



EUROPEAN REFERENCE
NETWORK FOR
CRITICAL INFRASTRUCTURE
PROTECTION

Thematic Group “[insert_TG_name]”

Membership Agreement

V. 1.2 – 12th September 2012

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1. Introduction

- 1.1** The European Reference Network for Critical Infrastructure Protection (in following “ERNCIP”) forms part of the European Programme for Critical Infrastructure Protection (in following “EPCIP”), and aims at providing a framework within which experimental installations will share knowledge and expertise throughout Europe leading to improved protection of critical infrastructure against all hazards. ERNCIP objectives are to harmonise test protocols, and to improve the conditions for EU wide certification and standardisation of security solutions. This will be a step change towards a more trusted, homogeneous and outreaching EU market for security-related equipment and systems, services and applications from which all CIP related stakeholders will benefit. Therefore the mission of ERNCIP is: *“to foster the emergence of innovative, qualified, efficient and competitive security solutions, through networking of European experimental capabilities”*. The Thematic Areas (in following “TA”) have been identified to facilitate the exchange of information relating to a specific priority CIP area. Experts in that area from participating organizations (the “Members”) will be organised into a Thematic Group (in following “TG”) for that thematic area, so that such TG Member experts (the “Representatives”) can work in a trusted environment. A full description of ERNCIP TAs can be found at <http://ipsc.jrc.ec.europa.eu/index.php/Thematic-areas/775/0/>.
- 1.2** The Membership shall be restricted to entities with experts in the field, who are part of organizations that meet the criteria described in the Call for Expression of Interest issued by the ERNCIP Office hereby annexed and recalled in **Section 3**;
- 1.3** By the term "Membership" it is not intended any accession to a legal entity, nor any related collective financial liability, nor any activity that may involve the liability of a legal entity; the meaning is strictly operational, limited to a participant of ERNCIP and related rights to have Representatives participate in the Thematic Groups under the following rules;
- 1.4** Each and every Representative and their organization shall comply with the information sharing procedures and rules set out in **Section 7**;

- 1.5 The Members agree that the ERNCIP TGs will mainly produce common test protocols and recommendations for policy makers that have to be shared with all Members, but will not produce any inventions, software or significant amount of “*Foreground*” (as defined under **art. 8.1.7**);
- 1.6 The Members agree to have any research activities that are likely to produce inventions, software, other items protected or protectable by intellectual property rights or copyrights or significant amounts of “*Foreground*” governed by separate written cooperation agreements (which will supersede this Agreement for that purpose) from the outset;
- 1.7 All Members will have the right to participate in their TG meetings;
- 1.8 Each TG will be chaired by a Coordinator. The Coordinator will be the official link from the TG to the ERNCIP Office;
- 1.9 The Coordinator of each TG will be appointed by the ERNCIP Office. The Coordinator will then subsequently propose to the ERNCIP Office, for approval, other Members in order to constitute a Group;
- 1.10 The ERNCIP office is responsible for the final acceptance and approval of the membership of all the TGs;
- 1.11 If needed, each TG will create sub-groups and working groups to take forward detailed project tasks, as agreed by the ERNCIP Office. Membership of sub-groups and working groups will be necessarily restricted to Members. Only in limited and special cases, Members may involve external partners or experts if they are deemed necessary to achieve the objectives. This will require prior approval from the ERNCIP Office, and a written statement from all external parties committing to respect the information sharing procedures and rules set out in **Section 7**;
- 1.12 This Membership Agreement is drawn up in English, which language shall govern all documents, notices, meetings and processes relative thereto.

2. Coordinator’s role, responsibilities and commitments

- 2.1 The Coordinator is the TG chairperson and is appointed by the ERNCIP Office;
- 2.2 The Coordinator’s job is to make sure that the TG achieves its objectives. The Coordinator will prepare the *Thematic Group’s Terms of References* (if needed), and ensure production of the TG’s work programme and deliverables in collaboration with the TG Members and Representatives. The Coordinator works as a

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facilitator to resolve differences among the Members and Representatives and regularly reports the TG progress to the ERNCIP Office. The Coordinators of all TGs form the Coordinator group (COOs – chaired by the ERNCIP) whose role is to support the ERNCIP Office in the management of ERNCIP and propose actions to support the cross fertilization of ideas, methods and processes among TGs. The responsibilities of each Coordinator include:

