

# **CONSORTIUM AGREEMENT**

**under**  
**the Specific Research and Technological Development Programme**  
**"Structuring the ERA"**  
**MARIE CURIE RESEARCH TRAINING NETWORKS (RTNs)**

**for the Project called**  
**"European Virtual Anthropology Network" (EVAN)**

- (1) Universität Wien (UNVI)
- (2) Medizinische Universität Innsbruck (UHIN)
- (3) University of York (YORK)
- (4) Consejo Superior de Investigaciones Científicas  
(CSIC)
- (5) Université Bordeaux 1 (UNBX)
- (6) Senckenbergische Naturforschende Gesellschaft  
(RISE)
- (7) Aikaterini Karagianni & Sia E.E. (dHAL Software)  
(DHAL)
- (8) Max-Planck Institute for Evolutionary  
Anthropology (MPEA)
- (9) z-werkzeugbau-gmbh (ZUMT)
- (10) Breuckmann GmbH (BREU)
- (11) Gruner + Jahr AG & Co. KG (GEO)
- (12) Cybula Limited (CYBU)
- (13) Commissariat à l'Energie Atomique (ATOM)
- (14) Stiftung Neanderthal Museum (NEMU)
- (15) University of Hull (HULL)

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This consortium agreement ("Consortium Agreement") is entered into by and between

- (1) Universität Wien (UNVI), Coordinator**  
established in Dr. Karl Lueger Ring 1, Wien, AT-1010, Austria, represented by Georg Winckler, Rector, or his authorized representative
- (2) Medizinische Universität Innsbruck (UHIN), Contractor**  
established in Christoph-Probst Platz 1, Innsbruck, AT-6020, Austria, represented by Clemens Sorg, Rector, or his authorized representative
- (3) University of York (YORK), Contractor**  
established in Heslington, York, GB-YO10 5DD 1, United Kingdom, represented by Scott Shurtleff, Research Support Office Manager, or his authorized representative
- (4) Consejo Superior de Investigaciones Científicas (CSIC), Contractor**  
established in Calle Serrano 117, Madrid, IT-28006, Spain, represented by Carlos Martinez-A., President, or his authorized representative
- (5) Université Bordeaux 1 (UNBX), Contractor**  
established in 351 Course de la Libération, Talence, Cedex, FR-33405, represented by Alain Boudou, President, or his authorized representative
- (6) Senckenbergische Naturforschende Gesellschaft (RISE), Contractor**  
established in Senckenberganlage 25, Frankfurt-am-Main, DE-60325, Germany, represented by Volker Mosbrugger, Director, or his authorized representative
- (7) Aikaterini Karagianni & Sia E.E. (dHAL Software) (DHAL), Contractor**  
established in 6 Menandrou Street, Kifissia, GR-14561, Greece, represented by Aikaterini Karagianni, Director, or her authorized representative
- (8) Max-Planck Gesellschaft zur Förderung der Wissenschaften e.V. (MPEA), Contractor**  
established in Hofgartenstrasse 8, München, PO Box 101062, DE-80539, Germany, represented by Michael Tomasello, Director, or his authorized representative
- (9) z-werkzeugbau-gmbh (ZUMT), Contractor**  
established in Höchsterstraße 8, Dornbirn, AT-6850, Austria, represented by Hermann Eberle, Managing Director, or his authorized representative
- (10) Breuckmann GmbH (BREU), Contractor**  
established in Torenstraße 14, Meersburg, DE-88709, Germany, represented by Bernd Breuckmann, President, or his authorized representative
- (11) Gruner + Jahr AG & Co. KG (GEO), Contractor**  
established in Am Baumwall 11, Hamburg, DE-20459, Germany, represented by Martin Meister, managing editor, and Martin Soppe, Procurist, or their authorized representative

**(12) Cybula Limited (CYBU), Contractor**

established in IT Centre, Innovation Way, University of York Science Park, York, GB-Y010 5DG, United Kingdom, represented by James Austin, CEO, or his authorized representative

**(13) Commissariat à l'Energie Atomique (ATOM), Contractor**

established in 31-33 rue de la Fédération, Paris, Cedex 15, FR-75752, France, represented by Jacques Ramette, Chef de Département, or his authorized representative

**(14) Stiftung Neanderthal Museum (NEMU), Contractor**

established in Talstrasse 300, Mettmann, DE-40822, Germany, represented by Gerd-Christian Weniger, Director, or his authorized representative

**(15) University of Hull (HULL), Contractor**

established in Cottingham Road, Hull, GB-HU6 7RX, United Kingdom, represented by Jonathan Cant, Research Grants and Contracts Manager, or his authorized representative.

Hereinafter referred to individually or collectively as "Party" or "Parties"

**WHEREAS:**

- (A) The Parties, having considerable experience in the field concerned, have submitted a Proposal entitled **European Virtual Anthropology Network (EVAN)**, Proposal No. 019564-2 within the framework of the specific research and technological development programme "Structuring the ERA" to the Commission as part of the Sixth Research and Technological Development Framework Programme.
- (B) The Parties wish to specify or supplement, between themselves, the provisions of the Contract with regard to the organization of the work, the management of the Project, and the rights and obligations of the Parties.

## **Section 1: Definitions**

### **1.1 Contract Definitions**

For the avoidance of doubt, words bearing a capital letter in this Consortium Agreement shall have the same meaning as words defined in the Contract and its Annexes where such words appear in italics.

### **1.2 Additional Definitions**

**"Affiliate"** of a Party means:

(a) any legal entity specified in the agreed schedule to this Consortium Agreement to be an Affiliate – which deals with issues, provides services or products that constitute the goal(s), content, which are part of the objectives of the Project - directly or indirectly controlling, controlled by, or under common control of 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.

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

- control of fifty (50) percent or more of the nominal value of the issued equity share capital of the entity or of fifty (50) percent 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).

**"Allocated Work"** shall mean the research work and the related activities and services allocated to any of the Parties in accordance with Annex I of the Contract.

**"Application Programming Interface"** means an interface or other means provided for by a Software application, component or library for the purpose of interfacing or interaction of other Software with such application, component or library including, but not limited to, data types and structures, constant and macro definitions, function and procedure definitions including their name, parameters, parameter count and parameter data type(s) and any data type of function results thereof, as set forth in header files, specifications and related documentation.

**"Co-ordinator"** means the person responsible for the overall management of the Project.

**"Compensating Party"** means a Party, other than the "Defaulting Party", from whom the Commission claims reimbursement due to financial collective responsibility in accordance with Contract, Annex II.

**"Contract"** means the Contract No. MRTN-CT-2005-019564 (including its Annexes) for the Project of the Parties. Contract also means, as applicable, any Contract amendment.

**"Database"** means all archives for electronic data established or enlarged during the Project.

**"Defaulting Party"** means a Party breaching its obligations under the Contract or this Consortium Agreement.

**"Deliverables"** means all activities and reports of the Consortium as listed in the Contract, Annex I 2.5, including progress reports and certified audit reports,

provided by each Party to the Coordinator in order to be compiled and filed with the Commission.

**"Gender Board"** means the panel overseeing all gender-related issues relevant to the network.

**"IPR Council"** is the panel of arbitration with power to decide in disputes between the Parties concerning Intellectual Property Rights.

**"Limited Source Code Access"** means

- (a) access to the Object Code; and,
- (b) where normal use of such an Object Code requires an API, access to the Object Code and such an API; and,
- (c) if neither (a) nor (b) is available, access to the Source Code.

**"Object Code"** means software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for linking procedures and functions to other software.

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

**"Project Share"** means for each Party that Party's share in the funding allocated according to this Consortium Agreement.

**"Project Tasks"** means all research and training tasks contributed by each Party as defined in Annex I, Table 1.

**"Proposal"** means the proposal for the Project submitted by the Parties to the Commission, including any amendments.

**"Scientist in Charge"** means the Project team leader of each Party.

**"Software"** means software programmes 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.

For the avoidance of doubt, Software may be Knowledge or Pre-existing Know-how.

**"Software Documentation"** means software information, being technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a software programme.

**"Source Code"** means software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.

**"Source Code Access"** does not include any right to receive Source Code ported to a certain hardware platform, but only as available from the Party granting the Source Code Access.

