

UNIFIED CONSORTIUM AGREEMENT

This "Unified Consortium Agreement for FP5 Projects" (the *Consortium Agreement*) has been produced by groups involved in the European Commission's formal advisory group "IRDAC/ESTA" and by the group of telecommunications network operators. These groups are::

- (i) the "European IT Industry Round Table" (EITIRT);
- (ii) European Research Institutes;
- (iii) the Telecommunications Network Operators' Contracts Group (TNOCG); and
- (iv) the Unite group for European Universities.

The *Consortium Agreement* has been negotiated to reflect and balance the interests of all interest-groups concerned in European Framework Programme projects.

The *Consortium Agreement* may be copied and used unamended (save for selection of the Options as indicated below) under the title "Unified Consortium Agreement for FP5 Projects". The *Consortium Agreement* may be copied, amended and used as amended provided a different title is used and the amendments are highlighted. Use of the *Consortium Agreement* is at the sole risk of the users and none of the authors or members of the above groups shall be liable for such use.

Please note in respect of this *Consortium Agreement*:

1. The *Consortium Agreement* is entered into by only *Principal Contractors*. Each *Principal Contractor* should enter into suitable arrangements with the *Assistant Contractors* which it technically supervises. Such arrangements should accord with Section 5.3.1(d) of the *Consortium Agreement*.
2. The *Consortium Agreement* should be signed before signature of the *Contract* with the *Commission*. If this is the case select option 2 of Whereas (B), otherwise select option 1 of Whereas (B) and consider the effect of (and if necessary amend) Section 2.2.
3. The *Consortium Agreement* contains options, comments and requirements for data - on Page 1, in Whereas A, B and D, in Sections 7.1, 10.2.1, 16, 18, the signature page and the Schedule. These are set out in **BOLD CAPITALS**. Select the option required and include it in normal type. Delete the non-selected option and the corresponding note.

General Guidelines:

1. Any third party claiming *Access Rights* as an *Affiliate* should establish that fact before the *Access Rights* are granted.
2. If a *Party* has a link with a third party via a government but considers that third party is an *Affiliate*, it should agree with the other *Parties* to list the third party as an *Affiliate* on the *Consortium Agreement* schedule.

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UNIFIED CONSORTIUM AGREEMENT FOR FP 5 PROJECTS

This AGREEMENT is made on **27-Oct-2000**

BETWEEN

- (1) **Natural Environment Research Council, United Kingdom**
- (2) **Israel Oceanographic and Limnological Research Ltd., Israel**
- (3) **University of Haifa, Israel**
- (4) **National Institute of Biology, Slovenia**
- (5) **Institute of Marine Biology of Crete, Greece**
- (6) **University of Portsmouth Higher Education Corporation, United Kingdom**
- (7) **University of Southampton, United Kingdom**

relating to the *Project* entitled

Biofiltration and aquaculture: an evaluation of hard substrate deployment performance within mariculture developments

WHEREAS:

- (A) The *Parties*, having considerable experience in the field concerned, have submitted or intend to submit a *Proposal* for a *Project* entitled **Biofiltration and aquaculture: an evaluation of hard substrate deployment performance within mariculture developments** to the *Commission* in the Quality of Life and Management of Living Resources part of the Fifth Research And Technological Development Framework Programme
- (B) the parties intend to enter into the *contract*, as *principal contractors*.

- (C) The *Parties* wish to specify or supplement, between themselves, the provisions of the *Contract* in line with the *Contract Annex II* Articles 1.15 and 2.2 b.

- (D) the *parties* recognise that the *project* may have *assistant contractors* and, where this is the case, each relevant *party* intends to enter into an appropriate arrangement with its respective *assistant contractor* to provide the supervision required by the *contract* and to enable certain benefits and obligations to be shared between *assistant contractors* and the *parties*.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

Section 1 Definitions

A. 1.1 Contract Definitions

Words defined in the *Contract* or in the *Contract Annex II Article 1* have the same meaning in this *Consortium Agreement* and appear in italics.

