***Instructions for use of this template***

***This template ICON COLLABORATION AGREEMENT FAIR AND REASONABLE CONDITIONS is solely intended to serve as an example. Whether the State aid rules are respected, will depend on the concrete configuration and application of the arrangements between the project partners. Therefore, no guarantee can be given that this template is in accordance with the State aid rules. The project partners always should consider which regime is best applied in function of the compliance with the State aid rules, and research organisations must keep in mind that they should make always arrangements that could as well be made between industrial partners.***

***This template is drafted from a template collaboration agreement for a Cluster related ICON project; however it can be used for all kind of ICON programmes provided that the Cluster related terms are replaced or deleted.***

**[Cluster Organisation] ICON PROJECT Collaboration agreement**

This [Cluster Organisation] ICON Project Collaboration Agreement (hereafter called the “Collaboration Agreement”) is entered into on [date] by and between the following parties:

The following companies:

**[PARTY 1],** [address], registered under company number BE [number], duly represented by [name and title] (hereafter called “[Party 1]”); and

**[PARTY 2],** [address], registered under company number BE [number], duly represented by [name and title] (hereafter called “[Party 2]”); and

**[PARTY 3],** [address], registered under company number BE [number], duly represented by [name and title] (hereafter called “[Party 3]”).

Prementioned parties in this paragraph are hereafter individually called the ‘Company’ and collectively the ‘Companies’.

The following research organisations:

**[PARTY 4],** [address], registered under company number BE [number], duly represented by [name and title] (hereafter called “[Party 4]”); and

**[PARTY 5],** [address], registered under company number BE [number], duly represented by [name and title] (hereafter called “[Party 5]”).

Prementioned parties in this paragraph are hereafter individually called the ‘Research Organisation’ and collectively the ‘Research Organisations’.

Companies and Research Organisations are hereafter individually called the “Party” and collectively the “Parties”.

The Cluster Organisation:

**[Cluster Organisation]**, [address], registered under company number BE [registry number], duly represented by [name and title] (hereafter called “[Cluster Organisation]”).WHEREAS, the Parties have submitted through [Cluster Organisation] a project proposal to the Hermes Fund, entitled

“[name of the ICON project]”

“[abbreviation]”

WHEREAS, the proposal has been approved by the Hermes Fund (the approved ICON project with reference HBC.YYYY.XXXX hereinafter the “Project”) and an agreement has been entered into between the Hermes Fund and the Parties with respect to the activities to be performed by the Parties under the Project and the specific terms and conditions related hereto (hereinafter the "Hermes Fund Agreement" see copy attached as Exhibit 1);

WHEREAS, the parties have signed a Term Sheet on [date], in which they commit themselves to act in conformity with the Framework for State aid for Research and Development and Innovation and in which they demonstrate the project will be performed as an “Effective Collaboration” and agree the terms and conditions as regards access to and rules for allocation of IP.

WHEREAS this agreement constitutes the Collaboration Agreement required by the Hermes Fund Agreement which gives further elaboration to the commitments and obligations of the Parties stipulated in the Hermes Fund Agreement and in the Term Sheet;

1. **Definitions**

In addition to the concepts already defined in the beginning of this Collaboration Agreement and the definitions stated in the Hermes Fund Agreement, for the application and interpretation of this Collaboration Agreement the following capitalized terms have to be understood as:

1. “Access Right”: means a non-exclusive, non-sublicensable license to use Foreground or Background of another Party (as the case may be). The different forms of ‘use’ can either be for Research Use or for Exploitation.
2. “Affiliates”: any undertaking which is, on or after the date of the Collaboration Agreement from time to time, an Affiliate as this term is defined in article 1:20 of the Belgian Code of Companies and Associations, and which is listed in Exhibit 4.
3. “Background”: means a Party’s information, data, know-how, software, materials and intellectual property rights generated before or outside of the Project that are Needed by another Party for carrying out its tasks in the Project or for Exploitation of its Foreground and that are listed in Exhibit 3. Unless stated otherwise in the Project, the Parties agree to the general principle that methods, procedures, techniques, models, equipment, datasets etc. which are further developed or improved upon during the performance of the Project will be considered as Background of the Party that introduced the underlying Background to the Project provided that the development and/or improvement is:

1. done by the Party that owns the respective Background, and

2. not severable from such Background, and

3. is not an expected outcome of the Project.