- 2.2.1** Acting as the main reference point between the TG which he/she represents and the ERNCIP Office;
- 2.2.2** Scheduling meetings and notifying Representatives of the date, venue and duration;
- 2.2.3** Approving and officialising meeting agenda;
- 2.2.4** Approving and officialising documentation needed to prepare and conduct the meeting agenda;
- 2.2.5** Approving and officialising final meeting minutes before distribution through/to the ERNCIP office;
- 2.2.6** Approving all documentation issued by the TG including reports, findings, recommendations, final or preliminary, minutes;
- 2.2.7** Inviting Representatives and external partners and experts where needed, to attend meetings when required by the TA topic and or sub-topic to be discussed;
- 2.2.8** Chairing and guiding meetings according to the agreed agenda and available time;
- 2.2.9** Ensuring that all agenda discussion items end with a decision, action or definite outcome;
- 2.2.10** Ensuring that Members and Representatives of TGs respect this Membership Agreement. In case of infringement of this Membership Agreement, the Coordinator must report it immediately to the ERNCIP Office;
- 2.2.11** Keeping the address list of Members, Representatives and other contact persons updated and available for the ERNCIP Office and Sponsors (annex 2 “ERNCIP Thematic Areas Member Registration Form”) and informing the TG Members of any changes in the composition of the Group (including changes of Representatives);

- 2.2.12** Providing, upon request, the Members and Representatives with official copies or originals of relevant documents if the request doesn't conflict with the rules set out in **Section 7**;
- 2.2.13** In the event of major changes to the work programme the Coordinator will inform the ERNCIP office why such changes are suggested and needed. An impact assessment may also be requested by the ERNCIP office to support such changes;
- 2.2.14** Potential issues concerning intellectual property rights (as set out in **Section 8**) are managed by the ERNCIP Office and the ERNCIP Legal Issue group in conjunction, when needed, with the Coordinator;
- 2.3** The Coordinator can appoint a deputy Coordinator. The duration of their office is no longer than the duration of the TG and work programme. Both the Coordinator and the deputy Coordinator will automatically relinquish their post as soon as the TG terminates. If the duration of a TG is extended, both Coordinator and deputy Coordinator can remain in charge until the TG terminates or expires. Both the extension and the expiration will be confirmed by the ERNCIP Office;
- 2.4** The reimbursements of the Coordinator's and deputy Coordinator's activities, applied by the ERNCIP Office, will take place after the signature of an Appointment Letter, arranged by the JRC Administration, that will inform them about the terms and condition of the payment. In order to correctly handle the administrative procedure, the Coordinator and deputy Coordinator will have to register to the Cordis system (<https://cordis.europa.eu/sur/index.cfm?fuseaction=Reg.UserRegistration>) and provide to the ERNCIP Office the Cordis Candidature Number assigned automatically by the system after successful registration;
- 2.5** If needed for particular tasks related to the TG's activities and deliverables, the Coordinator may propose a Representative from those participating in the TG, whose work may be reimbursed, on ERNCIP Office's acceptance, according to the rules for coordinators reimbursement and as specified under **art. 2.4**;

3. Membership Criteria and Commitments

- 3.1** The Membership of a TG is restricted to highly qualified EU organizations (that will participate in the Project's activities through a maximum number of two Representatives per TG), that will pursue the development and aims of ERNCIP (Laboratories and other research facilities - National certification bodies and accreditation bodies - Government departments or agencies, etc.) and that meet the criteria reported herein and as stated by the Call for Expression of Interest issued by the ERNCIP Office and endorsed by the EU MSs. At the same time the Membership is prohibited for those organizations that would pose a threat to the security, confidentiality or integrity of the TGs by their Membership;
- 3.2** ERNCIP TG Membership criteria involves or refers to:
- 3.2.1** The whole organization, parts of the organization e.g. departments and/or individuals pertaining to parts of an organization e.g. laboratory staff member such as an expert or specialist;
 - 3.2.2** Years of experience (that can also be referred to specific competencies e.g. 10 years in CIIP and 5 years in SCADA);
 - 3.2.3** Publications or important scientific contributions in international peer-reviewed publications;
 - 3.2.4** Active attendance (e.g. chairing sessions, presenting guest speeches etc.) at national and international conferences;
 - 3.2.5** Patents;
 - 3.2.6** Accreditations and Certifications;
 - 3.2.7** Awards for Excellence (e.g. best papers, prizes);
 - 3.2.8** Participation in scientific networks or in projects funded by the EU Framework Programme for R&D;
 - 3.2.9** Recommendation by the government of a Member State.
- 3.3** This application by an Organization seeking to join the ERNCIP TGs will be put before the ERNCIP Office for approval. The Governance and competence over the Membership is assigned exclusively to the ERNCIP Office according to the rules and criteria described herein and in the Call for Expression of Interest;
- 3.4** Each Member must abide by this Membership Agreement, and undertake in writing to respect the confidentiality and integrity of the ERNCIP TGs based (when needed) on a Traffic Light Protocol (in following "TLP" – **Section 7**) for all information shared during relative TG meetings. If a Member breaches these rules, the