B. 1.2 Additional Definitions

“*Affiliate*” of a *Party* means:

- (a) any legal entity directly or indirectly controlling, controlled by, or under common control with a *Party*, for so long as such control lasts and provided that the said *Affiliate* or the ultimate controlling entity is incorporated and resident in, and subject to the law of, a Member State of the Community, or an *Associated State*.

Control of an entity shall exist through the direct or indirect:

- control of 50% or more of the nominal value of the issued equity share capital of the entity or of 50% or more of the equity's shares entitling the holders to vote for the election of directors or persons performing similar functions, or
- right by any other means to elect or appoint directors of the entity (or persons performing similar functions) who have a majority vote,

- (b) any other organisation specified in the agreed Schedule to this *Consortium Agreement* to be an *Affiliate* of the *Party*.

Common control through government does not, in itself, create affiliated status unless otherwise specified in accordance with paragraph (b) above.

Consortium Agreement means this Unified Consortium Agreement for FP5 Projects entered into in respect of the *Project*.

"*Contract*" means (i) after its signature by all *Contracting Parties*, the Contract No <insert project number> (including its Annexes) for the undertaking by the *Parties* of the *Project*; (ii) before such signature, the model contract proposed by the *Commission* at the date of this *Consortium Agreement* for projects in the fifth research and development framework programme for which the *Proposal* has been or is to be submitted. "*Contract*" shall as applicable also mean any *Contract* amendment.

"*Defaulting Party*" means a *Party* breaching its obligations mentioned in Section 8.7 of this *Consortium Agreement* or withdrawing from the *Project*.

"*Party*" or "*Parties*" means a party or the parties to this *Consortium Agreement*.

"PCC" means the Project Coordination Committee established in accordance with Section 4.

"Project Share" means for each Party, that Party's share of the total cost of the Project as shown in the Contract.

"Proposal" means the proposal for the Project submitted or intended to be submitted (as the case may be) by the Parties (in conjunction with the relevant Assistant Contractors (if any)) to the Commission. "Proposal" shall as applicable also mean any amendment to a Proposal which is so submitted or intended to be submitted.

"Software" means:

- (a) software programs being sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression and in any code form (including source code form);
- (b) software information being technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a software program; and/or
- (c) software documentation being software information in documentary form.

For the avoidance of doubt, Software may be Knowledge or Pre-Existing Know-How.

C. 1.3 Further Understandings

- (i) "indirect use of Knowledge" in the Contract's definition of Exploitation includes, for and on behalf of the Party concerned, use by having products and/or services developed, made and/or provided;
- (ii) "preferential conditions" means more favourable than the market conditions;
- (iii) "held" in the Contract Annex II Article 1(22) means that the holder of the Pre-Existing Know-How can legally grant, or require a party other than the Contractors to grant, Access Rights under and/or to the same;
- (iv) "needed" and "necessary" in the Contract and in this Consortium Agreement means where technical matters are involved "technically essential", otherwise it means "essential".
- (v) "Knowledge" in the Contract Annex II Article 12(1) first paragraph is actually "Knowledge from the Project".

Section 2 **Purpose and Duration**

D. 2.1 Purpose

The purpose of this *Consortium Agreement* is to specify the organisation of the work between the *Parties*, supplement the provisions of the *Contract* concerning *Access Rights* and to set out rights and obligations of the *Parties* supplementing but not conflicting with those of the *Contract*.

E. 2.2 Duration

This *Consortium Agreement* shall come into force as of the date of its signature by the *Parties* but shall have retroactive effect as from 1-Jan-2000 and shall continue in full force and effect until terminated in accordance with Section 15 or complete discharge of all obligations for the carrying out of the *Project* undertaken by the *Parties* under the *Contract* and under this *Consortium Agreement*, whichever is the earlier.

Section 3 **Coordinator**

3.1 In addition to the *Coordinator's* functions pursuant to the *Contract*, the *Coordinator* shall have the following functions only :

- (a) administration, preparation of minutes and provision of the chairman of the *PCC*, and follow-up of its decisions;
- (b) transmission of any documents and information connected with the *Project* between the *Parties* and (as appropriate) to the *Assistant Contractors* concerned.

3.2 Except for the capacity as representative of the *Contractors* described in the *Contract* Annex II Article 2.1d), the *Coordinator* shall not be entitled to act or to make legally binding declarations on behalf of any other *Party*.