1. “Confidential Information”: all information in whatever form or mode of transmission, from a Disclosing Party to any other Receiving Party in connection with the Project and which has been marked as “confidential”, or when disclosed orally or in any other intangible form, has been identified as confidential at the time of disclosure and has been conformed and designated in writing within fifteen (15) days from oral disclosure at the latest as Confidential Information by the Disclosing Party. Any information which is not identified as confidential must nevertheless be treated as Confidential Information by the Receiving Party, if it knows or should reasonably be expected to know about the secret and confidential nature of such information.
2. “Coordinator”: the representative of all Parties towards the Hermes Fund. The Coordinator acts as the Project leader of the Project towards the other Parties. The Coordinator acts as the intermediary between the Parties and [Cluster Organisation] and Hermes Fund. Its responsibilities will be ascribed to such terms in article 4.2.
3. “Disclosing Party”: a Party who discloses Confidential Information.
4. “Exploitation”: means developing, creating, manufacturing and marketing products or processes, or creating and providing services. Exploitation does not include the granting of (sub)licenses, unless this falls within the scope of dealing with developing, creating, manufacturing and marketing products or processes, or creating and providing services. .
5. “Fair and Reasonable Conditions” means appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access, for example the actual or potential value of the results to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged.
6. “Foreground”: means any information, data, know-how, software, materials or other (tangible or intangible) output generated under the Project and reported to the Steering Committee, as well as intellectual property rights thereon.
7. “Individual Foreground”: all Foreground that is generated or obtained by a Party without the intellectual contribution of another Party in the framework of the Project.
8. “Joint Foreground”: means each Foreground that has been generated by work carried out jointly by at least two Parties in the framework of the performance of the Project and where it is impossible to distinguish each Party's intellectual contribution to the creation of Foreground, or where it cannot reasonably be established which Party has generated Foreground.
9. “Member”: a representative of each Party in the Steering Committee. Members are listed in Exhibit 5.
10. “Needed” is defined as:
    1. For the performance of the Project: Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources;
    2. For Exploitation of own Foreground: Access Rights are Needed if, without the grant of such Access Rights, the Exploitation of own Foreground would be technically or legally impossible.
    3. For Research Use with own Foreground: Access Rights are Needed if, without the grant of such Access Rights, the Research Use with own Foreground would be technically or legally impossible.
11. “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.
12. “Receiving Party”: a Party who receives Confidential Information.
13. “Research Use”: means use for a party’s internal research, internal development, academic teaching and academic research activities.
14. “Steering Committee”: the decision-making board of the Project consisting of Members.
15. **Subject**
    1. **Performance of the Project.** The concrete content of the contribution of each Party in the Project is described in detail in the Proposal known by all Parties and is attached to this document (Exhibit 2). The Parties will collaborate in good faith in order to implement the Project as set out in the Proposal. Each Party will use its best endeavours to carry out the Project in a timely and efficient manner. Each Party shall perform the tasks allotted to it in the Proposal and provide the human resources, materials, facilities and equipment that are designated as its responsibility in the Proposal. The Parties will ensure to exchange, and where necessary request, all necessary information without impairing any obligation of confidentiality.
    2. **No warranty regarding outcome of scientific research.** Although each of the Parties will use its best endeavours to carry out the Project in accordance with the Proposal, no Party undertakes that any research will lead to any particular result, nor does it guarantee a successful outcome to the Project.
    3. **Information and materials.** Each Party undertakes to promptly notify the Coordinator of any significant information, fact, problem or delay likely to affect the Project. Each Party will promptly provide all information reasonably required by the Coordinator to carry out its tasks.
    4. **Involvement of third parties.** A Party that subcontracts part of its work under the Project to a third party (including but not limited to Affiliates) remains solely responsible for the carrying out of these tasks and for such third party’s compliance with the applicable provisions of this Collaboration Agreement. It will ensure that the involvement of a third party does not affect the rights of the other Parties.
    5. **Rights limited to the Project.** The Collaboration Agreement as well as the hereby forthcoming rights and obligations will only be related to the realization of the Project. The Parties explicitly agree that the Collaboration Agreement will not extend to or is related with other activities or projects of the Parties.
    6. **Subordinate to Hermes Fund Agreement.** Current Collaboration Agreement gives further elaboration to the commitments and obligations of the Parties stipulated in the Hermes Fund Agreement. Nothing in this Collaboration Agreement shall be understood as limitation of any of these obligations or commitments. In case the provisions listed in this Collaboration Agreement conflict with the provisions of the Hermes Fund Agreement, the provisions of the Hermes Fund Agreement, with special attention to but not limited to those related to the Proposal, the Innovation Goal, and Exploitation plan are leading and will be respected integrally.
16. **Mutual relationship of the Parties**

All Parties acknowledge to act as independent Parties and cannot be considered agents or representatives of each other, nor will there be any joint liability between Parties for each other’s obligations, barring recorded in writing differently. The Parties will not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Collaboration Agreement will be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