- ERNCIP Office reserves the right to terminate their Membership (**Section 3.9**);
- 3.5** In particular, each Member must abide by the following commitments:
- 3.5.1** Respect the Membership Agreement and the work programme developed by the TG and endorsed by the ERNCIP Office;
 - 3.5.2** Define, in conjunction with the other Members, the work programme of the TG it is involved in;
 - 3.5.3** The execution of the TG work programme;
 - 3.5.4** Respect the rules of ethics and mutual respect;
 - 3.5.5** Exchange sensitive and/or confidential information only on a strict ‘need to know’ basis;
 - 3.5.6** Respect the TLP (**Section 7**) and any other non-disclosure agreements, subject to mandatory national law;
 - 3.5.7** Maintain the reputation of the project and third parties through fair behaviour;
 - 3.5.8** Accept IPR section related to the project (ownership, right of use and exploitation, right of access – as set out in **section 8**);
 - 3.5.9** Notify the coordinator and ERNCIP Office immediately in the event of a conflict of interest;
- 3.6** Members and Representatives commit themselves to add value to the group and to contribute in its initiatives. The Representative’s role within their organization shall reasonably fit the remit of the TA’s as set out in **Section 1 and in the Call for Expression of Interest** and thus be able to make a positive contribution to satisfy the needs of the TG work programme. If this is not the case, a Representative may be barred by the ERNCIP Office (**Section 3.9 and 9.2**);
- 3.7** The activities carried out by the Members and their Representatives are subject to all applicable rules and regulations in the respective Countries of origin. Nothing in this agreement shall be deemed to be an arrangement to violate any applicable rules or regulations;
- 3.8** The TG’s Members (and their Representatives) shall not be entitled to act or make any legally binding declarations on behalf of the ERNCIP Office or on behalf of other Members. Participating in a TG as Member will not constitute any partnership, joint venture, agency, interest grouping or any other kind of formal business grouping or entity between the Members of the TG;
- 3.9** TG Members (and their Representatives) will cease their Membership if they:

- 3.9.1** Resign from the TG. Resignation must be provided in writing to the ERNCIP office and relative Coordinator specifying why they can no longer continue in their role as Member;
- 3.9.2** Fail to attend 3 consecutive meetings without providing apologies and tangible reasons to the Coordinator and ERNCIP office;
- 3.9.3** Fail to complete the tasks for which they have been assigned in the TG work programme;
- 3.9.4** Cease their employment for any reason and therefore no longer represent their organization;
- 3.9.5** Breach their confidentiality obligations under this Membership Agreement;
- 3.9.6** Breach binding conditions stipulated in the Membership Agreement;
- 3.9.7** Are involved in circumstances of conflict of interest.

4. Membership Rights, Activities and Meetings

- 4.1** Each Member and their Representatives, in acceptance of this Membership Agreement has the right:
 - 4.1.1** To take part in a specialized working environment;
 - 4.1.2** To be involved in project activities;
 - 4.1.3** To be active in more than one TA;
 - 4.1.4** To have equal opportunity to participate in the TG;
 - 4.1.5** To share information and knowledge between each other and in accordance with **Section 7**;
 - 4.1.6** To use the ERNCIP logo for the dissemination and publication of deliverables and results, if authorized by the ERNCIP Office (as described in **Section 8.1.4**);
- 4.2** The structure of the meeting, the activities and the work related to each TG will be decided internally by the TG Members and headed by the Coordinator and will be endorsed by the ERNCIP Office;
- 4.3** Each TG Member has the right to participate in the following activities-outcomes of its TGs:
 - 4.3.1** Exchange of Good Practices and knowledge;
 - 4.3.2** Disclosure of CIP Expertise and Knowledge Gaps;
 - 4.3.3** Disclosure of CIP experimental capabilities gaps;
 - 4.3.4** Assessment new CIP products and solutions;
 - 4.3.5** Agreement on TG internal procedures;

