
CompLeap

Consortium Agreement

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Consortium agreement

THIS CONSORTIUM AGREEMENT ("Consortium Agreement") is made on 1.1.2018, hereinafter referred to as the Effective Date

BETWEEN:

1. **CSC-TIETEEN TIETOTEKNIKAN OY ("CSC")**, 'the Coordinator' official registration No 09206320 established in FINLAND, KEILARANTA 14, 02100 ESPOO (VAT number FI09206320) represented for the purposes of signature of the Agreement by Kimmo Koski, Managing Director
2. **OPETUSHALLITUS ("OPH")** official registration No 27697901 established in FINLAND, HAKANIEMENRANTA 6, 00530 HELSINKI (VAT number FI27697901),
3. **OULUN YLIOPISTO ("UOulu")** official registration No 02458955 established in FINLAND, PENTTI KAITERAN KATU 1, 90014 OULU (VAT number FI02458955),
4. **JYVASKYLAN KOULUTUSKUNTAYHTYMA ("JEC")** official registration No 02082011 established in FINLAND, VIITANIEMENTIE 3, 40720 JYVASKYLA (VAT number FI02082011),
5. **DE STAAT DER NEDERLANDEN**, represented by **MINISTER VAN ONDERWIJS, CULTUUR EN WETENSCHAP**, for this: **Dienst Uitvoering Onderwijs ("DUO")**, represented by **Wim Westerbeek**, Chief executive Financials, Services and ICT, established in **THE NETHERLANDS, RIJNSTRAAT 50, 2500 BJ DEN HAAG**,

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

relating to the Action entitled

Learner-centred digital ecosystem of competence development (CompLeap)

in short

Compleap

hereinafter referred to as "Project"

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Funding Authority.

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement

Number SI2.488704 (ECOKT2016-1) signed by the Parties and the European Commission (hereinafter "Grant Agreement").

The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Definitions

1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules or in the Grant Agreement including its Annexes.

1.2 Additional Definitions

“Consortium plan”

Consortium plan means the Description of the Action and the related agreed Consortium Budget as first defined in the Grant Agreement and which may be updated by the Project Management Committee, in accordance with the terms of the Grant Agreement.

"Funding Authority"

Funding Authority means the body awarding the grant for the Project.

“Defaulting Party”

Defaulting Party means a Party which the Project Management Committee has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Section 4.2 of this Consortium Agreement.

“Needed”

means:

For the implementation 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 impossible, significantly delayed, or require significant additional financial or human resources.

For exploitation of own Results:

Access Rights are Needed if, without the grant of such Access Rights, the Exploitation of own Results would be technically or legally impossible.

“Software”

Software means 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.

Section 2: Purpose

The purpose of this Consortium Agreement is to specify with respect to the Project the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the Project and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.

Section 3: Entry into force, duration and termination

3.1 Entry into force

An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

An entity becomes a Party to the Consortium Agreement upon signature of the accession document (Attachment 2) by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

3.2 Duration and termination

This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the Grant Agreement and under this Consortium Agreement.

However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.

If the Grant Agreement

- is not signed by the Funding Authority or a Party, or
- is terminated,

or if a Party's participation in the Grant Agreement is terminated, this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Section 3.3 of this Consortium Agreement.

3.3 Survival of rights and obligations

The provisions relating to Access Rights and Confidentiality, for the time period mentioned therein, as well as for Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Project Management Committee and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

Section 4: Responsibilities of Parties

4.1 General principles

Each Party undertakes to take part in the efficient implementation of the Project, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the Grant Agreement and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Belgian law.

Each Party undertakes to notify promptly, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the Project.

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.

Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

4.2 Breach

In the event that a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement (e.g. improper implementation of the project), the Coordinator or, if the Coordinator is in breach of its obligations, the Party appointed by the Project Management Committee, will give formal notice to such Party requiring that such breach will be remedied within 30 calendar days.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Project Management Committee may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

4.3 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the Grant Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the Grant Agreement.