1. **Division of tasks and planning**
   1. **Division of tasks.** The Parties will remain loyal to the division of tasks and planning as determined in the Proposal. To meet these provisions, all involved Parties will inform each other of the made progress and/or eventual problems on a regular basis.
   2. **Coordinator.** Without prejudice the respective obligations of each Party, [“Party”] will act as Coordinator and will further be responsible for:
2. establishing communication with and between all Parties to analyse the progress and the evolution of the Project in order to achieve the Projects goals,
3. executing the actions required for coordination, management and control of the execution of the Project,
4. providing direction to the Steering Committee,
5. transmitting documents and information connected with the Project to and between the Parties,
6. collecting, reviewing to verify consistency and submitting reports and other deliverables (including financial statements and related certifications) via [Cluster Organisation] to Hermes Fund,
7. providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims or other legitimate interests,
8. keeping the address list of Members and other contact persons updated and available.
   1. **Reporting.** Each Party shall submit a report to the Coordinator pertaining to its activities under the Project at the reporting deadlines as set forward in the Proposal and imposed by the Hermes Fund Agreement. The layout and content of the reports will be conform to all requirements imposed by Hermes Fund.
   2. **Authority.** The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party.
9. **Steering Committee**
   1. **Members.** The Parties establish a Steering Committee. Any Member may be present or represented at any meeting of the Steering Committee or may appoint a substitute or a proxy to attend and vote at any meeting. Each Member may invite other persons within its organization if relevant to the agenda to be discussed at a particular meeting of the Steering Committee**.** After approval by the Coordinator, a Member may also invite external advisors if relevant to the agenda to be discussed at a particular meeting of the Steering Committee and if such advisors are bound to confidentiality obligations no less stringent than those contained in this Collaboration Agreement.
   2. **Meetings.** The Coordinator will chair all meetings of the Steering Committee, unless decided otherwise in a meeting of the Steering Committee. The Coordinator shall convene meetings of the Steering Committee. Ordinary meetings will take place at least three (3) times a year and extraordinary meetings may be convened at any time upon written request of one-third (1/3) of the Members. The Coordinator shall give notice in writing of a meeting with the agenda to each Member no later than fourteen (14) calendar days in advance.
   3. **Quorum, voting power and majorities.** The Steering Committee can only deliberate and decide validly if two-thirds (2/3) of its Members are present or represented**.** Each Party will have one vote. Decisions will be taken by a majority of two-thirds (2/3) of the votes in attendance, except that the decisions referred to in article 5.4. (d), (e), (f), (g), (h) and (i) require unanimity of all votes in attendance.
   4. **Actions and decisions**. The following actions and decisions will be taken by the Steering Committee:
10. collect information on the progress of the Project, examine that information to assess the compliance of the Project with the Proposal and, if necessary, propose modification of the Proposal via [Cluster Organisation] to Hermes Fund (to the extent required by this Collaboration Agreement or the Hermes Fund Agreement),
11. determine the policy for press releases, joint publications and other public disclosures regarding the Project,
12. keep a register of Foreground generated within the Project and patents filed thereon, which is concluded at the end of the Project,
13. approve withdrawals from and additions to Exhibit 3 and additions to Exhibit 4,
14. propose via [Cluster Organisation] to Hermes Fund, as applicable, major changes in work under the Project (e.g., termination, creation, or reallocation of top level work packages) to the extent required by this Collaboration Agreement or the Hermes Fund Agreement,
15. propose via [Cluster Organisation] to Hermes Fund the entrance of a new party to the Project and approval of conditions of accession, including an accession fee in cash or in kind to be distributed among the Parties pro rata their share in the Project budget,
16. propose via [Cluster Organisation] to Hermes Fund the withdrawal of a Party from the Collaboration Agreement and approval of settlement on conditions of withdrawal, and rearrangement of tasks and budgets of that Party (any resulting changes in the budgets of the remaining Parties will be subject to an amendment to the Hermes Fund Agreement),