- 4.3.6** Agreement on EU qualification schemes for laboratories;
- 4.3.7** Agreement on requirements and standards;
- 4.3.8** Establishment of an EU wide certification and standards;
- 4.3.9** Establishment of a network of experimental capabilities.
- 4.4** If for any reason a Representative is unable to attend a TG meeting, event etc., he/she should notify the Coordinator and/or deputy Coordinator as soon as possible;
- 4.5** Only authorized Representatives will be allowed to join the meetings, no substitution will be accepted;
- 4.6** An agreed quorum of Members must be present in all TG meetings before a meeting can proceed. At least 50% + 1 Members must be present if decisions are taken by the TG;
- 4.7** External persons e.g. experts with specific knowledge, may be invited as special guests to attend the meetings at the request of the Coordinator and upon approval by the ERNCIP Office. External persons may only participate in a meeting after having undertaken in writing to respect the confidentiality and integrity of the ERNCIP TGs based (when needed) on a Traffic Light Protocol (in following “TLP” – **Section 7**) for all information shared during relative TG meetings. External persons do not have the right to vote on any TG decision and may be requested to leave the meeting at any time by the Coordinator;
- 4.8** Decisions regarding the TG activities will be made preferably by consensus and otherwise by majority voting and following the principle “One Member one vote”. In the event of a stalemate vote the Coordinator will always have the casting vote;
- 4.9** Defaulting Members may not vote;
- 4.10** Meetings will be normally hosted by the Joint Research Centre (JRC) in Ispra (IT), upon request by the Coordinator or deputy Coordinator;
- 4.11** In case the meeting is not hosted by the JRC, a Member may host the meeting at its own reasonable discretion and if doing so will arrange the necessary logistics and event management, such as providing meeting rooms. However, the ERNCIP Office will cover participant expenses, including travel and accommodation within the rules described in **Section 10**;
- 4.12** Meetings may also be held by teleconference or other telecommunication means, though it is preferable that the meetings are held in the form set out in **Section 4 (4.10, 4.11)**;
- 4.13** The host of a meeting will be responsible for:
 - 4.13.1** Organising and managing the event;

- 4.13.2** Liaising with the Coordinator to set the agenda;
- 4.13.3** Providing administrative support and “Secretarial support services” for the event;
- 4.13.4** Producing and distributing the minutes of the meeting-event;
- 4.13.5** The minutes will record attendance and apologies received. The minutes of each event can be anonymised and attributed an AMBER information sharing level in accordance with **Section 7**;
- 4.13.6** The minutes must be approved by the Coordinator before they are distributed;
- 4.13.7** The minutes of each event will be e-mailed by the Host to all Members of the TG in accordance with anonymisation and distribution rules set out in **Section 4.13.5 and 7.3**.

5. Thematic Group Work Programme

- 5.1** Each TG will have its own work programme that must be approved by the TG Members and officialised by the Coordinator. The Coordinator will provide the ERNCIP Office with a copy of each work programme and relative amendments for final approval;
- 5.2** Each TG will need to determine the following minimum work programme details:
 - 5.2.1** Define the scope for the thematic area and write the description of the thematic area;
 - 5.2.2** The start and expected end of the work programme and key parts of it;
 - 5.2.3** The key work programme milestones and deliverables;
 - 5.2.4** The definition of key resources for the work programme;
 - 5.2.5** The expected outcome and work output.

6. Code of Conduct for the Thematic Group

- 6.1** A TG is an endorsed group of Members and Representatives whose call is to investigate a TA (or part of) and set common test practices and guidelines concerning a specific theme or sub-theme in the TG field;
- 6.2** Each TG will organize itself and the relative tasks as it thinks necessary to guarantee the success of its work programme;
- 6.3** Each TG will endeavour to maximise its output in accordance with the identified TA and the relative TG work programme;
- 6.4** All TG meeting minutes must be truthful and in accordance with the discussion held and decisions made. All actions and

