**CONSORTIUM AGREEMENT**

BETWEEN:

**COMPANY (“**     **”)**, having its office at ADDRESS, The Netherlands and represented in this matter by its POSITION, NAME;

**COMPANY (“**     **”)**, having its office at ADDRESS, The Netherlands and represented in this matter by its POSITION, NAME;

**COMPANY (“**     **”)**, having its office at ADDRESS, The Netherlands and represented in this matter by its POSITION, NAME;

COMPANY, COMPANY and COMPANY individually referred to as “Industrial Partner” and together referred to as “Industrial Partners”;

AND

**KNOWLEDGE INSTITUTE (“**     **”)**, having its office at ADDRESS, The Netherlands and represented in this matter by its POSITION, NAME;

**KNOWLEDGE INSTITUTE (“**     **”)**, having its office at ADDRESS, The Netherlands and represented in this matter by its POSITION, NAME;

**KNOWLEDGE INSTITUTE (“**     **”)**, having its office at ADDRESS, The Netherlands and represented in this matter by its POSITION, NAME;

KNOWLEDGE INSTITUTE, KNOWLEDGE INSTITUTE and KNOWLEDGE INSTITUTE individually referred to as “Knowledge Institute” and together hereinafter referred to as “Knowledge Institutes”;

The Industrial Partners and Knowledge Institutes hereinafter jointly referred to as “Parties” and individually referred to as “Party”.

WHEREAS:

* The Dutch government deployed an innovation policy, which aims at strengthening the international competitiveness of nine leading industrial sectors (the Topsectors) through innovation;

* The core principle of the innovation policy is demand-driven research through collaboration between industry, academia and government, funded by both industry and government;
* This policy is implemented through the installation of at least one TKI (as defined hereafter) per Topsector, such TKI having a role in determining the research agenda of the relevant Topsector. Ultimately, the Minister of Economic Affairs is responsible for the grant of public funding.

* Parties have expressed their intention to participate in the project entitled “     ”, for the purpose of which they submitted a proposal to the TKI Agri&Food;
* Since EZ (as defined hereafter) has granted the requested subsidy pursuant to the application dated      , Parties hereby wish to set out their mutual rights and obligations within the context of the Project (as defined hereafter);
* The Knowledge Institutes involved are responsible for the negotiation process regarding their research results, aiming at adequate and effective utilization of these results by the Industrial Partners involved;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

**Article 1: Definitions**

* 1. Definitions

“**Access Rights**” means a license to Foreground or Background for execution of the Project or for the purpose of use of Own or Joint Foreground outside the Project, as laid down in Article 6.

“**Affiliated Entity**” means the legal entity that is either the ultimate parent company of a Party or that is under the direct or indirect control of a Party, or under the same direct or indirect control as the Party, control taking any in the following forms:

1. the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
2. the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

“**Background**” means information or material which is either held by a Party prior to its accession to this Consortium Agreement or that has been developed or obtained by a Party after the Effective Date of this Consortium Agreement independently from the Project, as well as any intellectual property rights pertaining to such information or material.

“**Coordinator**” is the Party that is authorised by the other Parties to act as the secretary or “penvoerder” to the Parties, having the tasks assigned to it under Article 8.1.

“**Consortium Agreement**” means this agreement as well as all annexes and addenda thereto.

**“Defaulting Party”** a Party in substantial breach of its obligations under this Consortium Agreement – not caused by force majeure (“overmacht”) - which is irremediable or which is not remedied within ninety (90) days of written notice from the Coordinator requiring that it be remedied.

“**Effective Date**” means      .

“**EZ**” means the Dutch Ministry of Economic Affairs.

“**Field of Use**” means the application area per Industrial Partner as specified hereafter:

Industrial Partner 1 -

Industrial Partner 2 -

Industrial Partner 3 -

"**Foreground**” means the results, including information, know-how and materials, whether or not they can be protected, that are generated under the Project. Such results include copyright, design rights, patent rights, plant variety rights, or similar forms of protection.

“**Invention Disclosure Form**” means a document used to evaluate the patentability of an invention, see template in Annex 2.

