

## Collaboration Agreement for Interdisciplinary Collaborative Research (authentic version: Dutch version)

This Collaboration Agreement is executed by and between the undersigned:

**Interdisciplinary institute for BroadBand Technology vzw**, a non profit organization under Belgian law, whose registered office is at Gaston Crommenlaan 8, P.O. box 102 BE-9050 Ghent, Belgium, Register of Legal Entities Ghent VAT BE 0866.386.380 and hereby duly represented for the present purposes by Mr. Wim De Waele in his capacity as General Manager, hereafter referred to as "IBBT

and

....., whose registered office is at ..... and hereby duly represented by ....., hereinafter referred to as "....."

and

....., whose registered office is at ..... and hereby duly represented by ....., hereinafter referred to as "....."

and

1. **Ghent University**, public institution with legal personality, located at Sint Pietersnieuwstraat 25, BE-9000 Gent and hereby duly represented by Prof. Luc Moens, Vice-rector, and [...] who is responsible for the performance of the Agreement, hereinafter referred to as "UGent"

2. **Katholieke Universiteit Leuven**, and hereby duly represented by **K.U.LEUVEN RESEARCH & DEVELOPMENT**, acting on behalf of the Katholieke Universiteit Leuven and located at Minderbroedersstraat 8A, BE-3000 Leuven, and hereby duly represented by Prof. Dr. ir. Koenraad Debackere, Managing Director and Paul Van Dun, Algemeen Directeur, and [...] who acknowledge(s) and agree(s) with the contents of this document, hereinafter referred to as "KULeuven"

3. **Vrije Universiteit Brussel**, located at Pleinlaan 2, 1050 Brussel and hereby duly represented by Prof. Dr. Paul De Knop, Rector and [...] who acknowledge(s) and agree(s) with the contents of this document, hereinafter referred to as "VUB"

4. **University of Antwerp**, located at Prinsstraat 13, BE-2000 Antwerp, and hereby duly represented by Prof. Dr. Francis Van Loon, Rector and [...] who acknowledge(s) and agree(s) with the contents of this document, hereinafter referred to as "UAntwerpen"

5. **Universiteit Hasselt**, located at Universitaire Campus, Gebouw D, BE-3590 Diepenbeek and hereby duly represented by Prof. Dr. Luc De Schepper, Rector and [...] who acknowledge(s) and agree(s) with the contents of this document, hereinafter referred to as "UHasselt"

6. **Interuniversitair Mikro-Electronika Centrum vzw**, with its registered office located at Kapeldreef 75, BE-3001 Heverlee, RPR Leuven VAT BE 0425.260.668 and hereby duly represented by Prof Gilbert Declerck, hereinafter referred to as "IMEC"

### INTRODUCTION

- WHEREAS IBBT's activities are focusing on Information and Communication Technology (ICT) in general, and applications of broadband technology in particular;

IBBT ICON Collaboration Agreement ACRONYM

Datum: x-x-2009

Versie: 0.1

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- WHEREAS one of the objectives of IBBT is to perform demand driven research activities whereby the aim is to develop and gather generic knowledge in the medium term and whereby the creation of clusters between the economic, scientific and social actors concerned is encouraged by means of, amongst other, the co-operation in Interdisciplinary Collaborative Research projects (ICON);
- WHEREAS ..... is engaged in the business of ..... and has acquired extensive technological expertise in the field of .....
- WHEREAS ..... is engaged in the business of ..... and has acquired extensive technological expertise in the field of .....
- WHEREAS ..... is engaged in the business of ..... and has acquired extensive technological expertise in the field of .....
- WHEREAS ..... has taken the initiative for the creation of a cluster with a view to ..... and therefore considers, within the vision and objectives of IBBT, the co-operation in a Common Basic Research (CBR) project the most appropriate instrument;
- WHEREAS ....., ....., ..... and IBBT have therefore submitted a Interdisciplinary Collaborative Research (ICON) project entitled “.....” submitted to IBBT;
- WHEREAS this project has been approved by IBBT and consequently ....., ....., ..... and IBBT wish to establish the terms and conditions governing each Party’s participation in such project;

NOW, THEREFORE, the Parties hereto agree as follows:

### Article 1: Definitions

When used in the Agreement, the following words and expressions shall have the meaning as stated hereunder:

- 1.1. “*Application Programming Interface*” or “*API*” means the collection of all data and information for specific *Software* on the basis of which a capable software developer creates *Software* that interface and interact with other specified *Software*.
- 1.2. “*Background*” means the information that is held by a *Party* prior to the commencement date of the *ICON project* (as stipulated in the *ICON project proposal* approved by the board of directors of IBBT), as far as it has been developed by the *Research groups* involved in the *ICON project*, as well as copyright and other *Intellectual Property Rights* pertaining to such information, the application for which has been filed before the commencement date of the *ICON project* and that is *needed* for the performance of the *ICON project* or *Use of the Foreground*.
- 1.3. “*Use*” means the direct or indirect utilization of *Foreground*:
  - (a) in further research activities other than the research activities covered by the *CBR project*,
  - (b) for developing, creating, including manufacturing, and marketing a product or process; or
  - (c) for creating and providing a service.
- 1.4. “*Limited Source Code Access*” means:
  - (a) access to *Object Code* or, where the normal use of such *Object Code* requires *API*, access to such *Object Code* and *API*, or
  - (b) if (a) is not available, access to the *Source Code*.

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- 1.5. “*Source Code*” is the *Software* in human readable form normally usually used to implement changes to it, including without limitation the comments and procedural code such as job control language or scripts to control compilation and installation.
- 1.6. “*Source Code Access*” means the access to the *Source Code* as needed by a *Party* for the performance of its activities within the framework of the *ICON project* or for *Use* of the *Foreground*.
- 1.7. “*Software*” means a specific collection of instructions to carry out a process in, or convertible into, a form executable by a computer, and filed in a tangible medium of expression.
- 1.8. “*fair and reasonable conditions*” means appropriate conditions, including possible financial conditions, taking into account the specific circumstances of possible *Access Rights*, for example the actual or potential value of *Foreground*, *Background* or *Sideground* to which *Access Rights* are granted and/or the scope, duration and other characteristics of the *Use* envisaged.
- 1.9. “*Foreground*” means the results that are generated under the *ICON project*, including information, whether or not eligible for protection. Such results include rights relating to copyright, design and model rights, patent rights, plant variety rights or other similar forms of protection.
- 1.10. “*ICON project*” means the Interdisciplinary Collaborative Research (ICON) project entitled “.....” as described in Exhibit 1 to the Agreement.
- 1.11. “*held*” means that a *Party* can rightfully grant, or require a third party to grant, *Access Rights* on the *Background* or *Sideground* without:
  - (a) the consent of a third party; or
  - (b) accounting to or financial compensation to a third party.
- 1.12. “*legitimate interest*” means any interest, in particular interest of commercial nature, of a *Party* that can be invoked by such *Party* in the cases described in the *Agreement*. Therefore, such *Party* must prove that when its interest is not taken into account, the damages incurred by such *Party* are disproportional.
- 1.13. “*Hardware Equivalents*” means the collection of descriptions that can be used to build the electronics and mechanics of the hardware such as but not limited to electronic diagrams, mechanical drawings, PCB lay-out, programmable logic.
- 1.14. “*indirect Use*” with regard to *Access Rights* for *Use* granted in accordance with the terms and conditions of the *Agreement* includes the right for a *Party* and its *Affiliated Entities* who are granted *Access Rights* to have a third party make products or render services, only for the account of and for the use, sale or other disposal by the *Party* or its *Affiliated Entities*. Prerequisite is that a substantial part of the specification of such products and/or services have been designed by, or for such *Party* or its *Affiliated Entities*.
- 1.15. “*Intellectual Property Rights*” means patent, patent applications and other rights with regard to inventions, copyrights (including, without limitation, the copyright protection of *Software*), designs and models, including applications for designs and models, and any other similar or equivalent legal intellectual property rights anywhere in the world, excluding the rights in *Confidential Information* and know-how.
- 1.16. “*Research Organisation*” means [list of participating Universities and/or Knowledge Institutes]
- 1.17. “*needed*” and “*necessary*” means in respect of the performance of the *ICON project* and/or *Use* of the *Foreground* technically essential. In the following cases, technically essential is further defined as follows:

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- (a) where *intellectual property rights* are concerned: unlawful use of the *intellectual property rights* absent the grant of *Access Rights*.
  - (b) where *Confidential Information* is concerned: Except as otherwise agreed upon between the *Parties*, only the *Confidential Information* exchanged between the *Parties* pending the performance of the *ICON project* is considered as technically essential.
- 1.18. “*Object Code*” (or executable code) means *Software* in machine-readable compiled and/or executable form, including, but not limited to byte code form and in for of machine readable libraries used for linking procedures and functions to other *Software*.
- 1.19. “*Research Group*” means the research group(s) of the *Research Organisations* that perform part(s) of the *CBR project* as defined in Exhibit 1 to the *Agreement*.
- 1.20. “*Force majeure*” means any event outside the control of the *Party* affected by *force majeure*
- (a) that occurs after the execution of the *Agreement*;
  - (b) that upon execution of the *Agreement* was not reasonable foreseeable; and
  - (c) of which the consequences cannot be remedied by the affected *Party* without incurring unreasonable expenses and/or delay by such affected *Party*.
- Force majeure* includes, without limitation, war, civil riot, government action, natural disasters, exceptional weather circumstances, the collapse of or the general unavailability of transport facilities, fire, explosions and general energy shortages.
- 1.21. “*Open Source Software*” means the *Software* that is distributed according to *Open Source Terms*.
- 1.22. “*Open Source Terms*” means the licensing conditions that require that the use, copying, modification and/or distribution of *Software* or another work (“*Work*”) any other work that is a modified version of or is a derivative work of such *Work* (in such case “*Derivative Work*”) be subject, in whole or in part, to one or more of the following conditions:
- (a) where the *Work* or *Derivative work* is *Software* that the *Source Code* automatically be made available to any third party, whether royalty-free or not;
  - (b) that permission to create modified versions or derivative works of the *Work* or *Derivative Work* be granted to any third party;
  - (c) that a royalty-free license relating to the *Work* or *Derivative Work* be granted to any third party.
- For the avoidance of any doubt, the licensing conditions that merely permit possibility to apply these conditions, but do not require any of these conditions are not “*Open Source Terms*”.
- 1.23. “*Agreement*” means the terms and conditions of the Collaboration Agreement, including its Exhibits, executed by and between IBBT, [COMPANY, ORGANISATION] and *Research Organisation(s)*.
- 1.24. “*Party*” means [COMPANY, ORGANISATION], *Research Organisation* or IBBT.
- 1.25. “*Parties*” means IBBT, [COMPANY, ORGANISATION] and *Research Organisations*.
- 1.26. “*Sideground*” means information other than *Foreground* developed or otherwise acquired by a *Party* after the commencement date of the *ICON project* as well as copyright or other *Intellectual Property Rights* regarding this information, and which has been explicitly introduced by this *Party* in a way that a other *Party* will *need* this information for the execution of the *ICON project* or for the *Use of the Foreground*.
- 1.27. “*Access Rights*” means the licenses and user rights to the *Background, Sideground* and *Foreground*.
- 1.28. “*Affiliated Entity*” means:

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- (a) any legal entity (i) directly or indirectly *Controlling a Party*; (ii) directly or indirectly under the common *Control* with a *Party*; or (iii) directly or indirectly *Controlled* by a *Party*, for as long as such *Control* lasts.
- (b) any other legal entity listed as *Affiliated Entity* in Exhibit 3 to the *Agreement*.

*Control* is acquired through the direct or indirect

- (a) ownership of more than 50% of the nominal value of the issued share capital of the entity or of more than 50% of the issued share capital entitling the holders to vote for the election of directors or persons performing similar functions; or
- (b) right by any other means to elect or appoint directors of the entity or persons performing similar functions who have a majority vote.

1.29. "*Confidential Information*" means any and all information of whatever nature and disclosed in whatever form by a *Party* ("disclosing *Party*") to another *Party* ("receiving *Party*") in connection to the *ICON project* and (i) when disclosed in written or other tangible form is explicitly marked as confidential or (ii) when disclosed orally or in any other intangible form is confirmed within thirty (30) days after such disclosure that it concerns confidential information, or (iii) it concerns information that is obviously of a confidential nature.

1.30. "*Work Package*" means the part(s) of the *ICON project* as described in Exhibit 1 to the *Agreement*.

### Article 2: Subject of the Agreement

The purpose of the *Agreement* is to:

- (1) specify the organisation of *ICON project* related work between the *Parties*;
- (2) organise the administration of the *ICON project*;
- (3) define the rights and obligations of each *Party*, including each *Party's* liability; and
- (4) define the rules regarding the *Intellectual Property Rights to Background, Sideground and Foreground*.

### Article 3: Subcontracting

No *Party* is authorized to subcontract, in whole or in part, any of the tasks described in Exhibit 1 to any third party without the prior written approval of IBBT. The conditions as provided in this article are not applicable in the following cases:

- (a) the performance of routine tasks that do not concern a core part of the *ICON project* and that a *Party* does not wish to perform itself (such as, but not limited to, the performance of routine tests, the construction of part of a prototype, part of the programming);
- (b) the performance of tasks by the *Affiliated Entity(ies)* mentioned in the *ICON project* proposal (including the specification of the tasks and number of man hours to be performed by such *Affiliated Entity(ies)*);
- (c) (individual) consultants as specified in the *ICON project* proposal – Exhibit 1. This list of consultants may be updated during the performance of the *CBR project* under the condition that such *Party* informs the project steering committee of its intention and this proposal is accepted by the *Parties*. The *Parties* shall not unreasonably refuse or condition a *Party's* request for subcontracting.

### Article 4: Performance of the *ICON project*

4.1. Each *Party* shall take all necessary and reasonable efforts to ensure the satisfactory performance of the *ICON project*. Therefore, each *Party* particularly undertakes to:

- promptly, with due care, knowledge and dedication and, in general, in conformity with the recognized professional standards carry out the tasks allocated to the *Party* in the relevant *Work Package*;

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- promptly and in accordance with the conditions described in the Agreement provide all information and documentation *needed* for the performance of the contractual obligations;
  - promptly notify the project leader of any and all events or circumstances that might affect the careful and uninterrupted performance of the *ICON project* (in particular, but not limited to, the (possible) modifications to the financial conditions provided in Exhibit 1 to the Agreement);
  - use all reasonable endeavours to ensure the accuracy of any information and/or material(s) a *Party* supplies to the other *Parties* and promptly use all reasonable endeavours to correct any error and/or mistake in such information and/or material(s) of which a *Party* is notified.
- 4.2. Each *Party* undertakes to provide evidence of the performance of its tasks within the *Work Packages* by issuing regular reports in accordance with the provisions provided in the *Agreement*. The lay-out and reports to be provided within the framework of the Agreement must conform to the instructions and notes laid down by IBBT. A status report (including final report) together with the financial report used by the *Parties* for the purposes of the Agreement is attached as Exhibit 4 to the Agreement.
- 4.3. Each *Party* undertakes to reply fully and accurately within a reasonable time to any additional request for information from IBBT regarding events and/or circumstances that may jeopardise the uninterrupted and correct performance of the *Agreement* (reported by the *Party* in accordance with article 4.1 of the *Agreement* and have been formulated by IBBT (or as the case may be by the Project leader).
- 4.4. Each *Party* shall call upon (a) sufficient qualified personnel and (b) equipment and materials as required for the performance of the *ICON project*. The *Parties* undertake to provide free of charge the material and/or equipment detailed in Exhibit 1 within the framework of the *ICON project*. The material and equipment is and remains the exclusive property of the *Party* putting such material and equipment at the disposal (hereinafter "the Borrower"). The *Party* using the material and equipment (hereinafter "the User") will use this material and equipment on a due diligence basis exclusively within the framework of the *ICON project*. Upon termination of its participation in the *ICON project*, the Borrower shall be entitled to re-collect the material and equipment that the Borrower put at the disposal.
- 4.4. Where it is provided that persons of the *Research Organisations* participate in the *ICON project* under the university doctoral bursary system (paid for from IBBT means), [COMPANY] and [ORGANISATION] shall take into account the involvement of such persons in the general activities of doctoral research within the *Research organisation*. However this will not affect the obligations of IBBT and the *Research Organisation* regarding the performance of the *ICON project*

### Article 5: Consultation and decision-making

- 5.1. Project leader and research leader
- 5.1.1. Project leader

[COMPANY X] will be appointed as the project leader. The project leader will appoint a representative. During the term of the *Agreement*, the project leader shall not replace its representative without good cause (e.g. termination of employment agreement). In case the project leader replaces its representative, he will immediately and in writing inform the other *Parties* of such replacement of a representative.

The project leader shall only be responsible for the following tasks:

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- the co-ordination of the activities of the *ICON project*, such as the co-ordination between *Work Packages*;
- the verification of the observance of each *Party* of its obligations as detailed in the Agreement;
- the administrative management of the *ICON project*;
- the preparation of quarterly status reports and the delivery of such report to the *Parties*, using the template provided by IBBT (Exhibit 4 to the Agreement);
- the preparation and dissemination of reports required within the framework of the project steering committee (e.g. agenda and minutes);
- acting as the intermediary between the *Parties* whereby the project leader is, among others, responsible for the transmission of the correspondence between the *Parties* and with third parties and for the exchange of information between the *Parties* and/or third parties;
- to be the intermediary for the efficient and correct communications regarding the progress of the *ICON project* between the *Parties*.

The project leader is not entitled to act or to make legally binding declarations or commitments on behalf of any other *Party*.

### 5.1.2. Research leader

On behalf of the *Research Group(s)*, [name (and affiliation) of research leader] will be appointed as the research leader. The research leader will assure the performance of the tasks of the project leader in case no project leader is appointed.

The research leader will be the intermediary contact person for [COMPANY] and [ORGANISATION] with the *Research Group(s)* and will protect the interests of the different *Research Groups*.

The project leader and the research leader will consult regularly with the IBBT program manager in order to observe the correct performance of the *ICON project*.

### 5.2. Project steering committee

5.2.1. [COMPANY], [ORGANISATION], IBBT and the participating Research groups will each appoint a project representative (hereinafter called *Project Representative*) for the project steering committee who will attend project steering committee's meetings. Each *Party* shall use all reasonable efforts to maintain the continuity of its representation in the project steering committee.

5.2.2. The project steering committee is composed of:

- The representative of the project leader (as detailed in article 5.1.1),
- The research leader,
- The *Project Representatives*,
- The IBBT program manager.

The project steering committee shall be responsible for:

- Evaluating and managing the progress of the *ICON project* and, if needed, preparing proposals to modify the *ICON project*;
- Submitting proposals for the review of the *Agreement* and the forwarding of such proposal to the board of directors of IBBT and the *Parties*;
- Deciding upon actions to be taken against a defaulting *Party* in accordance with the provisions of article 11.3;
- Evaluating the *Foreground*;
- Approving publication in accordance with the procedure provided in article 9.2 of the *Agreement*;
- Approving reports;

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- Deciding upon the introduction by a *Party* (*Parties*) of *Open Source Software* as *Background* or *Sideground* in the event the *Foreground*, in whole or in part, the products and/or services of the *ICON project* are to be released conform *Open Source Terms*.

The meetings of the project steering committee should preferably be called by the project leader every three (3) months, and at least every six (6) months. The project leader is entitled to convene the project steering committee whenever the needs of the *ICON project* so require, or if one *Party* so requests. Meetings of the project steering committee shall be convened by the project leader with at least fifteen (15) days' prior written (e.g. e-mail, facsimile) notice to each member. This notice shall be accompanied by an agenda proposed by the project leader and submitted to each *Party*. The agenda shall be deemed to be accepted unless one or more *Parties* notifies the project leader and the other *Parties* in writing of additional points to the agenda at the latest two (2) working days before the meeting date.

Minutes of the project steering committee meetings shall be transmitted to the *Parties* by the project leader within thirty (30) days after such meeting. The minutes shall be considered as accepted by the *Parties* if, within fifteen (15) days from receipt of the minutes, no *Party* has objected in writing to the project leader.

Any decision requiring a vote at the project steering committee must be identified as such on the agenda, unless there is unanimous agreement to vote on a decision at that meeting and all *Parties* are present or represented.

Any decision required or permitted to be taken by the project steering committee in accordance with the conditions detailed herein may be taken as follows:

- (a) in a physical meeting whereby all members are present or represented or meeting via tele- or video-conference;
- (b) without a meeting with prior notice of at least seven (7) days, and without a vote, provided that, in such case, a consent in writing, setting forth the decision taken, is signed by the members with not less than the minimum number of votes necessary to take such decision at a meeting at which all members entitled to vote on such decision were represented and were voting, and provided that the consent has been delivered for signature to all *Parties'* representatives.

The project steering committee shall be chaired by the project leader.

For its deliberations to be valid, all members of the project steering committee must be present or represented. Unless expressly provided otherwise by the Agreement, decisions may only be approved providing all members present or represented agree.

Additional agreements concerning the operation of the project steering committee may be established by the project steering committee in a separate document (e.g. standing orders).

### 5.3. Work package leader and project working group

#### 5.3.1. For each *Work Package* a work package leader will be appointed who shall be responsible for:

- the administration of the *Work Package* in order to monitor the progress of the activities within the *Work Package*;
- issue reports (at least on a quarterly basis) to the project leader. Such report will indicate the progress of the *Work Package* (% completed) and possible difficulties and risks.

#### 5.3.2 The project working group is composed of:

- The project leader;
- The *Project Representative* of each *Party* concerned in that *Work Package*; and
- The work package leader of the relevant *Work Package*.

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The project leader shall ensure that regular discussions are held with the research leader and work package leader(s). The project leader shall convene meetings of the project working group whenever necessary for discussion of the content of the *Work Package* and its progress. The project working group shall be convened by the project leader at least every three (3) months, but preferably every month. The project leader may also convene the project working group whenever the needs of the *Work Package* so require. Following the proposal of the project leader, the project working group may invite other persons involved in the *ICON project* on an ad-hoc or regular basis. The IBBT Program Manager shall be informed of the project working group being convened, of its documents and reports, and shall be entitled to attend its meetings.

### Article 6: Contribution by the *Parties*, reporting and audit

#### 6.1. Contribution by the *Parties*

6.1.1. IBBT shall not be liable for any financial compensation to [COMPANY] and [ORGANISATION] for their performance of the tasks within the scope of the *ICON project*. The costs associated with the performance of the tasks within the *ICON project* shall be borne by [COMPANY] and [ORGANISATION]

[COMPANY], [ORGANISATION] and the *Research Organisation(s)* will provide IBBT annually, no later than January 31, with a financial report (at *Work Package* level) (to be completed on a template supplied by IBBT (Exhibit 4 to the Agreement)).

6.1.2. It is acknowledged that a maximum of 50% of the cost of the *ICON project* will be borne by IBBT. If the total cost of the *ICON project* changes for any reason whatsoever, this 50% rule shall apply unaltered (max 50% IBBT and min. 50% [COMPANY] and [ORGANISATION] taken together). [COMPANY] and [ORGANISATION] shall not be liable to contribute financially to costs incurred by other *Parties* through their participation in the *ICON project*. However, if the 50% rule is not observed, the *Parties* shall decide to change the contents of the *ICON project*. In such case the contribution of each *Party* is evaluated and if needed modified in common agreement. In this event, the principle set out in the previous paragraph shall apply provided that the contribution of [COMPANY], [ORGANISATION] and the *Research Organisation(s)* may be changed by a maximum of 20% of their estimated contribution as specified in Exhibit 1.

In addition to the information obligation as detailed in article 4.1, each *Party* shall in good faith inform the project steering committee in due time, fully and accurately about (1) any proposals to modify the *Agreement* and/or (2) possible deviations of the *Agreement*. The information will be provided in writing and will only be effective as from the modification of the *Agreement* in accordance with the terms and conditions detailed herein.

#### 6.2 Reports

##### 6.2.1. Interim reports

Each *Party* will inform IBBT about the progress of the *ICON project*. The reports detail the services performed by such *Party* and the *Foreground* as detailed in Exhibit 1 of the *Agreement*. Such interim reports will be provided on a yearly basis. When needed the *ICON project* may be modified by the project steering committee in accordance with the terms and conditions of article 5 of the *Agreement*.

6.2.2. At the latest three (3) months following the termination of the *CBR project*, the project leader will together with the *Parties* prepare a final report and will transmit this final report to IBBT. The final report contains at least the following items:

- the extent to which the innovation objectives have or have not been met;
- general evaluation of the *CBR project*.

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The project leader will prepare, together with the *Parties*, a valorisation report and will transmit this report to IBBT. The valorisation report will provide a global overview of the valorisation opportunities for the *Foreground*.

Additionally, [COMPANY] and [ORGANISATION] shall individually provide a more detailed and company specific valorization report to IBBT. The timing for delivery of such report to IBBT as well as the minimum content hereof will be agreed upon between the *Parties* in the project steering committee.

Upon request of IBBT, each *Party* will provide an update report at the end of a period of three, five or ten (exceptional cases) following the date of termination of the *ICON project* so that IBBT is able to evaluate the valorisation of the *Foreground*. Such request will be issued by IBBT by registered mail addressed to the *Party* requested to provide such update report and associated information. The requested *Party* is obliged to provide the update report and associated information within two (2) months following such request. Taking into consideration the update report and the associated information provided by the *Party* IBBT shall be able to determine the full or partial performance of the obligations regarding the valorisation of the *Foreground*.

Each *Party* shall fully co-operate with IBBT to complete the information sheets regarding the valorisation of the *Foreground* transmitted by IBBT for monitoring purposes three (3) and five (5) years following the first valorisation report.

6.2.3. The deliverables specified in Exhibit 1 will be put at the disposal of IBBT and its co-owners during and following the termination of the *ICON project* subject to the terms and conditions approved by the project steering committee.

### 6.3. Audit

6.3.1. IBBT will verify the accuracy, regularity and reasonableness of the costs invoiced or to be invoiced, irrespective of possible checks by the Audit Office. Each *Party* shall retain, and have available for the Audit Office and IBBT, all items substantiating the expenses claimed during a period of seven (7) years following the approval of the final report. Each *Party* shall co-operate in carrying out such checks, and in providing any information required for monitoring purposes.

6.3.2. IBBT shall be entitled take any initiative that it considers reasonably necessary to audit and monitor the technical performance of the *ICON project*, including visits to workplaces. IBBT will inform the *Party* concerned in writing at least fifteen (15) days prior to such visit. The number of visits is, in principle, limited to two during the term of the *ICON project*.

6.3.3. Each *Party* will render all reasonable assistance regarding the audits and the information to be provided.

## Article 7: Duty of non-disclosure

7.1. The receiving *Party* undertakes to use the *Confidential Information* exclusively

- (a) in accordance with the terms and conditions detailed in the Agreement;
- (b) for the performance of its obligations in the framework of the Agreement or as needed for the exercise of the *Access Rights* granted by the Agreement.

The receiving *Party* undertakes not to use the *Confidential Information* for any other purpose.

7.2. Each receiving *Party* undertakes to apply for the security of the *Confidential Information* at least the same degree of care as it applies for the security of its own *Confidential Information*, but no less than a reasonable degree of care.

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- 7.3. Without the prior written consent of the disclosing *Party*, the receiving *Party* is not authorized to disclose, transfer or disseminate, in whole or in part, directly or indirectly, any *Confidential Information*, in any form whatsoever, to any third party other than the third party provided in article 7.7.
- 7.4. The obligations not to disclose as detailed in the *Agreement*, shall bind the *Parties* during the term and following three (3) years of the expiration of the *Agreement*. The obligation not to disclose to be observed by the receiving *Party* shall not or no longer apply to *Confidential Information* in respect of which the receiving *Party* invokes one of the exceptions listed in article 7.5.
- 7.5. No information disclosed by the disclosing *Party* shall be deemed to be (or to remain) *Confidential Information*, to the extent the receiving *Party* can show that the information concerned:
- (a) was publicly available at the time of disclosure or has become publicly available by no wrongful act or omission on the part of the receiving *Party* or any of its *Affiliated Entities*;
  - (b) was in the possession of the receiving *Party* or one of its *Affiliated Entities* without confidentiality obligation at the time of disclosure;
  - (c) was lawfully obtained by the receiving *Party* or any of its *Affiliated Entities* from a third party free to disclose such information; or
  - (d) is developed by the receiving *Party* or any of its *Affiliated Entities* independently from the other *Parties'* Confidential Information.

For the avoidance of doubt: article 7.5 does not grant any other right to the *Confidential Information*, than the rights expressly detailed in article 7.7 hereunder, to an *Affiliated Entity* of a *Party*.

- 7.6. 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, such *Party* shall be entitled to disclose the *Confidential Information* provided that the following conditions are observed:
- (a) the receiving *Party* shall notify the disclosing *Party* hereof; and
  - (b) the receiving *Party* shall comply with the Disclosing *Party's* reasonable instructions to protect the confidentiality of the information.
- 7.7. For the avoidance of doubt, the obligations not to disclose as detailed in the *Agreement* shall not be interpreted so as to prevent the communication of the *Confidential Information* to:
- (a) any other *Party (Parties)* to the extent *needed* to perform the *Agreement*;
  - (b) any *Affiliated Entity* or subcontractor, insofar as strictly *needed* for the performance of the *Agreement*;
  - (c) any third party insofar as strictly *needed* for technical reasons and permitted Use of the *Foreground*.

With respect to any permitted disclosure of any of the *Confidential Information* by the receiving *Party* to a third party including but not limited to its *Affiliated Entities* and subcontractors, the receiving *Party* will ensure that appropriate arrangements are in place prior to any such disclosure of *Confidential Information*. The receiving *Party* is liable for any breach of confidentiality by the third party.

### **Article 8: Intellectual Property Rights and Access Rights**

The terms and conditions of article 8 are applicable notwithstanding the possibility provided by article 12.1 to take appropriated measures towards the *Parties* that do not observe their obligations detailed in the *Agreement*, and in particular those contained in article 6.2.

#### 8.1. Ownership

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### 8.1.1. Background

The ownership rights in and to the *Background* are not transferred by the terms and conditions of the *Agreement*. The *Background* is and remains the exclusive property of the *Party* introducing the same into the *Agreement*.

### 8.1.2. Foreground

8.1.2.1. Each *Party* will remain the owner of the *Foreground* generated by such *Party* (or its subcontractor(s)).

The *Foreground* generated by one or more *research organisations* (or its subcontractor (s)) will be co-owned with IBBT.

If, in the course of carrying out the work in the *ICON project*, *Foreground* is generated by two or more *Parties* ("the contributors") and if the contribution to or features of such *Foreground* form an indivisible part thereof, such that it is not possible to separate them for the purpose of applying for and maintaining the relevant *Intellectual Property Rights*' protection, such *foreground* will be jointly owned by the Contributors .

#### 8.1.2.2. Principles regarding jointly owned *Foreground*

(a) The *Intellectual Property Rights* regarding the jointly owned *Foreground* shall be jointly owned by the Contributors ("co-owner(s)").

(b) Unless otherwise agreed upon between the co-owners, each co-owner shall have for the duration of the corresponding *Intellectual Property Right(s)*, the non-exclusive and irrevocable right, without territorial or other restrictions, to

- (i) Use the jointly owned *Foreground*; and
- (ii) grant non-exclusive *Access Rights* to third parties, without obtaining any consent from or paying compensation to or otherwise accounting to any other co-owners.

(c) In order to guarantee an adequate protection of the jointly owned *Foreground*, the co-owners will inform each other as soon as practicable of the opportunity to apply for a patent of any other similar protection. The co-owners will agree who will be charged with the preparation, application and follow-up of those applications and in what countries or jurisdictions these applications will be made. The application for a patent or any other protective measure related to the jointly owned *Foreground* requires the agreement of the co-owners with the exception of the co-owner(s) that do(es) not wish to share in the costs related to these applications in accordance with the stipulations of clause (d). All external costs and contributions for the maintenance of such protection will be born by the co-owners in equal parts, unless otherwise agreed upon.

(d) If and when a co-owner decides not to contribute or not to continue its contribution (as the case may be) to the costs of application for or maintenance of patent or other protection for the jointly owned *Foreground* for one or more countries or jurisdictions, such co-owner shall:

- (i) immediately inform the other co-owners of its decision in writing;
- (ii) it shall forthwith relinquish all its title to and interest in such jointly owned patents, patent applications or other rights protecting such *Foreground* for the countries or territories concerned to the other owner(s) who contribute or continue their contribution, as the case may be, to such costs in accordance with paragraph (c) above; and;
- (iii) it shall lose its rights under paragraph (b) above with respect to such jointly owned patents, patent applications or other registered rights for the countries or territories concerned as of the

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moment of notification under paragraph (i) above, but subject, however, to the retention of a non-transferable, non-exclusive, royalty-free and fully paid-up *Access Rights*, without the right to grant sub-licenses, for the lifetime of such jointly owned patents, patent applications or other registered rights for the countries or territories concerned in favour of, and for the Use by, the relinquishing Contributor and its *Affiliated Entities*. The Contributor that does not contribute or continue to contribute its contribution to the costs of application for or maintenance of patent or other protection for the jointly owned *Foreground* is granted the non-exclusive, worldwide and irrevocable to use the jointly owned *Foreground* covered by these patents and patent-applications for research, with or without third parties ("The Research") without the consent of the other co-owners and without accounting or compensation being due to the co-owners. If the performance of the research projects and/or the *Use* of the results of this research project require the sublicensing of the patent and patent applications, the co-owner paying for the patent related costs can only refuse this sublicense for *Legitimate interests*.

(e) Each owner of patents or patent applications or other *Intellectual Property Rights* protecting such jointly owned *Foreground* shall have the right to bring an action for infringement of any such jointly owned rights only with the consent of the other owner(s). Such consent may only be withheld if such infringement action would be prejudicial to the commercial interests of one or more of the other joint owner(s), as demonstrated by it (them).

### 8.1.2.3. Assignment of ownership of the *Foreground*

*Each Party may assign ownership of its own Foreground (including without limitation its share in Foreground that it owns jointly with another Party or Parties, and all rights and obligations attaching to it) to third party without prior notification and approval being required from the other co-owners.*

Any such assignment shall be made subject to the *Access Rights* granted to the other *Parties*. The assignor shall ensure that such assignment does not prejudice such rights of the other *Parties*. The assignor shall ensure that each assignee of the *Foreground* shall be subject to all the in relation to the *Foreground*.

## 8.2. Access Rights

### 8.2.1. Identification of *Background* and/or *Sideground*.

Each *Party* will describe the *Background* or *Sideground* needed for the execution of the *ICON project* and/or the *Use* in Exhibit 2 of the *Agreement*. As far as the *Access Rights* are concerned, the *Background* or *Sideground* that is not described in Exhibit 2, will be considered as not *needed* for the correct and uninterrupted performance of the *ICON project* nor for the *Use*. However, this does not apply to the *Background* or *Sideground* introduced by a *Party* during *ICON project* in such a way that the *Background* or *Sideground* proves to be needed to another *Party* in order to execute the *ICON project* or for the *Use* of the *Foreground*.

### 8.2.2. General principles relating to *Access Rights*

8.2.2.1. All *Access Rights* needed for the execution of the *ICON project* and for *Use* are granted on a non-exclusive basis and are worldwide.

8.2.2.2. Except in exceptional circumstances, no transfer costs shall be charged for the granting of *Access Rights*.

8.2.2.3. With the exception of the *Access Rights* that are deemed to be granted, the *Party* requesting *Access Rights* will issue a written and motivated request to the *Party* obliged to grant the *Access Rights*. The written request will describe the *Foreground* for which the *Access Rights* are *needed*. The request for *Access Rights* to *Foreground* developed by a *Research Group* (co-owned by IBBT) will be directed to

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IBBT. The terms and conditions of the agreement as referenced hereunder will be negotiated and executed with IBBT who will consult the *Research Group* concerned.

The request for *Access Rights* to *Background* or *Sideground* will be directed to the owner of the *Background* or *Sideground* and the agreement (as referenced hereunder) will be executed with the owner.

The specific conditions regarding the *Access Rights* for *Use* will be formalised in a traceable format. The finalisation of these formalities however, will not delay the granting of the *Access Rights* for *Use*.

In the event the *Parties* do not succeed to agree on the specific terms and conditions of the *Access Rights* for *Use* within a delay of six months following the issuance of the request for *Access Rights* for *Use*, the *Parties* concerned will appoint an independent expert to advise. In the absence of an agreement between the *Parties* concerned to appoint an independent expert, such *Parties* will use the Arbitration possibility foreseen in the *Agreement*.

The advise of the independent expert is binding and the costs associated herewith will be equally shared between the *Parties* concerned.

8.2.2.4. The request to negotiate the terms and conditions for *Access Rights* in accordance with the conditions of the *Agreement* is to be issued in writing at the latest within two (2) years following the expiration of the *ICON project*. In the event of termination the terms and conditions provided in the articles 8.2 and 11 will apply.

Following the expiration of the above-mentioned periods, the obligation to grant and the right to obtain *Access Rights* as described in the *Agreement* terminates.

As an exception to the above, the following will apply in case of patent applications on *Foreground*: without prejudice to the rights of the *Parties* as detailed above, the *Parties* agree that the *Access Rights* (subject to agreement between the *Parties* in accordance with the terms and condition of the *Agreement*) to such patent applications must be requested no later than six (6) months after the publication of the search report of these patent applications. At the end of the above-mentioned period, the obligation to grant and the right to receive *Access Rights* will expire.

This article is not applicable to *Access Rights* that are deemed granted in accordance with the terms and conditions of the *Agreement*.

### 8.2.3. Access Rights to *Affiliated Entities*

8.2.3.1. Each *Party* hereby grants *Access Rights* to any *Affiliated Entity* of any other *Party* as if such *Affiliated Entity* was a *Party* on condition that

(a) against the same terms and conditions such *Affiliated Entity* grants *Access Rights* on its *Intellectual Property Rights* and know-how needed for the *Use* of *Foreground* to all *Parties* and their *Affiliated Entities* and,

(b) fulfil all confidentiality and other obligations described in the *Agreement* as if such *Affiliated Entity* was a *Party*. *Access Rights* to any *Affiliated Entity* are subject to the continuation of the *Access Rights* of the respective *Party* and automatically terminate in case of termination of the *Access Rights* granted to the respective *Party*. In the event the *Affiliated Entity* does not observe its obligations and does not remedy such breach within a reasonable period all *Access rights* granted to such *Affiliated Entity* shall terminate.

The procedure for the granting of *Access Rights* to the *Parties* as set out in article 8.2.4 shall also apply to *Affiliated Entities*.

### 8.2.3.2. Cessation of *Control*

Upon cessation of the *Control* of an *Affiliated Entity*, any *Access Rights* granted to such *Affiliated Entity* shall lapse except in the event that such termination will have an disproportionately negative impact on the

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business of the *Affiliated Entity* (ex. because certain *Background*, *Foreground* or *Sideground* has been incorporated in a product).

### 8.2.4. Access Right for the performance of the *ICON project* and for *Use*

#### 8.2.4.1 *Access Rights needed* for the performance of the *ICON project*

(a) The *Access Rights* to *Background* and *Sideground* needed for the performance of the *ICON project* shall be deemed granted, as of the commencement date of the *ICON project*, on a royalty-free basis.

(b) The *Access Rights* to the *Foreground* needed for the performance of the *ICON project* shall be deemed granted, as of the date of creation, on a royalty-free basis.

#### 8.2.4.2. *Access Rights for Use*

(a) Each *Party* hereby grants to any *Party* *Access Rights* to the *Foreground* to the extent such *Party* needs the *Foreground* for *Use* of the own *Foreground*.

Such *Access Rights* shall be granted:

(i) on a royalty-free basis to all *Parties* participating in the same *Work package*.

(ii) against favourable conditions to all *Parties* not participating in the same *Work package*. In this case the *Party* obliged to grant *Access Rights* is entitled to invoke legitimate interests against the granting of such *Access Rights*.

(b) Each *Party* hereby grants to any other *Party* *Access Rights* to *Background* and *Sideground* to the extent such *Party* needs the *Background* or the *Sideground* or *Use* of the own *Foreground*.

Such *Access Rights* shall be granted:

(i) against favourable conditions to all *Parties* participating in the same *Work package*;

(ii) against reasonable and non-discriminatory conditions between the *Parties* that do not participate at the same *Work package*. In this case the *Party* obliged to grant *Access Rights* can invoke *Legitimate Interests* against the granting of the *Access*.

#### 8.2.4.3. Special provisions concerning *Access Rights* to *Software*

##### (a) General principles

(i) All the terms and conditions concerning *Access Rights* to *Background*, *Sideground* or *Foreground* as detailed in the *Agreement* apply to *Software* that is *Background*, *Sideground* or *Foreground*. In the event of any inconsistency between the terms and conditions detailed in the *Agreement*, the terms and conditions of article 8.2.4.3 shall apply.

(ii) *Access Rights* to *Software* do not include any right to require the creation and delivery of *Object Code* or *Source Code* ported to any particular hardware platform or any right to require the creation and delivery of any *API* or *Software* documentation in any particular form or detail. *Access Rights* to *Software* only relate to the item as available at the moment of granting of the *Access Rights* unless otherwise expressly agreed upon. Only in exceptional circumstances, transfer costs will be charged.

(iii) Unless otherwise expressly provided in article 8.2.4.3. no *Party* is obliged to grant *Access Rights* to *Source Code*. All *Access* rights needed for the performance of the *ICON project* or *Use* will be granted in *Limited Source Code Access*.

##### (b) *Software* license and sublicenses

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(i) *Access Rights to Object Code and/or API needed for Use of the Foreground* in accordance with the terms and conditions of article 8.2.4.2 comprise the worldwide right to:

- use the *Software*:

- in research;
- to create and market products and processes;

or

- to create and provide services.

- to distribute, make available or sell (including by using the services of a third party) such *Object Code* and/or *API* in accordance with the *Access Rights* granted in the *Agreement*;

- to grant to each user buying/using such product and/or service a perpetual, irrevocable and worldwide license to:

- the *Object Code* and/or *API* as part of or in connection with any product or service of a *Party* having *Access Rights*;
- to use the *Object Code* and/or *API* to maintain such product/services;
- to use the *Object Code* and/or *API* to create for its own end-use interacting interoperable Software in accordance with the rights conferred by, and subject to the conditions of, Council Directive of 14 May 1991 on the legal protection of computer programs;

- in the course of and for the purposes of the exercising of the rights described in (i) above, to make and have made an unlimited number of copies of such *Object Code* and/or *API*.

Nothing in this article 8.2.4.3 affects the application of the terms and conditions provided in article 8.2.4.4. In the event of any inconsistency between the provisions of article 8.2.4.3 and article 8.2.4.4, then article 8.2.4.4 shall prevail.

(ii) Where a *Party* has access to *Source Code* for *Use of the Foreground*, *Access Rights* to such *Source Code* shall, unless otherwise expressly agreed upon between the *Parties* concerned, comprise the worldwide right to copy, use and modify such *Source Code* as *needed* to support the exercise of the *Access Rights* granted to such *Party* in respect to the corresponding *Object Code*. Unless otherwise agreed upon between the *Parties* concerned, *Access Rights* to the *Source Code* do not include the right to sublicense such *Source Code* or make it available to any third party in whole or in part.

(iii) Each sublicense granted in accordance with the provisions of article 8.2.4.3(b) shall, if possible, be made by traceable agreement specifying and protecting the rights of the *Party* granting the *Access Rights*.

### 8.2.4.4. *Open Source*

The *Parties* acknowledge that the use in the *ICON project* or the introduction in the *ICON project* by a *Party of Background* or *Sideground* pursuant to *Open Source Terms* may impair or otherwise affect the utilisation or *Use* by other *Party* of the *Background*, *Sideground* or *Foreground*.

Therefore, each *Party* will, unless such *Party* obtained the prior approval from the project steering committee, refrain from using during the performance of the *ICON project* or introducing in the *ICON project*, *Background*, *Sideground* or *Foreground* that would (or probably would) cause the release of the *Background*, *Sideground* or *Foreground* (entirely or partially) in accordance with the *Open Source Terms*.

During the term of the *ICON project* and for a period of two (2) years following the termination of the *ICON project* no *Party* will release its *Foreground* pursuant to *Open Source Terms*, unless such release is the direct consequence of or is implicitly provided by the approval of the project steering committee.

8.2.4.5. *Access Rights* for a party joining the *ICON project* after the commencement date of the *Agreement*

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The following terms and conditions apply to the party(ies) joining the *ICON project* after the commencement date of the *Agreement*:

(a) as from the date of joining the *ICON project*, the new party will be granted *Access Rights* in accordance with the terms and conditions provided in article 8.2 and article 8.2.4.5(b);

(b) In respect to *Foreground* arising from the work performed by the *Party(ies)* before the date of joining by the new party is regarded to be *Background* towards such new party. In respect of the *Foreground* arising from work performed under the *ICON project* before the date of joining such new party shall enjoy *Access Rights* under the same conditions as the *Access Rights* to *Background* provided in the *Agreement*. For the avoidance of doubt, the project steering committee will determine the *Foreground* that is to be considered to be *Background* in relation to the *Access Rights* for such new party.

### 8.2.4.6. Access Rights for withdrawing / excluded *Party*

The following terms and conditions apply to the *Party(ies)* in respect of whom the *Agreement* is terminated in accordance with the provisions provided in the *Agreement*:

(a) In the event the participating of a *Party* to the *ICON project* is terminated upon request of such *Party*, the *Access Rights* granted and the obligations to grant *Access Rights* pursuant to the *Agreement* shall continue to be in full force and effect except that the *Access Rights* shall only be granted with respect to the *Background*, *Sideground* and *Foreground* existing at the time of such termination.

(b) In the event the *Agreement* is terminated due to breach of contract, the defaulting *Party* is obliged to continue to grant *Access Rights* pursuant to the terms and conditions of the *Agreement* to the *Background*, *Sideground* and *Foreground* existing at the time of such termination. The *Access Rights* granted by the other *Party(ies)* to the defaulting *Party* shall cease immediately upon termination of the *Agreement*.

## Article 9: Publications and communication

9.1. For the avoidance of doubt, no *Party* to the *ICON project* shall be entitled to publish or allow the publishing of any data that constitutes *Background*, *Sideground*, *Foreground* or *Confidential Information* of another *Party*, even where such data is amalgamated with such first *Party's* *Foreground*, *Background*, *Sideground* or other information, document or material, without the prior written consent of the other *Party*.

9.2. For each proposal to publish or communicate the *Foreground*, each *Party* shall request the prior written consent of the project steering committee. Therefore, the requesting *Party* shall issue a written request to the project leader. Within a period of thirty (30) working days following the communication of such request, the project steering committee shall decide whether or not the publication and/or communication is authorized or not. The consent may only be refused for the reasons detailed in article 9.2. Under no circumstances the delay of the publication will exceed a period of six (6) months.

In the absence of any response within the above-mentioned period, it is deemed that the proposed publication or communication is authorized. If the project steering committee decides that *Intellectual Property* Rights cannot effectively be protected, the project steering committee may decide to postpone the publication and/or communication or to allow a limited, amended or alternative version of the information to be published or communicated. In this case a representative of the requesting *Party* will be invited to the project steering committee and given a fair hearing. Till one (1) year after termination of the *Agreement* consent is to be given by the *Parties* (instead of the project steering committee). After this period, the restrictions with respect

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to *Foreground, Background, Sideground* and *Confidential Information* of other Parties remain into full force.

- 9.3. The consent of the project steering committee is not required for any publication by IBBT of information falling within the scope of (i) the applicable reporting obligations to IBBT, (ii) IBBT's annual reports or (iii) audit(s) to which IBBT is subject.
- 9.4. Each authorized publication and/or communication of the *Foreground* will mention that the *Foreground* is obtained within the *ICON project* of IBBT.

### Article 10: Liability

#### 10.1. Principles

##### 10.1.1. Liability towards the *Parties*

- (a) The obligation of each *Party* to carry out its tasks within the *Work Package(s)* of the *ICON project* does not entail an obligation on that *Party* to deliver results, but is merely a commitment to use all reasonable efforts to perform to the best of its ability and insight the *ICON project* as set out in article 4 of the *Agreement*.
- (b) None of the *Parties* shall be liable for any fault and/or negligence of another *Party (Parties)* resulting from the carrying out of the *Agreement*. Each *Party* shall be solely liable for any defects in its products and/or services resulting from the use of the *Foreground*. In the event a claim for such defects are started against the *Party* that is the owner of the *Foreground*, the *Party* using the *Foreground* in its products and/or services will indemnify the other *Party*.
- (c) In respect of information or materials supplied by a *Party* to another *Party* under the *Agreement*, the supplying *Party* shall be under no obligation or liability other than as expressly stated in the *Agreement*. Except as otherwise expressly agreed, no warranty condition or representation of any kind is made by, given by or to be implied against the supplying *Party* as to the sufficiency, accuracy or fitness for purpose of such information or materials, or, the absence of any infringement of any *Intellectual Property Rights* of third parties by the use of such information and materials, and the recipient *Party* shall in any case bear the entire risk of any consequences that may arise from the use of such information and materials.

Notwithstanding the foreground, each *Party* hereby agrees to promptly inform the other *Parties* of any (threatened) claim of infringement of *Intellectual Property Rights* of a third party that comes to the attention of such *Party*.

##### 10.1.2. Liability towards third parties

Each *Party* is and remains fully liable for the performance of any part of its obligations under the *Agreement* and for any loss, damage or injury to third parties resulting from the carrying out by it of the *Agreement* or from the *Use* of the *Foreground, Background* or *Sideground*. Therefore, a *Party* against whom a claim is lodged by a third party shall enjoy a right of recourse against any other *Party* to the extent that the third party claim is predicated on that other *Party's* fault and/or negligence. Each *Party* agrees to be summoned before the court seized with the dispute with the third party for mediation and indemnification.

##### 10.1.3. Liability for subcontractors

Subcontracting by a *Party* in accordance with the provisions of the *Agreements* shall not relieve that *Party* from its obligations and liabilities as detailed in the *Agreement*. Each *Party* shall be fully

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liable for the correct performance of any part of its activities and the compliance of its obligations detailed in the Agreement. Each *Party* agree to take all necessary measures in order to ensure that the obligations applicable to such *Party* also applicable to subcontractors.

### 10.2. Claims between *Parties*

#### 10.2.1. Excluded liability

In no event shall any *Party* be liable for any indirect or consequential damages, however caused or arising (such as tort or objective liability), including without limitation:

- (a) Loss of profit, revenue, income, turnover, interests, savings, consignment, productions and business opportunities;
- (b) goodwill and anticipated savings;
- (c) loss of data or damage to reputation;
- (d) any type of indirect or consequential loss or damage.

#### 10.2.2. Limitation of liability

The aggregate liability of each *Party* towards the other *Parties* shall not exceed the total amount for the *ICON project* as detailed in Exhibit 1 of the *Agreement*.

#### 10.2.3. Exceeding the scope of *Access Rights*

For the avoidance of doubt, the *Parties* hereto expressly agree:

The exclusions and limitations of liability detailed in this article shall not apply in respect of any activity involving the use of the *Background*, *Sideground* and/or *Foreground* of another *Party* to the extent that such activity or use is not within the scope of the *Access Rights* granted by the Agreement.

#### 10.2.4. Exceptions

The limitations and exclusions of liability shall not apply in respect of any:

- (a) Fraud and wilful misconduct;
- (b) Death and/or injury to natural persons (in which case the amounts of the applicable insurances are applicable whereby the amounts can in no event be lower than the financial limitation of liability provided in the Agreement).

### 10.3. Force Majeure

10.3.1. If the performance of the *Agreement* is prevented or limited by Force Majeure, the contractual *Party* affected by the Force Majeure is released from the performance of its obligations that are directly affected or limited by Force Majeure provided that the affected *Party*:

- (a) promptly informs the other *Parties* of any event of Force Majeure;
- (b) uses all reasonable efforts to avoid or solve the circumstances of *Force Majeure*, and
- (c) shall continue the performance of its obligations as from the moment the events of Force Majeure are removed.

10.3.2. Following the notification as detailed in article 10.3.1 a), the *Parties* shall discuss in good faith the measures to be taken and take all reasonable efforts to minimize the consequences of the events of Force Majeure on the performance of the *Agreement*.

## Article 11: Term of the *Agreement*

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11.1. The *Agreement* shall enter into force on the date of its execution by all *Parties* with retroactive effect as from the commencement date of the *ICON project* (see Exhibit 1) and shall remain in full force and effect until all the obligations set out in Exhibit 1 to the *Agreement* have been fulfilled, unless the *Agreement* is terminated prematurely in accordance with its terms and conditions detailed in the *Agreement*.

11.2. Termination of the *Agreement* following an evaluation

This *Agreement* may be terminated at any time by common accord between the *Parties* in the project steering committee if the *Parties* feel that the co-operation as described in the *Agreement* is failing to achieve the anticipated *Foreground* and/or for legal reasons. In such event, the *Parties* shall settle the consequences of the termination of the *Agreement* in a written "termination agreement", taking into consideration the principles set out in article 8.2 and 11.4 of the *Agreement*.

11.3. Withdrawal and/or exclusion of a *Party*

Each *Party* may submit a motivated request to terminate its participation in the *Agreement*.

The other *Parties* may also apply for the termination of the participation of a *Party* in the *ICON project* (e.g. for breach of contract that is not remedied by the defaulting *Party* within thirty (30) days as from the written notification to remedy the breach). This notification shall mention the reasons for terminating *ICON project* against such *Party* as well as the proposals for the re-allocation of such *Party's* tasks.

In the above circumstances, the project steering committee may approve or reject such a request (final decision of the IBBT Board of Directors). Notwithstanding the fact that the project steering committee approves such request, the decision has to be ratified by the Board of Directors and the *Agreement* must then be amended in writing. In the event a request to exclude a *Party* is formulated, the *Party* to whom the exclusion application relates may not vote on such decision, in which case he will be invited before the project steering committee and given a fair hearing before any decision is taken by the project steering committee.

The termination of the *Agreement* regarding the *Party* concerned shall come into effect on the date on which the project steering committee approves the decision to exclude the *Party*.

However, if no agreement can be reached between the *Parties* in the project steering committee concerning the exclusion of a *Party* for breach of contract that is not remedied by the defaulting *Party* within a period of thirty (30) calendar following the written notice by the *Parties* who are faced with such breach of contract by the other *Party* and participate in that *Work Package*, the *Party (Parties)* that are within the *Work Package* with a breach of contract by a *Party* ("the defaulting *Party*") may decide unanimously to exclude the defaulting *Party* from further participation in the *Work Package* in question. It is explicitly agreed that the defaulting *Party* shall not take part in the vote on the exclusion decision.

11.4. Consequences of termination of the *Agreement*

11.4.1. Obligations intending to survive the termination of the *Agreement* remain in full force and effect after the termination of the *Agreement* (for whatever reason). These obligations include, *inter alia*, the articles 4.5, 6.2 en 6.3, 7, 8, 9, 10, 11.4, 12.1 and 12.4, and these articles shall remain in force following the termination of the *Agreement*.

11.4.2. Upon termination of the *Agreement* in accordance with the provisions of article 11.3, the excluded/withdrawing *Party* shall immediately (at the latest within thirty 30 calendar days) provide

## IBBT confidential

IBBT with a report on work carried out up to the date of termination of the *Agreement*, including the *Foreground* achieved.

### Article 12: Miscellaneous

- 12.1. This *Agreement* shall be governed by the laws of Belgium. Any dispute arising out of the interpretation and/or execution of the *Agreement* that cannot be solved amicably, will be finally settled by the competent court located in Ghent (Belgium). Notwithstanding the foregoing, all difficulties, controversies and disputes between the *Parties* regarding *Intellectual Property Rights* that can not be solved amicably, will be finally settled by arbitration in accordance with the rules and procedures of CEPINA. The tribunal shall be composed of one (1) arbitrator and the proceedings shall be conducted in Dutch or English as agreed upon between the *Parties*.
- 12.2. Without prejudice to the provisions of article 8.1.2.3. no *Party* shall be entitled to assign, transfer or otherwise dispose of, in whole or in part, of its obligations and rights under the *Agreement* without the prior written consent of the other *Parties*.
- 12.3. The *Parties* shall independently perform the *ICON project* in accordance with their own ideas and abilities. There is no hierarchical relationship between the *Parties* nor any other relationship other than the relationship specified in the *Agreement*.
- 12.4. Any and all notices within the framework of the *Agreement* by the *Parties* to the other *Party* (*Parties*) will be in writing (e.g. e-mail).
- 12.5. No other rights regarding the *Foreground*, *Sideground* or *Background* than the rights expressly provided in the *Agreement* are granted by a *Party* or its *Affiliated Entity* to the other *Parties* or their *Affiliated Entities*.
- 12.6. This *Agreement* contains the entire and only agreement between the *Parties* with regard to the performance of the *ICON project* and supersedes and cancels all previous oral and written communications. The Exhibits form an integral part of the *Agreement*.
- 12.7. This *Agreement* cannot be amended or completed, except by a written document signed by the *Parties* unless such written document executed by the *Parties* is not required following the terms and conditions of the *Agreement* or as agreed upon between the *Parties*.
- 12.8. If any part or any clause of the present *Agreement* is for whatever reason found to be infringing any law, regulation or judicial decision applicable to the *Agreement*, invalid or unenforceable, the remaining parts or articles shall not be affected and shall remain valid and enforceable as if the illegal, invalid or unenforceable parts or clauses were not part of the *Agreement*. Any illegal, invalid or unenforceable part of the article shall be replaced by a provision that, inasmuch as this is legally possible, comes closest to what the *Parties* aimed at in the part or clause concerned. The *Parties* will in good faith negotiate such new article and agree to modify as soon as possible the *Agreement*.
- 12.9. In the event a *Party* requests or intends to request state aid, such *Party* hereby commits to submit the IBBT file as part of its request for state aid. Such IBBT file will contain an overview of the ownership rules agreed upon between the *Parties* and described in Exhibit 2. Such *Party* shall in due time inform IBBT about its intention to request state aid in order for IBBT to collect the information for the IBBT file and give the IBBT file to the *Party* concerned.

Executed in [number of Parties] (..) original copies in Ghent, each Party acknowledging having received one (1) original copies of the *Agreement*.

Exhibits:

1. Description of *ICON project*
2. Foreground – Background – Sideground
3. *Affiliated Entities*
4. Reporting: reference documents

TEMPLATE