

Consortium Agreement

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CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon the EC- Framework Service Contract 387427, and is made on 2011-12-07, hereinafter referred to as "Effective Date"

BETWEEN:

SMHI Sveriges Meteorologiska Hydrologiska Institut, Coordinator

and

SHMU Slovenský hydrometeorologický ústav

and

RWS Rijkswaterstaat

- hereinafter, jointly or individually, referred to as "Parties" or "Party" -

relating to the Contract entitled

EFAS Dissemination Centre

hereinafter referred to as "Contract".

WHEREAS:

The Parties, having considerable experience in the field concerned, have earned a Framework Contract no 387427 to the European Commission as part of the European Flood Alert System, EFAS. The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the Framework Contract. The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium agreement and that explanations to the DESCA model are available at www.DESCA-FP7.eu.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Purpose

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

Section 2: Entry into force, duration and termination

2.1 Entry into force

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

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

A new Party enters the Consortium upon signature of an accession document by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

2.2 Duration and termination

This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the EC - Framework Service Contract 387427 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 . If the Commission does not award the EC- Framework Service Contract 387427 or terminates the EC- Framework Service Contract 387427 or a Party's participation in the EC- Framework Service Contract 387427, this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Art. 2.3 of this Consortium Agreement.

2.3 Survival of rights and obligations

The provisions relating to Confidentiality, for the time period mentioned therein, as well as for Liability, Applicable law and Settlement of disputes 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 General Assembly and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

Section 3: Responsibilities of Parties

3.1 General principles

Each Party undertakes to take part in the efficient implementation of the Contract, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the EC- Framework Service Contract 387427 and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Swedish law.

Each Party undertakes to notify promptly, in accordance with the governance structure of the Contract, any significant information, fact, problem or delay likely to affect the Contract.

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.

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

3.2 Breach

In the event a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the EC- Framework Service Contract 387427 (e.g.: a partner producing poor quality work), the Coordinator or the Party appointed by the General Assembly if the Coordinator is in breach of its obligations under this Consortium Agreement or the EC- Framework Service Contract 387427 will give written notice to such Party requiring that such breach be remedied within 30 calendar days.

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

3.3 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 Contract remains solely responsible for carrying out its relevant part of the Contract and for such third party's compliance with the provisions of this Consortium Agreement and of the EC- Framework Service Contract 387427. It 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 EC- Framework Service Contract 387427.

Section 4: Liability towards each other

4.1 No warranties

In respect of any information or materials supplied by one Party to another under the Contract, 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 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 proprietary rights of a third party resulting from any other Party (or its Affiliates) exercising its Access Rights.

4.2 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 or by a breach of confidentiality.

A Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's share of the total costs of the Contract as identified in the Budget of the EC- Framework Service Contract 387427 provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability.

4.3 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 Foreground or Background.

4.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure. Each Party will notify the competent Consortium Bodies of any Force Majeure without undue delay. If the consequences of Force Majeure for the Contract are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

Section 5: Governance structure

5.1 General structure

The General Assembly is the decision-making body of the Consortium.

The Coordinator is the legal entity acting as the intermediary between the Parties and the European Commission. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the EC- Framework Service Contract 387427 and this Consortium Agreement.

The Management Support Team assists the General Assembly and the Coordinator.

5.2 Members

The General Assembly shall consist of one representative of each Party (hereinafter referred to as "Member"). Members shall have the rank of Departmental Director or above.

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 5.3.5 of this Consortium Agreement.

The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise by the General Assembly.

The Parties agree to abide by all decisions of the General Assembly.

This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Article 10.8 of this Consortium Agreement.

5.3 Operational procedures for the General Assembly

5.3.1 Representation in meetings

Any 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.

5.3.2 Preparation and organisation of meetings

5.3.2.1 Convening meetings:

The chairperson shall convene ordinary meetings of the General Assembly at least once every six months and shall also convene extraordinary meetings at any time upon written request of any Member.

5.3.2.2 Notice of a meeting:

The chairperson shall give notice in writing of a meeting to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

5.3.2.3 Sending the agenda:

The chairperson shall send each Member a written original agenda no later than 14 calendar days preceding the meeting, or 7 calendar days before an extraordinary meeting.

5.3.2.4 Adding agenda items:

Any agenda item requiring a decision by the Members must be identified as such on the agenda. Any Member may add an item to the original agenda by written notification to all of the other Members no later than 7 calendar days preceding the meeting.