**"Steering Committee"** means the management decision-making body established in this agreement.

**"Training Administrator"** means the person supervising the training procedures and everything related thereto.

**"Task Administrator"** means the person responsible for all scientific and other operational matters as well as the dissemination of information within the Consortium.

### 1.3 Further Understandings

In order to clarify certain ambiguities appearing in the provisions of the Contract, the Parties have agreed on the following interpretations:

- (a) "**Indirect utilisation of Knowledge**" in the Contract's definition of Use includes, for and on behalf of the Party concerned, Use by having products or services developed, made or provided;
- (b) "**Fair and Non-discriminatory Conditions**" means fair market conditions.
- (c) "**Pre-existing Know-how**" means only such Pre-existing Know-how which has been accumulated within or developed by the specific research group, research department, or research institute directly involved in carrying out the Project.

## **Section 2: Purpose, Nature and Duration of the Agreement**

### **2.1 Purpose**

- (1) The purpose of this Consortium Agreement is to specify the organisation of the Allocated Work and the transfer of the Project Share to each Party, to organise the management of the Network, to define the respective rights and obligations of the Parties, including, but not limited to their liability and indemnification, and to supplement the provisions of the Contract regarding Access Rights.
- (2) The Parties agree to cooperate in accordance with the terms of this Consortium Agreement in order to execute and fulfil the Contract and perform the tasks allocated to them in the Proposal and in Annex I to the Contract.

### **2.2 Nature of the Agreement**

- (1) Nothing contained in this Consortium Agreement shall constitute or be deemed to constitute a partnership, agency or any formal business organisation or legal entity between the Parties. Each Party shall act as an independent Contractor and not as the agent of any of the other Parties.
- (2) Nothing contained in this Consortium Agreement shall be construed as constituting or organising the sharing of profits or losses arising out of the efforts of any other Party hereunder.
- (3) This Consortium Agreement shall be applicable to all activities agreed upon amongst the Parties in the Proposal.
- (4) In case of conflict between this Consortium Agreement or parts of it and the Contract, the latter will have precedence.

### **2.3 Duration**

- (1) This Consortium Agreement shall come into force as of the date of its signature by the Parties, but shall have retroactive effect from the date of the Contract signature by the Co-ordinator and shall continue in full force and effect until rightfully terminated or until complete discharge of all obligations carried out under the Contract and this Consortium Agreement, whichever is earlier.
- (2) For new Parties accessing to this Consortium, this Agreement shall come into force as from the date of signature of the Declaration of Accession, Annex D (Forms A and B).

## **Section 3: Consortium Organisation and Management Structure**

### **3.1 General Structure**

The initial organisation structure of the Consortium shall comprise the following:

- (1) **Steering Committee** as the ultimate decision-making and arbitration body of the Consortium,
- (2) **Co-ordinator** as the overall operative business manager of the Project,



- (3) **Gender Board** appointed to support the Co-ordinator in dealing with gender related issues,
- (4) **Training Administrator** as supervisor of the training procedures and their content,
- (5) **Task Administrator** as supervisor of all scientific and other operational matters,
- (6) **Scientists in Charge** as team leaders of each Party's respective research and training team,
- (7) **ESR Fellow Representative** nominated by all Early Stage Researchers to represent their interests at the Steering Committee meetings,
- (8) **ES Fellow Representative** nominated by all Experienced Researchers to represent their interests at the Steering Committee meetings,
- (9) **IPR Council** as the panel of arbitration with power to decide disputes amongst the Parties concerning Intellectual Property Rights and Access Rights.

### **3.2 Steering Committee**

#### **3.2.1 In General**

- (1) The Steering Committee is composed of one (1) representative of each of the Parties with due authorisation to discuss, negotiate and agree decisions or provide recommendations. In addition, the Co-ordinator, the Training Administrator and the Task Administrator shall be members of the Steering Committee.
- (2) Each member of the Steering Committee shall have one (1) vote. Proxy votes are permitted if the nomination is in writing and signed by the representative. The representative delegating its voting rights may only name a substitute from its own organisation as proxy.
- (3) The Co-ordinator chairs the meetings.
- (4) If the representative of a Party and the Scientist in Charge of the same Party are two different persons, the Scientist in Charge may also attend the Steering Committee meeting in order to advise the representative. The Scientist in Charge will have no additional vote.
- (5) The Commission may send a representative as an observer to the meetings of the Steering Committee.
- (6) The ESR and ER Fellow Representatives may take part in the meetings of the Steering Committee. They may be heard regarding issues concerning the groups they represent. However, they do not have the right to vote.
- (7) All decisions of the Steering Committee on project issues are legally binding for all Parties.

#### **3.2.2 Responsibilities**

The Steering Committee is the Consortium's decision-making and arbitration body. The Steering Committee shall take responsibility for the following matters:

- (1) Political and strategic orientation of the Project;
- (2) Compliance with national and EU laws and regulations;
- (3) Monitoring and support of the Co-ordinator, Training Administrator, and Task Administrator;
- (4) Decisions with regard to dissemination, joint press releases and joint publications;

- (5) Decisions on significant changes in the Allocated Work, budget and the financial allocation of the EU's contribution between the various activities on the one hand and between the various Parties on the other;

### **3.2.3 Decisions und Voting Rules**

- (1) The Steering Committee decides by a simple majority of all members present with regard to
- the co-ordination, preparation and final approval of reports (technical, financial, etc.) prior to the submission to the Commission,
  - the definition, allocation of tasks and minor changes in Allocated Work,
  - the structure and restructuring of the Project,
  - the transfer of the tasks of a Party affected by Force Majeure,
  - IPR or Access-Right issues if no agreement can be reached between the Parties concerned (see procedure below),
  - decisions in the case of disagreement regarding the extent of the Software contained in the Tool Boxes,
  - decisions regarding the licensing of the Tool Boxes,
  - the modification of the Consortium Agreement,
  - the amendment of the Contract, and
  - the premature completion/termination of the Project.
- (2) Decisions with regard to the (re-)allocation of tasks and changes in Allocated Work shall further require the consent of the Parties concerned.
- (3) At a parity of votes, the Co-ordinator shall have the deciding vote.
- (4) In addition, the Steering Committee decides by unanimous vote minus that of the Party concerned on
- proposals to the Parties to serve notice to a Defaulting Party and to assign the Defaulting Party's tasks to specific entity(ies) (preferably chosen from the remaining Parties),
  - the withdrawal of a Party after the signature of the Contract and on the allocation of the withdrawing Party's Allocated Work;
  - the exclusion of Parties and the acceptance of new partners as well as any corresponding reallocation of the respective work and Project Shares, and
  - any change in the list of Affiliates.
- (5) Any decision requiring a vote at a Steering Committee meeting must be identified as such on the pre-meeting agenda, unless there is a unanimous agreement to vote on a decision at that meeting.
- (6) Decisions may be taken by circular resolution if all Parties agree thereto. In such cases, the Co-ordinator is required to specify the deadline for response. Failure to respond within this deadline shall be deemed a non-vote for the majority vote requirements.

### **3.2.4 Meetings**

- (1) The Co-ordinator shall convene the meetings of the Steering Committee in accordance with the timelines laid out in the Contract, Annex I. There will be at least one (1) yearly meeting.
- (2) Extraordinary meetings may be called at any other time in case of emergency situations at the request of the Co-ordinator or at the written request of a third (1/3) of the Parties.

- (3) The chairperson shall give at least thirty (30) calendar days advance written notice of such meetings and an agenda to each Party, or fifteen (15) calendar days advance written notice in case of an emergency meeting.
- (4) Ordinary and extraordinary meetings of the Steering Committee shall constitute a quorum if at least half (1/2) of the members are present or duly represented by proxy. In case the quorum is not met, the Steering Committee will be convened once again within no more than four (4) weeks from this date, and may validly deliberate even in the absence of the quorum.
- (5) In emergency cases the Steering Committee may take decisions via teleconference, via e-mail or phone etc.

### **3.2.5 Minutes of Meetings**

Minutes of the meetings of the Steering Committee shall be sent to the representatives of the Parties or posted at the internet platform of the network without delay. The minutes shall be considered as accepted by the representatives if, within fifteen (15) calendar days from receipt or online posting, no Party present or represented at the meeting has objected in a traceable form to the Co-ordinator.