“**Project**” means all activities related to the project entitled: “     ”, which shall be carried out in accordance with the Project Plan.

“**Project Budget**” means the allocation of all the resources in cash or in kind contributed by EZ, Industrial Partners and TKI Agri & Food for the Project (including managing costs of the Coordinator) as specified in the Project Plan.

“**Project Committee**” is the decision-making body for the Project.

“**Project Plan**” means the description of research and related budget for the Project, which is attached to this Consortium Agreement as Annex 1.

“**Project Share**” means the total in kind and/or cash contribution of a Party to the Project as set forth in the Project Plan.

"**Subcontractor**" means a third party that carries out activities within the scope of the Project on behalf of a Party.

“**TKI Agri&Food**” means the non-profit foundation Stichting Topconsortium voor Kennis en Innovatie Agri&Food, established on 7 August 2012 and having its registered office in Wageningen.

“**TKI Conditions**” means all conditions imposed by TKI Agri&Food and/or EZ in connection with the Project, such as, without limitation, Article 2.2.2 of the Community Framework for State Aid (2014/C 198/01), the Kaderbesluit EZ-subsidies (21 November 2008), the Regeling nationale EZ-subsidies (11 July 2014).

**Article 2: Responsibilities of Parties**

2.1 General principles

Each Party shall contribute to the efficient implementation of the Project Plan and shall cooperate in good faith and shall perform and fulfil, promptly and on time, all of its obligations under this Consortium Agreement as may be reasonably required from it.

Each Party shall promptly provide all information reasonably required by the Project Committee or Coordinator to carry out its tasks. Each Party undertakes to notify promptly and in accordance with the governance structure of the Project any information that is likely to affect the Project.

Each Party shall take reasonable measures to ensure the accuracy of any information (including Background and Foreground) or material it supplies to the other Parties.

2.2 Involvement of third parties

A Party is only allowed to involve third parties in the execution of its work under the Project upon prior approval thereof by the Project Committee.

A Party that involves a third party (including Affiliated Entities) in the Project shall at all times remain responsible for the execution of its relevant part of the Project and for such third party’s compliance with the provisions of this Consortium Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement.

2.3 Financial and scientific reporting

In connection with reporting requirements of TKI Agri&Food, Parties shall provide the Coordinator with financial and scientific reports with regard to the Project. Parties agree that the Knowledge Institute’s/Knowledge Institutes’ financial reporting requirements are complied with through submission of financial reports based on the existing reporting instruments for EZ funding granted to such Knowledge Institute/Knowledge Institutes.

In addition, as the Knowledge Institute/Knowledge Institutes’ is accountable to EZ directly for the execution of its/their part of the Project, Parties acknowledge that the Knowledge Institute/Knowledge Institutes’ provides/provide EZ with financial reports as well as outline scientific reports (which may include an abstract of the Project Plan) on the Project.

2.4 Use of Names, Logos or Trademarks

Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval. However, Parties are entitled to use the name, logos and trademarks of another Party in connection with internal and external communication regarding the Project.

2.5 Defaulting Party

A Party that is declared a Defaulting Party pursuant to Articles 8.2 and 8.3 shall – subject to Article 9.2 - bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks. Any excess amount shall be apportioned to the remaining Parties pro rata to their share in the total costs of the Project as identified in the Project Budget.

In the event that a Party does not or does not fully meet its committed in-kind contribution, Article 3.2 applies.

**Article 3: Contributions and Financial provisions**

3.1 In-cash contribution

The financial contribution of EZ to the Project, as outlined in the Project Budget, shall be distributed by EZ directly to the Knowledge Institute/Knowledge Institutes.

The in-cash contribution of the Industrial Partners shall be payable to the Knowledge Institute/Knowledge Institutes according to the schedule included in the Project Budget, or once per year in the first quarter if no such schedule is available. The Knowledge Institute/Knowledge Institutes shall send an invoice to each Industrial Partner separately for the amount due by such Industrial Partner according to the Project Budget for such year. An Industrial Partner will pay such invoice within 30 days of receipt thereof. Each Industrial Partner shall be solely responsible for the payment of its own invoices.