17. propose via [Cluster Organisation] to Hermes Fund the termination of all or part of the Project,
18. propose via [Cluster Organisation]to Hermes Fund the change of the Coordinator,
19. escalate of a matter to [Cluster Organisation] if a Party deems that its legitimate interests are seriously affected by a decision of the Steering Committee and no amicable resolution has been found at the level of the Steering Committee. [Cluster Organisation] will act as moderator in the discussion.
    1. **Written decision-making.** Any Member may participate in meetings by teleconference, video-conference or any other technology that enables everyone participating in the meeting to communicate interactively and simultaneously with each other. Any decision may be taken without a meeting if the chairperson circulates to all Members a written document which is then unanimously accepted and signed by all Members.
    2. **Minutes of meetings.** The chairperson will produce written minutes of each meeting and will send the draft minutes to all Members within ten (10) calendar days of the meeting. The minutes will be considered as accepted and become binding if, within fourteen (14) calendar days from sending, no Member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes. The chairperson shall send the accepted minutes to all the Members.
    3. **Support by** [Cluster Organisation]. To support the Project and accelerate the progress and next steps, [Cluster Organisation] will be invited as an observer to the Steering Committee meetings and the conclusion of the Project.
20. **Confidential Information**
    1. **Restrictions.** The Receiving Party shall up until five (5) years after the end of the Project:
21. not use the Confidential Information otherwise than for the purpose for which it was disclosed;
22. not disclose the Confidential Information to any third party without the prior written consent of the Disclosing Party.
    1. **Internal use.** The Receiving Party shall internally distribute Confidential Information on a strict need-to-know basis and apply the same degree of care with regard to the Confidential Information as with its own Confidential Information, but in no case less than reasonable care. The Receiving Party shall have its employees, collaborators, advisors and consultants comply with the confidentiality provisions hereof and shall ensure that they continue to do, as far as legally possible, during and after the end of the Project and/or after the termination of employment or the agreement with the advisor or consultant.
    2. **Exceptions.** The foregoing obligations of this Article 6.2 do not apply for disclosure or use of Confidential Information, if and in so far as the Receiving Party can show that:
23. the Confidential Information became public other than through a breach of the Receiving Party’s confidentiality obligations;
24. the Confidential Information is received by the Receiving Party without any obligation of confidence from a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
25. the Confidential Information was already known to the Receiving Party prior to disclosure;
26. the Confidential Information was developed by the Receiving Party completely independently of any such disclosure by the Disclosing Party;
27. the disclosure or communication of the Confidential Information is required by provisions of the Hermes Fund Agreement; or
28. the Disclosing Party informs the Receiving Party that the Confidential Information is no longer confidential.
    1. **Disclosure regulated by law.** If a Receiving Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure, notify the Disclosing Party and comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.
    2. **Unauthorized use and disclosure.** A Receiving Party shall promptly advise the Disclosing Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.
    3. **Return.** A Receiving Party shall return to the Disclosing Party on demand and by the end of the Project specified Confidential Information which has been supplied to or acquired by the Receiving Party including all copies thereof and delete all information stored in a machine readable form. The Receiving Party may keep a copy for archival purposes if needed for the recording of ongoing obligations or if such copy is contained in an archived computer system backup that was made in accordance with the Receiving Party's security and/or disaster recovery procedures; provided, however, that any such copies will remain subject to the terms of Article 6.
    4. **Information of third parties.** Information which is received by one of the Parties from a third party and that is necessary for the execution of the Project, will be shared with the other Parties in the Project, excluding the case that confidentiality obligations of this Party towards this third party is preventing this. The abovementioned regulations on confidentiality are applicable.
29. **Property rights and Access Rights**
    1. Background