## **3.3 Co-ordinator**

### **3.3.1 Rights and Obligations**

- (1) The Co-ordinator is the single point of contact between the Commission and the Consortium. In this function the Co-ordinator shall sign the Contract with the Commission after authorization by all Parties who have signed the Contract forms (Forms A and B) and this Consortium Agreement. In no other case shall the Co-ordinator be entitled to act or to make legally binding declarations on behalf of any other Party, unless authorized by the Steering Committee.
- (2) The role of the Co-ordinator is entrusted to UNVI.
- (3) The Co-ordinator shall nominate an administrative assistant to help with the administration.

### **3.3.2 Responsibilities of the Co-ordinator**

The Co-ordinator is responsible for the following tasks and functions:

- (1) overall management of the Project with the support of the Training Administrator (TR) and the Task Administrator (TA),
- (2) chairman of the Steering Committee,
- (3) preparation of the meetings and decisions of the Steering Committee,
- (4) timely collection and, with the support of the Steering Committee, preparation of Deliverables and statements, including financial audit certificates, from the Parties for transmission to the Commission,
- (5) ensure prompt delivery of the Project Tasks of each Party identified in Annex I,
- (6) alerting the Steering Committee and Commission in case of Force Majeure, non-delivery, default, or unilateral requests for the termination by one Party,
- (7) distribution of any documents and information connected with the Contract performance among the Parties concerned,
- (8) diligent performance of the proper administration of the funds granted by the Commission, including the keeping of the financial accounts,
- (9) involvement in the recruitment process according to Annex I, and

- (10) mediator between the concerned Parties in case of disputes regarding the execution of the Project or IPR-related issues. In the case an agreement cannot be reached, the case is deferred to the Steering Committee.

### **3.3.3 Submitting Deliverables**

If one or more of the Parties is late in submitting of Deliverables, the Co-ordinator may submit the other Parties' deliverables to the Commission.

### **3.3.4 Specific Authorisation of the Co-ordinator**

- (1) To the extent that serious concerns regarding the financial soundness of one or several Parties exist, the Co-ordinator has the authority to require the appropriate letter of comfort to prove that the corresponding Party is able to fulfil the financial obligations with regard to the Contract and this Consortium Agreement.

Until this is provided, the Co-ordinator is entitled to refuse the disbursement of the financial contributions of the Commission to this Party.

- (2) Furthermore, the Co-ordinator has the right to retain any payment if a Party is late in submitting or refuses to provide Deliverables or Project Tasks as defined in this Consortium Agreement.

## **3.4 Training Administrator**

- (1) The TR is nominated by the Co-ordinator to help with the organisation of the training aspects of the Project. In accordance with the Contract, Annex I, José Braga is nominated as the initial TR.

- (2) The main tasks of the TR are defined in the Contract, Annex I. Namely, the TR is responsible for:

- Supervision of the training procedures and their contents
- Regular reports to the Co-ordinator about the TR's activities
- Overall management of the recruitment process
- Survey of the individual Career Plans
- Co-ordination of network activities in connection with training (eg. Intensive courses, summer schools, conferences)
- Verification of the availability of infrastructure for trainees
- Reward the efforts and achievements of the young researchers
- Contact person for fellows and SICs

- (3) The TR will ensure that the SICs will send the required annual reports on training activities done in the previous twelve months to the Co-ordinator at least thirty (30) days ahead of the deadline to insure the timely assembly and transmission to the Commission by the Co-ordinator.

## **3.5 Task Administrator**

- (1) The TA is nominated by the Co-ordinator to assist with the organisation of research related matters as well as administrative tasks. In accordance with the Contract, Annex I, Fred L. Bookstein is nominated as the initial TA.

- (2) The main tasks of the TA are outlined in the Contract, Annex I. In particular, the TA is responsible for:

- Supervision of scientific matters and administrative tasks
- Dissemination of results within the Consortium

- Control and initiation of scientific publications and announcements
  - Editing of annual and final reports
  - Help to stimulate public awareness
  - Contact person for SICs regarding research and administrative matters
- (3) The TA will ensure that the SICs report their progress achieved in the last six months and urgent concerns to the Co-ordinator every six (6) months at least. Cases of major breakthroughs or problems require separate reports. Further, the TA will collect all other requested reports at least thirty (30) days before the deadline to insure the timely assembly and transmission to the Commission by the Co-ordinator.

### **3.6 Scientists in Charge**

- (1) Each Party nominates a SIC in order to co-ordinate their respective research and training teams.
- (2) The SICs will ensure the execution of the Project in accordance with the Contract, Annex I, the timely collection of Deliverables or Project Tasks and the compliance with the work schedules.
- (3) During the recruitment phase, each SIC shall select the fellows to be employed in that SIC's unit according to the procedure laid out in Annex I. Wherever possible undue delays to the recruitment of researchers shall be avoided. In case of disagreement with the Co-ordinator over qualifications, the SIC shall hear the TR and the Gender Board before he/she makes the final decision regarding the employment of a particular fellow.
- (4) The SICs will communicate among each other by way of meetings or electronic medias.
- (5) The SICs will further advise their representatives in the Steering Committee.
- (6) The SICs report to the TR and TA.

### **3.7 Gender Board**

- (1) The Gender Board consists of three (3) members appointed by the Co-ordinator. The Board advises the Co-ordinator on all gender related matters.
- (2) The members of the Gender Board may take part in meetings of the Steering Committee convened to discuss gender issues but do not have the right to vote.
- (3) The Gender Board is further integrated in the recruitment process and shall receive information on applicants and the reasoning for the choice of a particular aspirant.

## **Section 4: Responsibilities of each Party**

### **4.1 General Responsibilities**

Each Party hereby undertakes with respect to other Parties all reasonable endeavours to perform and fulfil, promptly, actively and on time, all of its obligations under the Contract and this Consortium Agreement, including in particular the submission to the Commission of the Deliverables pursuant to the Contract.

### **4.2 Responsibilities towards the Co-ordinator**

- (1) Each Party undertakes best efforts to supply promptly to the Co-ordinator via the Scientist in Charge all such information or documents as the Co-ordinator

needs to fulfill obligations pursuant to this Consortium Agreement, the Contract and upon request of the Commission.

- (2) In particular, the Parties shall use best efforts to carry out the Project Tasks and meet the timelines and milestones set out in Annex I of the Contract.
- (3) The Parties agree that all information or documents requested by the Commission shall be submitted via the Co-ordinator.

#### **4.3 Obligations of the Parties towards each other**

- (1) Each Party undertakes to use its reasonable endeavours:
  - to promptly notify the Co-ordinator and each of the Parties of any significant problem and delay likely to affect the success of the Project and
  - to inform other Parties of relevant communications it receives from third parties in relation to the Project.
- (2) Each Party shall use best efforts to ensure the accuracy of any information or materials it supplies hereunder or under the Contract and promptly to correct any error therein of which it is notified. The recipient Party shall be entirely responsible for the Use to which it puts such information and materials.
- (3) In addition to the obligations specified in the Contract, Annex II, and notwithstanding the stipulations of Section 9 below, each Party agrees not to use knowingly, as part of a Deliverable or Project Task or in the design of such Deliverable or Project Task or in any information supplied hereunder or under the Contract, any proprietary rights of a third party for which such Party has not acquired the right to grant licences and user rights to the other Parties in accordance with the Contract, unless all of the other Parties have accepted such Use in writing, such acceptance not to be unreasonably withheld.

### **Section 5: Costs - Payments**

#### **5.1 General Principles**

- (1) Each Party shall bear its own costs incurred in connection with the performance of the Contract and this Consortium Agreement, carrying out of the Project and implementation of the Consortium.
- (2) The financial contribution of the Commission will be distributed according to the Contract, this Consortium Agreement and the decisions of the Steering Committee.

#### **5.2 Payments**

- (1) The Co-ordinator shall receive all payments made by the Commission.
- (2) The Co-ordinator will transfer, in accordance with the Contract and the budget allocation decided by the Steering Committee, the appropriate sums to the respective Parties with minimum delay, but not later than forty-five (45) calendar days from the receipt thereof from the Commission. The Co-ordinator shall notify each Party promptly of the date and amount transferred to its respective bank account, as listed in Annex B, and shall give the relevant references.

#### **5.3 Financial planning and reporting data**

- (1) The Parties shall deliver all relevant financial data including but not limited to the application of the budget use and received payments needed for financial planning, its execution and accountability towards the Consortium and towards

the Commission, based upon their financial system as provided in the Contract and this Consortium Agreement.

- (2) The format of these data has to comply with the requirements of the Commission and any formats suggested by the Co-ordinator, within the boundaries given by the accorded financial system of the Parties.
- (3) Each Party shall be solely liable for its financial data. No other Party, including the Co-ordinator or their representatives acting within the scope of this Consortium Agreement may change these data without express written permission of the Party concerned.

## **Section 6: Confidentiality**

### **6.1 Principles**

With respect to all information of whatever nature or form as is

- (1) disclosed to a Party in connection with the submission to the Commission of a proposal for a Marie Curie Research Training Network under the Sixth Framework Programme pending the signing of the Contract;
- (2) disclosed to a Party in connection with the Project after the signing of the Contract, but which
  - is clearly marked "confidential", or
  - if disclosed orally, was at the time of disclosure indicated to be "confidential" and within thirty (30) calendar days reduced to physical form and marked "confidential" by the discloser

the terms of this Section shall apply.

### **6.2 Obligations**

- (1) Accordingly, each Party undertakes that:
  - it will not during the term of the Project and for a period of five (5) years thereafter use any confidential information for any purpose other than in accordance with the terms of the Contract and of this Consortium Agreement;
  - it shall not disclose any such confidential information to any third party except with the disclosing Party's prior written consent;
  - it will ensure that confidential information and materials may only be made available to employees, subcontractors or external consultants who are in need thereof to perform their duty in this project, and only to such employees, subcontractors and external consultants who are bound by the respective Party to keep information and materials confidential as provided for by this Consortium Agreement;
  - it will impose the same obligations on its employees, who obtain knowledge of confidential information, as far as legally possible even for the time after the end or after the termination of employment.
- (2) The receiving Party shall not be liable for disclosure or use of confidential information, if and in so far as without breach of this agreement, the receiving Party can prove that such information:
  - has been published or otherwise been made generally available to the public at the time of disclosure to the Party; or

- has after disclosure to the Party been published or become generally available to the public otherwise than through any act or omission on the part of the receiving Party; or
- was already in the possession of the receiving Party, without any restrictions on disclosure, at the time of disclosure to the Party; or
- has been lawfully received from a third party without restrictions or breach of this Consortium Agreement; or
- is being developed independently of the work under the Contract by the receiving Party in good faith by employees of the receiving Party who did not have access to the confidential information; or
- has to be communicated to comply with applicable laws or regulations or with a court of administrative order provided that insofar as reasonably possible the complying Party shall have informed the owner of the information of such need and shall have complied with such owner's reasonable instructions designed to protect the confidentiality of such information.

## **Section 7: Liabilities**

### **7.1 Liability of the Parties towards each other**

- (1) No Party shall be responsible to another Party for indirect or consequential loss or damages such as, but not limited to, loss of profit, loss of revenue or loss of Contracts.
- (2) With respect to information or materials provided by one Party to another hereunder or under the Contract, the supplying Party shall be under no obligation or liability other than as stated in the Contract, Annex II, and no warranty condition or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or appropriateness for purpose of such information or materials.
- (3) Each Party shall indemnify each of the other Parties in respect of acts or omissions of itself and of its employees, agents and subcontractors in accordance with this agreement provided 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 that Party's Project Share.
- (4) In any case where the Commission claims reimbursement in accordance with the Contract, Annex II, from Parties other than the Defaulting Parties, the Compensating Parties shall be entitled to seek full indemnification by the Defaulting Party.

### **7.2 Liability towards Third Parties**

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the execution of that Party's assigned tasks in the Project and from its Use of Knowledge or Pre-existing Know-how.

### **7.3 Third Parties (Subcontractors)**

- (1) Each Party shall be fully responsible for the performance of any part of its Allocated Work, or other Contract obligations, in respect of which it enters into any agreement with a third party (e.g. a subcontractor) and shall ensure
  - such contracts enable fulfilment of the Contract;



- the other Parties' Access-rights are the same as would have been the case had the contracting Party performed the work itself; and
  - 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.
- (2) Each Party shall inform the Co-ordinator in writing of its intention to enter into an agreement with a third party (giving the rationale therefore) asking for the permission of the Steering Committee. Such permission shall not be unreasonably withheld.
- (3) Each Party shall ensure that it can grant Access-rights and fulfil the obligations under the Contract and this Consortium Agreement 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 Start Date.

#### **7.4 Defaults and Remedies**

- (1) A Party in default of its contractual obligations (Defaulting Party) causing 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 the Euro Interbank Rate (EURIBOR). Interest shall accrue on a daily basis starting on the day the Commission informs the other Parties of such withholding or on the day the Parties or the Management Board becomes aware of such withholding (whichever is earlier) and ending as soon as the Commission has effectively transferred the withheld amount to the Co-ordinator.
- (2) If a breach of the contractual obligations of a Defaulting Party is irremediable or not remedied within sixty (60) calendar days of a written notice from the Co-ordinator, the other Parties may jointly decide to terminate this Consortium Agreement with respect to the Defaulting Party following a minimum thirty (30) calendar day prior written notice by the Co-ordinator.
- (3) In the event of termination under this clause,
- any and all Access-rights granted **to** the Defaulting Party and its Affiliates by the other Parties as well as under the Contract, shall cease immediately; but any and all Access-rights granted **by** the Defaulting Party to the other Parties and their Affiliates shall remain in full force and effect;
  - the Allocated Work of the Defaulting Party shall be assigned to one or several entities which are chosen by the other Parties, are acceptable to the Commission and who agreed to be bound by the terms of this Consortium Agreement. The preference shall be granted to one or more of the remaining Parties.
- (4) The Defaulting Party shall:
- assume all reasonable direct costs increase (if any), resulting from the assignment referred to above in comparison with the costs of the Allocated Work of the Defaulting Party as specified in the Contract, Annex I, and
  - be liable for any thus resulting additional direct costs caused to the other Parties, up to a total amount which, together with any liability to the Commission under the Contract will not exceed the Defaulting Party's total Project Share.

(5) Public bodies are in accordance with Annex II – General Conditions – Part A Article II 18.3 only responsible for their own debts.

## **Section 8: Intellectual Property Rights**

### **8.1 Knowledge generated by one Party**

- (1) The Parties agree to respect their individual Intellectual Property Rights. For the avoidance of doubt, knowledge shall be the property of the Party generating it. However, that Party is obligated to inform the Co-ordinator about any Knowledge generated immediately.
- (2) Further, the Party creating Knowledge shall ensure adequate protection for such Knowledge. If the Party is not interested in pursuing such protection, it will inform in writing the Steering Committee via the Co-ordinator. The Steering Committee will decide the next steps in accordance with the plan for using and disseminating the Knowledge while ensuring that the Access-rights of all Parties will remain unaffected. The Steering Committee may for that purpose consult the IPR-Council or any other IP advisors.

### **8.2 Knowledge generated by two or more Parties (Joint Invention)**

- (1) If, in the course of carrying out work on the Project, a joint invention, design or work is made - and at least two Parties contribute to it - and if the features of such joint invention, design or work are such that it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining the relevant patent protection or any other Intellectual Property Right, the Parties concerned agree to the following:
  - if one of the Parties involved is not interested in the protection of its contribution to the joint Knowledge, it will offer such contribution of Knowledge to the other party or parties to the joint invention in return for fair payment which can consist of either a lump sum or a license fee or a share of the future earnings,
  - in all other cases, the Parties shall jointly apply to obtain and/or maintain the relevant IPR.
- (2) The Parties concerned shall seek to agree amongst themselves arrangements for applying for, obtaining and/or maintaining such right as well as mechanisms for benefit sharing and licensing on a case-by-case basis.
- (3) However, if within six (6) months the concerned Parties cannot agree on either
  - their contribution to the invention, or
  - the allocation of future costs and profits, or
  - the terms of the transfer of their contribution to the remaining Party or Parties to the joint inventionthe Steering Committee shall decide the controversial issues and the best strategy to protect the IPR in accordance with the plan for using and disseminating the Knowledge while ensuring that the Access-rights of all Parties will remain unaffected.
- (4) In such cases, prior consultation of the IPR Council by the Steering Committee is mandatory.

### **8.3 Exclusion of Access-rights to Pre-existing Know-how**

- (1) In accordance with the Contract, Annex II, each Party has the right to exclude specific Pre-existing Know-how from the other Parties' access by way of

describing the type and scope of Pre-existing Know-how for which exclusion from access is requested in Annex C before the signature of the Contract and this Consortium Agreement.

- (2) During the Term of the Project, a Party can request the right to exclude Pre-existing Know-how only before the effective joining of a new party with regard to that party or if acquired parallel with the Project by way of informing the Co-ordinator and the other Parties. The exclusion from access to Pre-existing Know-how will become effective provided that no other Party objects thereto within a period to be specified by the Co-ordinator.
- (3) In case a Party objects to exclusion from access to Pre-existing Know-how, the Party seeking to exclude access must petition the IPR-Council to decide whether the exclusion can take effect. Until a decision of the IPR Council is taken, access to Pre-existing Know-how is regarded as denied.

## **8.4 Access-rights**

### **8.4.1 General Provisions**

- (1) All Access-rights are granted on a non-exclusive basis, expressly exclude any rights to sub-license and shall be made free of any transfer costs.
- (2) Granted Access-Rights for Knowledge and Pre-existing Know-how shall be used only for the purpose for which Access-rights have been granted and only until that purpose has been achieved.
- (3) The burden of proof in relation to a claimed need for Access-rights shall be on the requesting Party. This Party shall provide such proof to the owning Party upon written request.
- (4) The Parties concerned shall endeavour to reconcile any dispute concerning the need for Access-rights through the Co-ordinator. If no agreement can be reached, the matter shall be referred to the IPR-Council and whose decision shall be final and binding on all Parties.
- (5) If a Party applies Pre-existing Know-how of another Party without the grant of access, a penalty will be decided by the IPR-Council on a case by case basis depending on the value of the infringed rights.
- (6) Any grant of Access-rights not covered by this agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

### **8.4.2 Access-rights for the execution of the Project**

- (1) Access-rights to Knowledge and Pre-existing Know-how needed for the performance of the Project shall be granted on a royalty-free basis only upon written request specifying the scope and duration of their application particularly with respect to Pre-existing Know-how.
- (2) Access-rights to Knowledge and Pre-existing Know-how are needed for the performance of the Project if the execution of the tasks assigned to the recipient Party under the Work Plan would otherwise be impossible, significantly delayed, or require significant additional financial or human resources.

### **8.4.3 Access-rights for Use**

- (1) Access-rights to Knowledge and Pre-existing Know-how both needed for Use shall be granted if the Use of a defined and material element of the recipient Party's own Knowledge would otherwise be technically or legally impossible.

- (2) Access-rights to Knowledge shall be limited to the field of application being identified as the objectives and goals of the Project and shall be granted on preferential conditions.
- (3) Access-rights to Pre-existing Know-how shall be limited to the field of application being identified as pertaining to the objectives, content and goals of the Project and necessary for the Use of own Knowledge of the recipient Party and shall be granted on Fair and Non-discriminatory Conditions.
- (4) Within six (6) months after written request by the potential user to the owning Party a bilateral agreement shall be concluded between the Parties concerned. In the case access is not granted within the above-mentioned period, the IPR-Council will decide this issue.

#### **8.4.4 Access-rights for using Knowledge in subsequent Research Activities**

Recognising the Parties' obligations to act in good faith and in accordance with the Contract and this agreement, the Parties agree that academic Parties and Public Bodies of this Consortium are deemed to be granted a right to Use free of charge Knowledge from the Project for:

- internal research, or
- third-party research, provided that the third party does not have direct access to Knowledge from the Project generated by other Parties particularly, but not limited to producing research results which are available to the third party but which contain hermetically sealed Knowledge from the Project, or to using Knowledge from the Project for in-house testing or diagnosis purposes in doing research.

#### **8.4.5 Access-rights for Affiliates**

- (1) 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 Deliverables) fulfil all confidentiality and other obligations accepted by the Parties under the Contract or this Consortium Agreement as if such Affiliates were Parties.
- (2) 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 end, Access-rights granted **by** such Affiliate shall continue in full force and effect.
- (3) In the case that Knowledge has been incorporated into the products, processes, Software or services of such Affiliate or has been amalgamated with such Affiliate's own information the Affiliate may request a non-exclusive license for the concerned Party's Knowledge under terms and conditions to be agreed upon. The concerned Party may oppose the grant of such license if it were in conflict with the Party's Legitimate Interest.

#### **8.4.6 Access-rights for Parties joining or leaving the Project**

- (1) Parties joining the Project after the Start Date will be granted the Access-rights as from the date of their signature of the Declaration of Accession.
- (2) Parties leaving the Project voluntarily and in accordance with this Consortium Agreement shall be granted access to Knowledge as it exists at the date of the membership expiration of the Consortium.
- (3) Any Party eliminated by decision of the Steering Committee does not have any access to Knowledge. Defaulting Parties are obliged to continue to grant Access-rights, but the Access-rights granted to the Defaulting Party shall cease

immediately upon termination of the participation of the Defaulting Party in the Contract. The same provisions apply with regard to sublicenses.

#### **8.4.7 Access-rights for Third Parties**

Notwithstanding the provisions of this Agreement, each Party may enter into a technical co-operation or licensing arrangement with a third party in respect of its own Knowledge, including, but not limited to, the carrying out of research on behalf of a third party, even if there are minor amounts of Pre-existing Know-how and Knowledge owned by another Party, unavoidably incorporated into or amalgamated with such own Knowledge. In such circumstances and upon request of the party entering into the co-operation or arrangement, the other Party shall grant non-exclusive rights to permit such co-operation or arrangement against terms and conditions to be agreed upon, provided that no Legitimate Interest of the other Party opposes the grant of such rights.

### **8.5 Specific Provisions for Access-rights to Software**

#### **8.5.1 General principles**

- (1) For the avoidance of doubt, the general provisions for Access-rights are applicable also to Software.
- (2) Access-rights to Software do not comprise access to Source Code but only Limited Source Code Access as defined below. Access to Source Code will be granted subject to separate agreements only, to be concluded between the Parties concerned.
- (3) Access-rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access-rights.

#### **8.5.2 Access-rights to Software for carrying out the Project**

Access-rights to Software which is Knowledge or Pre-existing Know-how, needed for the execution of the Project shall be granted on the basis of royalty free Limited Source Code Access upon written request, specifying the scope and duration of their application particularly with respect to Software which is Pre-existing Know-how.

#### **8.5.3 Access-rights to Software for Use**

- (1) Software, which is Knowledge or Pre-existing Know-how needed for Use shall be granted on the basis of Limited Source Code Access upon a bilateral agreement between the Parties concerned.
- (2) Access to Software which is Knowledge shall be granted on a royalty free basis and be subject to the provisions of 8.4.3.
- (3) Access to Software which is Pre-existing Know-how shall be granted on Fair and Non-Discriminatory Conditions.

#### **8.5.4 Software license and sub-licensing rights**

- (1) Access-rights to Object Code and Limited Source Code Access shall be subject to the provisions of 8.4.3. and shall comprise the right:
  - to use the Object Code and Limited Source Code Access in research, or to create and market a product or process, or to create and provide a service; and

- to make and have made an unlimited number of copies of Object Code and Limited Source Code Access.
- (2) The right to Use another Party's Object Code is granted to the above-mentioned extent provided that the Object Code represents only a minor part of the overall product, process or service and the Object Code cannot be separated from or has been amalgamated with such product, process or service.
  - (3) In addition, Access-rights to Object Code shall comprise the worldwide right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services a perpetual, irrevocable, worldwide license
    - to Use the Object Code in connection with or integrated into, products and services of the Party having the Access-rights and, as technically essential,
    - to maintain such product/service, and
    - 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).
  - (4) Where a Party has been granted access to Source Code to Knowledge, the Parties concerned may further agree that the Access-rights to such Source Code can comprise a worldwide license to Use, to make and have made copies, to modify and have modified, develop and have developed, to adapt and have adapted Source Code for research, or to create and market a product or process, or to create and provide a service. In addition, Access-rights can comprise the worldwide right to sub-license such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the software.
  - (5) Each sublicense granted according to this Agreement shall, when reasonably possible, be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned unless otherwise agreed upon in a separate agreement.

### **8.5.5 Modifications of Software**

Unless otherwise agreed, any change or modification on the software made by the receiving Party must be reported with a detailed description immediately to the owning Party. In the event a Party will not comply with this obligation, which is valid for Pre-existing Know-how as well as for Knowledge, the IPR Council shall decide on an adequate penalty on a case by case basis depending on the value of the infringed rights.

### **8.6 Tool Boxes**

- (1) The Parties agree that the Tool Boxes as specified in the Contract, Annex I shall be developed not only for the benefit of the Consortium but also for the benefit of the research community. Therefore, the Parties shall use reasonable efforts to make the Tool Boxes available via GPL (see the license specifications at <http://www.gnu.org/licenses/gpl.html>). In cases where licensing under the GPL is not possible, the Steering Committee will decide how the Tool Boxes shall be marketed and commercially exploited with regard to third Parties.
- (2) Any differences related to the question whether Software developed for the Project is part of the Tool Boxes or independent from the Tool Boxes are decided by the Steering Committee.

## 8.7 Database

- (1) In accordance with the Contract, Annex I, the Parties shall gather primary data in the form of 2D, 3D, and 4D data, which shall be collected in two archives, one being for modern humans and other extant primates (digital record of modern hominoids – dr. MoHo), the other being for fossil hominoids (digital record of fossil hominoids – dr. FoHo).
- (2) The dr. MoHo database and its content established during the term and the context of the Project shall be the joint property of all Parties contributing to such database.
- (3) All Parties as well as the ESR and ER fellows shall have free access for **research and teaching purposes** to the dr. MoHo database during the term of the Project.
- (4) In the philosophy of EVAN, generally all Parties shall have access to the dr. FoHo database for **research and teaching purposes** as well. However, for data provided to dr. FoHo, the curating institution can opt for different levels of accessibility (access level x – ALx):
  - AL1: free research and teaching access for all researchers inside and outside the network,
  - AL2: free research access for all researchers inside and outside the network,
  - AL3: research and teaching access only for the Parties to this Consortium,
  - AL4: research access only for the Parties to this Consortium,
  - AL5: research and teaching access for the Parties to this Consortium only after obtaining permission of the curating institution, or
  - AL6: research access for the Parties to this Consortium only after obtaining permission of the curating institution.
- (5) All rights to images and data contributed to dr. FoHo are retained by the curating institution of the particular fossil. Permission for other purpose than research such as to copy images and data, to use images and data for educational purposes, to produce models based on images and data or to use images and data for commercial purposes must be obtained from the curating institution prior to use. The Sections 8.4 and 9 of this Consortium Agreement apply accordingly.
- (6) For administration and storage of the databases (dr. MoHo and dr. FoHo), a private space (accessible only for Parties of the Consortium) at the NESPOS (TNT) database will be provided. The Co-ordinator shall have the right to decide to administer and store the database or parts of the databases on other servers and database solutions. In such a case, the Co-ordinator shall ensure the Parties' access rights to the databases remain unchanged.
- (7) The dr. MoHo and dr. FoHo database will be co-ordinated by UNVI with the help of NEMU.
- (8) The Parties shall use best efforts for funding and promotion of the databases after the end of this Project to facilitate a permanent accessibility for the enhancement of European research and educational infrastructure.
- (9) Parties as well as the ESR and ER fellows shall take care for secure data management at their institution according to the accessibility rules outlined under 8.7.

## **8.8 Website**

- (1) The Parties agree that the Co-ordinator shall install a website. All rights to that website shall therefore remain with the Co-ordinator. The website will be online and active during the term of the EU Contract and serve as a communication and dissemination platform for the Parties, but also outside of the Consortium.
- (2) The website will provide basic information on Virtual Anthropology in general and EVAN in particular, and serve as a platform for e-learning applications.
- (3) The Co-ordinator will provide the Parties with editing-rights and access-rights at different levels according to their involvement in the construction of the website.
- (4) The Parties shall use best efforts for funding and promotion of the website and the e-learning platform in particular after the end of this Project to facilitate a permanent accessibility for the enhancement of European research and educational infrastructure.

## **Section 9: Publications, Press Releases and Reports to the Commission**

### **9.1 Publications of own Knowledge**

For the avoidance of doubt, each Party shall have the right to publish or allow the publishing of data which constitutes such Party's Knowledge, Pre-existing Know-how or confidential information it owns in accordance with the Contract and this Consortium Agreement.

### **9.2 Other Publications**

- (1) Each publication or communication, whether written or oral, is required to have obtained the consent of the Parties concerned in the publication by way of contribution of data or know-how. To this end, a brief description and the subject of the proposed publication or communication shall be submitted to the TA, a copy of which shall be provided to all Parties.
- (2) If none of the Parties concerned in the publication by way of contribution of data or know-how objects to the publication within one (1) calendar month from the date of referral, consent shall be deemed to be given.
- (3) Any objection shall include,
  - a request for modifications, specifically if information contained in the proposed publication or communication is likely to impair the industrial and commercial Use of Knowledge; or
  - a request that the publication or communication shall be postponed if, in its opinion, serious reasons require this, especially if the information contained in the proposed publication or communication could affect the protection of knowledge of the objecting Party.
- (4) If a dispute regarding a publication cannot be settled amicably within two (2) calendar months, the Steering Committee shall decide the issue within a period of six (6) months starting from the date of the first submission of the publication to the TA.
- (5) It is understood that any non-journalistic publication or communication made pursuant to this Section is required to indicate the contribution made by each of the Parties. Any non-journalistic publication in connection with the Project shall make reference to the EVAN consortium and indicate the Commission's financial support as established in the Contract, Annex II. Any journalistic publication in connection with the Project should make reference to the EVAN



consortium and indicate the Commission's financial support as established in the Contract, Annex II.

(6) The Parties understand that GEO is dedicated to publishing a popular-science magazine addressed to the broad public and they agree that GEO shall be entitled to publish results of the Project in such a way under the following cumulative conditions:

- GEO's publication shall not anticipate first publications of the respective results in a scientific journal by a Party,
- GEO's publication shall not anticipate applications for intellectual property rights, especially applications for a patent, and
- GEO shall inform the Co-ordinator as early as possible of the content of its planned publication.

Any planned publication by GEO deemed to violate one of the above conditions may be vetoed jointly by the Co-ordinator and the TA within two weeks after notification. GEO will be liable for damages due to an untimely publication.

Any regulations to the contrary shall not apply to GEO.

### **9.3 Publication to qualify for a degree**

Where a person carrying out work on the Project on behalf of a Party (the "Relevant Party") needs to include Pre-existing Know-how or Knowledge of another Party in a publication to qualify for a degree, prior approval for Use shall be obtained from the appropriate Party owning such rights or affected by the Use.

### **Section 10: Assignment**

No Party shall, without the prior written consent of the other Parties, partially or totally assign or otherwise transfer any of its rights and obligations under this Consortium Agreement.

### **Section 11: Accession and Termination**

#### **11.1 Accession to the Contract**

Accession to the Contract entails that the entering Party agrees to adhere to this Consortium Agreement (Annex D: Forms A and B).

#### **11.2 Rules for Termination**

(1) No Party shall be entitled to withdraw from this Consortium Agreement and participation in the Project unless:

- that Party has obtained the prior written approval from the Steering Committee and the Commission, to the withdrawal from the Contract; or
- that Party's participation in the Contract is terminated by the Commission pursuant to the provisions of the Contract, Annex II or any other reason whatsoever.

(2) Under no circumstances, such Party shall be relieved from:

- its responsibilities under this Consortium Agreement or the Contract in respect of the 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; and
- any of that Party's obligations or liabilities arising out of such withdrawal or termination.

### **11.3 Termination due to Bankruptcy or Liquidation**

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.

### **11.4 Continuance of Regulations**

The provisions of Sections 1, 4.3.(3), 6, 7, 8, 9, 11, 12 and 15 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.