Section 5: Liability towards each other

5.1 No warranties

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

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliated Entities) exercising its Access Rights.

5.2 Limitations of contractual liability

No Party shall be responsible 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 or by a breach of confidentiality.

A Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's share of the total costs of the Project as identified in Annex 2 of the Grant Agreement provided such damage was not caused by a wilful act or gross negligence.

The above limitations of liability are not applied to cases where, as the consequence of a Party's breach of the terms of the Grant Agreement and/or this Agreement, the Coordinator is required to pay compensation to the Funding Agency. The breaching Party agrees to pay the amount of such damages fully to the Coordinator, limited to the amount that the Coordinator has to pay to the Funding Agency added with the Coordinator's reasonable and justified expenses.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability.

5.3 Damage caused to third parties

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

5.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure. Each Party will notify the competent Consortium Bodies of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

Section 6: Governance structure

6.1 General structure

The Project Management Committee (PMC) is the decision-making body of the CompLeap - project. Each Party has an experienced project manager as its representative in the Project Management Committee.

The Coordinator is the legal entity acting as the intermediary between the Parties and the Funding Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

To coordinate everyday work defined in the project plan, the project will have a **project coordinator**. Duties will include following the progress according to the project plan; allocating and tracking the budget; communicating with outside stakeholders, contractors and others; organising meetings; maintaining the risk census with feedback from the work package leaders and task force owners, etc. The Project Coordinator is the chairman of the Project Management Committee.

Work package leaders and task force owners will also participate to the project management as they are responsible for delivering the defined outputs and allocation of tasks of their defined work packages. The work in the project is divided between five work packages, with a different WP lead partner. Each WP lead is responsible for planning, executing and monitoring the activities in that WP and also for reporting the status to the PMC. CompLeap applies the agile principles and expects that all partners will take part actively in the project activities. Any proposed change to the approved project plan will be prepared by the lead partner for the Work Package in question and then analysed in the PMC.

The project will also appoint an **advisory Project Steering Committee** guiding the project work at key review points to ensure the project remains focused on producing a demonstration system that meets end-user needs, while addressing project objectives. The members of the Project Steering Committee will consist of experienced experts from e.g. the ministries or EU bodies and representatives of appropriate networks. Their role would be to advise the project on how to best transfer the results into national or European level and to make sure the project is aware of relevant policy work ongoing elsewhere.

6.2 Project Management Committee Members

The Project Management Committee shall consist of one representative of each country participating in the project (hereinafter referred to as "Member").

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.6 of this Consortium Agreement.

The Project Coordinator representing the Coordinator shall chair all meetings of the Project Management Committee, unless decided otherwise by the Project Management Committee. The Coordinator also provides a Secretary to the meetings.

The Parties agree to abide by all decisions of the Project Management Committee. This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Section 11.8 of this Consortium Agreement.

6.3 General operational procedures

6.3.1 Representation in meetings

Any Member:

- should be present or represented at any meeting;
- may appoint a substitute or a proxy to attend and vote at any meeting;
- and shall participate in a cooperative manner in the meetings.

6.3.2 Preparation and organisation of meetings

6.3.2.1 Convening meetings:

The chairperson shall convene ordinary meetings of the Project Management Committee at least once every month and shall also convene extraordinary meetings at any time upon written request of any Member.

6.3.2.2 Notice of a meeting:

The chairperson shall give notice in writing of a meeting to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

6.3.2.3 Sending the agenda:

The chairperson shall send each Member a written original agenda no later than 14 calendar days preceding the meeting, or 7 calendar days before an extraordinary meeting.

6.3.2.4 Adding agenda items:

Any agenda item requiring a decision by the Members must be identified as such on the agenda.

Any Member may add an item to the original agenda by written notification to all of the other Members no later than 7 calendar days preceding the meeting.

6.3.2.5 During a meeting if all the members of a Consortium Body are present or represented a unanimous decision can be made to add a new item to the original agenda.

