

APPENDIX B CONSORTIUM AGREEMENT**Article 1. Definitions**

(1) Words and expressions defined in the *Contract*, including its Annexes, have the same meaning in this *Agreement*.

(2) Without prejudice to the meaning of words or expressions that may be defined in other articles of this *Agreement*, the further additional definitions shall apply:

Agreement means this *Consortium Agreement*, including all its *Attachments*;

Contract means the *Contract* with the European Commission, including its Annexes;

Default means any non-performance or shortcoming, including delay, in performance of a *Consortium Institution*, whether with respect to the obligations under the *Contract* or with respect to the obligations under this *Agreement*;

IPR, Intellectual Property Rights, means all industrial and intellectual property of whatever nature anywhere in the world and all rights pertaining thereto, whether recorded or registered in any manner, or otherwise, including without prejudice to the foregoing generality, patents, trademarks, registered designs and applications for any of the same, copyright, design right, semi-conductor topography rights, database and software rights, mask works, trade secrets, know-how, business names, trade names, brand names and all other legal rights protecting intangible proprietary information;

Knowledge means knowledge arising from work carried out under the *Coordination Action*;

Network means the *Consortium Institutions'* co-operation as described and agreed in this *Agreement* to perform the *Coordination Action* and its related activities;

Network Budget means the allocation of resources, including the Community financial contribution and the *Consortium Institutions'* contributions of own resources, to the *Network activities*;

Additional Agreement(s) mean agreements between two or more of the *Consortium Institutions* beyond the scope and/or duration of this *Agreement*, whose legal validity shall be independent from the validity of this *Agreement*, but which are concluded during or as a result of the *Coordination Action* in the fields set forth in Annex I of the *Contract* in order to achieve a durable integration of activities and/or the sharing of assets or in order to otherwise determine details and modalities of intensifying co-operation of the *Consortium Institutions* in such fields;

(3) The words and expressions defined in this Article or elsewhere in this *Agreement* appear in italics beginning with capital letters.

Section A: Subject and Duration**Article 2. Subject and Scope**

(1) The subject of this *Agreement* is to specify with respect to the *Coordination Action* the organisation of the work between the *Consortium Institutions*, to organise the management of the *Coordination Action*, to define rights and obligations of the *Consortium Institutions*, including, but not limited to, their contribution, liability and indemnification, and to supplement the provisions of the *Contract*, including those concerning *Access rights* and to set out any other rights and obligations of the *Consortium Institutions* related to the *Coordination Action*, but not conflicting with those of the *Contract*.

(2) For the avoidance of doubt, the rights set forth in this *Agreement* shall only extend to the *Consortium*

Institutions hereto in their own legal personality and capacity and shall not extend to any third persons or parties even if such third party should be an affiliate of a *Consortium Institution*. No special rights or status are recognised for affiliates of *Consortium Institutions*, which are not parties to this *Agreement* in their own right. Unless provided otherwise in this *Agreement* or by mandatory law, no such rights may be assigned by a *Consortium Institutions* to a third party without having obtained the prior written agreement from all other *Consortium Institutions*.

Article 3. Agreements on Integration

(1) The provisions of this *Agreement* shall apply to and thus rule and regulate all activities, contributions and obligations agreed upon among the *Consortium Institutions* in the current *Programme of Networking Activities*.

(2) In order to achieve the objectives of the *Coordination Action*, *Consortium Institutions* may also conclude, during and/or as a result of the *Coordination Action*, *Additional Agreements* in the fields set forth in the *Contract* beyond the scope and duration of this *Agreement*, in order to achieve a durable integration of activities and/or the sharing of assets or in order to otherwise determine details and modalities of intensifying co-operation of the *Consortium Institutions* in such fields. In such case, the *Consortium Institutions* concerned will conclude agreements in writing to specify their respective mutual rights and obligations. Where such *Additional Agreement* is to be concluded during the *Coordination Action* the *Consortium Institutions* concerned shall inform beforehand the other *Consortium Institutions* in the *Steering Committee* of their intent to conclude such an *Additional Agreement*.

Article 4. Duration

(1) An organisation becomes a *Consortium Institution* upon signature of this *Agreement* by a duly authorised representative.

(2) Upon and as from the date of signature by at least five *Consortium Institutions*, this *Agreement* shall enter into force for these *Consortium Institutions*. For all other *Consortium Institutions* signing this *Agreement* before signature of the *Contract*, it enters into force upon signature.

(3) For all and any *Consortium Institutions* intending to accede to this *Agreement* after signature of the *Contract*, the provisions of **Article 39 (Accession)** of this *Agreement* shall apply. For those *Consortium Institutions* this *Agreement* shall enter into force as from the date of signature or the respective decision of accession by the *Steering Committee*, whichever is the later.

(4) Without prejudice to the provisions of **Article 42 (Survival of Provisions)** of this *Agreement*, this *Agreement* shall continue in full force and effect

a) until the fulfilment the *Contract* and complete discharge of all obligations for the carrying out of the *Coordination Action* undertaken by the *Consortium Institutions* under the *Contract* or under this *Agreement*, whichever is the later, or

b) until terminated earlier in accordance with **Articles 40 (Termination)** or **41 (Withdrawal)** of this *Agreement*.

Section B: Organisation and Management

Article 5. ENCORA network

(1) *ENCORA* is a Network of Networks. It is based on National Coastal Networks, Thematic Coastal Networks and International Coastal Networks. These networks cooperate through a common *Programme of Networking Activities*.

(2) The membership of the *ENCORA Network* is open to institutions (*Member Institutions*) and to individuals (*Participants*).

- (3) The *ENCORA Network* is established by a *Consortium of Institutions*, each responsible for
- a National Coastal Network, and/or
 - a European Thematic Coastal Network, and/or
 - an International Coastal Network, and/or
 - a Coordination Office.
- (4) The *ENCORA Network* is built on different substructures and organizations listed below:
- National Networks
 - International Networks
 - Member Institutions
 - National Coordinating Institutions
 - National Coordination Offices
 - Thematic Networks
 - Theme Participants
 - Theme Coordination Institutions
 - Theme Coordination Offices
 - ENCORA Coordinator
 - ENCORA Coordination Office
 - Workpackages
 - Executive Committee
 - Steering Committee
 - Advisory Board
- (5) A description of these substructures and organisations, their role and responsibilities, is given hereafter.

Article 6. National Networks

- (1) *National Networks* fulfil a coordination function and facilitate knowledge-sharing between institutions based in a particular country, with expertise in the field of coastal science, policy or practice.
- (2) The agreements made between *Member Institutions* of the *National Networks* are in line with the objectives of the *ENCORA Network* and contribute to the realisation of the *ENCORA* objectives.

Article 7. International Networks

- (1) *International Networks* fulfil a coordination function and facilitate knowledge-sharing between institutions based in a different countries, with expertise in the field of coastal science, policy or practice.
- (2) The agreements made between *Member Institutions* of the *International Networks* are in line with the objectives of *ENCORA* and contribute to the realisation of the *ENCORA* objectives.

Article 8. Member institutions

- (1) In order to become a *Member Institution* of the *Network*, an institution must adhere to a national or international network coordinated by an *ENCORA Consortium Institution*.
- (2) *Member Institutions* belong to any of the following categories:
- Universities and institutes involved in research on European coastal zones
 - Coastal engineering, planning and consulting companies, firms or bodies
 - Coastal policy and management authorities
 - Coastal stakeholder organisations
- (3) *Member Institutions* are represented in the *Steering Committee* by the coordinator of their *National* or *International Coastal Network*.

(4) *Member Institutions* agree to contribute to the knowledge-sharing mechanisms established by *ENCORA* and stimulate their staff to participate in activities to facilitate cooperation and sharing of knowledge and experience on coastal issues Europe-wide.

(5) *Cooperation projects* are funded by the *Member Institutions* which propose them, as part of their regular research programme. The definition of the research objectives of each particular *cooperation project* and their realisation are the only responsibility of the *Member Institutions* which propose it.

Article 9. National Coordination Institution

(1) Each *National Network* has appointed a *Coordinating Institution*.