3.3 If one or more of the *Parties* is late in submission of *Project Deliverables*, the *Coordinator* may submit the other *Parties' Project Deliverables* to the *Commission*.

Section 4 **Project Coordination Committee**

4.1 The *Parties* shall establish, within thirty days after the date of this *Consortium Agreement*, the *PCC* composed of one duly authorised representative of each of them. After having informed the others in writing, each *Party* shall have the right to replace its representative and/or to appoint a proxy although it shall use all reasonable endeavours to maintain the continuity of its representation.

Each representative shall have a deputy.

4.2 The *PCC* shall be chaired by the *Coordinator's* representative.

The *PCC* shall meet at least quarterly in principle at the request of its chairman or at any other time when necessary at the request of one of the *Parties*. Meetings shall be convened by the chairman with at least fifteen (15) calendar days prior notice with an agenda.

Minutes of the meetings of the *PCC* shall be transmitted to the representatives of the other *Parties* without delay. The minutes shall be considered as accepted by the other *Parties* if, within fifteen (15) calendar days from receipt, no *Party* has objected in a traceable form to the *Coordinator*.

If necessary, the *PCC* may invite representatives of the *Assistant Contractors* to observe (but not to participate in) the meetings of the *PCC*.

4.3 Without prejudice to the *Contract* Annex II Article 2, the *PCC* shall be in charge of overall direction of the *Project*. To that end, the *PCC* shall be responsible for :

- (a) reviewing and proposing to the *Parties* and *Assistant Contractors* budget transfers in accordance with the *Contract*.
- (b) making proposals to the *Parties* and *Assistant Contractors* for the review and/or amendment of the terms of the *Contract*, including Annex I;
- (c) agreeing press releases and (without prejudice to Section 12) joint publications by the *Parties* with regard to the *Project*
- (d) assisting the *Coordinator* to prepare reports on the whole *Project* and in particular agreeing whether a report referred to in the *Contract* Annex II Articles 4(1)(a)(i)-(iii) should be publishable;
- (e) without prejudice to Section 12, agreeing procedures and policies in accordance with the *Contract* Article 10 for *Dissemination of Knowledge* from the *Project* which is not to be *Used* by the *Parties*;
- (f) making proposals to the *Parties* (other than the *Defaulting Party*) and *Assistant Contractors* to service of notices on a *Defaulting Party* in accordance with Section 8.6 and to assign the *Defaulting Party's* tasks to specific entity(ies) (preferably chosen from the remaining *Parties*).

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

In the case of Section 4.3(a) to (d) and in other cases not referred to below, decisions shall be taken by the majority of the votes of the *Parties* present or represented by proxy at a quorate meeting, provided always that any *Party* whose scope of work, time for performance, costs or liabilities are changed or whose information is to be published, may veto such decisions.

In the case of Section 4.3 (e), decisions shall be taken unanimously by all of the *Parties*. In the case of Section 4.3(f), the decision shall be taken unanimously by all of the non-*Defaulting Parties*.

K. 8.3 Claims of the *Commission*

If the *Commission*, in accordance with the provisions of the *Contract*, claims any reimbursement, indemnity or payment of damages from one or more *Parties* (except for claims relating to the matters mentioned in the *Contract* Annex II Articles 6(2), 6(3), 7(3)b, c) or e), 26, 27 or 28 which claims shall be solely for the account of the relevant *Party(ies)* or where the *Commission* states the claim is to be solely for the account of a certain set of *Parties*):

- (a) each *Party* whose default has caused or contributed to the claim being made shall indemnify each of the other *Parties* against such claims provided always that the total limit of liability of that *Party* to all of the other *Parties* collectively in respect of any and all such claims shall not exceed twice that *Party's Project Share* - any excess shall be apportioned between all the *Parties* pro rata to their *Project Shares*; and
- (b) in the event that it is not possible to attribute default to any *Party* under (a) above, the amount claimed by the *Commission* shall be apportioned between all the *Parties* pro rata to their *Project Shares*.

L. 8.4 Liability towards Third Parties

Subject always to such other undertakings and warranties as are provided for in this *Consortium Agreement* and the *Contract*, each *Party* shall be solely liable for any loss, damage or injury to third parties resulting from its carrying out its parts of the *Project* and from its *Use of Knowledge* and/or *Pre-existing Know How*.

M. 8.5 Third Parties

- (a) Each *Party* shall be fully responsible for the performance of any part of its share of the *Project*, or other *Contract* obligation, in respect of which it enters into any contract with a third party (e.g. a *Subcontractor*) and shall ensure (i) such contracts enable fulfilment of the *Contract*; (ii) the other *Parties' Access Rights* are the same as would have been the case had the contracting *Party* performed its share of the *Project* and/or those obligations itself; and (iii) the third party shall not have access to any other *Party's Knowledge* or *Pre-Existing Know-How* without that *Party's* prior written consent.
- (b) Each *Party* shall in writing inform the other *Parties* if it intends to enter into a contract referred to in Section 8.5(a) (giving the rationale therefor) if such an event has not been detailed in the *Contract* Annex I and the contract is other than for a minor or trivial part of its share of the *Project*. Such *Party* shall consider in good faith comments made, pursuant to the *Contract* Annex II Article 5, in relation to such contract.
- (c) Each *Party* hereby grants *Access Rights* to all *Affiliates* of any other *Party* as if such *Affiliates* were *Parties* provided all such *Affiliates* grant *Access Rights* to all *Parties*

(and their *Affiliates*) and (without prejudice to the *Parties'* obligations to carry out the *Project* and to provide *Project Deliverables*) fulfil all confidentiality and other obligations accepted by the *Parties* under the *Contract* or this *Consortium Agreement* as if such *Affiliates* were *Parties*.

- (d) In addition to the obligations pursuant to the *Contract* Annex II Article 8, each *Party* shall ensure that it can grant *Access Rights* and fulfil the obligations under the *Contract* notwithstanding any rights of its employees, or persons it engages to perform part of its share of the *Project*, in the *Knowledge* or *Pre-Existing Know-How* they create after the *Project Commencement Date*.

N. 8.6 Defaults and Remedies (1)

A *Party* in default of its obligations under the *Contract* which default causes lawful withholding of payments by the *Commission* to other *Parties*, shall pay to the other *Parties* interest on the amount withheld at an annual rate equal to one (1) percentage point above the prime rate of interest on overdrafts charged according to Euro Interbank Rate (EURIBOR) on the last working day before the *Commission* informed the other *Parties* of such withholding or on the last working day before which the *Parties* or the *Coordinator* became aware of such withholding (whichever was the earlier). Such interest shall accrue on a daily basis until the *Commission* has effectively transferred the withheld amount to the *Coordinator*.

O. 8.7 Defaults and Remedies (2)

In the event of (i) a substantial breach, but not in case of force majeure, by a *Party* of its obligations under this *Consortium Agreement* or the *Contract* which is irremediable or which is not remedied within one month of written notice from the other *Parties* requiring that it be remedied, or (ii) if Section 15.4 applies, or (iii) if the *Commission* terminates the *Contract* in respect of a *Party*, the other *Parties* may jointly terminate this *Consortium Agreement* with respect to the *Defaulting Party* concerned by not less than one month's prior written notice.

Such termination shall take place with respect to such *Defaulting Party* as of the date of such notice, subject to the provisions in (a) to (b) below.

Notice of such termination pursuant to (i) or (ii) above shall be given to the *Commission* and the *Commission* shall be requested to terminate the *Contract* with respect to the *Defaulting Party* pursuant to the *Contract* Annex II Article 7(3)(b) or to state it does not object to the withdrawal from the *Project* of the *Defaulting Party* in accordance with the *Contract* Annex II Articles 7(2)(b), provided always that:

- (a) the *Access Rights* granted to the *Defaulting Party* pursuant to this *Consortium Agreement* shall cease immediately;
- (b) the *Access Rights* granted and the obligations to grant *Access Rights* pursuant to this *Consortium Agreement* or the *Contract* by the *Defaulting Party* shall remain in full force and effect;
- (c) the *Defaulting Party* shall:

The *Parties* concerned shall seek to agree between them and the other parties concerned arrangements for applying for, obtaining and/or maintaining such right on a case-by-case basis. Where the parties concerned are solely *Parties*, so long as any such right is in force, the *Parties* concerned shall be entitled to use and to license such right without any financial compensation to or the consent of the other *Parties* concerned.