**Exclusive property.** This Collaboration Agreement does not affect the ownership of any Background and rights therein will remain the property of the Party that contributes it to the Project.

* 1. Foreground
     1. **Individual Ownership.** Individual Foreground will be the property of the Party carrying out the Project work generating that Individual Foreground. Where any third party such as a subcontractor is involved in the Project, the Party engaging that third party will ensure that said third party assigns any rights it may have in Foreground to the Party concerned in order to enable the Party concerned to give effect to the provisions of this Collaboration Agreement.
     2. **Protection of Individual Foreground.** Each Party may take such steps as it may decide from time to time to register and maintain any protection for its Individual Foreground, including filing, prosecuting and withdrawing of patent applications. No later than on the date a patent is filed on Individual Foreground, the filing Party shall provide written notice thereof to the other Parties. Within one (1) month after filing, this Party shall also provide the other Parties the abstract in case of priority filing and the information to trace the patent in case of full application. This obligation will survive termination of the Project for a period of six (6) months.
     3. **Joint ownership.** The owners of Joint Foreground aim to establish an agreement regarding the allocation and terms of exercising that joint ownership, and which is subject to article 2.6. regarding Exploitation. Where no such joint ownership agreement has been concluded, each joint owner will have the unrestricted right to use such Joint Foreground for Research Use in line with Article 7.2.4. Such rights shall be granted at Fair and Reasonable Conditions in conformity with the principles described in the Term Sheet (e.g. on Effective Collaboration and an allocation which is a fair reflection of the work packages, contributions and respective interest). No joint owner will have the right to register or maintain any protection (including filing and prosecuting patent applications) without authorisation of other joint owner(s). None of the owners of Joint Foreground will have the right to, entirely or partially, exploit or license such Joint Foreground for any and all purposes until an agreement has been established.
     4. **Protection of patentable Joint Foreground.** The owners of Joint Foreground may take such steps to register and maintain any protection for the Joint Foreground, including filing and prosecuting patent applications. In order to be able to file a patent application, the co-owners shall not disclose the Joint Foreground to be implemented in the patent application until such patent application is filed. Such filing should be made within 6 months after the decision to file a patent application. No later than on the date a patent is filed on Joint Foreground, the filing Parties shall provide written notice thereof to the other Parties. Within one (1) month after filing, the joint owners shall also provide the other Parties the abstract in case of priority filing and the information to trace the patent in case of full application. This obligation will survive termination of the Project for a period of six (6) months. The joint owners will establish an agreement regarding inter alia the decision-taking process for filing patent applications and the jurisdiction(s) where protection will be sought, and the responsibilities for patent prosecution. Unless otherwise agreed, the patent(s) shall be jointly owned pro rata the ownership, whereby the external costs for patent filing, prosecution, and maintenance will be shared pro rata the ownership. When a joint owner does not wish to contribute to the protection procedure, desired by one or more joint owners, it abandons its right to decide on the further protection of the Joint Foreground and abandons its property rights of the relevant Joint Foreground; however it still has the right to apply for Access Rights for Exploitation.
     5. **Transfer of Individual Foreground.** Each Party may transfer ownership of its own Foreground (including its rights in Joint Foreground) at market terms if it ensures that the rights of the other Parties will not be affected by such transfer and if the transfer is subject to article 2.6. regarding Exploitation. Such transferring Party must thereto pass on its obligations regarding that Foreground to the assignee (including the obligation to pass those obligations on to any subsequent assignee). Subject to its obligations concerning confidentiality such as in the framework of a merger or an acquisition, the transferring Party shall at least thirty (30) days prior to the envisaged transfer give notice to the other Parties of such transfer, together with sufficient information concerning the envisaged new owner of Foreground to permit the other Parties to exercise their Access Rights.
     6. **Non-exclusive licenses to third parties.** During the term of the Project and until six (6) months after its termination, each Party willing to grant a third party a non-exclusive license to intellectual property rights on Foreground it (jointly) owns, will promptly notify the other Parties in writing. Non-exclusive licenses can be granted to third parties at market terms.
  2. Access Rights
     1. **Agreement on Background.** The Parties have agreed on the Background and listed their Background and any limitation to granting Access Rights thereto in Exhibit 3 (unless otherwise specified in Exhibit 3, software will be made available in Object Code only). All information, data, know-how, software, materials and intellectual property rights that are not listed in Exhibit 3 will be deemed not Needed by another Party for carrying out its tasks in the Project or for Exploitation of its Foreground and are explicitly excluded from Access Rights.
     2. **Additions and withdrawals of Background.** Only the Steering Committee can permit a Party to add additional items to its Background in Exhibit 3 or to withdraw any of its Background from Exhibit 3. Each Party will notify the Steering Committee in due time if it is willing to introduce certain of its information, data, know-how, software, materials and/or intellectual property rights in the Project in such a way that another Party will need Access Rights thereto for the performance of the Project or Exploitation (as set out in article 7.3.10, 7.3.11 and 7.3.12) and an addition to Exhibit 3 would be Needed. If no such notification has taken place or if the Steering Committee has rejected the addition to the Background, and a Party introduces any such information, data, know-how, software, materials or intellectual property rights in the Project in such a way that another Party will need Access Rights thereto, Access Rights can only be granted to other parties requesting such Access Rights under article 7.3.11.
     3. **Restrictions to Access Rights to Foreground.** The Parties shall inform the Steering Committee during the Project and the other Members after the termination of the Project, however within the legitimacy of this Collaboration Agreement, as soon as possible of any restriction which might substantially affect the granting of Access Rights to their Foreground.
     4. **Requests for Access Rights for Exploitation.** All requests for Access Rights for Exploitation must be made in writing and must explain why Access Rights are Needed. Access Rights will be granted upon written agreement, which may not conflict with the terms of this Collaboration Agreement.
     5. **No implied licenses.** No Access Right or license to use any Background, Foreground or any other information, data, know-how, software, materials or intellectual property rights that are not Foreground is granted or implied by this Collaboration Agreement except the rights explicitly granted in this Collaboration Agreement.
     6. **Requests by Affiliates.** An Affiliate has the right to request Access Rights to Background or Foreground at market terms.
     7. **Termination of Affiliates’ Access Rights.** Access Rights granted to an Affiliate are subject to the continuation of the Access Rights of the Party to which it is affiliated, and automatically terminate upon termination of the Access Rights granted to such Party. Upon cessation of the status as an Affiliate, any Access Rights granted to such former Affiliate will lapse.
     8. **New parties entering the Collaboration Agreement.** Subject to payment of the accession fee on market terms, a new party to the Collaboration Agreement will have Access Rights for Exploitation to Background and Foreground generated before the date of entry of the new party concerned. After the date of entry of the new party concerned, this new party can have Access Rights for Exploitation to Background and Foreground at the conditions stipulated in article 7.
     9. **Parties leaving the Collaboration Agreement.** If this Collaboration Agreement is terminated with respect to a Party for breach or insolvency, the Access Rights granted to such Party and such Party's right to request Access Rights will cease immediately upon termination. A non-defaulting Party leaving voluntarily and with the other Parties' consent will retain (the right to request) Access Rights to Background and to Foreground developed until the date of the termination of its participation on market terms. After this date, the non-defaulting leaving Party can request Access Rights on market terms. Any Party leaving the Project shall continue to grant Access Rights pursuant to this Collaboration Agreement as if it had remained a Party for the whole duration of the Project in accordance with the provisions laid down in article 7.3.
     10. **Access Rights for performance of the Project.** Subject to articles 7.3.1 and 7.3.3, Access Rights to Background or Foreground of a Party that is Needed by another Party for the performance of its tasks in the Project are automatically granted by this Collaboration Agreement at no cost on the starting date of the Project or as soon as Foreground in question is conceived insofar this does not contradict any law or regulation. These Access Rights terminate automatically at the termination of the Project or at the time a Party leaves the Project.
     11. **Access Rights to Background for Exploitation.** If a Party needs access to Background of another Party for the Exploitation of its own Foreground, it may apply for Access Rights with that Party. Such Access Rights shall be granted at market terms.
     12. **Access Rights to Foreground for Exploitation.** If a Party needs access to Foreground of another Party for the Exploitation of its own Foreground, it may apply for Access Rights with that Party. Such Access Rights shall be granted at Fair and Reasonable Conditions in conformity with the principles described in the Term Sheet (e.g. on Effective Collaboration and an allocation which is a fair reflection of the work packages, contributions and respective interests). The requesting Party has to demonstrate a content link between the Foreground for which Access Rights are requested and its own Foreground, and has to demonstrate why the Access Rights on specific indicated Foreground of another Party are needed for the Exploitation of its own Foreground. Notwithstanding the foregoing, (i) if Foreground consists of a patent application, Access Rights may be applied for after disclosure of the abstract to the other Parties and may be subject to a contribution in the filing, prosecution and maintenance costs, and (ii) a Party shall enter into good faith negotiations with the Party requesting Access Rights.
     13. **Expertise procedure.** In case no agreement is reached within three (3) months from the initiation of negotiations on market terms under article 7.3.6, 7.3.8, 7.3.9 and 7.3.11, and on Fair and Reasonable Conditions under article 7.3.12, the Parties concerned agree to submit the determination of the respective market terms or the Fair and Reasonable Conditions to an expert appointed in accordance with the CEPANI Rules of Expertise Procedure, which Rules will apply to said procedure. The findings and conclusions of such expert will bind these Parties.

1. **Publications**
   1. **Duration.** Each Party will during the Project as well as within a period of one (1) year after the termination of the Collaboration Agreement comply with the terms stated in article 8 concerning publications of Foreground.
   2. **Prior notice of dissemination.** At least forty-five (45) days prior notice of any submission for publication or other dissemination activity of (joint) Foreground will be given to the other Parties, including sufficient information concerning the planned publication or dissemination activity and the data envisaged to be published or disseminated. Only in case of publication or dissemination of Joint Foreground, any of the joint owners may object to the envisaged dissemination or publication if such dissemination or publication would adversely affect the protection of its Confidential Information, Background or Foreground within thirty (30) days of the notification. Any objection to the planned dissemination or publication must be made in writing to the publishing Party concerned with a precise request for necessary modifications with specification on data to omit and clear suggestions on improvements. If an objection has been raised, the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party will not unreasonably continue the opposition if appropriate actions are performed following the discussion. If no objection is made within the time limit stated above, the publication or dissemination is permitted.
   3. **Publication of another Party’s Background or Foreground.** A Party may not publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the Party’s Foreground, without the other Party’s prior written approval. The mere absence of an objection according to article 8.2 is not considered as an approval.
   4. **Acknowledgment.** Unless [Cluster Organisation] and Hermes Fund request otherwise, any publications and publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc.), must specify that the Project has received research funding from VLAIO and support from [Cluster Organisation]. The publishing Party is responsible for assuring that a (digital) copy of every press release or publication of material based on or developed under the Project, clearly labelled with the Project name and number and other appropriate identifying information, is sent to [Cluster Organisation] promptly after publication.
   5. **Disclosure by** [Cluster Organisation]**.** The Parties hereby authorize [Cluster Organisation] to publish, in whatever form and on or by whatever medium, the following information: name of the parties, title of the Project, starting date and duration of the Project, the financial contribution to the Project, a non-confidential summary of the Project and a non-confidential summary of the Foreground whereby the content of the summaries is approved by the Steering Committee.
2. **Entry into force, duration and termination**
   1. **Entry into force and duration.** The Collaboration Agreement becomes effective on the date of signing by all Parties with retroactive effect from the starting date as stipulated in the Hermes Fund Agreement and is valid for five (5) years after the termination of the Project in line with the Exploitation obligation mentioned in the Hermes Fund Agreement, barring premature termination corresponding the Collaboration Agreement.
   2. **Termination when not complying.** The Collaboration Agreement can be terminated towards one or more Parties before the end of the Project in case this Party/these Parties fail(s) to comply with its/their obligations according to the Collaboration Agreement and do(es) not repair this omission within the thirty (30) calendar days after the receipts of a recorded notice on behalf of the other Parties. The termination will be requested conform the provisions in article 5.4.(e).
   3. **Termination induced by Hermes Fund.** This Collaboration Agreement can be terminated as well with immediate entry and without compensation by any Party when the support by Hermes Fund for the Project is stopped, revised and/or reclaimed, barring in case such stop, revision or reclamation of the Hermes Fund support is ascribed to a contractual breach of contract of the Party/Parties.
   4. **Survival of rights.** Articles 6, 7, 8, 10 and 11.8 will survive the expiration or termination of this Collaboration Agreement for an unlimited period of time or as specifically set forth in the applicable article. Termination will not affect any rights or obligations of a Party leaving the Collaboration Agreement incurred prior to the date of termination, unless otherwise agreed between the Coordinator and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.
3. **Warranties and liability**
   1. **No warranties.** In respect of any information or materials (including but not limited to Background and Foreground) supplied by one Party to another under the Project, no warranty or representation of any kind is made or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. Therefore, (i) the recipient Party will in all cases be entirely and solely liable for the use to which it puts such information and materials, and (ii) no Party granting Access Rights will be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliates) exercising its Access Rights. Notwithstanding the foregoing, each Party will bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party property rights.
   2. **Limitation of liability.** A Party’s aggregate liability towards the other Parties collectively will be limited to the Party’s share of the Project subsidy, provided such damage was not caused by a wilful act.
   3. **Indirect damages.** No Party will be liable to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act.
4. **Miscellaneous**
   1. **Four corner clause.** With the exception of the Term Sheet the terms of the Collaboration Agreements contains the consensus between Parties with respect to the execution of the Project and replace, undo and annul all prior notifications, oral or written agreements, proposals, offers and correspondence with regard to beforementioned subject. Each adjustment to the Collaboration Agreement will only be binding when written and sufficiently signed by all Parties.
   2. **Partial invalidity.** Should any provision of this Collaboration Agreement become invalid, illegal or unenforceable, it will not affect the validity of the remaining provisions of this Collaboration Agreement. In such a case, the Parties will be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.
   3. **Information duty.** Each Party shall inform the Coordinator and [Cluster Organisation] in due time of:
5. any changes in persons who will manage and monitor its work under the Project, and its contact details;
6. any event which might affect the performance of the Project and the rights of [Cluster Organisation] and Hermes Fund; and
7. any change in its legal name, address and legal representatives, and any change with regard to its organisational situation.
   1. **Force majeure.** No Party will be considered to be in breach of this Collaboration Agreement if such breach is caused by Force Majeure. Each Party will notify the Steering Committee of any Force Majeure as soon as possible. If the consequences of Force Majeure for the Project are not overcome within six (6) weeks after such notification, the transfer of tasks (if any) will be decided by the Steering Committee.
   2. **Entire agreement**. This Collaboration Agreement, consisting of this core text and
8. Exhibit 1: Hermes Fund Agreement
9. Exhibit 2: Proposal
10. Exhibit 3: Background Included and Restrictions to Background
11. Exhibit 4: Affiliates
12. Exhibit 5: Initial list of Members and other contact persons
13. Exhibit 6: Accession document