(2) The *Coordination Institution* is responsible for:

- implementation of the *Programme of Networking Activities* approved by the *ENCORA Steering Committee*,
- annual reporting on the performance of the *ENCORA Coordination Office* and *National Coordination Offices*,
- implementation of recommendations for improvement by the *Steering Committee*,
- quality and timing of the deliverables,
- administrative and financial management of the *National Network*.

Article 10. National Coordination Office

(1) Each *National Coordinating Institute* appoints a *Coordinator* and establishes a *Coordination Office*, which assists the *Coordinator* at the implementation of the *Networking Mechanisms* and at other coordination and management tasks.

(2) The *Coordination Office* is hosted by the *Coordinating Institution* or by a *Host Institution*.

Article 11. Thematic Networks

(1) A number of *Thematic Networks* will be implemented, which address coastal issues shared by many member states:

- Social and economic aspects of ICZM
- Multi-functionality and Valuation
- ICZM Participation and Implementation
- Coastal and marine spatial planning
- Pollution, prevention and mitigation
- Long-term geomorphologic change and climate impacts
- Effect of development and use on eco-morphology and coastal habitats
- Assessment of biodiversity change
- New sustainable coastal engineering techniques
- Assessment of field observation techniques
- Capacity building, education and training

(2) The *Thematic Networks* promote and facilitate Europe-wide knowledge-sharing and cooperation related to the theme issues

(3) Therefore the *Thematic Networks* organise meetings, seminars and workshops on the state of the art, on benchmarking knowledge, tools and practices, on training and education curricula and on European Actions for addressing priority issues.

Article 12. Theme Participants

(1) Registration to an *ENCORA Thematic Network* is open to any individual with knowledge and experience pertaining to this theme, not restricted to staff of *ENCORA Member Institutions* and not restricted to the

countries where a *National Network* is established. Individuals who have registered to one or several of the *ENCORA Thematic Networks* are called *ENCORA participants*.

(2) *Theme participants* are represented in the *Steering Committee* by the coordinator of their *Thematic Network*.

(3) *Theme participants* agree to contribute to the knowledge-sharing mechanisms established by *ENCORA* and participate in activities to facilitate cooperation and sharing of knowledge and experience on coastal issues Europe-wide.

Article 13. Theme Coordination Institution

(1) Each *Thematic Network* is coordinated by a *Coordination Institution*

(2) The *Theme Coordination Institution* appoints a *Theme Coordinator* with outstanding experience in the specific theme issue.

(3) The appointment of a *Theme Coordinator* is subject to approval by the *Steering Committee*.

(4) The *Theme Coordinator* develops together with the *Theme Participants* a *Theme Programme*, which is submitted for approval to the *Steering Committee*.

(5) The *Theme Coordinator* is responsible for:

- implementation of the *Theme Programme* approved by the *Steering Committee*,
- reporting on the results of the *Theme Programme*,
- implementation of recommendations for improvement by the *Steering Committee*,
- quality and timing of the deliverables,
- administrative and financial management of the *Thematic Network*.

Article 14. Theme Coordination Office

(1) Each *Theme Coordination Institution* establishes a *Theme Coordination Office*, which assists the *Coordinator* at the implementation of the *Theme Programme* and at any other coordination and management tasks.

(2) The *Theme Coordination Office* is hosted by the *Coordinating Institute* or by a *Host Institution*.

Article 15. ENCORA Co-ordinator

(1) The *ENCORA Co-ordinator* shall be the intermediary between the *Consortium Institutions* and the *Commission* in relation to the *Consortium Institutions'* obligations as *Contractors* under the *Contract*.

(2) The *ENCORA Co-ordinator* shall promptly perform all tasks assigned to it pursuant to the *Contract* and shall do so in the interest of all *Consortium Institutions* and as further described in this *Agreement*.

(3) Additional tasks shall be performed by the *ENCORA Co-ordinator* to the extent as determined in this *Agreement*, or as otherwise agreed upon between the *Consortium Institutions* in the *Programme of Networking Activities*.

(4) To this end, the *ENCORA Co-ordinator* shall appoint and make promptly known to all *Consortium Institutions* and their representatives involved in the *Coordination Action*, the person(s) in charge of the execution of the *ENCORA Co-ordinator's* tasks.

(5) With respect to the *ENCORA Co-ordinator's* tasks under paragraph (2) of this **Article**, the *ENCORA Co-ordinator* shall in particular be responsible for:

- assistance in the *Executive Committee* in the overall follow-up of the performance of the tasks and activities and deliverables to be provided by the *Consortium Institutions* under the *Contract* as well as information of the representatives of the other *Consortium Institutions* on any non-performance;
- upon timely approval by the *Steering Committee* where necessary, transmission of reports and other deliverables to the *Commission*;
- timely delivery of cost and other statements as well as financial audit certificates from the *Consortium Institutions* to the *Commission*;
- forwarding any documents and information connected with the *Contract* performance to the *Executive Committee* and the *Consortium Institutions* concerned;
- performing in due diligence its tasks in the proper administration of any funds and maintaining financial accounts as provided for in **Articles 30 (Custody)** and **31 (Payments)** of this *Agreement*;
- arranging for the payment and, in case of *Default*, the withholding of payments allocated among the *Consortium Institutions* in accordance with the respective *Programme of Networking Activities* and in consideration of any agreement in a *Work Package* in accordance with **Article 17 (Work Packages)** paragraph (7) of this *Agreement*;
- upon prior information to the members of the *Executive Committee*, administering and forwarding any unilateral requests for the termination of a *Consortium Institution's* participation in the *Contract* to the *Steering Committee* and the *Commission*.

(6) If one or more *Consortium Institutions* is late in submission of deliverables under the *Contract*, the *ENCORA Co-ordinator* may submit the other *Consortium Institutions'* deliverables to the *Commission*. If the *Steering Committee* is late in the approval of reports, the *ENCORA Co-ordinator* may submit earlier drafts of the reports to the *Commission*.

(7) Besides its other tasks, the *ENCORA Co-ordinator* shall also administer and prepare minutes of meetings and shall provide the chairperson of the *Steering Committee* and, if so determined, the *Executive Committee*;

(8) Neither the *ENCORA Co-ordinator*, nor any of its representatives shall be entitled to act or to make legally binding declarations on behalf of the *Consortium Institutions* altogether or on behalf of a single party to this *Agreement* or to enlarge its role beyond the one described herein and in the *Contract*.

Article 16. ENCORA Coordination Office

(1) Personnel or other resources are made available for administrative support of the *Network activities*, in accordance with the *Contract*.

(2) The *ENCORA Coordination Office* shall assist the *Executive Committee* as well as the *Steering Committee*, the *Advisory Board* and the *ENCORA Co-ordinator* in the fulfilment of administrative and organisational tasks in accordance with the *Programme of Networking Activities*

(3) The costs of administrative support are included in the *Network Budget*.

(4) The members of the *ENCORA Coordination Office* shall not be entitled to act or to make legally binding declarations on behalf of the *Consortium Institutions* altogether nor on behalf of a single party to this *Agreement*.

Article 17. Work Packages and Work Package teams

(1) In order to achieve and to carry out the *Programme of Networking Activities*, the *Consortium Institutions* shall establish *Work Packages* as described in the *Contract*, not later than thirty (30) calendar days after the entry into force of this *Agreement* or after the revision of or agreement on the *Programme of Networking Activities* that defines such *Work Package*, whichever is the later.

(2) Each *Work Package* shall consist of a team, to which each of the *Consortium Institutions* taking part in the respective line of activity appoints one or more team members as decided by the *Steering Committee* in the respective *Programme of Networking Activities*. Substitutes may be appointed as well. Each *Consortium Institution* shall have the right to revoke appointment of its team member(s). In such case, the respective

Consortium Institution shall immediately appoint a new member.

(3) Each *Work Package* shall be chaired by a *Work Package member* appointed as chairperson for such task by the *Steering Committee*. A deputy chairperson shall also be appointed.

(4) Each *Consortium Institution* participating in a *Work Package* shall be responsible for the coordination of the activities allocated to such *Work Package* in the *Programme of Networking Activities*.

(5) Meetings of the *Work Package team* shall take place as required in accordance with the *Programme of Networking Activities*. Meetings may also take place via audio or video teleconferences.

(6) The *Consortium Institutions* participating in a *Work Package* shall be in particular responsible for:

- prepare and update a work plan and budget plan for its line of activity in conformity with the *Programme of Networking Activities*, to be forwarded to the *Executive Committee* and the *Steering Committee*;
- follow-up and report on the use of the *Network Budget* with respect to this *Work Package* in general and in respect of the *Consortium Institutions* participating in such *Work Package* in detail and report on any reallocations;
- delivery of progress reports to the *Executive Committee*, not later than on the dates set out for such delivery in the *Programme of Networking Activities*
- preparation of deliverables and of their presentation towards the *Commission* via the *ENCORA Co-ordinator*, satisfying respective reporting requirements;
- preparation of proposals to the *Executive Committee* for new *Consortium Institutions* to this *Agreement* and/or proposals for the accession of new *Consortium Institutions* to the *Contract* for the purpose of participation in the activities of the *Work Package*;
- alerting the *Executive Committee* and the *ENCORA Co-ordinator* in case of a delay in the implementation of the *Work Package* activities or in case of *Default* of any *Consortium Institution* with respect to its participation in the *Work Package's* activities;
- analysing and documenting any *Default* of a *Consortium Institution* in relation to the *Work Package's* activities and prepare a respective proposal for an action plan to the *Executive Committee*;
- deciding on any transfer of tasks and activities allocated in the *Programme of Networking Activities* – including any financial re-allocations which are neutral to the total of the *Work Package's* budget – between the *Consortium Institutions* participating in the *Work Package*, except in the case that this exchange has an impact beyond the scope of the *Work Package* activities within the overall *Programme of Networking Activities*.

(7) Each *Work Package member* shall have one vote. The *Work Package members* shall not deliberate and decide validly unless two thirds of its members are present or represented. In the cases of paragraph (6), decisions shall be taken unanimously by all members of the *Work Package* present or represented. In all other cases, while consensus among the *Work Package members* should be a general aim, decisions shall be taken by a majority of two thirds of the votes of the *Work Package members* present or represented. A *Consortium Institution* shall have no vote in decisions relating to its own *Default*.

(8) The chairpersons of the *Work Packages* shall coordinate each *Work Package's* activities and maintain the documentation of these activities. The chairpersons of the *Work Packages* shall also present the *Work Packages'* decisions and conclusions to the *Executive Committee* and the *Steering Committee*. They shall further transmit any documents and information in relation to the *Work Package* activities between the *Consortium Institutions* concerned and to the *ENCORA Co-ordinator*.

(9) All *Work Package* meetings shall be minuted by the *Work Package members* on the basis of rotation. The minutes shall record inter alia all decisions taken and shall be sent to all members within thirty (30) calendar days. The minutes shall be considered as accepted, if until the next meeting of the *Work Package* no member or attendee has objected against the minutes.

Article 18. Executive Committee

(1) The *Executive Committee* consists of all the *Work Packages chairpersons* and the representative(s) of the *ENCORA Co-ordinator* appointed according to **Article 15(4) (Co-ordinator)** of this *Agreement*. In the case of unavailability of a chairperson of a *Work Package*, the deputy chairperson of such *Work Package* shall

take his/her place in the *Executive Committee*.

(2) The *Executive Committee* shall perform the management and coordination of the *ENCORA Network* and co-ordinate its operability. It shall in particular be in charge of coordinating the activities within the *Network* and prepare the decisions of the *Consortium Institutions* within the *Steering Committee*. In particular its members shall in accordance with this *Agreement* and the decisions of the *Steering Committee* be responsible for the following:

- co-ordinating its own tasks and those of the *Work Packages* with respect to the implementation of the current *Programme of Networking Activities*;
- initiating, co-ordinating and adapting the proposals of the *Work Packages* and its plans regarding its own tasks for updating the *Programme of Networking Activities* and, on this basis, prepare an overall draft for the *Programme of Networking Activities*, including the *Network Budget*, and present such plan to the *Steering Committee* for decision;
- the overall follow-up of the performance of the tasks and activities and deliverables to be provided by the *Consortium Institutions* under the *Contract* and the current *Programme of Networking Activities* as well as information of the representatives of the other *Consortium Institutions* on any non-performance;
- providing regular information to the *Consortium Institutions* on the overall *Network activities* and, distribution of any documents and exchange information with respect to the *Network activities* to and between the *Work Packages* and the *Consortium Institutions* concerned;
- drawing up and compiling the reports to be delivered by the *Consortium* to the *Commission*;
- supporting the *ENCORA Co-ordinator* in the preparation of meetings with the *Commission* and in the compilation of related data;
- preparing proposals of the *Steering Committee* for the acceptance of new *Consortium Institutions* to this *Agreement* and the accession of new *Consortium Institutions* to the *Contract*,
- the implementation of any such accession of new *Consortium Institutions*;
- drawing up proposals to the *Steering Committee* for the review and/or amendment of terms of the *Contract* or to the *Consortium Institutions* for the review and/or amendment of terms of this *Agreement*;
- in accordance with the decisions of the *Steering Committee* and the provisions of this *Agreement* and any amendments thereto, implementing and deciding on the application of measures of controls and audit procedures in order to ensure the effective day-to-day coordination and monitoring of the *Network activities*;
- comment on proposals by the *Work Package* dealing with *IPR* in accordance with the provisions of **Article 35 (Relation to Contract Provisions)** of this *Agreement*, on additional procedures and policies on management of *Knowledge* and submit the proposals and its comments to the *Steering Committee* for approval;
- review of a *Work Package's* documentation on the *Default* of a *Consortium Institution*, compile a report on such *Default* to the *Steering Committee* and propose actions to be taken against the *Defaulting Party* to the *Steering Committee* in accordance with **Article 19(2) (Steering Committee)** of this *Agreement*;
- subject to other provisions of this *Agreement*, propose modalities for any additional rules for the financial management of funds;
- propose the establishment of any advisory committees, including the appointment of its members;
- propose to the *Steering Committee* the decision to suspend all or part of the *Coordination Action* or to terminate all or part of the *Contract*, including the modalities of such termination with respect to ongoing activities; or propose a decision regarding a request by the *ENCORA Co-ordinator* to the *Commission* to terminate the participation of one or more *Consortium Institutions* in the *Contract*;
- co-ordination of agreements or activities in accordance with the *Contract* on publications or press releases by *Consortium Institutions* or by the *Commission* and co-ordinate the required actions and agreements on planned press releases or publications in accordance with the provisions of **Article 38 (Publication)** of this *Agreement*;

(3) In case of the *Default* of the *ENCORA Co-ordinator* in the performance of its tasks as *ENCORA Co-ordinator*, at least two members of the *Executive Committee* acting jointly shall document such *Default* and bring the issue to the vice-chairperson of the *Steering Committee*, who shall inform the *Consortium Institutions* of the issue for a decision to be taken within the *Steering Committee*.

(4) The *Executive Committee* shall be chaired by the representative(s) of the *ENCORA Co-ordinator* for a period of one year. Thereafter the *Executive Committee* shall nominate a chairperson, to be appointed by the *Steering Committee* for a period of one year. Reappointments of the same chairperson shall be possible. The chairperson of the *Executive Committee* shall usually be responsible for the transmission and presentation of the proposals of the *Executive Committee* to the *Steering Committee*.

(5) Meetings of the *Executive Committee* shall take place at least once per six (6) months or upon request by any of its members. The meetings shall be convened by the *ENCORA Co-ordinator* with a notice period of fourteen (14) calendar days. The convocation shall identify the agenda of the meeting, all decisions to be taken and be accompanied by the necessary supporting material and documentation for such decision. Any member of the *Executive Committee* may suggest any additional agenda items by giving notice of such request to all other members not later than 36 hours in advance to the meeting. Notice periods may be waived by unanimous agreement from all members of the *Executive Committee*.

(6) In the decisions of the *Executive Committee* each *Work Package chairperson* or their deputies shall have one vote; the representative(s) of the *ENCORA Co-ordinator* not acting as *Work Package chairpersons* shall have no voting rights arising from their capacity as representatives of the *ENCORA Co-ordinator*. Decisions in meetings of the *Executive Committee* shall require a quorum of all members of the *Executive Committee* either being present or represented by deputies. Decisions shall be taken by a majority of two thirds of the votes of those present or represented. The chairperson of a *Work Package*, whose tasks or activities are existentially impacted by such decision, may object to such decision. In such case the matter, shall be brought to and decided in the *Steering Committee*, where the reasons for the decision as well as the reasons for the objection shall be presented.

(7) Meetings of the *Executive Committee* may also be held

- without the prior notices required under this **Article** paragraph (5), and/or
- via audio- or video-conferences and/or
- decisions required to be taken or permitted to be taken by the *Executive Committee* may be taken via email, on the pre-condition that all other members of the *Executive Committee* receive copies of all related communications from all other members.

(8) All meetings and decisions of the *Executive Committee*, including those based on non-personal meetings according to paragraph (7) of this **Article**, shall be minuted by the *ENCORA Co-ordinator* and agreed upon by the members who attended that meeting. The minutes shall record inter alia all decisions taken and shall be sent to all members within seven (7) calendar days after the meeting. The minutes shall be considered as accepted, if until the next meeting of the *Executive Committee* no member or attendee has objected against the minutes towards the *ENCORA Co-ordinator*. Thereafter, the chairperson of the *Executive Committee* shall sign the minutes. The original minutes thus compiled and signed shall be kept by the *ENCORA Co-ordinator* and serve as prima facie evidence for the decisions taken. The *ENCORA Co-ordinator* shall distribute copies to all members and attendees.

(9) Unless otherwise decided by the *Steering Committee*, the members of the *Executive Committee* may attend meetings of the *Steering Committee*. They shall have the right to speak at these meetings and shall give any explanations requested by the *Consortium Institutions'* representatives to the *Steering Committee*, but shall have no right to vote at said meetings.

(10) Neither the *Executive Committee* nor its chairperson or any of its members, including in their position as *Work Package chairpersons*, shall be entitled to act or to make legally binding declarations on behalf of the *Consortium Institutions* altogether or on behalf of a single *Consortium Institution* to this *Agreement* nor shall a member enlarge its role beyond the one described herein.

Article 19. Steering Committee

(1) Members of the *Steering Committee* are:

- the *ENCORA Coordinator*,
- the *Coordinators* of the *National Networks*
- the *Coordinators* of the *Thematic Networks*

(2) The *Steering Committee* shall, in accordance with this *Agreement* and the *Contract*, take the necessary decisions relating to the *Network* and shall in this regard particularly deal with the following:

- with respect to the *Consortium Institutions* obligations under the *Contract* and their relation with the *Commission*, any revision of the current *Programme of Networking Activities* and adoption of any new *Programme of Networking Activities*;

- on a twelve-months basis, adoption and any revision of the *Programme of Networking Activities* in accordance with **Article 22 (Obligations)** of this *Agreement*;
- on a twelve-months basis, agreement on the *Network Budget* (as part of the *Programme of Networking Activities*);
- exchange of information on any third party receipts by a *Consortium Institution* in relation to the *Network activities*;
- in accordance with **Article 17 (Work Packages)** of this *Agreement*, establishment of *Work Packages* for the implementation of the *Programme of Networking Activities* as well as appointment and revocation of appointment of the respective *Work Package* chairpersons and, after the first year of the *Coordination Action*, of the chairperson of the *Executive Committee*;
- establishment of an *Advisory Board*, including the appointment, revocation of appointment and determination of the rules for selection of its members in accordance with **Article 21 (Advisory Board)** of this *Agreement*;
- in a manner not unduly obstructing the timely delivery of such reports, approval of any reports to be delivered under the *Contract*;
- acceptance of new *Consortium Institutions* to this *Agreement*;
- the acceptance of new *Consortium Institutions* to the *Contract*, in consideration of the respective steps to be taken in such case in accordance with the *Contract* including the modalities of the accession process;
- the amendment of terms of this *Agreement*
- the review and/or amendments of terms of the *Contract*;
- subject to and in accordance with the provisions of **Article 35 (Relation to Contract Provisions)** of this *Agreement*, deciding on additional procedures and policies on management of *Knowledge*;
- in case of the *Default* of a *Consortium Institution*, decision on any actions to be taken, including decisions on serving any notices required and a request to the *Commission* for an audit on *Contract issues*, assign such *Consortium Institution's* tasks and if appropriate to agree upon a new entity to join the *Consortium* for that purpose;
- in case of a *Default* of the *ENCORA Co-ordinator* in the performance of its tasks as a *ENCORA Co-ordinator*, this also includes the possible nomination of a new *ENCORA Co-ordinator*;
- appointing additional *Signatories* for the withdrawal of funds in accordance with **Article 30 (Custody)** of this *Agreement*;
- agreement on the suspension of all or part of the activities under this *Agreement* or the *Coordination Action*, or to terminate all or part of the *Contract*, and the modalities for such suspension or termination, including bringing forward such proposal to the *Commission*;
- any decision to instruct the *ENCORA Co-ordinator* to ask the *Commission* on behalf of the *Consortium* to terminate the participation of one or more *Consortium Institutes*.

(3) The Steering Committee may, upon request by a *Consortium Institution* and after hearing the members of the *Executive Committee*, also overrule any decision taken by the *Work Package teams* and by the *Executive Committee*

(4) Each Party in the *Steering Committee* shall have one vote. The *Consortium Institutions* shall not deliberate and are not able to decide validly in the *Steering Committee* unless all of the *Consortium Institutions* but two are represented in the respective meeting and the *Steering Committee* has been duly convened in accordance with the provisions of **Article 20(4) (Steering Committee Meetings)** of this *Agreement*. This provision is without prejudice to the possibility of the *Consortium Institutions* to take a decision in accordance with **Article 20(5) (Steering Committee Meetings)** of this *Agreement*.

(5) A unanimous decision shall be required with respect to any issue involving a change in the task and/or the funding allocated to one or several partners. In all other cases, decisions of the *Steering Committee* shall be taken by a majority of two thirds of the votes of the *Consortium Institutions* present or represented in the *Steering Committee*. Decisions relating to amendments and modifications of the main body of this agreement are subject the provisions of Article 53 (2). For decisions relating to the *Default* of a *Consortium Institution*, the vote of this party shall not be required nor counted.

Article 20. Steering Committee Meetings

(1) The first meeting of the *Steering Committee* shall take place not later than thirty (30) calendar days after the *ENCORA Co-ordinator* has signed the *Contract* in order to take the first decisions for setting up the

Network. Thereafter, the *Steering Committee* meetings shall take place at least once every twelve (12) months.

(2) Additional meetings may be convened at a time that is mutually agreed between the *Consortium Institutions* upon a written request by one *Consortium Institution* to the *ENCORA Co-ordinator*.

(3) The meetings of the *Steering Committee* shall be prepared by the *Executive Committee* and/or the *ENCORA Management Office*.

(4) The meetings shall be convened by the *ENCORA Co-ordinator* by a notice to be sent to the representatives of all the *Consortium Institutions* involved not less than thirty (30) calendar days before the date of the meeting. The notice shall be accompanied by the draft agenda prepared by the *Executive Committee* and/or the *ENCORA Management Office*. All necessary background information on any decisions proposed to be taken shall be delivered in readable format by any regular means of communication. Each *Consortium Institution* may suggest any additional agenda items by notice to all other *Consortium Institutions* at least seven (7) calendar days prior to the meeting date.

(5) In emergency situations, determined as such by the *ENCORA Co-ordinator* and two other members of the *Executive Committee*, meetings of the *Steering Committee* may also be held:

- without the prior notices required in the preceding paragraph, and/or
- via audio- or video-teleconferences and/or
- decisions required to be taken or permitted to be taken by the *Steering Committee* may be taken via email on the pre-condition that all other members of the *Steering Committee* receive copies of all related communications.

In any such cases, in derogation of **Article 19(4) (Steering Committee)** of this *Agreement*, a decision taken in such way or in such meeting is only taken validly, if a consent in writing, setting forth the decision so taken, is signed by all *Consortium Institutions'* representatives to the *Steering Committee* and sent to the *ENCORA Co-ordinator* with a copy to the other *Consortium Institutions'* representatives.

(6) If not decided otherwise by the *Steering Committee*, the meetings shall be chaired by the representative of the *ENCORA Co-ordinator* appointed to the *Steering Committee*. A vice-chairperson shall be elected from among the other representatives.

During deliberations and decisions relating to the tasks of the *ENCORA Co-ordinator*, the meeting shall be chaired by the vice-chairperson or, failing the presence of the vice-chairperson in a meeting, by a chairperson to be elected from among the other *Consortium Institutions'* representatives present at the meeting.

(7) Unless decided otherwise in the *Steering Committee*, the *ENCORA Co-ordinator* may also invite one or more representatives from the *Commission* to attend the meetings of the *Steering Committee* during its deliberations related to the *Contract*. In such case, the representatives of the *Commission* shall have speaking rights.

(8) The meetings in the *Steering Committee* shall be minuted by the *ENCORA Co-ordinator*. The minutes shall record inter alia all decisions taken. A draft of the minutes shall be sent to the representatives of the *Consortium Institutions* to the *Steering Committee* and all participants to the meeting within thirty (30) calendar days after the closing date of the meeting. The minutes shall be considered as accepted, if within twenty (20) calendar days, no objections against the minutes have been raised. The original minutes shall be kept by the *ENCORA Co-ordinator* and serve as prima facie evidence for the decisions taken. The *ENCORA Co-ordinator* shall distribute copies to all the *Consortium Institutions'* representatives.

Article 21. Advisory Board

(1) The *Steering Committee* may decide on the establishment of an *Advisory Board* in accordance with **Article 19 (Steering Committee)** of this *Agreement*.

(2) In such case, the *Advisory Board* shall consist of representatives of national or international coastal networks or representatives of institutions with a broad national or international coastal network. The members of the *Advisory Board* shall be appointed by unanimous decision of the *Consortium Institutions'*

representatives in the *Steering Committee* and according to a selection procedure to be agreed upon within the *Steering Committee*. The rules and agreements related to the appointment must ensure that matters of confidentiality are observed and that all members of the *Advisory Board* sign a non-disclosure agreement.

(3) The *Advisory Board* should deliberate on matters related to sharing of knowledge and formulate recommendations to the *Steering Committee* and *Executive Committee* and can also be requested by the *Steering Committee* and the *Executive Committee* to deliberate on further specific topics. To this end, the *Advisory Board* shall in particular formulate recommendations to the *Steering Committee* and the *Executive Committee* on:

- the content, planning and execution of the *Consortium Institutions' Programme of Networking Activities*;
- the impact of the *ENCORA networking mechanisms*;
- increasing the effectiveness of the *ENCORA networking mechanisms*;
- the establishment of operational links with other networks;
- tuning the activities of *ENCORA* with activities of other networks;
- promoting joint execution of activities;
- promoting and facilitate sharing of knowledge, experience, tools and data;
- priorities for future research and stimulate joint proposals ;
- any particular topic requested by the *Consortium*.

(4) The *Advisory Board* shall meet at least once per year or upon request by the *Steering Committee* or the *Executive Committee*. The *Advisory Board* shall elect a moderator for its deliberations and take its decisions according to internal rules to be agreed upon by the *Advisory Board* and approved by the *Steering Committee*.

(5) The *Advisory Board* shall not be entitled to act or to make legally binding declarations on behalf of the *Consortium Institutions* altogether or on behalf of any party to this *Agreement*. Should the *Steering Committee* or the *Executive Committee* not follow the recommendations of the *Advisory Board*, the reasons for such decision must be recorded in the respective minutes of meeting.

(6) The *Steering Committee* or the *Executive Committee* may invite the members of the *Advisory Board* to attend their meetings in order to give further explanations on its recommendations.

Section C: Performance responsibilities of the Consortium Institutions

Article 22. Obligations - Programme of Networking Activities

(1) The obligations of the *Consortium Institutions* are specified in the *Contract* and in this *Agreement*.

(2) The *Consortium Institutions* shall fulfil these obligations by carrying out the *Programme of Networking Activities*.

(3) The *Programme of Networking Activities* provides a description and a planning schedule of the *Work Packages* to be carried out for the fulfilment of the *Contract* obligations, excluding *Work Package 1 Project Coordination*.

(4) Every twelve months an updated *Programme of Networking Activities* is adopted by the *Steering Committee*, in accordance with **Article 19(2) (Steering Committee)** of this *Agreement*.

(5) The first *Programme of Networking Activities* is described in the *Contract* with the *Commission*.

(6) In the adoption of any subsequent *Programme of Networking Activities*, a *Consortium Institution* may only refuse to contribute additional resources beyond the contributions that would be due to meet the agreed level of integration stated in the *Contract*.

Article 23. Responsibilities of the Consortium Institutions and liability

(1) Each *Consortium Institution* hereby undertakes to use all reasonable endeavours to perform and fulfil, promptly, and on time, all of its obligations under the *Contract* and this *Agreement*, to be actively engaged to fulfil the purpose and objectives of the *Coordination Action* and act in a spirit of cooperation and mutual trust. For the avoidance of doubt, this includes that the *Consortium Institutions* shall also make all reasonable endeavours to provide their respective contributions to deliverables, information, and reports as required for the *Work Packages*, the *Executive Committee* and the *ENCORA Co-ordinator* to fulfil their tasks under the *Contract* and this *Agreement*.

(2) Without prejudice to the *Consortium Institutions* information obligations under the *Contract*, each *Consortium Institution* undertakes to notify the *Executive Committee* via the appropriate *Work Package* chairperson promptly of any significant problem or delay likely to affect the success of the *Coordination Action*.

(3) Each *Consortium Institution* shall use reasonable endeavours to ensure the accuracy of any information or materials it supplies under this *Agreement* or under the *Contract* and promptly to correct any error therein, of which it is notified. The recipient *Consortium Institution* shall be entirely responsible for its own use to which it puts such information and materials and the supplying *Consortium Institution* shall be under no obligation or liability other than as stated in this **Article**, paragraph (4), and no warranty condition or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or fitness for purpose of such information or materials. The latter shall not apply for the *ENCORA Co-ordinator*, only to the extent that the *ENCORA Co-ordinator* may rely on the accuracy of the information or materials received for the purpose of transmission to the *Commission*.

(4) Each *Consortium Institution* agrees not to use knowingly, as part of a deliverable or in the design of such deliverable or in any information supplied hereunder or under the *Contract*, any proprietary rights of a third party for which such *Consortium Institution* has not acquired the right to grant licences and user rights to the other *Consortium Institutions* in accordance with the *Contract*, unless all of the other *Consortium Institutions* have accepted such use in writing, such acceptance not to be unreasonably withheld.

(5) Without prejudice to any specific provisions of the *Contract* or this *Agreement*, each *Consortium Institution* shall be solely liable for any loss, damage or injury to other *Consortium Institutions* resulting solely from the performance of its obligations under this *Agreement*.

(6) No *Consortium Institution* shall be responsible to any other *Consortium Institution* for indirect or consequential loss or damages such as, but not limited to, loss of profit, loss of revenue, or loss of contracts. A *Consortium Institution's* liability towards the other *Consortium Institutions* shall be limited to the total maximum amount such *Consortium Institution* would have been entitled to receive from the *Commission* under the current *Programme of Networking Activities*.

(7) Where the *Commission*, in accordance with the provisions in the *Contract*, claims any reimbursement, or payment of damages from a *Consortium Institution*:

- each *Consortium Institution*, to the extent that its default has caused or contributed to the claim made, shall be responsible according to paragraph (6) of this **Article**, and
- in the event that it is not possible to attribute default to any *Consortium Institution* any liability to the *Commission* shall be apportioned between the *Consortium Institutions* pro rata to the amount such *Party* would be entitled to receive under the current *Programme of Networking Activities*.

Article 24. Defaults and remedies

(1) For the purposes of this *Agreement*, the non-performance or default, including delay, in performance of its obligations under this *Agreement* or the *Contract* (*Default*) by a *Consortium Institution* (in such case referred to as *Defaulting Party*) shall be considered a breach, if it is not due to *Force Majeure* and if it is irremediable or is not remedied within sixty (60) calendar days of a notice in writing from the *ENCORA Co-ordinator* upon a respective decision by the *Executive Committee*, requiring that such non-performance be remedied. The lack of representation in two consecutive meetings of the *Steering Committee* or in two consecutive meetings of the *Executive Committee* shall be considered a breach by the respective *Consortium Institution* without requiring notice.

(2) In the event of a breach of the *Contract* or any other obligation in relation to this *Agreement* by a *Defaulting Party*, the other *Consortium Institutions* may decide jointly in the *Steering Committee* to

terminate this *Agreement* in relation to such *Defaulting Party* by a written notice of not less than thirty (30) calendar days to be sent by the *ENCORA Co-ordinator*.

(3) In the event of a breach of its obligations under the *Contract*, the *Defaulting Party* shall be deemed to have agreed to the termination of the *Contract* in respect of its participation therein under the relevant provisions of the *Contract*, as the other *Consortium Institutions* and/or the *Commission* shall decide.

(4) In the event of a breach, all and any claim to a reimbursement or consideration, if any, related to the obligation breached shall be deemed to be waived by the *Defaulting Party* after the date of receipt of the request to remedy a non-performance.

(5) Unless decided otherwise unanimously by the *Consortium Institutions* in the *Steering Committee* and without prejudice to the provisions of **Article 23 (Responsibilities)** of this *Agreement*, in the event of a breach by a *Consortium Institution* and if a respective decision of termination is taken by the other *Consortium Institutions* in accordance with paragraph (1) of this Article, the following shall apply:

- any and all *Access rights* granted to the *Defaulting Party* by the other *Consortium Institutions* under this *Agreement* as well as under the *Contract*, shall cease immediately while any and all *Access rights* granted by the *Defaulting Party* to the other *Consortium Institutions* under this *Agreement* as well as under the *Contract* shall remain in full force and effect;
- the work and tasks remaining to be performed by the *Defaulting Party*, may be assigned, by decision of the other *Consortium Institutions* within the *Steering Committee*, to one or more of the *Consortium Institutions* or to third *Parties*, which are acceptable to the *Commission* and agree to be bound by the terms of this *Agreement*.
- the *Defaulting Party* shall, within the limits specified in **Article 23(5) (Responsibilities)** of this *Agreement*:
 - assume all reasonable direct cost increase (if any) resulting from the assignment referred to above in comparison with the costs of the work to be performed by the *Defaulting Party* as specified in the *Programme of Networking Activities* defining such work;
 - be liable for any so resulting additional direct cost incurred by the other *Consortium Institutions*.

Consequently, any further amount required pursuant to any joint liability of the *Consortium Institutions* to perform the *Contract* shall be apportioned between the *Consortium Institutions* pro rata to the amount such *Consortium Institution* would be entitled to receive under the last *Programme of Networking Activities*.

(6) Without prejudice to any other rights of the other *Consortium Institutions*, the provisions of paragraph (5) of this **Article** shall also apply in the event that a *Consortium Institution's* participation in the *Contract* is terminated by the *Commission*.

(7) If a *Consortium Institution* enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors, the other *Consortium Institutions* shall take over the fulfilment of such *Consortium Institution's* obligations and receive subsequent payments under the *Contract* in respect thereof. In such event all rights and obligations under the *Contract* and this *Agreement* shall in good faith be redistributed among the remaining *Consortium Institutions* on the basis of the work performed by the affected *Consortium Institution* prior to the occurrence of the above circumstance.

Article 25. Force Majeure

(1) The *Consortium Institutions* agree that the definition for *Force Majeure* and the consequences with respect to the *Consortium Institutions' rights and obligations* in case of *Force Majeure* under this *Agreement* shall be the same as provided for in the *Contract* as these may be amended from time to time between the *Consortium Institutions* and the *Commission*.

(2) A *Consortium Institution* shall promptly notify the *Executive Committee* in writing of any *Force Majeure* that may affect the fulfilment of its obligations under the *Contract* or under this *Agreement*.

Article 26. Exchange of Personnel

(1) The *Consortium Institutions* undertake to encourage the exchange of personnel and staff mobility for the

purpose including, without limitation, of providing training, carrying out joint research, coordinating activities and/or implementing common research tools and platform.

(2) The following principles shall apply for exchange of personnel:

- The visiting person will continue to be employed by the original employer during the exchange.
- The visiting person will be subject to and required to observe all rules, regulations, policy and requirements of the host *Consortium Institution*, including but not limited to non-disclosure of confidential information, health and safety, security and export control requirements, conduct, hours of work and predetermined firm holidays.

(3) Knowledge developed by the visiting person during his/her assignment shall be handled in accordance with the provisions of **Section E** on *Intellectual Property Rights* of this *Agreement*.

(4) Additional provisions or, if legally necessary, modifications on the above principles shall be laid down by the *Consortium Institutions* concerned in *Additional Agreements*.

Article 27. Subcontracting

(1) Subcontracts planned by a *Consortium Institution* in relation to its obligations under the *Contract* and which are not clearly identified in the *Contract*, shall require the approval of the *Executive Committee*.

(2) In case a *Consortium Institution* uses a subcontractor in the performance of its obligations under the *Contract* or in the performance of other obligations under this *Agreement*, such *Consortium Institution* shall remain fully responsible for the performance of any part of such obligations and, unless otherwise approved by the *Steering Committee*, bear all costs and obligations resulting from such subcontracting.

For the avoidance of doubt, such *Consortium Institution* shall also be fully responsible for the supervision of its *Subcontractor* and shall ensure that:

- such subcontracts fully comply with the requirements of the *Contract* and this *Agreement*;
- that obligations of non-disclosure under **Article 43 (Non-disclosure)** of this *Agreement* are extended to such *Subcontractor* by appropriate contractual obligations;
- that the other *Consortium Institutions' Access rights* are fully preserved ; and
- that the third party shall have no access to any other *Consortium Institution's Knowledge* or *Pre-Existing know-how* without the latter's prior written consent.

Section D: Financial provisions

Article 28. Financial contribution of the Commission

The financial contribution of the *Commission* shall be distributed according to the *Network Budget*, which reflects the provisions of the *Contract*, this *Agreement* and the decisions of the *Steering Committee*.

Article 29. Resources

(1) Each *Consortium Institution* shall make available the resources for performing its obligations as agreed in the *Programme of Networking Activities*. These resources may take the form of money or comprise assets of any other nature.

(2) Costs arising from a *Consortium Institution's* performance or contribution or any participation in the *Network* shall be borne fully and solely by such *Consortium Institution*, if not explicitly determined otherwise in the *Network Budget*.

Article 30. Custody of funds

(1) Any money made available for the execution of the *Programme of Networking Activities* from the EU, shall be received and administered by the *ENCORA Co-ordinator* in clearly separated and identified special

accounts.

(2) In case the *ENCORA Co-ordinator* is not a Public body, this account must be separated from its normal business accounts and its own assets and property. Such separation shall be made by means of a notary public deposit or similar means provided for in the national laws and regulations of the country where the money is deposited. The latter shall not apply, if the *ENCORA Co-ordinator* is a wholly owned subsidiary of one or more *Public bodies*, as long as these guarantee the custody.

Article 31. Payments

(1) Not later than thirty (30) days from receiving the budget from the Commission, the *ENCORA Co-ordinator* will transfer the amounts available to it and due to the *Consortium Institutions* concerned, and will notify those *Consortium Institutions* promptly of the date and composition of the amount transferred to its bank account and shall give the relevant references. The *ENCORA Co-ordinator* shall maintain financial accounts tracing payments made and identifying what portion of the *Community financial contribution* has been paid to each *Consortium Institution*.

(2) Notwithstanding the existence of the *Network Budget*, each *Consortium Institution* shall be solely responsible for demonstrating its costs with respect to the *Coordination Action* towards the *Commission* – in accordance with its own financial system as allowed for by the *Commission*. Neither the *ENCORA Co-ordinator* nor any of the other *Consortium Institutions* shall be in any way liable or responsible for such demonstration towards the *Commission*.

Article 32. Budgeting specific costs

(1) The following costs for management shall be budgeted:

- banking and transaction costs related to the handling of any financial resources made available for the Network by the *ENCORA Co-ordinator*;
- reasonable costs of *Consortium Institutions* related to the delivery of audit certificates according to the Contract;
- costs related to calls for new Contractors
- costs related to updating this Agreement
- costs for the *ENCORA Co-ordinator* and the administrative team
- any other categories of management costs.

(2) The above costs shall be taken into account by the *Consortium Institutions* when agreeing on the *Network Budget*.

(3) All other costs are to be handled within the budget lines of the *Work Packages* concerned.

Article 33. Financial planning and reporting data

(1) Each *Consortium Institution* shall, within the organisational structures set-forth in this Agreement, make available all relevant financial data as needed for the setting-up of the *Network Budget*, using the forms prescribed by the Commission.

(2) The *ENCORA Co-ordinator* shall provide consolidated data about definitive payments by the *Commission* and about the financial statements of all *Consortium Institutions* as delivered to the *Commission*, in order to be able to prepare new *Network Budgets*.

(3) Each *Consortium Institution* shall be solely liable for its financial data. No other party, including the *ENCORA Co-ordinator*, nor their representatives acting within the scope of this *Agreement* may change these data without a written permission of the *Consortium Institution* concerned.

Article 34. Suspension of payment by the Commission

(1) In case the *Commission* decides to suspend the *Coordination Action*, the *Consortium Institutions* in the *Steering Committee* shall meet in order to decide unanimously on the further procedure and the modalities of continuation of the *Network activities*.

(2) In case no agreement on the further procedure or continuation of the *Network activities* can be reached, those activities within the *Network*, which are necessary to the other *Consortium Institutions* in order to continue their activities in the field of the *Network*, shall continue for the *Programme of Networking Activities*, to the extent that adequate reimbursement and sharing of costs ensuing from such activities has already been agreed upon or can be agreed upon among the *Consortium Institutions* concerned.

Section E: Intellectual Property Rights**Article 35. Relation to Contract provisions**

(1) Each *Consortium Institution* is bound by the terms and conditions of the *Commission* contractual rules, **Annex II General Conditions – Part C entitled “Intellectual Property Rights”** as hereby complemented or specified.

(2) The *Consortium Institutions* intend to cooperate at *Network* level with respect to the management of all matters relating to the protection and exploitation of all *Knowledge* arising from the *Coordination Action* and of the intellectual property rights pertaining to such *Knowledge*, with the view to promote innovation.

Article 36. Pre-existing Know-how

The *Coordination Action* does not impose any obligation

- on the *Consortium Institutions*, or
- on the *Member Institutions* of *National Networks* and *International Networks*, or
- on the *Participants* of *Thematic Networks*

to share the *Pre-existing Know-how* they own.

Pre-existing Know-how which is shared without restrictive clauses by any of these institutions or participants among each other or with other parties shall be considered as freely available for the implementation of the *Coordination Action*.

Article 37. Ownership of Knowledge

(1) *Knowledge* arising from work carried out under the *Coordination Action* shall be the property of the *Institution(s)* carrying out the work leading to that *Knowledge*.

(2) Where several *Institutions* have jointly carried out work generating the *Knowledge* and where their respective share of the work cannot be ascertained, they shall have joint ownership of such *Knowledge*. They shall agree among themselves on the allocation and the terms of exercising the ownership of said *Knowledge*.

(3) In addition to the obligations pursuant to the *Contract*, each *Consortium Institution* shall ensure that it can fulfil its obligations under the *Contract* and this *Agreement*, notwithstanding any rights of its faculty, employees, post-docs or students under the *Knowledge* or *Pre-existing Know-how*.

(4) For the avoidance of doubt, nothing contained in this *Agreement* shall constitute or be deemed to constitute any transfer of ownership of any *Consortium Institution's Pre-existing Know-how*.

Article 38. Publication

(1) The *Consortium Institutions* acknowledge their common interest in publishing the *Knowledge* to obtain recognition and to advance the state of knowledge in the field as set forth in the *Contract*. The *Consortium*

Institutions also recognise their common interest in obtaining valid intellectual property protection and in protecting business interests.

(2) It is contemplated that results of the *Coordination Action* will be jointly published; in such case authorship on publications will be based on academic standards and custom.

The *Consortium Institutions* each separately have the right to publish their own *Knowledge*

(3) All written or oral public disclosures concerning *Knowledge* arising from work carried out under the *Coordination Action* will expressly reflect that it has been developed within the *Network*. Where requested, *Pre-existing Know-how* disclosed in any publications shall acknowledge the relevant funding body.

(4) The *Consortium Institution* or *Consortium Institutions* wishing to make the publication will provide a copy of the abstract or publication manuscript and a reasonably detailed description of any oral presentation to the other *Consortium Institutions* and the *Commission* via the *ENCORA Co-ordinator* at the earliest practicable time, but in any event within at least 30 days prior to any proposed submission for publication of any manuscript or any presentation or other public disclosure date, including abstracts.

(5) The other *Consortium Institutions* may comment upon, but may not change, the conclusions and content of any such publication or presentation. Each of the other *Consortium Institutions* is however entitled to request that its proprietary confidential information, *Pre-existing Know-how* and *Knowledge* be deleted from any such publication or communication. Each of the other *Consortium Institutions* including the *Commission* may also object to the publication within a period of 30 days from receipt of the proposed publication, if they consider that the protection of their *Knowledge* would be adversely affected. In such case, the *Consortium Institutions* agree to delay the publication up to a maximum of 60 days after objection to allow for protection.

(6) The *Consortium Institutions* undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their *Knowledge* and *Pre-Existing know-how*.

(7) Nothing in this *Agreement* shall be construed as conferring rights to use in advertising, publicity, or otherwise the name of the *Consortium Institutions* or any of their marks, without their prior written approval.

Section F: Termination and changes in the Consortium Institutions

Article 39. Accession to the Contract

(1) Third parties may accede to this *Agreement* and the *Contract* subject to a decision by the *Steering Committee* and, where required, the *Commission*.

(2) When the accession to the *Contract* is the result of a competitive call, the entering party shall be accepted in accordance with this *Agreement* and the additional financial requirements set up in the competitive call.

(3) When the accession to the *Contract* is not the result of a competitive call, the entering party will be accepted in accordance with this *Agreement* and the financial additional requirement set up by the *Steering Committee*.

Article 40. Termination

(1) This *Agreement* shall automatically terminate without any further required decision in case the *Coordination Action* work is not awarded to the *Consortium Institutions* within a period of 12 months from the entry into force of this *Agreement*.

(2) In the case of a termination of the entire *Contract* by the *Commission* or by the *Consortium Institutions*, the *Consortium Institutions* may terminate this *Agreement* by unanimous agreement, provided that decisions can be reached on the modalities of termination or the continuation of ongoing activities within the current *Programme of Networking Activities* between the *Consortium Institutions* involved in such activities.

(3) Termination of this *Agreement* with respect to an individual *Consortium Institution* shall be possible according to the provisions of **Article 24 (Default)** or pursuant to the withdrawal of a *Consortium Institution* in accordance with **Article 41 (Withdrawal)** of this *Agreement*.

Article 41. Withdrawal of Consortium Institutions

(1) No *Consortium Institution* shall be entitled to withdraw from this *Agreement* and/or participation in the *Coordination Action* unless:

- that *Consortium Institution* has obtained the prior written consent of the other *Consortium Institutions* (such consent not to be unreasonably withheld), and also of the *Commission*, to the withdrawal from, or termination of, the *Contract*; or
- the *Contract* is terminated by the *Commission* in relation to that *Consortium Institution* for any reason whatsoever

(2) However, a *Consortium Institution* shall not by withdrawal or termination be relieved from

- its responsibilities under this *Agreement*, including the current *Programme of Networking Activities* or the *Contract* in respect of that part of that *Consortium Institution's* work on the *Coordination Action* which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or
- any of its obligations or liabilities arising out of such withdrawal or termination.

(3) Notwithstanding the provisions of paragraph (1), a *Consortium Institution* intending to unilaterally terminate its part of the *Contract* or to withdraw from this *Agreement* (“*the Withdrawing Consortium Institution*”) is entitled to request the other *Consortium Institutions'* consent with respect to such withdrawal, if:

- modifications of its statute prevent the *Withdrawing Consortium Institution* to further participate in the *Network*,
- *Consortium Institution's* activities in the field of the *Network* are substantially impaired due to a substantial decrease in the appropriation of public funds with respect to such activity or if the respective field has been entirely abandoned following a relevant executive decision within that entity or by its sponsors.

(4) If, due to integrative steps taken in fact by the *Consortium Institutions* during the course of the *Coordination Action* without providing for an *Additional Agreement* setting forth details on withdrawal and termination from the concrete integrated activity, the other *Consortium Institutions* vitally depend on the ongoing performance of technical responsibilities and obligations by the *Withdrawing Consortium Institution*, the *Withdrawing Consortium Institution* shall in any case continue to be obliged to perform such technical responsibilities and obligations against full reimbursement of costs for a period to be agreed upon between the remaining *Consortium Institutions* and the *Withdrawing Consortium Institution*, but which shall not exceed one year.

Article 42. Survival of provisions

The provisions related to liability, confidentiality, intellectual property rights and publications shall survive the term or termination of this *Agreement* for any reason whatsoever, to the extent needed to enable the *Consortium Institutions* to pursue the remedies and benefits provided for in those provisions. For the avoidance of doubt, termination or withdrawal shall not affect any rights or obligations incurred prior to the date of the termination.

Section G: General contractual provisions

Article 43. Non-disclosure of information

(1) In respect of all and any information in whatever form or mode of transmission, which has been explicitly marked as “confidential”, acquired prior to or during the period of this *Agreement* by a *Consortium Institution* (“*Receiving Party*”) from an other *Consortium Institution* (the “*Disclosing Party*”) relating in any way whatsoever to the *Coordination Action* or the activities of the *Consortium Institutions*

within the *Network*, the *Receiving Party* or *Receiving Consortium Institutions* hereby undertake(s) in addition and without prejudice to any commitment of non-disclosure under the *Contract*, for a period of five years from the date of disclosure of the information:

- not to use such information otherwise than for the purpose, for which it was disclosed;
- not to disclose such information to any third person without the prior written consent by the *Disclosing Party*;
- that internal distribution of information by a *Receiving Party* shall take place on a strict need-to-know basis.
- that such information shall neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication have not been specifically authorised in writing by the *Disclosing Party*;
- to return to the *Disclosing Party* on demand all information which has been supplied to or acquired by the *Receiving Party* including all copies thereof and to delete all information stored in a machine readable form ;

The *Receiving Party* shall be responsible for the fulfilment of the above obligations on the part of its employees and shall ensure that its employees shall be respectively obligated, as far as legally possible, during and after the end or after the termination of employment.

(2) The *Receiving Party* shall not be liable for disclosure or use of confidential information, if and in so far as without breach of this provision:

- it is in or comes available to the public at any time from a source other than the *Receiving Party*, or
- is released for disclosure by the *Disclosing Party*, or
- is fully received from third parties, or;
- is, at any time, developed by the *Receiving Party* completely independently of any such disclosure by the *Disclosing Party* ;
- was already known to the *Receiving Party* prior to disclosure, or
- is disclosed to comply with the law or legal process to which the *Receiving Party* is subject and the *Receiving Party* has exercised its best efforts to obtain reliable assurance that confidential treatment will be accorded to the information disclosed within that process.

(3) The *Receiving Party* shall apply the same degree of care with regard to the confidential information disclosed within the scope of this *Agreement* as with its own confidential and/or proprietary information.

(4) Each *Consortium Institution* shall promptly advise the other in writing of any disclosure, misappropriation or misuse by any person of information as soon as practicable after it becomes aware of such disclosure, misappropriation or misuse. Each *Consortium Institution* shall also promptly advise the other *Consortium Institution* of any request by authorities of disclosure under strict legal requirements (such as legal processes) as soon as such a request is received.

(5) The expiration or termination of this *Agreement* shall not relieve the *Consortium Institutions* of any rights or any obligations that have arisen under this **Article** during the term of this *Agreement*.

Article 44. Severability

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

Article 45. Attachments, Conflicts, Inconsistency

(1) In the event of conflict or inconsistency between any provision contained in the body of this *Agreement* and any provision contained in its *Attachments*, the provisions contained in the body shall prevail.

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

(3) In the event of conflict or inconsistency in a matter falling under the subject of this *Agreement* between any provision contained in this *Agreement* and an *Additional Agreement* concluded in connection with the integration process of the *Consortium Institutions*, the conditions of this *Agreement* shall prevail.

Article 46. Notices

(1) If not explicitly stated in this *Agreement* that a notice shall be in writing, any notices, requests, consents and other communications to be given by a *Consortium Institution* under this *Agreement* may also be effected by email or by telefax.

Notices in writing shall be deemed to be valid and effective, if the notice

- has been personally served,
- sent by registered prepaid airmail, or
- sent by recorded delivery mail
- to the representatives of the *Consortium Institutions* to the *Steering Committee* at their addresses listed in the most current address list to be kept by the *Coordinator*.

Notices by email or telefax shall be deemed to be valid and effective, if sent to representatives of the *Consortium Institutions* at the addresses as listed in such address list and if delivery was recorded and a transmission report has been received by the sender.

(2) The address list to be kept by the *ENCORA Co-ordinator* shall show full addresses and names of the *Consortium Institutions'* authorised representatives to the *Steering Committee*. For the purpose of convenience, it shall also show the contact details of other persons designated under the *Contract* or otherwise designated by the *Consortium Institutions* in connection with the *Coordination Action*.

(3) Any change of persons or contact details shall immediately be notified by the respective *Consortium Institution* to the *ENCORA Co-ordinator*. The *ENCORA Co-ordinator* will forthwith distribute a respectively modified address list to all the other contact persons and the Commission. The address list shall be accessible to all concerned.

Article 47. Assignment, Amendments

(1) Any rights or obligations of the *Consortium Institutions* arising from this *Agreement* may not be assigned or transferred in all or in part to any third party without the other *Consortium Institutions'* prior written approval.

(2) All and any amendments and modifications to the main body of this *Agreement* require consent in writing between all *Consortium Institutions*, duly signed by respectively authorised representatives of the *Consortium Institutions*.

(3) All and any amendments and modifications require respective decisions of the *Steering Committee* as specified in **Article 19 (Steering Committee)** and **20 (Steering Committee meetings)** of this *Agreement*.

Article 48. Language

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

Article 49. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the same country, by which the Contract is governed.

Article 50. Settlement of Disputes

- (1) The *Consortium Institutions* endeavour to settle disputes amicably.
- (2) In the event of any dispute, difference, controversy or claim arising out of or in connection with this *Agreement*, the *Consortium Institutions* will first attempt to settle such dispute by consultations in at least two minuted meetings on the subject. The second meeting shall be held among the respective *Consortium Institutions'* representatives to the *Steering Committee*.
- (3) If in application of paragraph (2) of this **Article**, the *Consortium Institutions* concerned have not reached a settlement of such dispute at the expiration of sixty (60) days after the second meeting, the dispute shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce as presently in force. The number of arbitrators shall be three. In disputes, where the value of the dispute does not exceed 250,000 Euro, the dispute shall be settled by arbitration with a sole arbitrator. The language to be used in the arbitral procedure shall be English.