- agreements must be officialised in the minutes and approved by the TG following the voting rules set out in **Section 4.8 and 4.9**;
- 6.5** All TG Members are invited to actively take part in the meeting discussions and relative decisions process and all TG Members have a right to voice their approval or otherwise on anything established in the approved agenda and/or discussed in the meeting;
- 6.6** All TG meeting data, information and/or knowledge in oral or written format may be considered “sensitive data” and may only be exchanged on a strict ‘need to know’ basis and according to the rules set out in **Section 7**;
- 6.7** The work of each TG must be conducted in accordance with good management practices and in respect of all those (actors) taking part in the work programme;
- 6.8** Each TG will be responsible for the quality control and quality assurance and complete documentation of all its work. This documentation will be made available to the ERNCIP Office;
- 6.9** The function of each TG is to ensure that all knowledge gained and results obtained are adequately disseminated and shared within the stakeholders of ERNCIP Office and the Sponsors (European Commission and Member States);

7. Rules for Information Sharing

- 7.1** No information regarding the TG Membership will be made public, with the exception of the identity of the Coordinator and deputy;
- 7.2** Each group may decide to classify part of its work and documents or to share them based on the TLP as set out in **Section 7.3** below. In such cases they should inform the ERNCIP Office;
- 7.3** Each Member must mark information they share according to the TLP, as well as indicate to others how they should handle and share such information with other Members. The four information sharing levels according to the TLP are as follows:
- 7.3.1 RED - personal for named recipients only**
In the context of a meeting, for example, RED information is limited to those Representatives present at the meeting. In most circumstances, RED information will be passed orally or in person. Representatives must not disseminate the information outside of the meeting. RED information may be discussed during a meeting but only when all Representatives present have signed up to this Membership Agreement. Other

external participants, such as visiting speakers, who are not Members of the TG, will be required to leave before such information is disclosed and discussed;

7.3.2 AMBER - limited distribution

The recipient may share AMBER information with others within their organisation (whether direct employees, consultants, contractors or outsource-staff working in the organisation), **but only on a strict ‘need-to-know’ basis. The originator may specify the intended limits of that sharing;**

7.3.3 GREEN - community wide

Information in this category can be circulated widely within a particular community. However, the information may not be published or posted publicly on the Internet, nor released outside of the community;

7.3.4 WHITE – unlimited

Information that is for public, unrestricted dissemination, publication, web-posting, or broadcast. Any Member may publish the information, subject to copyright acknowledgement of the source.

7.4 The TLP is extended also to information shared/created in electronic/digital form and in the respect of these sharing levels:

7.4.1 RED the information can be shared according to the article 7.3.1 and must be stored in encrypted format or systems that use password longer than 10 (ten) characters and only on devices that have no access, even occasional, to networks;

7.4.2 AMBER the information can be shared according to the article 7.3.2 and must be transmitted in encrypted format;

7.4.3 GREEN the information can be shared according to the article 7.3.3;

7.4.4 WHITE the information can be shared according to the article 7.3.4.

7.5 It is the responsibility of all Members (and their Representatives) to respect the designated sharing levels of all information offered within the TGs. However responsibility lies with the source to make sure that the information disclosed among the TG has been properly marked. If the information level is AMBER and is passed on to others, then the recipients among the Members must first agree, in written form, to follow the relative information level sharing rules;

- 7.6 If any Member (and its Representatives) has any doubt whether information is covered by TLP's rules, the Member must contact the person who provided it (or, if in doubt, the Coordinator) before acting on it;
- 7.7 If required, before a meeting, each Member shall ensure that they deposit with the event administrator all items having recording or transmitting capability, such as cameras, mobile telephones, electronic organisers, PDAs, walkmans, laptop computers etc.

8. Intellectual Property Rights, Access and Use Rights

8.1 General Principles:

- 8.1.1 Each TG Member shall ensure that the "*Foreground*" (as defined in art. 8.1.7) of which it has ownership (as defined in art. 8.2) is disseminated as swiftly as possible;
- 8.1.2 Dissemination activities shall at all times be subject to the protection of Members' intellectual property rights, the confidentiality obligations set out in this Membership Agreement and all further legitimate interests of the owner(s) of the *Foreground* (as defined in item 8.1.7);
- 8.1.3 At least 30 days prior to the intended dissemination, a written notice of any dissemination activity shall be given to the other TG Members concerned, including sufficient information concerning the planned dissemination activity and the data envisaged to be disseminated. Following notification, any of those TG Members may object within 20 days of the notification to the envisaged dissemination activity if it considers that its legitimate interests in relation to its intellectual property rights or copyrights could suffer disproportionately great harm. In such cases, the proposed dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests;
- 8.1.4 All publications or any other dissemination relating to *Foreground* (as defined in item 8.1.7) shall include the following statement to indicate that said *Foreground* was generated with the assistance of financial support from the European Union: "The research leading to these results has received funding from the European Union within the European Reference Network for Critical Infrastructure Protection project hosted at the Joint Research Centre –