For the avoidance of doubt, joint ownership of an invention, design or work shall not affect the obligations arising under this *Consortium Agreement* or the *Contract*.

- 10.1.2 In respect of a country either specified by the *Commission* or agreed by the *Parties*, a *Party* shall notify the other *Parties* (via the *Coordinator* if practical) if it does not intend to seek adequate and effective protection (as required by the *Contract*) of certain of its *Knowledge* from the *Project* or if that *Party* intends to waive such protection. If another *Party* (or *Parties*) informs the notifying *Party* in writing within one calendar month of such notice that it wishes to obtain or maintain such protection, the notifying *Party* shall assign to such other *Party(ies)* all necessary rights which it owns. Such assignment shall ensure the *Access Rights* of all *Parties* will be unaffected except that the *Party(ies)* shall not enforce the resultant rights acquired pursuant to the assignment against the *Party* which assigned its rights, nor against such *Party's Affiliates* or licensees under the assigned rights. For the avoidance of doubt, the *Party* which assigned its rights shall have at least the same *Access Rights* as the non-involved *Parties*.

Q. 10.2 General principles relating to *Access Rights*

- 10.2.1 All *Access Rights* for carrying out of the *Project* and for *Use* are granted on a non-exclusive basis.
- 10.2.2 Save in exceptional circumstances, no transfer costs (as referred to in the *Contract* Annex II Article 11(5)) shall be charged for the granting of *Access Rights*.

R. 10.2.3 Change of Control

Upon cessation of the control of an *Affiliate* any *Access Rights* granted to such *Affiliate* in respect of *Knowledge* or *Pre-existing Know How* shall lapse, provided however that information which is *Knowledge* which has been incorporated into the products, processes, software or services of such *Affiliate* or which has been amalgamated with such *Affiliate's* own information may continue to be used (in the manner it was then being used) by such *Affiliate* provided it is not practical to do otherwise. In such event, at the request of such *Affiliate*, each requested *Party* shall grant to such *Affiliate* non-exclusive licences under that *Party's* intellectual property rights which are *Knowledge* against terms and conditions to be agreed, provided that no *Legitimate Interests* of such *Party* oppose the grant of such licences. Upon such cessation of control, *Access Rights* granted by such *Affiliate* shall continue in full force and effect.

S. 10.3 *Access Rights* for carrying out the *Project*

- 10.3.1 Subject to Sections 8 and 10.3.3, *Access Rights to Pre-Existing Know-How* needed for carrying out the *Project* shall be deemed granted, as of the date set out in the *Contract* Article 2, on a royalty-free basis to and by all *Parties*.
- 10.3.2 Subject to Section 10.3.3, *Access Rights to Pre-Existing Know-How and Knowledge* needed for carrying out the *Project* shall be deemed granted, as of the date set out in the *Contract* Article 2, on a royalty-free basis to all *Assistant Contractors* which similarly grant such *Access Rights* to all *Parties* and other *Assistant Contractors*.
- 10.3.3 Conditions as set out in the *Contract* Annex II Article 12 can be applied by a *Party* if as soon as reasonably possible and preferably before submission of the *Project* proposal to the *Commission* but in any case prior to entering into the *Contract*, the granting *Party* has in writing notified the *Assistant Contractors* and other *Parties* of the conditions that will apply to such *Access Rights*.
- 10.3.4 For the avoidance of doubt, *Software* will be available only insofar as, and in the form which it is, needed for carrying out the *Project*. Notwithstanding the foregoing and save as set out in the *Contract* Annex 1, the supplying *Party* shall have no obligation to port the *Software* to any particular equipment or to change it from the form in which the supplying *Party* has it.