3.2 In-kind contribution

Each Party’s in-kind contribution will be provided in accordance with the tasks, lists of items and the timetables set forth in the Project Plan in order to enable the Parties to meet the work schedule for the Project. The legal title to the equipment contributed in kind will remain with the Party who provided the equipment, unless agreed otherwise in the Project Plan. Parties shall use such contributed equipment solely for the purpose of the Project.

In the event that a Party does not or does not fully meet its committed in-kind contribution, such Party shall be obliged to pay the monetary equivalent of such in-kind contribution to the Party to which such contribution was due, without prejudice to the right of the latter to claim compensation for the actual loss suffered.

3.3 Justifying Costs

In accordance with its own usual accounting and management principles and practices - which may be verified by TKI Agri&Food or EZ - each Party shall be solely responsible for justifying its costs incurred with respect to the Project. Where an audit certificate is required, Parties shall provide such certificate at their own costs.

3.4 Funding Principles

A Knowledge Institute that spends less than its allocated share of the Project Budget will be funded in accordance with its actual duly justified eligible costs only. A Knowledge Institute that spends more than its allocated share of the Project Budget will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share unless decided otherwise by the Project Committee.

**Article 4: Foreground**

4.1 Ownership

The Party that carried out the work generating Foreground hold the rights to that Foreground (“**Own Foreground**”).

If the work generating particular Foreground is carried out by more than one Party and if their intellectual contributions to such Foreground form an indivisible part thereof, these Parties (individually referred to as the “**Entitled Party**”) shall be jointly entitled to such Foreground (“**Joint Foreground**”). The share of each of the Entitled Parties that is entitled to the Joint Foreground shall be determined in good faith, taking into account each Entitled Party’s relative intellectual contribution to the Joint Foreground.

The Party that is entitled to Own Foreground shall have the exclusive right to file patent applications for such Own Foreground in its own name and at its own expense. In the event of Joint Foreground, the Entitled Parties shall have the exclusive right to file patent applications for such Joint Foreground in their names and at their expense.

4.2 Rights to Non-protectable Foreground

The Industrial Partners shall receive a non-exclusive, non-transferable, sub-licensable to its Affiliated Entities only, worldwide, royalty-free right to use the Knowledge Institute’s/Knowledge Institutes’ Own and/or Joint Foreground that is not protectable by an intellectual property right (“**Non-protectable Foreground**”). This user right is subject to the confidentiality in accordance with Article 7.

Each Industrial Partner hereby agrees, irrevocably and in advance, that the Knowledge Institute/Knowledge Institutes grants the aforementioned user rights, in the event that the Non-protectable Foreground is Joint Foreground to which both that Industrial Partner and the Knowledge Institute/Knowledge Institutes are entitled.

After publication of the Non-protectable Foreground, all Parties are entitled to use the published Non-protectable Foreground for all purposes. If the Non-protectable Foreground is not published, Parties are entitled to use non-published Non-protected Foreground for all purposes as from lapse of the confidentiality obligations laid down in Article 7.

4.3 Rights to Protectable Foreground

Each Party agrees to inform the other Parties of Foreground for which intellectual property rights can be obtained (“**Protectable Foreground**”), through a completed Invention Disclosure Form or in a different form as agreed by the Project Committee.

The Knowledge Institute/Knowledge Institutes hereby grants/grant each Industrial Partner making a (cash and/or in-kind) contribution of at least 5% of the total Project Budget, a right of first negotiation for an exclusive license with regard to the Knowledge Institute’s Protectable or protected Own Foreground and Joint Foreground owned only by Knowledge Institutes within such Industrial Partner’s Field of Use, for all purposes and with the right to grant sublicenses to its Affiliated Entities (“**Right of First Negotiation**”). This Right of First Negotiation is subject to Article 29 (d) Framework for State aid for research and development and innovation (2014/C 198/01).

