpreted under the Law provided in the Contract.

Article 25

Entire Agreement - Amendments

Sect. 1

Amendments or changes to the current Agreement shall be valid only if made in writing and signed by an authorized representative of each Party.

Sect. 2

The current Agreement must be signed by an authorized representative of each Party.

On behalf of:

Name: