**MEMORANDUM OF UNDERSTANDING ON**

1. **THE ACCESS TO**
2. **SHARING OF**

**INFRASTRUCTURES IN JOINT PROGRAMMING INITIATIVES**

**BETWEEN**

**Party #1**, whose registered office is at …………………., legally represented by …………., hereinafter referred to as INFRASTRUCTURE PROVIDER,

**AND :**

**Party #2**, whose registered office is at …………………., legally represented by …………., hereinafter referred to as USER,

hereinafter, jointly or individually, referred to as "Parties" or "Party".

**THE PARTIES HAVE HEREBY AGREED AS FOLLOWS :**

**PRELIMINARY ARTICLE – DEFINITIONS**

Words beginning with a capital letter shall have the meaning defined herein without the need to replicate said terms herein.

**“Agreement”** shall designate this Memorandum of Understanding (MOU).

**“Infrastructure”** shall designate the facility provided for use by the INFRASTRUCTURE PROVIDER.

 **“Equipment”** shall designate USER equipment, if any, to be used on/inside the Infrastructure during the Experiment.

**“Experiment”** shall designate the scientific experiment identified as ……. initiated by the USER using the Infrastructure operated by the INFRASTRUCTURE PROVIDER, according to the scope of work and time schedule as defined in Annex 1 attached hereto.

 **“Chief scientist”** shall designate the qualified representative of the USER leading the Experiment.

**ARTICLE 1 - PURPOSE**

The purpose of this Agreement is to define the terms whereby the INFRASTRUCTURE PROVIDER will put at disposal to the USER the Infrastructure

(a) as a platform to carry out the Experiment under a Trans National Access (TNA) access programme included in a Joint Programming Initiative.

(b) as a shared platform to carry out the Experiment under a Joint Programming Initiative.

**ARTICLE 2 – GENERAL ACCESS CONDITIONS**

**2.1** The management and operation of the instrumentation on/inside the Infrastructureand the overall safety of the Infrastructure, as well as the access of the Infrastructure by any required transport mean, shall be the sole responsibility of the

[ ] USER

[ ] INFRASTRUCTURE PROVIDER

**2.2** The INFRASTRUCTURE PROVIDER will endeavour to fulfil USER requests concerning the execution of the Experiment as defined in Annex 1, as well as, if specified in Annex 1, the implementation of the Equipment on/inside the Infrastructure, subject to the management and safety rules defined here above and operational risks.

Those requests will be expressed to INFRASTRUCTURE PROVIDER by the chief scientist designated by USER by written communication.

**ARTICLE 3 – SPECIFIC ACCESS CONDITIONS**

The access conditions are established by the INFRASTRUCTURE PROVIDER and specified in Annex 1 –IV.

USER will endeavour to fulfil INFRASTRUCTURE PROVIDER requests concerning the specific access condition.

**ARTICLE 4 – INTELLECTUAL PROPERTY RIGHTS**

**4.1 Background**

Each Party remains the sole owner of the results, products and processes (patented or not), held prior to this Agreement or acquired outside the scope of this Agreement. This Agreement shall not give any right over the aforementioned knowledge to the other Party. The other Party is credited only for the purpose of the Experiment and for the term of validity of this Agreement, a personal and non-transferable right to use.

Each recipient Party agrees to maintain in confidence and not to disclose any knowledge (know-how, patents, software, raw data or validated ...) received from the other Party to third parties without the prior written consent of the disclosing Party.

**4.2 Data acquired during the Experiment**

The Parties agree that the access to data collected during the Experiment, such as metadata and all the raw data

[ ] shall be granted to third parties, without the prior written consent of the Parties.

[ ] shall be granted to third parties, with the prior written consent of the Parties.

**4.3 Results of the Experiment**

The Parties agree that the results of the Experiment shall

[ ] belong to the USER.

[ ] belong to the USER and the INFRASTRUCTURE PROVIDER.

[ ] other option: ….

**ARTICLE 5 – USER COMMITMENTS**

**5.1 Expenses**

**5.1.1** Upon signature of this Agreement, the USER is committed to conduct the Experiment.

In case of cancellation by the USER, whatever the reason, the Parties agree that

1: the INFRASTRUCTURE PROVIDER shall make its best efforts to reschedule the Experiment on a schedule commonly agreed with the USER;

2 : when the USER and the INFRASTRUCTURE PROVIDER cannot reach an agreement on a new schedule,

[ ] the USER shall be liable for all reasonable costs incurred or obligated by the INFRASTRUCTURE PROVIDER. The USER shall pay the INFRASTRUCTURE PROVIDER for such costs within … days of receipt of an invoice for same.

[ ] other option: ……

**5.1.2** **Travel and shipment costs**

Costs related to USER travel to access the Infrastructure as well as shipping of his own Equipment

[ ] shall remain at USER charge.

[ ] are supported by ….. under grant …..

[ ] other option: …..…..

**5.1.3 Insurance conditions and costs**

The USER shall check with the INFRASTRUCTURE PROVIDER the insurance conditions applying for accessing the Infrastructure.

[ ] When necessary, the USER undertakes to contract at its own expense, an insurance policy covering the risks agreed between the Parties,

**5.2** **Safety rules**

The USER undertakes to apply the INFRASTRUCTURE PROVIDER ’s requests regarding safety during its in-person access to the Infrastructure.

**5.3 Publications and miscellaneous**

Subject to article 4.3 hereabove, any publication, report, databases, etc. incorporating the results developed, acquired or obtained during the Experiment, as well as any promotion or communication on an invention developed with incorporation of the results developed, acquired or obtained during the Experiment,

[ ] is free of any restriction.

[ ] shall mention the participation of the INFRASTRUCTURE PROVIDER and the present Agreement.

[ ] other option: …..…..

This article applies to any publication and/or product will be derived from the Experiment, whatever the author.

The USER undertakes to send a copy of all publications to the INFRASTRUCTURE PROVIDER.

**ARTICLE 6 – INFRASTRUCTURE PROVIDER COMMITMENTS**

**6.1** The INFRASTRUCTURE PROVIDER shall send a written confirmation to USER before the Experiment commencement.

**6.2** According to Article 5.1.3 here above, the INFRASTRUCTURE PROVIDER shall notify within reasonable period before the Experiment to the USER its requests regarding the insurance policy to be taken by the USER and the applicable safety rules on-site.

**6.3** The INFRASTRUCTURE PROVIDER undertakes to make its best efforts to reschedule the Experiment as provided in Article 5.1.1.

**6.4 Expenses**

**6.4.1** Upon signature of this Agreement, the INFRASTRUCTURE PROVIDER is committed to put at disposal to the USER the Infrastructure as a platform to carry out the Experiment.

In case of cancellation by the INFRASTRUCTURE PROVIDER, whatever the reason, the Parties agree that

1: the INFRASTRUCTURE PROVIDER shall make its best efforts to reschedule the Experiment on a schedule commonly agreed with the USER;

2 : when the USER and the INFRASTRUCTURE PROVIDER cannot reach an agreement on a new schedule,

[ ] the INFRASTRUCTURE PROVIDER shall be liable for all reasonable costs incurred or obligated by the USER. The INFRASTRUCTURE PROVIDER shall pay the USER for such costs within … days of receipt of an invoice for same.

[ ] other option: ……

**6.4.2** **Access costs** *[only for infrastructure sharing (b)]*

Costs related to running the Infrastructure during the Experiment

[ ] shall remain at INFRASTRUCTURE PROVIDER charge.

[ ] are supported by project….. grant no….. under the JPI providing the duly reporting is performed, including provision of the evidence of use (Annex II)

[ ] other option: …..…..

**ARTICLE 7 - CONFIDENTIALITY**

All data and information encountered during the Experiment which are not related to the purpose of Experiment of the USER are considered to be confidential.

USER shall ensure that all scientific staff shall hold information not related to the scientific mission of the USER, if so considered by INFRASTRUCTURE PROVIDER, to be confidential and will not disclose such information to any individual, group or company outside USER and initially only to the scientific team participating to the Experiment, unless written authorisation is given by INFRASTRUCTURE PROVIDER to do so.

Each Party undertakes consequently to keep confidential all this information, for a period of five years from receiving it.

**ARTICLE 8 - LIABILITY**

As the Experiment is operated involving an Infrastructure, the Parties agree upon the following provisions :

**8.1. Damages**

Except in case of INFRASTRUCTURE PROVIDER ’s gross negligence or intentions as specified in section 8.3, USER undertakes to cover all damages caused to USER’s staff members, its guests and its equipment during the Experiment.

USER waives any right to sue INFRASTRUCTURE PROVIDER for all direct or consequential damages caused to USER’s staff members, its guests and its Equipment during the Experiment.

**8.2. Safety**

The INFRASTRUCTURE PROVIDER shall be responsible for all operational decisions, especially for safety or technical reasons, and can postpone or cancel operations for the same reasons.