If an Industrial Partner elects to exercise its Right of First Negotiation, it shall inform the respective Knowledge Institute/Knowledge Institutes thereof in writing. The Right of First Negotiation shall lapse, if the Industrial Partner has not notified the respective Knowledge Institute/Knowledge Institutes that it exercises its Right of First Negotiation within one (1) month after the date an Invention Disclosure Form has been distributed in the aforesaid term and manner.

If the Right of First Negotiation is exercised, the Industrial Partner and the Knowledge Institute that is entitled to the Own Foreground/ the Knowledge Institutes that are entitled shall negotiate a license agreement in good faith and in accordance with Article 29 Framework for State aid for research and development and innovation (2014/C 198/01).

Should the Industrial Partner/Partners and the owning Knowledge Institute/Knowledge Institutes be unable to agree on the terms of a license agreement within a period of six (6) months, the Knowledge Institute/Knowledge Institutes shall have the right to license their Protectable Foreground to any third party. The Knowledge Institute/Knowledge Institutes shall however – for a period of one year as of the termination of these negotiations - not grant licenses to other Industrial Partners or third parties on more favourable terms (taking into account objective standards, such as field of use, geographical scope, exclusivity), than offered to the interested Industrial Partner.

4.4 Joint Foreground

**Non protectable Joint Foreground**

Each of the Entitled Parties has a non-exclusive, transferable, sub-licensable, worldwide, royalty-free right to use the Joint Foreground that is not protectable by an intellectual property right.

**Protectable Joint Foreground**

During a period of six (6) months as of the realization of Joint Foreground, each of the Entitled Parties shall use the Joint Foreground that is protectable by an intellectual property right (“Protectable Joint Foreground”) for its own internal research purposes only. Such internal use shall be on a royalty-free basis and without requiring the prior consent of the other Entitled Parties. During this period the Entitled Parties shall decide on whether or not they want to agree on exclusive use of the Joint Foreground within their Field of Use for commercial application and/or exploitation. If an Entitled Party wishes to agree on such exclusive user rights, the Entitled Parties shall agree on payment of a fair and reasonable fee to the other Entitled Parties. During a period of negotiation with a maximum of six (6) months after an Entitled Party has indicated its wish to obtain exclusivity, each of the Entitled Parties shall use the Protectable Joint Foreground for its own internal research purposes only in accordance with the above.

If none of the Entitled Parties has indicated it wishes to obtain such exclusivity within said period or the Entitled Parties haven’t reached agreement within a period of six (6) months after an Entitled Party has indicated its wish to obtain exclusivity, each of the Entitled Parties shall be entitled to use the Joint Foreground as it sees fit, and to grant non-exclusive licenses, without obtaining any consent from, paying compensation to, or otherwise accounting to any other Entitled Party, unless otherwise agreed between the Entitled Parties.

The Entitled Parties shall agree on all protection measures and the division of related cost before obtaining intellectual property protection (except for copyright and database rights).

**Article 5: Publication**

5.1 Publication

Each Party shall have the right to publish Own Foreground and/or Joint Foreground to which it is entitled through any public disclosure, such as scientific journals, press releases, seminars or otherwise and subject to the procedure contained herein. This procedure does not apply to disclosures for the purpose of obtaining intellectual property rights.

A Party that intends to publish Own Foreground and/or Joint Foreground shall provide the other Parties with the draft publication. Any objection to the intended publication shall be made in writing to the Party intending to publish within 30 days after receipt of the notice. If no objection is made within the time limit stated above, publication of the submitted draft document is permitted.

An objection to the intended publication is justified if:

(a) the proposed publication includes another Party’s Background and/or Foreground; or

(b) the proposed publication includes patentable Foreground and the objecting Party anticipates that it wishes to exercise the Right of First Negotiation.

The objection has to include a precise request for necessary modifications. If an objection has been raised, the Parties involved shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by filing applications for intellectual property rights before publication or by amending the planned publication), provided that the scientific integrity is preserved. The objecting Party shall not unreasonably continue the opposition, where appropriate actions are performed following the discussion.

If the objection is based on (b) the intended publication can be delayed for up to six (6) months to allow a patent application to be filed. As from the expiration of this term, such Party will be entitled to publish of the proposed document.