European Commission – Via E. Fermi 2749 – Ispra (VA)
Italy”;

- 8.1.5** The dissemination of TG work findings (partial or complete) including through journal papers, conferences etc. will require also the ERNCIP Office approval and may be published according to the FP7 rules concerning Intellectual Property, it being understood that Section 8.3.5 shall apply to any such (intended) publication without restriction;
- 8.1.6** Potential issues concerning intellectual property including patents, copyright, trademarks etc. are managed by the Legal Issue Group in conjunction with the ERNCIP Office;
- 8.1.7** For the purposes of this Membership Agreement, "*Foreground*" means the results, including information, materials and knowledge, generated in the Project, whether or not they can be protected. It includes (1) intellectual property rights (IPRs) such as rights resulting from copyright protection and related rights such as software, trademark rights, design rights, patent rights, rights of creators of topographies of semiconductor products, (2) similar forms of protection (e.g. inventions and sui generis rights for databases) and (3) unprotected know-how (e.g. confidential material). Thus, *Foreground* includes the tangible (e.g. prototypes, micro-organisms, source code and processed earth observation images) and intangible (Intellectual Property) results of the Project. Results generated outside of the Project (i.e. before, after or in parallel with a project) do not constitute *Foreground*;
- 8.1.8** "*Background*" means information and knowledge (including inventions, databases, etc.) as well as any intellectual property right owned or held by the participants prior to or during their participation to the Project as Members and needed for carrying out the Project or used in *Foreground*;
- 8.1.9** "*Use*" means the direct or indirect utilization of *Foreground* in further research activities other than those covered by the Project, or for developing, creating and marketing a product or process, or for creating and providing a service;
- 8.1.10** "*The Project*" means the European Reference Network for Critical Infrastructure Protection;

- 8.1.11** "*Affiliated entity*" means any legal entity that is under the direct or indirect control of a Member, or under the same direct or indirect control as the beneficiary, control taking any of the following forms and for as long as such control lasts:
- (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
 - (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.
- 8.2** Foreground resulting from a TG, is considered as jointly generated. The Foreground will be jointly used by the Members participating the specific TG, unless the ERNCIP Office and the Legal Issue Group agree on a different solution;
- 8.3** The use of jointly generated Foreground is subject to the following rules:
- 8.3.1** Each of the Members who participated in the generation of certain *Foreground* shall be entitled to utilize such jointly created Foreground on a royalty-free basis, and without requiring the prior consent of the other Members, for Use and implementation purposes;
 - 8.3.2** Each of the Members who participated in the generation of certain *Foreground* is granted user rights and entitled to grant non-exclusive licenses, with the right to grant sub-licences, of the *Foreground* right of use to third parties a) with at least 45 days prior notice to the other joint owner(s) but without obtaining any consent from or otherwise accounting to them; and b) without paying any compensation to the other Members who participated in the generation of such *Foreground*;
 - 8.3.3** Where a TG member transfers co-ownership of Foreground, it shall ensure that all of its obligations regarding that *Foreground* are passed on to the assignee including the obligation to pass those obligations on to any subsequent assignee;
 - 8.3.4** Subject to its contractual or other obligations concerning confidentiality such as in the framework of a merger or an acquisition of an important part of its assets, where a TG member is required to pass on its obligations to provide access rights, it shall give at least 45 days prior notice to the other TG members of the envisaged transfer,

together with sufficient information concerning the envisaged new owner of the *Foreground* to permit the other TG members to exercise their access rights;

8.3.5 Following notification in accordance with article 8.3.4, any other TG member may object within 30 days of the notification in writing, to any envisaged transfer of ownership on the grounds that it would adversely affect its access rights. Where any of the other TG members demonstrate that their access rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between the TG members concerned;

8.3.6 For the avoidance of doubt, a Member shall not publish *Background* of another Member, even if such *Background* is amalgamated with the TG's *Foreground*, without the other Member's prior written approval;

8.4 Each Member shall identify right before the accession to the network the *Background* to which they are not ready to grant Access Rights before sharing it with the TG Members, in a written list notified to the ERNCIP Legal Issue Group;