6.3.2.6 Any decision may also be taken without a meeting if the chairperson circulates to all Members a written document which is then signed by the defined majority of Members (see Section 6.3.3 of this Consortium Agreement). Such document shall include the deadline for responses.

6.3.2.7 Meetings of the Project Management Committee will in most cases be held by teleconference or other telecommunication means.

6.3.2.8 Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.3.5 of this Consortium Agreement.

6.3.3 Voting rules and quorum

6.3.3.1 The Project Management Committee shall not deliberate and decide validly unless half (1/2) its Members are present or represented (quorum).

6.3.3.2 Each Member shall have one vote.

6.3.3.3 Defaulting Parties may not vote.

6.3.3.4 Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast.

6.3.4 Veto rights

6.3.4.1 A Member which can show that a its own or a Partner's work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of the Project Management Committee may exercise a veto with respect to the corresponding decision or relevant part of the decision.

6.3.4.2 When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting only.

6.3.4.3 When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 days after the draft minutes of the meeting are sent.

6.3.4.4 In case of exercise of veto, the Members shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Members.

6.3.4.5 A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the consortium or the consequences of them.

6.3.4.6 A Party requesting to leave the consortium may not veto decisions relating thereto.

6.3.5 Minutes of meetings

6.3.5.1 The secretary shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send draft minutes to all Members within 14 calendar days of the meeting.

6.3.5.2 The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has sent an objection in writing to the chairperson with respect to the accuracy of the draft of the minutes.

6.3.5.3 The secretary shall send the accepted minutes to all the Members of the Project Management Committee, and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

6.3.6 Decisions of the Project Management Committee

The Project Management Committee shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein.

The following decisions shall be taken by the Project Management Committee:

Content, finances and intellectual property rights

- Proposals for changes to Annexes I, II and III of the Grant Agreement to be agreed by the Funding Authority
- Changes to the Consortium plan
- Modifications to Attachment 1 (Background Included)
- Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.2.2)
- Additions to Attachment 4 (Identified Affiliated Entities)

Evolution of the consortium

- appointment of the advisory Project Steering Committee
- appointment of The Project Coordinator upon proposal by the Coordinator
- Entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the consortium and the approval of the settlement on the conditions of the withdrawal
- Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement
- Declaration of a Party to be a Defaulting Party
- Remedies to be performed by a Defaulting Party
- Termination of a Defaulting Party's participation in the consortium and measures relating thereto
- Proposal to the Funding Authority for a change of the Coordinator
- Proposal to the Funding Authority for suspension of all or part of the Project
- Proposal to the Funding Authority for termination of the Project and the Consortium Agreement

In the case of abolished tasks as a result of a decision of the Project Management Committee, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

6.4 Coordinator

6.4.1 The Coordinator shall be the intermediary between the Parties and the Funding Authority and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.

6.4.2 In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations
- keeping the address list of Members and other contact persons updated and available
- collecting, reviewing and submitting information on the progress of the Project and reports and other deliverables (including financial statements and related certification) to the Funding Authority
- preparing the meetings, proposing decisions and preparing the agenda of Project Management Committee meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings
- transmitting promptly documents and information connected with the Project,,
- administering the financial contribution of the Funding Authority and fulfilling the financial tasks described in Section 7.3

- 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.

If one or more of the Parties is late in submission of any project deliverable, the Coordinator may nevertheless submit the other parties' project deliverables and all other documents required by the Grant Agreement to the Funding Authority in time.

6.4.3 If the Coordinator fails in its coordination tasks, a majority of the other Partners may propose to the Funding Authority to change the Coordinator.

6.4.4 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement.

6.4.5 The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.

Section 7: Financial provisions

7.1 General Principles

7.1.1 Distribution of Financial Contribution

The financial contribution of the Funding Authority to the Project shall be distributed by the Coordinator according to:

- the Consortium plan
- the approval of reports by the Funding Authority, and
- the provisions of payment in Section 7.3.

A Party shall be funded only for its tasks carried out in accordance with the Consortium plan.