T. 10.4 Access Rights for Use

- 10.4.1 Unless a *Party* has as soon as reasonably possible and preferably before submission of the *Project* proposal to the *Commission* but in any case prior to entering the *Contract* or the *Consortium Agreement* (whichever is the later) notified in writing the other *Parties* of its intention to invoke the following provisions of (i) the *Contract* Annex II, Article 13.1, second paragraph (where possible stating the conditions it proposes), and/or (ii) the *Contract* Annex II Article 14 (stating the details mentioned in the *Contract* Annex II Article 14) and/or (iii) the *Contract* Annex II Article 15 (giving the necessary rationale therefor) each *Party* hereby agrees not to invoke any of them in respect of which it has not so given such notification, except with unanimous agreement of the *Parties*.
- 10.4.2 *Access Rights for Use* which are to be granted on royalty-free terms shall be deemed granted on the date set out in the *Contract* Article 2 for the lifetime of the relevant *Knowledge*.
- 10.4.3 Save as set out in the *Contract* Annex 1, no *Party* shall have any obligation to port any *Software* to any particular equipment but:

- (i) each *Party* shall make *Software* resulting from the *Project* available to other *Parties* in any form needed, including source code
 - (a) to *Use* it (including without limitation by adapting, modifying, converting, translating and copying or having such acts carried out on its behalf) directly or indirectly - in research, or to create and market a product or process, or to create and provide a service

and

 - (b) to sublicense it as is normal in the course of the relevant trade to end-user customers buying/using the product/services but only to enable them to use and, as needed, (i) to maintain such product/service, and (ii) to create for its own end-use interacting interoperable *Software* in accordance with the Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC).
- (ii) each *Party* shall make other *Software* available and shall grant, on preferential terms, *Access Rights* which are additional to those set out in the *Contract Annex II*, 13(2) but which are needed for Section 10.4.3(i)(b) .
 - (a) each such sublicense shall when practical be made by a traceable agreement specifying and protecting the proprietary rights of the *Party* or *Parties* concerned; and
 - (b) each sublicensing *Party* and *Affiliate* shall obtain the previous written approval of the owner of the *Software* before sublicensing the source code or any relating design data , except that such approval is not required to the extent that the source code or the relating design data is sublicensed solely for the third party's own adaptation, error correction, maintenance and/or support of the *Software* sublicensed to him or rightfully further sublicensed by him.

10.4.4 Notwithstanding the provisions of Section 7.1, each *Party* may enter into a technical cooperation or licensing arrangement with a third party in respect of its own information even if unavoidably incorporated into or amalgamated with such information, there are minor amounts of information which is *Knowledge* from the *Project* of another *Party* (and there are minor amounts of information which is *Pre-Existing Know How* or other *Knowledge* of the other *Party*, but which is associated with that information which is *Knowledge* from the *Project* of the other *Party*). In such circumstances and upon request of the *Party* entering the cooperation or arrangement, the other *Party* shall grant non-exclusive rights to permit such cooperation or arrangement against terms and conditions to be agreed, provided that no *Legitimate Interests* of the other *Party* opposes the grant of such rights.

Section 12

Publications, Press Releases and Reports to the Commission

12.1 Without prejudice to any obligation of confidentiality in respect of another *Party's* information, publications and oppositions pursuant to the *Contract* Annex II Article 9(3) shall accord with the following.

- (i) When the *Contractors* have agreed a *Project Deliverable* is to be available to the public, any *Party* may publish information from that *Project Deliverable* without reference to any other *Party*.
- (ii) In respect of other publications, a copy of the planned publication shall be supplied together with the prior warning required by the *Contract*. Any opposition to the planned publication shall be made in accordance with the *Contract* in writing to the *Coordinator* and to any *Party* concerned. If no such opposition is made within the time limit set in the *Contract*, the publication is permitted.

When there is an opposition, the involved *Parties* shall discuss how to overcome the justified grounds of the opposition (for example by amendment to the planned publication) and the opposing *Party* shall not unreasonably continue the opposition if appropriate actions are performed following the discussion.

The justified grounds of opposition are:

- (a) for business reasons concerning the inclusion of the opposing *Party's Knowledge* or *Pre-Existing Know-How*.
- (b) for protection reasons concerning *Knowledge* or *Pre-Existing Know-How* and the publication of the material identified in opposition would adversely affect such protection.