5.3.2.5 During a meeting of the General Assembly the Members present or represented can unanimously agree to add a new item to the original agenda.

5.3.2.6 Any decision may also be taken without a meeting if the chairperson circulates to all Members a written document which is then signed by the defined majority of Members (see Article 5.3.3 of this Consortium Agreement).

5.3.2.7 Meetings of the General Assembly may also be held by teleconference or other telecommunication means.

5.3.2.8 Decisions will only be binding once the relevant part of the minutes has been accepted according to Article 5.3.5 of this Consortium Agreement.

5.3.3 Voting rules and quorum

5.3.3.1 The General Assembly shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).

5.3.3.2 Each Member shall have one vote.

5.3.3.3 Defaulting Parties may not vote.

5.3.3.4 Decisions shall be taken in consensus.

5.3.4 Minutes of meetings

5.3.4.1 The chairperson shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send draft minutes to all Members within 10 calendar days of the meeting.

5.3.4.2 The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes.

5.3.4.3 The chairperson shall send the accepted minutes to all the Members of the General Assembly, and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

5.3.5 Decisions of the General Assembly

The General Assembly 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 General Assembly:

Content, finances and intellectual property rights

- Proposals for changes of the EC- Framework Service Contract 387427 to be agreed by the European Commission
- Changes to the Consortium Plan (including the Consortium Budget)

Evolution of the Consortium

- Entry of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal
- 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
- Proposal to the European Commission for a change of the Coordinator
- Proposal to the European Commission for suspension of all or part of the Contract
- Proposal to the European Commission for termination of the Contract and the Consortium Agreement

Appointments

Agree on the Members of the Management Support Team, upon a proposal by the Coordinator.

In the case of abolished tasks as a result of a decision of the General Assembly, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

5.4 Coordinator

5.4.1 The Coordinator shall be the intermediary between the Parties and the European Commission and shall perform all tasks assigned to it as described in the EC- Framework Service Contract 387427 and in this Consortium Agreement.

5.4.2 In particular, the Coordinator shall be responsible for:

- Monitoring compliance by the Parties with their obligations
- Keeping the address list of Members and other contact persons updated and available
- Collecting, reviewing and submitting information on the progress of the Contract and reports and other deliverables (including financial statements and related certification) to the European Commission
- Preparing the meetings, proposing decisions and preparing the agenda of General Assembly meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings
- Transmitting promptly documents and information connected with the Contract,
- Administering the financial contribution of the Union and fulfilling the financial tasks described in Article 7.3
- 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.

5.4.3 If the Coordinator fails in its coordination tasks, the General Assembly may propose to the European Commission to change the Coordinator.

5.4.4 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party.

5.4.5 The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the EC- Framework Service Contract 387427 .

5.5 Management Support Team

The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the General Assembly and shall assist and facilitate the work of the General Assembly.

The Management Support Team shall provide assistance to the Coordinator for executing the decisions of the General Assembly. It shall be responsible for the day-to-day management of the Contract.

Section 6: Financial provisions

6.1 General Principles

6.1.1 Distribution of Financial Contribution

The financial contribution of the Union to the Contract shall be distributed by the Coordinator according to:

- the Consortium Budget
- the approval of reports by the European Commission, and
- the provisions of payment in Article 6.3.

A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.

6.1.2 Justifying Costs

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

6.1.3 Funding Principles

A Party which spends less than its allocated share of the Consortium Budget will be funded in accordance with its actual duly justified costs only.

A Party that spends more than its allocated share of the Consortium Budget will be funded only in respect of duly justified costs up to an amount not exceeding that share.

6.1.4 Financial Consequences of the termination of the participation of a Party

A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by the European Commission or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Article 4.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks. Any additional costs which are not covered by the Defaulting Party shall in principle be apportioned to the remaining Parties pro rata to their share in the total costs of the Contract as identified in the Consortium Budget.

6.2 Budgeting

The Consortium Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

6.3 Payments

6.3.1 Payments to Parties are the exclusive tasks of the Coordinator

In particular, the Coordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts
- undertake to keep the Community financial contribution to the Contract separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

6.3.2

The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following:

Funding of costs included in the Consortium Budget will be paid to Parties after receipt from the EU-Commission without undue delay and in conformity with the provisions of the EC- Framework Service Contract 387427. Costs accepted by the EU-Commission will be paid to the Party concerned, taking into account the amounts already paid for the reporting period concerned.