7.1.2 Reporting and justifying Costs

Each Party agrees to provide an accurate and timely report of its eligible costs in writing to the Coordinator as set out in the Grant Agreement for the purpose of the Coordinator's financial reporting to the Funding Authority. In accordance with its own usual accounting and management principles and practices, each Party also certifies and takes full responsibility of the compliency and justification of its costs according to the principles set out in the Grant Agreement and with respect to the Project. Each Party also agrees to promptly and accurately reply The Coordinator's requests for information in connection with all reporting to the Funding Authority.

7.1.3 Funding Principles

A Party which spends less than its allocated share of the budget as set out in the Consortium Budget or – in case of reimbursement via unit costs - implements less units than foreseen in the Consortium plan will be funded in accordance with its actual duly justified eligible costs only.

A Party that spends more than its allocated share of the budget as set out in the Consortium plan will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

7.1.4 Financial Consequences of the termination of the participation of a Party

A Party leaving the consortium shall refund all payments it has received except the amount of contribution accepted by the Funding Authority or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Section 5.2 of this Consortium Agreement, bear any

reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks.

7.2 Budgeting

The budget set out in the Consortium plan shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

7.3 Payments

7.3.1 Payments to Parties are the exclusive tasks of the Coordinator.

In particular, the Coordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts
- undertake to keep the Community financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.
- in circumstances not created by a negligent act or omission of the Coordinator, where it is not reasonably possible for the Coordinator to ensure the timely transfer of payment because of problems in correctly identifying the account or the amount to be transferred to a Party, the Coordinator shall transfer the amount concerned as soon as reasonably feasible

With reference to Articles I.5.2 and I.5.3 of the Grant Agreement, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount from which the amounts retained by the Funding Authority and for the final payment have been deducted.

7.3.2

The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following:

Funding of costs included in the Consortium plan will be paid to Parties after receipt from the Funding Authority without undue delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the Funding Authority will be paid to the Party concerned.

Payments to Parties will be handled according to the following two kinds of modalities:

- payments for past performance will be compared with the advance payment given to a Party for such past performance; the difference will be balanced directly with the Party concerned
- financing in respect to future work included in the Consortium Plan in conformity with the decisions of the Project Management Committee are forwarded to Parties directly after receipt from the Funding Authority
- the distribution of funding shall be subject to the approval by the Funding Authority of Project Deliverables including financial statements

In case a Party does not provide the Coordinator with its financial reporting and Project Deliverables in accordance with the requirements of the Grant Agreement and this Agreement, such Party shall not receive any payment hereunder, until it provides its financial reporting and the Project Deliverables in accordance with such requirements or until the Project Management Committee decides otherwise. The Project Management Committee shall be informed about any withholding of payments hereunder.

The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or to a Beneficiary which has not yet signed this Consortium Agreement. The Coordinator is entitled to recover any payments already paid to a Defaulting Party insofar as the corresponding work has not been carried out. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Funding Authority.

Section 8: Results

8.0 Ownership of Results

Results are owned by the Party that generates them.

8.1 Joint ownership

In case of joint ownership, each of the joint owners shall be entitled to Exploit the joint Results as it sees fit, and to grant non-exclusive licences, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

The joint owners shall agree on all protection measures and the division of related cost in advance.

8.2 Transfer of Results

8.2.1 Each Party may transfer ownership of its own Results only if it ensures that the terms of the Grant Agreement regarding results will continue to be complied with.

8.3 Dissemination

8.3.1 Dissemination of own Results

8.3.1.1 During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall performed as set out in a dissemination and communication plan accepted by the Project Management Committee, in compliance with the Grant Agreement subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties at least 45 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement in writing to the Coordinator and to the Party or Parties proposing the dissemination within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

8.3.1.2 An objection is justified if

- (a) the protection of the objecting Party's Results or Background would be adversely affected
- (b) the objecting Party's legitimate academic or commercial interests in relation to the Results or Background would be significantly harmed.

The objection has to include a precise request for necessary modifications.