constitutes the entire agreement between the Parties relating to its subject matter. In case of conflicts between the Exhibits 2, 3, 4, 5, and 6 and the core text of this Collaboration Agreement, the latter will prevail. In all cases, the provisions of the Hermes Fund Agreement will be leading.

* 1. **Notices and other communication.** Any notice to be given under this Collaboration Agreement will be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator based on the initial list of Members and other contact persons in Exhibit 5. If it is required in this Collaboration Agreement that a formal notice, consent or approval will be given, such notice will be signed by an authorised representative of a Party and will either be served personally or sent by mail with recorded delivery. Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.
  2. **Assignment.** Except as otherwise expressly stated herein, neither this Collaboration Agreement nor any rights or obligations of the Parties arising from this Collaboration Agreement may be assigned or transferred, in whole or in part, to any third party; subject, however, to (i) prior written approval of the Steering Committee, and (ii) the written confirmation by the assignee that it agrees to be bound by the terms hereof.
  3. **Applicable law and authorized courts.** This Collaboration Agreement is construed in accordance with and governed by the laws of Belgium, without regard to any applicable conflict of law rules. All disputes arising out of or in connection with this Collaboration Agreement, which cannot be solved amicably, will be finally and exclusively settled by the Courts of Brussels. Notwithstanding the foregoing, each Party will have the right at any time to commence an action or proceeding in any court of competent jurisdiction in order to seek and obtain a restraining order or injunction, but not monetary damages, to enforce the confidentiality provisions set forth herein.

Established in Brussels on 20xx-xx-xx in x originals, one for each Party.

For Party 1

Representative

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Established in Brussels on 20xx-xx-xx in x originals, one for each Party.

For Party 2

Representative

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit 1: Hermes Fund Agreement**

**Exhibit 2: Proposal**

**EXHIBIT 3 – BACKGROUND INCLUDED AND RESTRICTIONS TO BACKGROUND**

*[The Parties have to agree on a list of information, know-how, software and material* ***that is not in the public domain****, as well as intellectual property rights thereon, which is held by each Party and Needed by another party for* ***carrying out its tasks in the Project or for Exploitation of its Foreground****. The Parties should also mention any* ***restrictions*** *on granting non-exclusive licenses to such information, know-how, software and material and intellectual property rights thereon (e.g. for open source software or the requirement of a written agreement for granting a non-exclusive license to software).]*

*[Unless otherwise specified in this Exhibit, software in this Exhibit will be made available in object code only]*.

*[Party 1]:*

[complete or “none”]

*[PARTY 2]:*

[complete or “none”]

*[PARTY 3]:*

[complete or “none”]

*[PARTY 4]:*

[complete or “none”]

*[PARTY 5]:*

[complete or “none”]

**EXHIBIT 4 – AFFILIATES**

*[Do insert all Affiliates that are or may become relevant to the project and can apply to Access Rights as described in article 7.3.6.]*

*[Party 1]:*

[complete or “none”]

*[PARTY 2]:*

[complete or “none”]

*[PARTY 3]:*

[complete or “none”]

*[PARTY 4]:*

[complete or “none”]

*[PARTY 5]:*

[complete or “none”]

**Exhibit 5: Initial list of Members and other contact persons**

*[Party 1]:*

[complete]

*[PARTY 2]:*

[complete]

*[PARTY 3]:*

[complete]

*[PARTY 4]:*

[complete]

*[PARTY 5]:*

[complete]

**EXHIBIT 6 – ACCESSION DOCUMENT**

**ACCESSION DOCUMENT TO [Cluster Organisation] ICON PROJECT COLLABORATION AGREEMENT**

[Entity], [address], registered under company number BE [number], duly represented by [name and title], hereby consents to become a Party to the ICON Collaboration Agreement with starting date [starting date of the Project itself] relating to the Project “[Project Number]” – “[Project name]”

concluded between

the Coordinator, representing the Steering Committee of the Project, [Name], [address], registered under company number BE [number], duly represented by [name and title], and

**[Name Cluster Organisation]**, [address Cluster Organisation], registered under company number BE [registry number Cluster Organisation], duly represented by [name and title for Cluster Organisation] and

[name all Parties],

and accepts in accordance with the provisions of the Collaboration Agreement all the rights and obligations of a Party.

Done in 3 copies, of which one will be kept by [Entity], one by the [Coordinator] and one by [Cluster Organisation].

|  |  |
| --- | --- |
| [Entity]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title:  Date: | [Coordinator]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title:  Date: |
| [Name Cluster Organisation]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: [Name for Cluster Organisation]  Title: [Function for Cluster Organisation]  Date: |  |