The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body to be in breach of its obligations under this Consortium Agreement or the EC- Framework Service Contract 387427 or to a Beneficiary which has not yet signed this Consortium Agreement. The Coordinator is entitled to recover any payments already paid to a Defaulting Party.

Section 7: Foreground

No foreground neither with individual nor joint ownership is foreseen in the Contract and thereby also not within the Consortium plan. Should such result although emerge the DESCA model shall be used as a base for agreements in this area. Such an Agreement requires a decision of the General Assembly.

Section 8: 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 9: Non-disclosure of information

- 9.1** All information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Contract during its implementation and which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

- 9.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the EC- Framework Service Contract 387427 , for a period of 5 years after the end of the Contract:
- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
 - not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
 - to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
 - to return to the Disclosing Party on demand 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. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only.
- 9.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Contract and/or after the termination of employment.
- 9.4 The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:
- the Confidential Information becomes publicly available 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 confidence by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
 - the disclosure or communication of the Confidential Information is foreseen by provisions of the EC- Framework Service Contract 387427 ;
 - 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 or
 - the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Art. 9.7 hereunder.
- 9.5 The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Contract as with its own confidential and/or proprietary information, but in no case less than reasonable care.
- 9.6 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.

- 9.7 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, 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 the information.
- 9.8 The confidentiality obligations under this Consortium Agreement and the EC- Framework Service Contract 387427 shall not prevent the communication of Confidential Information to the European Commission.

Section 10: Miscellaneous

10.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and

Attachment 1 Distribution of tasks and responsibilities

Attachment 2 Budget

In case the terms of this Consortium Agreement are in conflict with the terms of the EC- Framework Service Contract 387427 , the terms of the latter shall prevail. In case of conflicts between the attachments 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.

10.2 No representation, partnership or agency

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. 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.

10.3 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.

Formal notices:

If it is required in this Consortium Agreement (Article. 10.4) 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 or telefax with receipt acknowledgement.

Other communication:

Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

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

10.4 Assignment and amendments

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 not explicitly listed in Art 5.3.5 require a separate agreement between all Parties.

10.5 Mandatory national law

Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

10.6 Language

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

10.7 Applicable law

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

10.8 Settlement of disputes

All disputes or differences arising from the implementation of this Consortium Agreement shall be settled through negotiations between the Members. Any dispute which cannot be amicably settled by the General Assembly shall be finally settled through arbitration in Stockholm under the Rules of the Arbitration Institute at the Stockholm Chamber of Commerce (ICC). Arbitration shall be conducted in the English language.

The arbitration award shall be final and binding upon the Members of the Consortium, not subject to appeal, and honoured by the Members without having resort to any court; however, if the award is not carried out voluntarily and without delay, it shall be referred to and enforced by any court having jurisdiction over the subject matter or any of the parties or their assets."

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

SMHI Sveriges Meteorologiska Hydrologiska Institut

Bodil Aarhus Andrae
Director Core Services

2011-12-07

SHMU Slovenský hydrometeorologický ústav

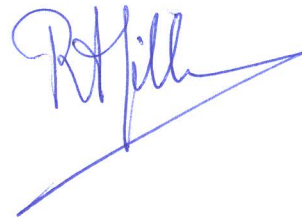
Name
Title

2011-12-07

RWS Rijkswaterstaat

Name
Title

Roeland HILLEN
acting director water mgd. centre



2011-12-07

Annex 1: SMHI 130076 Consortium Agreement, distribution of tasks and responsibilities 111207

Annex 2: SMHI 125399 EFAS Dissemination Budget Final (as in offer 110930)

Section 11: Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

SMHI Sveriges Meteorologiska Hydrologiska Institut



Bodil Aarhus Andrae
Director Core Services

2011-12-07

SHMU Slovenský hydrometeorologický ústav

Name

Title

2011-12-07

RWS Rijkswaterstaat Waterdienst

Name

Title

2011-12-07

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EFAS Dissemination Centre Consortium Agreement, 2011-12-07

Section 11: Signatures

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SHMI Sveriges Meteorologiska Hydrologiska Institut

Bodil Aarhus Andrae
Director Core Services

2011-12-07

SHMU Slovenský hydrometeorologický ústav

RNDr. Pavol Nejedlik, CSc.
Director general

 11. 5. 2012

2011-12-07

RWS Rijkswaterstaat Waterdienst

Name
Title

2011-12-07

**Annex 1: SMHI 130076 Consortium Agreement, distribution of tasks and responsibilities
111207**

Annex2: SMHI 125399 EFAS Dissemination Budget Final (as in offer 110930)