8.3.1.3 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 shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted, provided that Confidential Information of the objecting Party has been removed from the Publication as indicated by the objecting Party.

8.3.2 Dissemination of another Party's unpublished Results or Background

A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published.

8.3.3 Cooperation obligations

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

8.3.4 Use of names, logos or trademarks

Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

8.3.5 Information on Union funding and use of the European Union emblem

Unless the Commission requests or agrees otherwise, any communication or publication made by the beneficiaries jointly or individually that relates to the action, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, in electronic form, etc.), must, in compliance with the rules set out in Grant Agreement Section II.8.1:

- (a) indicate that the action has received funding from the Union; and
- (b) display the European Union emblem.

Section 9: Access Rights

9.1 Background included

9.1.1 In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.

Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.

9.1.2 Any Party can propose to the Project Management Committee to modify its Background in Attachment 1.

9.2 General Principles

9.2.1 Each Party shall implement its tasks in accordance with the Consortium plan and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party property rights.

9.2.2 Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.

9.2.3 Access Rights shall be free of any administrative transfer costs.

9.2.4 Access Rights are granted on a non-exclusive basis.

9.2.5 Results and Background shall be used only for the purposes for which Access Rights to it have been granted.

9.2.6 All requests for Access Rights shall be made in writing.

The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

9.2.7 The requesting Party must show that the Access Rights are Needed.

9.3 Access Rights for implementation

Access Rights to Results and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.

9.4 Access Rights for Exploitation

9.4.1 Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on a royalty-free basis.

9.4.2 Access Rights to Background if Needed for Exploitation of a Party's own Results, including for research on behalf of a third party, shall be granted on Fair and Reasonable conditions.

9.4.3 A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

9.5 Access Rights for Affiliated Entities

Affiliated Entities have Access Rights under the conditions of the Grant Agreement if they are identified in Attachment 4 (Identified Affiliated Entities) to this Consortium Agreement.

Such Access Rights must be requested by the Affiliated Entity from the Party that holds the Background or Results. Alternatively, the Party granting the Access Rights may individually agree with the Party requesting the Access Rights to have the Access Rights include the right to sublicense to the latter's Affiliated Entities listed in Attachment 4. Access Rights to Affiliated Entities shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.

Affiliated Entities which obtain Access Rights in return fulfil all confidentiality and other obligations accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliated Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

9.6 Additional Access Rights

For the avoidance of doubt any grant of Access Rights not covered by the Grant Agreement or this Consortium 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.

9.7 Access Rights for Parties entering or leaving the consortium

9.7.1 New Parties entering the consortium

As regards Results developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.

9.7.2 Parties leaving the consortium

9.7.2.1 Access Rights granted to a leaving Party

9.7.2.1.1 Defaulting Party

Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the Project Management Committee to terminate its participation in the consortium.

9.7.2.1.2 Non-defaulting Party

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Results developed until the date of the termination of its participation.

It may request Access Rights within the period of time specified in Section 9.4.3.

9.7.2.2 Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

9.8 Specific Provisions for Access Rights to Software

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software.

Parties' 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.

9.8 Specific provisions for Access Rights to Software

9.8.1 Definitions relating to Software

“Application Programming Interface”

means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.

"Controlled Licence Terms" means terms in any licence that require that the use, copying, modification and/or distribution of Software or another work ("Work") and/or of any work that is a modified version of or is a derivative work of such Work (in each case, "Derivative Work") be subject, in whole or in part, to one or more of the following:

- a) (where the Work or Derivative Work is Software) that the Source Code or other formats preferred for modification be made available as of right to any third party on request, whether royalty-free or not;
- b) that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
- c) that a royalty-free licence relating to the Work or Derivative Work be granted to any third party.

For the avoidance of doubt, any Software licence that merely permits (but does not require any of) the things mentioned in (a) to (c) is not a Controlled Licence (and so is an Uncontrolled Licence).

"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.

"**Open Source**" definition as presented by Open Source Initiative at <http://www.opensource.org/docs/osd>

"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.