## **Section 12: Settlement of Disputes**

### **12.1 Mediation and Arbitration**

- (1) The Parties will strive to settle all disputes or differences arising in connection with the execution of the Project and regarding this Consortium Agreement amicably.
- (2) The Co-ordinator will act as a mediator to help the concerned Parties overcome their disagreements.
- (3) If the Parties, with the help of the Co-ordinator cannot reach an agreement within six (6) months, the Steering Committee shall decide the dispute by way of a three-quarter (3/4) majority. That decision shall be binding and final.
- (4) If the Steering Committee cannot reach a valid agreement, the Parties shall finally settle their dispute under the Rules of Arbitration of the International Chamber of Commerce. The Parties shall nominate one (1) or three (3) arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Vienna, Austria. The language to be used in the arbitral proceedings shall be English.

### **12.2 IPR Council**

- (1) Regarding all disputes or differences concerning IPR issues that cannot be settled with the help of the Co-ordinator, the Parties agree to abide by the decision of the IPR Council.
- (2) The IPR Council shall consist of three (3) members of the Steering Committee who are not part of the dispute in question. The Parties concerned shall have the right to nominate two (2) of the members, the third member is nominated by the Co-ordinator. In the case that the Co-ordinator is party to the dispute, the third representative shall be nominated by the TA. If the TA is also party to the dispute, the third representative shall be nominated jointly by the concerned Parties.
- (3) The IPR Council may consult external experts who are neither interconnected nor economically related in any manner with any of the Parties, e.g. members of the European Patent Office or the IPR-Helpdesk.
- (4) The decisions of the IPR Council are made by simple majority vote. If the Parties concerned fail to accept the decision of the IPR Council, they may

petition the Steering Committee. The Steering Committee shall make its decision by way of a three-quarter (3/4) majority. That decision shall be binding and final.

- (5) If the Steering Committee cannot reach a decision, the Parties shall settle their dispute by arbitration as mentioned above.

### **Section 13: Language**

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

### **Section 14: Notices**

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in Annex A or to such other address and recipient as a Party may designate in respect of that Party by written notice to the Co-ordinator.

### **Section 15: Applicable Law**

This Consortium Agreement shall be construed according to and governed by the law provided in Article 12 of the Contract.

### **Section 16: Entire Agreement – Amendments / Severability**

- (1) Should any provision of this Consortium Agreement prove to be invalid or incapable of fulfilment, or subsequently become invalid or incapable of fulfilment, whether in whole or in part, this shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties shall be entitled to demand that a valid and practicable provision be negotiated which mostly fulfils the purpose of the invalid or impracticable provision.
- (2) This Consortium Agreement, the Contract and - when such exist(s) - Amendment(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 which relates to the Project or its proposal to the Commission.
- (3) 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 17: Accession to the Contract**

- (1) All Parties declare that they have taken notice of all provisions of the Contract and its Annexes, which they have approved and have taken notice of all Sections of this Consortium Agreement.
- (2) Therefore, through signature of this Consortium Agreement, the parties are obliged to accede to the Contract by submission of their Forms A and B to the Co-ordinator.

### **Section 18: 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 written below.

As of 29. November, 2005

Authorised to sign on behalf of

**Universität Wien, Coordinator**

---

Georg Winckler, Rector

Authorised to sign on behalf of

**Medizinische Universität Innsbruck**

---

Clemens Sorg, Rector

Authorised to sign on behalf of

**University of York**

---

Scott Shurtleff, Research Support Office Manager

Authorised to sign on behalf of

**Consejo Superior de Investigaciones Científicas**

---

Carlos Martinez-A., President

Authorised to sign on behalf of

**Université Bordeaux 1**

---

Alain Boudou, President



Authorised to sign on behalf of

**Senckenbergische Naturforschende Gesellschaft**

---

Volker Mosbrugger, Director

Authorised to sign on behalf of

**Aikaterini Karagianni & Sia E.E. (dHAL Software)**

---

Aikaterini Karagianni, Director,

Authorised to sign on behalf of

**Max-Planck Gesellschaft zur  
Förderung der Wissenschaften e.V.**

---

Michael Tomasello, Director

Authorised to sign on behalf of

**z-werkzeugbau-gmbh**

---

Hermann Eberle, Managing Director

Authorised to sign on behalf of

**Breuckmann GmbH**

---

Bernd Breuckmann, President

Authorised to sign on behalf of

**Gruner + Jahr AG & Co. KG**

---

Martin Meister, managing editor

---

Martin Soppe, Procurist

Authorised to sign on behalf of

**Cybula Limited**

---

James Austin, CEO

Authorised to sign on behalf of

**Commissariat à l'Energie Atomique**

---

Jacques Ramette, Chef de Département



Authorised to sign on behalf of

**Stiftung Neanderthal Museum**

---

Gerd-Christian Weniger, Director

Authorised to sign on behalf of

**University of Hull**

---

Jonathan Cant, Research Grants and Contracts Manager

## ***Consortium Agreement***

### **ANNEX A Recipients for Notices**

Recipients for Notices in accordance with this Consortium Agreement:

#### **Universität Wien**

Prof. Dr. Gerhard Weber

T: +43 1 4277 54777  
Mobile: +43 664 60277 54777  
F: +43 1 4277 9547  
Email: gerhard.weber@univie.ac.at

#### **Medizinische Universität Innsbruck**

Dr Wolfgang Recheis

T: +43 512 504 24021  
Mobile: +43 699 14040964  
F: +43 512 504 24029  
Email: [wolfgang.recheis@uibk.ac.at](mailto:wolfgang.recheis@uibk.ac.at)

#### **University of York**

Prof. Dr. Paul O'Higgins

T: +44 (01904) -321695  
Mobile: +44 - 1094 780310  
F: +44 (01904) -321696  
Email: paul.ohiggins@hyms.ac.uk

#### **Consejo Superior de Investigaciones Científicas**

Dr. Antonio Rosas

T: +34 1 4111328 ext. 1201  
Mobile: +34 616 723822  
F: +34 1 5645078  
Email: arosas@mncn.csic.es Mr./Ms.

#### **Université Bordeaux 1**

Dr. José Braga

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Mobile: + 33 6 78 27 93 78  
F: + 33 5 40 00 25 45  
Email: j.braga@anthropologie.u-bordeaux1.fr

**Senckenbergische Naturforschende Gesellschaft**

Dr. Ottmar Kullmer

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Mobile: +49 162 4394388  
F: +49 69 7542558  
Email: [ottmar.kullmer@senckenberg.de](mailto:ottmar.kullmer@senckenberg.de)

**Aikaterini Karagianni & Sia E.E. (dHAL Software)**

Dr. Demetrios Halazonetis

T: +30-210-6232008, +30-210-8136789  
Mobile: -  
Fax: +30-210-6233211  
Email: [dhal@dhal.com](mailto:dhal@dhal.com), [dhal@otenet.gr](mailto:dhal@otenet.gr), [dhalaz@dent.uoa.gr](mailto:dhalaz@dent.uoa.gr)

**Max-Planck Institute for Evolutionary Anthropology**

Prof. Dr. Jean-Jacques HUBLIN.

T: +49 341 3550 351  
Mobile: +49 170 7659 869  
F: +49 341 3550 399  
Email: [hublin@eva.mpg.de](mailto:hublin@eva.mpg.de)

**z-werkzeugbau-gmbh**

Hermann Eberle

T: +43 5572 390 666  
Mobile: +43 664 410 12 81  
F: +43 5572 390 666  
Email: [hermann.eberle@z-werkzeugbau.com](mailto:hermann.eberle@z-werkzeugbau.com)

**Breuckmann GmbH**

Bernd Breuckmann

T: +49 (0)7532 4346-12  
Mobile: +49 0170 3127035  
F: +49 (0)7532 4346-50  
Email: [bernd.breuckmann@breuckmann.com](mailto:bernd.breuckmann@breuckmann.com)

**Gruner + Jahr AG & Co. KG**

Martin Meister

T: +49 – 40 - 3703 2093  
Mobile: +49 - 171-3777702  
F: +49/40/3703-5647  
E-Mail: [meister.martin@geo.de](mailto:meister.martin@geo.de) Mr./Ms.