**8.3. Liability**

Liability of INFRASTRUCTURE PROVIDER and USER and their assistants is restricted to gross negligence or intentions. This agreement applies for both, contractual as well as tortious liability. Accountability is limited to estimated costs of the Experiment. In no event shall the Parties be liable for any consequential damages or loss of profit arising out of or in connection with this contract.

INFRASTRUCTURE PROVIDER and USER waive any right to sue the COORDINATOR for all direct or consequential damages caused to USER and/or INFRASTRUCTURE PROVIDER in the scope of this Agreement.

**ARTICLE 9 - FORCE MAJEURE**

Each of the Parties shall inform the other Party of the occurrence of any event which constitutes a force majeure, preventing it from executing its obligations set out in this Agreement.

Any event which is unforeseeable, and the effects of which are uncontrollable, which prevents one of the Parties from executing its obligations agreed within the scope of this Agreement shall be considered to be a case of force majeure. The obligations of the Party impeded shall be suspended for as long as the force majeure subsists.

If the work is interrupted by such events, the Parties shall quickly consult each other in order to study the postponement or possible termination of the Experiment or the adaptation of the terms of this Agreement.

**ARTICLE 10 - DURATION - TERMINATION**

**10.1** This Agreement enters into force upon its signature by the Parties and will expire on (Date).

**10.2** The Article 7 shall remain in force for its own duration.

**10.3** Each of the Parties expressly declare being bound by the terms of this Agreement, which shall constitute the law between the Parties. Each of the Parties shall consequently take all necessary steps to prevent or remedy all and any failure that could arise during the performance of this Agreement.

In case of major difficulties, leading one of the Parties to consider the termination of this Agreement, such cancellation will be exceptionally admitted, provided a prior written notice, giving the nature of the difficulties encountered and the reasons entitling the Party to terminate this Agreement, together with an appropriate financial compensation, be addressed by the defaulting Party to the other. Such termination proposal shall not be reasonably withheld.

In such case, the termination of this Agreement will be considered and the Parties
shall have to draw and sign a termination addendum to cancel this Agreement.

**ARTICLE 11 - APPLICABLE LAW**

This Agreement is subject to (Country) law.

**ARTICLE 12 - JURISDICTION**

**12.1** In case of a dispute over the execution and/or the interpretation of this Agreement,
the Parties undertake to seek a friendly solution, within a maximum of two months from the date of their dispute occurring.

**12.2** Any dispute arising out of or relating to this Agreement, including any question regarding its existence, validity or termination, which cannot be amicably resolved by the Parties, shall be settled before three arbitrators, one to be appointed by each Party and the two so appointed shall appoint the third arbitrator, in accordance with the Arbitration Rules of the International Chamber of Commerce with the arbitration to be held in Brussels, Belgium or such other location as agreed by the Parties. The language of the arbitration shall be English. A dispute shall be deemed to have arisen when either Party notified the other Party in writing to that effect.

**ARTICLE 13 – PREVAILING ORDER OF THE ANNEXES**

The prevailing order shall be:

1. This Agreement
2. Presentation of Scope of Work and Schedule of the Experiment (Annex I)
3. Evidence of use (Annex II) *[only for infrastructure sharing (b)]*

Done in two originals in English.

For the INFRASTRUCTURE PROVIDER done at [insert place]:

Name of the legal entity:

Name of legal representative:

Stamp of the organisation (if applicable):

Signature of legal representative:

Date:

For the USER done at [insert place]:

Name of the legal entity:

Name of legal representative:

Stamp of the organisation (if applicable):

Signature of legal representative:

Date:

**ANNEX I**

**PRESENTATION OF SCOPE OF WORK AND SCHEDULE OF THE EXPERIMENT**

1. **PURPOSE OF THE EXPERIMENT**
2. **PRESENTATION OF THE INFRASTRUCTURE AND EQUIPMENT** **AVAILABLE TO THE EXPERIMENT**
3. **SCOPE OF WORK**
4. **SPECIFIC ACCESS CONDITIONS OF THE INFRASTRUCTURE**
5. **SCHEDULE**

**ANNEX II**

**EVIDENCE OF INFRASTRUCTURE USE**

|  |  |
| --- | --- |
| **Host Research Infrastructure** |  |
| **Name of chief scientist** |  |
| **Home Laboratory** |  |
| **E-mail address** |  |
| **Telephone** |  |
| **Additional users**  |  |
| **Starting date - End date** |       -       |

**Short description of activities**

|  |
| --- |
|  |

|  |  |
| --- | --- |
| **Name and surname of the chief scientist** | **Signature of the chief scientist** |
|  |  |

The evidence of infrastructure use shall be confirmed by an official stamp of the organization that used the infrastructure