8.5 Each Member agrees:

8.5.1 Not to use, in the execution of the Project, any *Background* by any other Member which is listed as excluded in the Annex such Member notified to the ERNCIP Legal Issue Group; and

8.5.2 not to use, in the execution of the Project, any *Background* by it which is so listed, if such use of *Background* it would result in such excluded *Background* being needed by any other Member for the Use of any *Foreground*. If a Member has listed as excluded in the written list notified to the ERNCIP Legal Issue Group any *Background* by it that it has committed to provide to the Project, then such *Background* shall be deemed not to be listed in that list and accordingly not to be excluded from obligations to grant Access Rights in accordance with this Membership Agreement. Further, if a Member breaches this paragraph 8.5.2 and as a consequence thereof, such *Background* Held by it becomes Needed by any other Member for the Use of any *Foreground*, then such *Background* shall be deemed no longer listed in the list notified to the ERNCIP Legal Issue Group and not to be excluded from obligations to grant Access Rights in accordance with this Membership Agreement;

- 8.6** 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;
- 8.7** Access Rights granted within the Project do not allow the Members to sublicense them unless expressly authorized otherwise (a) by this Membership Agreement or (b) in writing by the owner/s of the *Background*;
- 8.8** Access Rights granted within the Project shall be granted for “implementation” or “Use” purposes;
- 8.8.1.** (Access Right for Implementation) Access Rights to *Background* shall be granted to the other Members, if they are needed to enable those Members to carry out their own work under the project provided that the Member concerned is entitled to grant them. Such Access Rights shall be granted on a royalty-free basis, unless otherwise agreed by all beneficiaries before their accession to this Project;
- 8.8.2.** (Access Right for Use) Members shall enjoy access rights to “*Background*”, if they are needed to use their own *Foreground* provided that the Member concerned is entitled to grant them. Subject to agreement, such access rights shall be granted on fair and reasonable conditions or on royalty-free basis;
- 8.8.3.** (Access Right for Use) Affiliated entities of a Member shall also enjoy Access Rights, referred to in articles 8.3.1, 8.8.1 and 8.8.2, to *Foreground* or *Background* under the same conditions as the Member to which they are affiliated, as long as they fall under the definition of art. 8.1.11;
- 8.8.4.** (Access Right for Use) A request for Access Rights under articles 8.8.1, 8.8.2 and 8.8.3 may be made up to four years after either of the following events:
- a) the end of the Project; or
 - b) Termination of participation by the owner of the *Background* or *Foreground* concerned;
- 8.9** All *Foreground* developed before the accession of a new Member shall be considered to be *Background* with regard to said new Member;
- 8.10** Access Rights to the *Background* and Right of Use of the *Foreground* are no more granted to a Defaulting Member who has received formal notice of the decision of the ERNCIP Office to terminate its participation to the ERNCIP Project;

- 8.11** A non-defaulting Member leaving voluntarily and with the ERNCIP Office consent shall have Access Rights to the Foreground developed until the date of the termination of its participation;
- 8.12** Nothing in this Membership Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Members or any of their logos or trademarks without their prior written approval;
- 8.13** Any deliverables or results shall be identified as soon as developed and any Members be duly informed;
- 8.14** In the absence of a specific provision in the present Membership Agreement the FP7 rules concerning Intellectual Property apply.

9. ERNCIP Project Administration and Governance

9.1 The organisational structure of the ERNCIP Project shall comprise the following Bodies:

9.1.1 ERNCIP Office: in charge of the overall administration, governance and decision making of the ERNCIP Project;

9.1.2 ERNCIP Legal Issue Group: in charge of decision and advices on legal and regulatory issues of the ERNCIP Thematic Areas Activities as well as interpretation issues of the rules of the Project;

9.1.3 Both the ERNCIP Office and the Legal Issue Group are composed of JRC Officials as well as JRC Grantholders, Contract Agents, Seconded National Experts and External Experts collaborating with the Project (<http://ipsc.jrc.ec.europa.eu/?id=775>);

9.1.4 The updated composition of the ERNCIP Office and ERNCIP Legal Issue Group will be made public through the publication on the ERNCIP Website.