For the avoidance of doubt, a Party shall **not** publish Background or Foreground of another Party, even if such Background or Foreground is amalgamated with the Party’s Own Foreground, without the other Party’s prior written approval.

This Article 5.1 shall survive expiration or termination of the Consortium Agreement for the term of the confidentiality obligations of Article 7.

5.2 Communication with subsidy provider

The provisions contained in this Article 5.1 shall not apply to communication with TKI Agri&Food and EZ, including the submission of outline scientific reports to EZ as meant in Article 2.3.

5.3 Cooperation obligations

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

**Article 6: Access Rights**

6.1 General Principles

Exchange of Background and Foreground under this Consortium Agreement does not affect the ownership thereof. Except for the Access Rights granted in this Article 6 and except for the user rights granted under Article 4.3, no user rights are granted in respect of Background and Foreground.

Parties strive to only disclose Background that is necessary for the execution of the Project. Parties shall indicate if Background is subject to restrictions that affect the granting of Access Rights.

Any Access Rights granted are on a non-exclusive basis and exclude any rights to sub-license, unless expressly agreed otherwise in writing.

Background and Foreground shall be used only for the purpose for which Access Rights are granted. Any use of a Party’s Background or Foreground outside such purpose shall be subject to an additional license agreement on terms to be agreed on.

6.2 Access Rights for execution of the Project

Each Party hereby grants to each of the other Parties, and subject to the terms of Article 6.1, Access Rights to 1) the Background disclosed in the execution of the Project and to 2) Own Foreground and Joint Foreground, for the purpose of the execution of the Project and on a royalty-free basis.

6.3 Access Rights necessary for use of Own Foreground or Joint Foreground

Parties agree to grant each other Access Rights to Background disclosed in the execution of the Project and Foreground on fair and reasonable conditions and subject to the terms of Article 6.1, if and insofar Access Rights are Needed for use of a Party’s Own Foreground or Joint Foreground outside the Project. As used herein “Needed” means that without the grant of such Access Rights, the use of Own Foreground or Joint Foreground to which a Party is entitled, would be technically or legally impossible.

A request for Access Rights under this Article 6.3 shall be made in writing, ultimately within six (6) months after expiration or termination of this Consortium Agreement. The requesting Party must show that the Access Rights are Needed. The grant of Access Rights will be at a Party’s own discretion and may be made conditional on the acceptance of specific conditions (such as confidentiality and payment conditions).

6.4 Parties acceding the Consortium Agreement

All Foreground developed before the accession of a Party shall considered to be Background with regard to such new Party.

6.5 Parties leaving the Consortium Agreement

Access Rights granted to a Party whose participation is terminated in accordance with Article 10.2, as well as such Party's right to request Access Rights, shall cease immediately upon receipt of the formal notice of termination.

In addition, such Party shall continue the Access Rights it has granted to its Background and Foreground under this Consortium Agreement as if it had remained a Party for the whole duration of the Consortium Agreement.

**Article 7: Confidentiality**

7.1 Confidentiality of Background, Own Foreground and Joint Foreground

Each Party agrees with respect to Background disclosed by another Party, Own Foreground of another Party and Joint Foreground of other Parties:

- to use such Background and Foreground solely for the purpose for which it was disclosed (if no purpose was agreed, the purpose shall be the execution of the Project by the Party that received the Background or Foreground);

- not to disclose such Background and Foreground to any third party without the prior written consent of the Party that disclosed the Background or Foreground;

- ensure that internal distribution of such Background and Foreground takes place on a strict need-to-know basis;

- take all reasonable precautions to prevent the unauthorised disclosure of the Background and Foreground.

These obligations apply mutatis mutandis to information that a person in a like position and under like circumstances would reasonably treat as confidential, such as financial, legal and business information.

The obligations of this Article 7.1 shall remain in force and effect for three (3) years as of the end of the Project.