In the case of (b) above,

- (i) the *Parties* concerned shall cooperate to achieve such protection in respect of *Knowledge* (whether invoking the provisions of Section 10.1.2 or otherwise) and to overcome such barrier to publication.
- (ii) provided it does not significantly adversely affect the timing or content of the publication, the publishing *Party* shall delay for an agreed period and/or modify the publication to enable the protecting *Party* to take prompt action to avoid the proposed publication prejudicing the eventual grant of such protection in respect of *Pre-Existing Know-How*; and
 - (iii) the opposing *Party* shall use all reasonable endeavours to overcome such barrier to publication as quickly as possible. The publishing *Party* shall postpone the publication of such material until such barrier has been overcome. However, the maximum time of postponement shall be three (3) months from the date of the opposition unless (exceptionally) the *Parties* involved agree (or are required by law or enforceable regulation) to extend the postponement.

Section 15

Termination

15.1 Before signature of the *Contract*,

- (i) any *Party* may withdraw from and terminate this *Consortium Agreement* in respect of itself by informing the other *Parties* in writing of such termination (which shall take effect as of the latest date of such notice) if at its sole option
 - (a) it decides it will not participate either in the submission of the *Proposal* or in the carrying out of the *Project* or
 - (b) it decides to be an *Assistant Contractor* and enters into a contract to that effect;
- (ii) the *Parties* may by agreement terminate this *Consortium Agreement* forthwith;
- (iii) this *Consortium Agreement* shall terminate if and on the date that
 - (a) the *Parties* agree not submit a *Proposal* to the *Commission* or
 - (b) the *Commission* rejects the *Proposal*.

15.2 After signature of the *Contract*, no *Party* shall be entitled to withdraw from this *Consortium Agreement* and/or participation in the *Project* unless:

- (a) that *Party* has obtained the prior written consent of the other *Contractors* (such consent not to be unreasonably withheld), and also of the *Commission*, to the withdrawal from, or termination of, the *Contract*; or
- (b) that *Party's* participation in the *Contract* is terminated by the *Commission* pursuant to the provisions of the *Contract Annex II Article 7*; or
- (c) the *Contract* is terminated by the *Commission* for any reason whatsoever, provided always that a *Party* shall not by withdrawal or termination be relieved from
 - (i) its responsibilities under this *Consortium Agreement* or the *Contract* in respect of that part of that *Party's* work on the *Project* which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or
 - (ii) any of its obligations or liabilities arising out of such withdrawal or termination.

15.3 If any *Party's* participation in the *Contract* is terminated by the *Commission* pursuant to the provisions of the *Contract Annex II, Article 7*, or a *Party* withdraws from the *Project*, then, without prejudice to any other rights of the other *Parties* the provisions of Sections 4.3(f), 8.6 and 8.7(a) and (b) shall apply correspondingly.

15.4 If any *Party* enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors the other *Parties* shall, subject to approval by the *Commission*,

be entitled to take over the fulfilment of such *Party's* obligations and to receive subsequent payments under the *Contract* in respect thereof.

In such event all rights and obligations under the *Contract* and this *Consortium Agreement* shall in good faith be redistributed among the remaining *Parties* and the affected *Party* on the basis of the work performed by the affected *Party* prior to the occurrence of the above circumstance.

- 15.5 The provisions of Sections 1, 5.3.1(e), 7, 8, 10, 11, 15 and 16 shall survive the expiration or termination of this *Consortium Agreement* to the extent needed to enable the *Parties* to pursue the remedies and benefits provided for in those Sections.
- 15.6 Termination of the *Consortium Agreement* and/or cessation of licences granted to the *Defaulting Party* in accordance with Section 8.7(a) and (b) shall not terminate any sublicenses granted or agreed to be granted or offered by the *Defaulting Party* in accordance with ~~Article~~ Section 10 prior to the date on which such termination of the *Consortium Agreement* and/or cessation of licences becomes effective, provided that the *Party* or *Parties* which generated the *Knowledge* or *Pre-Existing Know-How* so sublicensed shall have the right to have an assignment of the *Defaulting Party's* rights under such sublicenses.
- 15.7 For the avoidance of doubt, termination or withdrawal shall not affect any rights or obligations incurred prior to the date of the termination.