**Cybula Limited**

Prof. Jim Austin

T: +44 904 567686  
Mobile: +44 7789 487841  
F: +44 904 567685  
Email: austin@cybula.com

**Commissariat à l'Energie Atomique**

Dr. Jean-Francois Mangin

T: +33 1 69 86 77 70  
Mobile: +33 6 2572 64 16  
F: +33 1 69 86 77 86  
Email: [mangin@shfj.cea.fr](mailto:mangin@shfj.cea.fr), [mangin@bic.mni.mcgill.ca](mailto:mangin@bic.mni.mcgill.ca)

**Stiftung Neanderthal Museum**

Gerd-Christian Weniger

T: +49-2104-97970  
Mobile: +49-1705363106  
F: +49-2104-979796  
Email: [weniger@neanderthal.de](mailto:weniger@neanderthal.de)

**University of Hull**

Prof. Roger Phillips

T: +44 1482 465680  
F: +44 1482 465823  
Email: [r.phillips@hull.ac.uk](mailto:r.phillips@hull.ac.uk) Mr./Ms.

## ***Consortium Agreement***

### **ANNEX B Bank Accounts**

#### **Universität Wien,**

AT-1010 Wien, Austria,

Bank: Bank Austria Creditanstalt AG

IBAN: AT74 1100 0002 9062 0400

BIC: BKAU AT WW

#### **Medizinische Universität Innsbruck,**

AT-6020 Innsbruck, Austria,

Bank: Bank für Tirol und Vorarlberg AG - Innsbruck

Address: Langer Weg 11, 6020 Innsbruck

IBAN: AT071600000100415593

BIC: BTVAAT22

#### **University of York**

York, GB-YO10 5DD 1, United Kingdom

Bank: HSBC BankPlc

Address: 13 Parliament Street, York. UK. YO1 8XS

IBAN: GB37MIDL40051537511127

SWIFT: MIDLGB22

#### **Consejo Superior de Investigaciones Científicas,**

IT-28006, Madrid, Spain,

Bank: Banco de España

Address: Calle Alcalá 20

IBAN: ES449 000000 1200253107033

BIC: ESPBESMM

#### **Université Bordeaux 1,**

FR-33405 Talence, Cedex, France

Bank: AGT Comptable Université Bordeaux 1

Address: 351 Cours de la Libération, 33400 Talence

IBAN: FR76 1007 1330 0000 0010 0025 576

BIC: BDFEFRPPXXX Bank:

#### **Senckenbergische Naturforschende Gesellschaft**

DE-60325 Frankfurt am Main,

Bank: Frankfurter Sparkasse

IBAN: DE15500502010000760157

SWIFT: FRASDEFF 50050201

Reason for transfer: EVAN, Kostenstelle 17311

**Aikaterini Karagianni & Sia E.E. (dHAL Software)**

Bank: Alpha Bank  
IBAN: GR56 0140 1530 1530 0232 0002 432  
BIC: CRBAGR AA XXX

**Max-Planck Institut for Evolutionary Anthropology**

DE-04105 Leipzig, Germany  
Bank: Deutsche Bank  
IBAN: DE82 8607 0000 0143 0222 00  
BIC: DEUTDE8L

**z-werkzeugbau-gmbh**

1010 Wien, Austria  
Bank: BANK AUSTRIA CREDITANSTALT AG  
IBAN: AT78 12000 52007 184701  
BIC: BKAUATWW  
Reason for transfer: EVAN-Förderung

**Breuckmann GmbH**

D-88709 Meersburg, Germany  
Bank: Volksbank Überlingen eG  
Address: Marktplatz 7  
D - 88709 Meersburg, Deutschland  
IBAN: DE0269061800000627800  
BIC: GENODE61UBE

**Gruner + Jahr AG & Co. KG**

20444 Hamburg,  
Bank: Deutsche Bank AG Hmb  
Konto: 03 22 800  
BLZ: 200 700 00  
IBAN: DE30200700000032280000  
BIC: DEUTDEHH  
Reason for transfer: GEO, EVAN Projekt KST 0611/1100700

**Cybula Limited**

IT Centre, York Science Park, University of York, York, YO10 5DG  
Bank: Barclays  
Address: Parliament Street, York, YO1 8GA  
IBAN: GB68 BARC 2099 5680 6468 06  
BIC: BARCGB22

**Commissariat à l'Energie Atomique**

31-33 rue de la federation 75752 Paris Cdex 15

Bank: BNP PARIBAS

Address: Paris place Vendome (00818)

IBAN: FR76 3000 4008 1800 0212 1622 127

BIC: BNPAFRPPVD

**Stiftung Neanderthal Museum**

DE-40822 Mettmann, Germany

Bank: Kreissparkasse Düsseldorf

IBAN: DE 34 301 502 00 000 178 1111

BIC: WE LA DE D1 KSD

**University of Hull**

Cottingham Road, Hull, East Yorkshire, HU6 7RX, United Kingdom

Bank: HSBC

Address: 55 Whitefriargate, Hull, HU1 2HX

IBAN: GB74 MIDL 4005 1536 1984 68

BIC: MIDLGB22



## ***Consortium Agreement***

### **ANNEX C** **Exclusion of *Pre-existing Know-how* from Right to Access** **(Annex II)**

#### **Protected Know-how:**

##### **Universität Wien**

All "Pre-existing Know-how" of the University of Vienna and the Dept. of Anthropology of the University of Vienna is excluded except for that "Pre-existing Know-how" which has been accumulated by the workgroup "Virtual Anthropology" at the Dept. of Anthropology, University of Vienna. All images and data (raw or modified) of specimens under curation of an organisation other than the Dept. of Anthropology, University of Vienna, e.g. fossils collected under the projects Austrian Science Foundation P 14738, Austrian Ministry of Education, Science and Culture and Austrian Council for Science and Technology GZ200.093\_I-VI\_2004. Any patient-related data and information, and the rights attached thereto, from University of Vienna are excluded from access rights. Usage of data, software tools and algorithms developed in the course of any undergraduate or graduate research, which have not been accepted for publication by a peer-reviewed journal requires the explicit written consent of the author.

##### **Medizinische Universität Innsbruck,**

For avoidance of doubt, any patient-related and proband-related (e.g. fMRI studies) data and information, and the rights attached thereto, from Universtätsklinik für Radiodiagnostik are excluded from access rights. All images and data (raw or modified) of fossils or mummies under curation of an organisation other than the Universtätsklinik für Radiodiagnostik are excluded from access rights.

##### **Aikaterini Karagianni & Sia E.E. (dHAL Software)**

Viewbox software

##### **Breuckmann GmbH :**

OPTOCAT Software, incl. all correlated ADD-ON-modules, libraries and Macros  
All kind of documents - incl. especially the design, construction and manufacturing -  
for our commercial 3D-digitization systems, especially :  
opto*TOP*, opto*SCAN*, stereo*SCAN*, face*SCAN*, body*SCAN*, mikro*TOP*, derma*TOP*,  
opto*DENT*, Everest*SCAN*

PatentNo : P 44 15 834.3-09

##### **Cybula Ltd.**

Protected Know-how:

AURA software library and adapters for graphs, text and signals including associated algorithms.

SDE signal data search engine and pattern match controller.

Face recognition methods.

Graph matching methods.

PRESENCE II/III hardware and associated firmware.

FaceEnforce recognition engine, calibration software and enrolment software.

Patent No. or File No.:

Text matching. UK grant: GB2351572B, EPO 1196890 and associated applications and grants in other countries.

Image Recognition. UK grant: GB2384095 PCT 1472645 and associated applications and grants in other countries

Image recognition II. UK application 0323662.7 PCT EP2004/052502

### **University of Hull**

All "Pre-existing Know-how" which has been accumulated by the University of Hull is excluded except for that "Pre-existing Know-how" which has been accumulated by those researchers of the University of Hull identified explicitly in the contract. Furthermore, right of access is only granted to "Pre-existing Know-how" that is relevant to the project and that these rights are limited to academic purposes for other parties of the project. Where this "pre-existing know-how" is embedded within software then right of access is restricted to "Limited Source Code Access". Additional rights to this software will be considered by the University of Hull on a case by case basis.

Specific exclusions are:

- 1) Bone modelling simulator

Rights to these specified excluded "Pre-existing Know-how" items will be considered on a case by case basis.

***Consortium Agreement***

**ANNEX D  
Accession Forms (Forms A and B)**