7.2 Exceptions to confidentiality

The obligations laid down in Article 7.1 shall not apply to Background or Foreground for which a Party can demonstrate that it:

* was already in the public domain prior to the Effective Date or becomes publicly available thereafter by means other than any unlawful act or negligence of the Party relying on this exception;
* known to the receiving/non-owning Party prior to the Effective Date of this Consortium Agreement;
* was obtained from a third party and as far as reasonably known to the receiving/non-owning Party, has not originated from the disclosing Party; or
* was developed independently by such Party, without recourse to or use of the Background or Foreground

7.3 Permissible disclosure

If any Party is required to disclose another Party’s Background or Foreground in order to comply with applicable laws or regulations or with a court or administrative order, nothing herein shall restrict the Party from disclosing such information, but only to the extent of such order, law or regulation and it shall, to the extent it is lawfully able to do so, prior to any such disclosure

- notify the disclosing Party, and

- comply with the disclosing Party’s reasonable instructions to maximally protect the confidentiality of the information.

7.4 Disclosure to Affiliated Entities

Parties will have the right to disclose another Party’s Background or Foreground to any of its Affiliated Entities, provided that prior consent of the disclosing Party is obtained and such Affiliated Entities are bound by confidentiality obligations not less stringent than the ones of the Consortium Agreement.

7.5 TKI Agri&Food and EZ

The confidentiality obligations under this Consortium Agreement shall have no obstructing effect with regard to the communication with the TKI Agri&Food and EZ. The Party communicating with the TKI Agri&Food and EZ shall nevertheless use its reasonable efforts to limit disclosure of confidential information and shall secure that such communications do not include any Party’s Background or Foreground, nor information that impairs the novelty of the Foreground generated.

**Article 8: Governance structure**

8.1 Coordinator

Parties appoint [Stichting Wageningen Research onderdeel bijv. WFBR] as Coordinator. The Coordinator shall, and the other Parties hereby authorize the Coordinator to carry out the tasks set forth in this Article 8.1.

The Coordinator shall be responsible for:

* Preparing the meetings, proposing decisions and preparing the agenda of the Project Committee, chairing the meetings (unless otherwise decided by the Project Committee), preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings;
* Monitoring compliance by the Parties with their obligations;
* Keeping the address list of Members and other contact persons updated and available;
* Collecting and reviewing information on the progress of the Project and submitting outline scientific reports and other deliverables (including financial statements and related certification), if required, to the TKI Agri&Food, EZ and other Parties;
* Transmitting promptly documents and information connected with the Project;
* Administration of the financial contributions, as described in Article 3;
* Providing, upon request, the Parties with official copies of documents that are in the sole possession of the Coordinator when such copies are necessary for the Parties to present claims.

The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party, except that Parties hereby authorize the Coordinator to:

* enter into addenda regarding the accession of third parties to the Consortium Agreement pursuant to the Project Committee’s decision;
* give notice of default pursuant to the Project Committee’s decision;
* terminate the Consortium Agreement towards a Party in accordance with article 10.2.

8.2 Project Committee – composition and voting

The Project Committee shall consist of one representative from each Party (hereinafter referred to as “**Member**”). Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 8.3 of this Consortium Agreement. Each Member shall use its best efforts to be present at any meeting (or appoint a substitute or a proxy to attend such meeting) and shall participate in a cooperative manner in the meetings.

The Coordinator shall chair all meetings of the Project Committee, unless decided otherwise by the Project Committee.

The Parties agree to abide by all decisions of the Project Committee. This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Article 11.5 of this Consortium Agreement.

The Project Committee shall meet, either in person or by telephone, on a regular basis, at least twice a year.

Decisions shall be taken by the majority of votes of the Members of the Project Committee in meetings where all Members are present or represented. A Defaulting Party has no vote.