Section 16 Settlement of Disputes

- 16.1 All disputes or differences arising in connection with this *consortium agreement* which cannot be settled amicably shall be finally settled by arbitration in paris under the rules of arbitration of the international chamber of commerce by one or more arbitrators to be appointed under the terms of those rules. in any arbitration in which there are three arbitrators, the chairman shall be of juridical education.
- 16.2 The award of the arbitration will be final and binding upon the *parties* concerned.
- 16.3 The *parties* may instead elect to resolve by mediation a dispute or difference arising in connection with this *consortium agreement* which cannot be settled amicably.

Section 17 Language

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

Section 18 Notices

Any notice to be given under this *Consortium Agreement* shall be in writing to the following addresses and recipients. It shall be deemed to have been served when personally delivered, or, if transmitted by telefax, electronic or digital transmission when transmitted provided that such transmission is confirmed by receipt of a successful transmission report and confirmed by mail.

**(1) Natural Environment Research Council,
Dunstaffnage Marine Laboratory
Oban
Argyll
PA34 4AD
United Kingdom
Fax (00 44) 1631 559001
Dr Kenneth Black, Co-ordinator**

**(2) Israel Oceanographic and Limnological Research Ltd.,
National Center for Mariculture
P.O.B. 1212
Eilat 88112
Israel
Dr. Dror Angel**

**(3) University of Haifa
Aba-Hushi St.
Mount Carmel
31905 Haifa
Israel
Prof. Ehud Spanier**

**(4) National Institute of Biology
Vecna pot 111
1000 Ljubljana
Slovenia
Dr Alenka Malej**

**(5) Institute of Marine Biology of Crete
Main Port Heraklion
PO Box 2214
71003 Heraklion
Greece
Dr Ioannis Karakassis**

**(6) University of Portsmouth Higher Education Corporation
University house
Winston Churchill Avenue
PO1 2UP
Portsmouth
United Kingdom
Dr. Dr. Helen Pickering**

(7) University of Southampton
Highfield
SO17 1BJ
Southampton
United Kingdom
Dr Ken Collins

or to such other address and recipient as a *Party* may designate in respect of that *Party* by written notice to the others.

Section 19 **Applicable Law**

This *Consortium Agreement* shall be construed according to and governed by the law provided in the *Contract* Article 5.

Section 20 **Entire Agreement - Amendments**

This *Consortium Agreement*, the *Contract* and - when such exist(s) - *Complementary Contract(s)*, constitute the entire agreement between the *Parties* in respect of the *Project*, and supersede all previous negotiations, commitments and writings concerning the *Project* including any memorandum of understanding between the *Parties* (whether or not with others) which relate to the *Project* or its proposal to the *Commission*.

Amendments or changes to this *Consortium Agreement* shall be valid only if made in writing and signed by an authorised signatory of each of the *Parties*.

Section 21 **Counterparts**

This *Consortium Agreement* may be executed in any number of counterparts, each which shall be deemed an original, but all of which shall constitute one and the same instrument.

Signatures

AS WITNESS the *Parties* have caused this *Consortium Agreement* to be duly signed by the undersigned authorised representatives the day and year first above written.

Authorised to sign on behalf of

Natural Environment Research Council, UK

Signature

Name

Title

Authorised to sign on behalf of

Israel Oceanographic and Limnological Research Ltd., Israel

Signature

Name

Title

Authorised to sign on behalf of

University of Haifa, Israel

Signature

Name

Title

Authorised to sign on behalf of

National Institute of Biology, Slovenia

Signature

Name

Title

Authorised to sign on behalf of

Institute of Marine Biology of Crete, Greece

Signature

Name

Title

Authorised to sign on behalf of

University of Portsmouth Higher Education Corporation, United Kingdom

Signature

Name

Title

Authorised to sign on behalf of

University of Southampton, United Kingdom

Signature

Name

Title

Schedule to the Consortium Agreement

<i>Party</i>	<i>Affiliate</i> pursuant to Section 1.2 " <i>Affiliate</i> " (b)

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