9.8.2. General principles

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software as far as not modified by this Section 9.8.

Results that is software created under the CompLeap Grant Agreement will be published as Open Source. A more detailed Software policy shall be added to the Consortium Plan as accepted by the Project Management Committee.

Parties' 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 Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

The intended introduction of Intellectual Property (including, but not limited to Software) under Controlled Licence Terms in the Project requires the approval of the Project Management Committee to implement such introduction into the Consortium plan.

9.8.3. Access to Software

Access Rights to Software which is Results shall comprise:

Access to the Object Code; and,

where normal use of such an Object Code requires an Application Programming Interface (hereafter API), Access to the Object Code and such an API; and,

if a Party can show that the execution of its tasks under the Project or the Exploitation of its own Results is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary.

Background shall only be provided in Object Code unless otherwise agreed between the Parties concerned.

9.8.4. Software licence and sublicensing rights

9.8.4.1 Object Code

9.8.4.1.1 Results - Rights of a Party

Where a Party has Access Rights to Object Code and/or API which is Results for Exploitation, such Access shall, in addition to the Access for Exploitation foreseen in Section 9.4, as far as Needed for the Exploitation of the Party's own Results, comprise the right:

to make an unlimited number of copies of Object Code and API; and
to distribute, make available, market, sell and offer for sale such Object Code and API as part of or in connection with products or services of the Party having the Access Rights;

provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to exploit Object Code and API for its own Results.

If it is intended to use the services of a third party for the purposes of this Section 9.8.4.1.1, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.

9.8.4.1.2 Results - Rights to grant sublicenses to end-users

In addition, Access Rights to Object Code shall, as far as Needed for the Exploitation of the Party's own Results, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:

- to maintain such product/service;
- to create for its own end-use interacting interoperable software in accordance with the Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs

9.8.4.1.3 Background

For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API which is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.4.2 Source Code

9.8.4.2.1 Results - Rights of a Party

Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code which is Results for Exploitation, Access Rights to such Source Code, as far as Needed for the Exploitation of the Party's own Results, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service.

If it is intended to use the services of a third party for the purposes of this Section 9.8.4.2.1, the Parties shall agree on the terms thereof, with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.

9.8.4.2.2 Results – Rights to grant sublicenses to end-users

In addition, Access Rights, as far as Needed for the Exploitation of the Party's own Results, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software. Further sublicensing of Source Code is explicitly excluded.

9.8.4.2.3 Background

For the avoidance of doubt, where a Party has Access Rights to Source Code which is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.5 Specific formalities

Each sublicense granted according to the provisions of Section 9.8.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.

Section 10: Non-disclosure of information

10.1 All information in whatever form or mode of communication, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential" at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of 4 years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations.

10.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

10.4 The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

- the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;

- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
- the Confidential Information was already known to the Recipient prior to disclosure or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.7 hereunder.

10.5 The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.

10.6 Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

10.7 If any 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.

Section 11: Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and

Attachment 1 (Background included)

Attachment 2 (Accession document)

Attachment 3 (List of Third Parties for simplified transfer according to Section 8.2.2)

Attachment 4 (Identified Affiliated Entities)

In case the terms of this Consortium Agreement are in conflict with the terms of the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.

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

11.2 No representation, partnership or agency

Except as otherwise provided in Section 6.4.4, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

11.3 Notices and other communication

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator.

Formal notices:

If it is required in this Consortium Agreement (Sections 4.2, 9.7.2.1.1, and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

Other communication:

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.

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all concerned.

11.4 Assignment and amendments

Except as set out in Section 8.2, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Section 6.3.6 require a separate written agreement to be signed between all Parties.

11.5 Mandatory national law

Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

11.6 Language

This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

11.7 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.

11.8 Settlement of disputes

The parties shall endeavour to settle their disputes amicably.

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties.

The award of the arbitration will be final and binding upon the Parties.

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.