8.3 Project Committee – tasks and decisions

The Project Committee shall discuss the progress of the Project and the Foreground generated so far and shall take the following decisions:

Content and finances:

- Changes the Project Plan (excluding the Project Budget), all within the limits of TKI Conditions;

Evolution of the Project:

- Entry of a new Party to the Project and approval of the settlement on the conditions of the accession of such a new Party;

- Withdrawal of a Party from the Project and the approval of the settlement on the conditions of the withdrawal;

- Decision on a Party’s non-compliance and subsequent notification of default;

- Declaration of a Party to be a Defaulting Party;

- Remedies to be performed by a Defaulting Party;

- Termination of a Defaulting Party’s participation in the Project and measures relating thereto;

- Change of the Coordinator;

- Suspension of all or part of the Project;

- Termination of the Project and the Consortium Agreement;

- approve of changes or additions to annex 3 (Identified Affiliated Entities)

**Article 9: Liability**

9.1 No warranties

In respect of information or materials (including Background and Foreground) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency, accuracy or fitness for purpose of such information, nor as to the absence of any infringement of any proprietary rights of third parties.

The receiving Party shall be entirely and solely liable for the use to which it puts such information and materials.

No Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party exercising its Access Rights.

9.2 Limitations of contractual liability

No Party shall be responsible to any other Party for punitive damages, indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts.

A Party’s aggregate liability under or in connection with this Consortium Agreement towards the other Parties collectively shall be limited to once its Project Share.

The exclusions and limitations of liability stated above shall not apply in the event such damage was caused by a wilful act or gross negligence.

9.3 Damage caused to third parties

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

9.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by force majeure. Each Party will notify the Coordinator of any force majeure as soon as possible. If the consequences of force majeure for the Project are not overcome within 6 weeks after such notification, the Project Committee may decide on transfer of tasks of the Party concerned, if any.

**Article 10: Entry into force, duration and termination**

10.1 Entry into force and duration

This Consortium Agreement shall enter into force as per the Effective Date and shall remain in full force and effect until       [expiry date of Project]. This Consortium Agreement may be terminated prematurely in accordance with the terms of this Consortium Agreement.

10.2 Termination

Each Party is entitled to request the Project Committee to agree to termination of its participation in the Project and the Consortium Agreement.

Each Party is entitled to forthwith terminate the Consortium Agreement in the event of a final decision (not open to appeal) of EZ to discontinue funding the Project.

The Coordinator is entitled to terminate the Consortium Agreement with immediate effect by registered letter towards a Party:

that is declared a Defaulting Party pursuant to Article 8.2 and 8.3;

that is declared bankrupt or granted suspension of payments, or for which an application to that end is filed;

whose business is liquidated or discontinued;

that is in a situation of force majeure as described in Article 9.4, which has continued for a period longer than ninety (90) days.

10.3 Survival of rights and obligations

The provisions relating to Access Rights and confidentiality, for the term set forth therein, as well as for liability, applicable law and settlement of disputes shall survive the expiration or termination (including termination towards a Defaulting Party) of this Consortium Agreement.

**Article 11: Miscellaneous**

11.1 Inconsistencies and severability

If conflicts appear between the TKI Conditions and the Consortium Agreement, the TKI Conditions shall take precedence. In the event of a conflict between the Annexes and the body text of the Consortium Agreement on the other hand, the latter shall prevail.

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

11.2 No representation, partnership or agency

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, an offer by, or creating any obligation of either Party to enter into any form of agreement other **than** stated in this Consortium Agreement or interest grouping or any other kind of formal business grouping or entity between the Parties.

11.3 Assignment and amendments

No rights (except for licenses to / transfer of Foreground after lapse of the Right of First Negotiation) or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties’ prior formal approval.

Amendments and modifications to the text of this Consortium Agreement require a separate agreement between all Parties. For the avoidance of doubt: termination of a Party’s participation in the Consortium Agreement, accession of a Party to this Consortium Agreement, change of the Project Plan (within the limits of the Project Budget) do not require a separate agreement (see Article 8).

11.4 Applicable law

This Consortium Agreement affecting the rights and obligations between the Parties shall be construed in accordance with and governed by Dutch Law.

11.5 Settlement of disputes

Any dispute that may arise from this Consortium Agreement will be submitted to the competent court in Arnhem, the Netherlands.

**Annex 1 – Project Plan and Budget**

**Annex 2 – Invention Disclosure Form**