Section 12: Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

CSC-TIETEEN TIETOTEKNIKAN OY (“CSC”)



Kimmo Koski

CEO

Date: 16.4.2018

OPETUSHALLITUS ("OPH")

A handwritten signature in blue ink, reading "Olli-Pekka Heinonen", written over a horizontal line.

Olli-Pekka Heinonen

Director General

Date: 3.5.2018

OULUN YLIOPISTO ("UOulu")



Vesa-Matti Sarenius

Director

Academic Affairs

Date: **20 -06- 2018**



Helka-Liisa Hentilä

Vice Rector for Education

JYVÄSKYLÄN KOULUTUSKUNTAYHTYMÄ ("JEC")



Vesa Saarikoski

CEO

Date: 12.6.2018

DE STAAT DER NEDERLANDEN, represented by **MINISTER VAN ONDERWIJS, CULTUUR EN WETENSCHAP**, for this: **Dienst Uitvoering Onderwijs ("DUO")**

Wim Westerbeek

Chief executive Financials, Services and ICT

Date: 22.5.2018

A large, stylized handwritten signature in black ink, consisting of several loops and a long vertical stroke, positioned to the right of the printed name and title.

[Attachment 1: Background included]

According to the Grant Agreement (Article 24) Background is defined as “data, know-how or information (...) that is needed to implement the action or exploit the results”. Because of this need, Access Rights have to be granted in principle, but parties must identify and agree amongst them on the Background for the project. This is the purpose of this attachment.

PARTY 1

As to **CSC-TIETEEN TIETOTEKNIKAN OY (“CSC”)**, it is agreed between the parties that, to the best of their knowledge,

The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation	Specific limitations and/or conditions for exploitation
Scientific and technical information, data and knowhow, infrastructure and assets belonging to CSC and its units and teams directly involved in CompLeap Project, necessary for achieving the goals of the Description of Action, as specified in the Annex I (technical annex).	Access Right to Background is only granted to the extent that it is needed for implementation of the action.	Access Right to Background is only granted to the extent that said Background is not subject to terms and conditions in other agreements that may prohibit the desired Access Right.

This represents the status at the time of signature of this Consortium Agreement.

PARTY 2

As to **OPETUSHALLITUS (“OPH”)**, it is agreed between the parties that, to the best of their knowledge *(please choose)*

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation	Specific limitations and/or conditions for exploitation

Option 2: No data, know-how or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project or exploitation of that other Party’s Results.

This represents the status at the time of signature of this Consortium Agreement.

PARTY 3

As to **OULUN YLIOPISTO (“UOulu”)**, it is agreed between the parties that, to the best of their knowledge *(please choose)*

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation	Specific limitations and/or conditions for exploitation

Option 2: No data, know-how or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project or exploitation of that other Party’s Results.

This represents the status at the time of signature of this Consortium Agreement.

PARTY 4

As to **JYVASKYLAN KOULUTUSKUNTAYHTYMA (“JEC”)**, it is agreed between the parties that, to the best of their knowledge *(please choose)*

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation	Specific limitations and/or conditions for exploitation

Option 2: No data, know-how or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project or exploitation of that other Party’s Results.

This represents the status at the time of signature of this Consortium Agreement.

PARTY 5

As to **Dienst Uitvoering Onderwijs (“DUO”)**, it is agreed between the parties that, to the best of their knowledge *(please choose)*

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation	Specific limitations and/or conditions for exploitation

Option 2: No data, know-how or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project or exploitation of that other Party’s Results.

This represents the status at the time of signature of this Consortium Agreement.

[Attachment 2: Accession document]

ACCESSION

of a new Party to

[Acronym of the Project] Consortium Agreement, version [..., YYYY-MM-DD]

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE Grant Agreement]

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE Grant Agreement]

hereby certifies that the consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the consortium starting [date].

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

Signature(s)

Name(s)

Title(s)

[Attachment 3: List of Third Parties for simplified transfer according to Section 8.2.2.]

[Option: Attachment 4: Identified Affiliated Entities according to Section 9.5]