9.2 The Thematic Areas and their Membership will be managed and supervised according to the following governance rules. The ERNCIP Office has the power to:

9.2.1 verify the abidance of each and every requirement after the acceptance of the Member/Coordinator's registration to the project;

9.2.2 verify and overview the activities of the TGs to ensure that they are working according to the Call for Expression of Interest and Membership Agreements;

9.2.3 remind and ask Members and Representatives to complete relative TG tasks or to work towards the completion of the predefined mission of the relative TG;

9.2.4 revoke or suspend Membership and deny access to the TG activities in case of violation of the Membership Agreement, Call for Expression of Interest or in case of missing acceptance of amended version of Membership Agreements (**section 11**);

9.2.4.1 In the event the ERNCIP Office identifies a breach by a Member/Coordinator/Representative of its obligations under this Membership Agreement, it will give written notice to such Member/Coordinator/Representative requiring that such breach be remedied within 15 calendar days;

9.2.4.2 If such breach is substantial and is not remedied within that period or is not capable of remedy, the ERNCIP Office may decide to declare the Member/Coordinator/Representative to be a Defaulting Member and to decide on the consequences thereof which may include termination of its participation;

9.2.5 provide information about data treatment, where applicable and according to regulation 45/2001/EC and following amendments, information security and data retention;

9.2.6 If requested, offer secure facilities for meetings and classified document storage according to European Commission Information System Security Policy C(2006) 3602;

9.2.7 When a work programme is concluded, decide whether a TG will dissolve, continue its work on a new work program, or merge with another Thematic Area/Group;

9.3 The ERNCIP Office reserves the final decision on each and every aspect of ERNCIP not covered by this Membership Agreement.

9.4 The ERNCIP Office is the only Body entitled to make binding declaration on behalf of the ERNCIP.

10. Funding and Reimbursement

10.1 Funding for the work of the Thematic Groups will be provided from the ERNCIP project budget and only in relation to the approved objectives and work programme for the TGs ;

10.2 Funding refers to the following types of expenses reimbursement to be made payable to TG members or their facilities:

10.2.1 Organization of meetings and workshops (e.g. administrative costs);

- 10.2.2** Travel reimbursement to external partners and experts (**section 1.11**) and Representatives (maximum number of Representatives for each Member in each TG is two);
- 10.2.3** Coordinator's and deputy Coordinator's activities as described in **section 2.4**;
- 10.2.4** External expert's activities as described in **section 2.5**;
- 10.2.5** Funding does not include experimental work;
- 10.2.6** The ERNCIP Office is in charge for the preliminary and final approval of all Thematic Group expenses and must be contacted for details on reimbursement prior to any activity that needs to be carried out;
- 10.2.7** The ERNCIP Office will not be responsible for any cost or expense issued without any prior authorization given in written form.

11. Limitations of Liability

11.1 In respect of any information or materials (incl. "*Foreground*" and "*Background*") supplied by one Member 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 Member shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- no Member granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Member (or its Affiliated entities) exercising its Access Rights;

11.2 No Members shall be responsible to any other Member for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue, provided such damage was not caused by a wilful act or gross negligence, or by a breach of confidentiality;

11.3 The terms of this Membership Agreement shall not be construed to amend or limit any Member's non-contractual liability;

- 11.4** Each Member shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Member's obligations by it or on its behalf under this Membership Agreement or from its use of Foreground or Background.

12. Notices and other communications

- 12.1** Any notice to be given under this Membership Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator and distributed to the Members;

13. Amendments and conflict of rules

- 13.1** The Thematic Groups Membership Agreement shall be reviewed at least annually (or as needed) from the date of approval;
- 13.2** The new version of Membership Agreement, with the necessary amendments, will enter into force on the 20th day from its notification to all the affected Members;
- 13.3** In case of refusal to consent to an amended version of the Membership Agreement, the ERNCIP Office may terminate a Member's membership according to the rules set out in **Section 9.2.4**, and the Member may terminate this Membership Agreement with immediate effect;
- 13.4** In case of conflicts between the Membership Agreement and other documentation used in ERNCIP, the rules hereby formulated will prevail and must be respected.

14. Applicable law and dispute settlement

- 14.1** This Membership Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions;
- 14.2** The Members will attempt to solve amicably any dispute arising out of, or in relation to, the present Membership Agreement;

14.3 If, and to the extent that, any such dispute, controversy or claim has not been settled amicably and one of the Members so notifies the other in writing, such effort shall be deemed to have failed. In that case, each Member may initiate proceedings before the Courts of Brussels.

15. Annexes

The following documents are annexed to this Membership Agreement:

- 1) ERNCIP Thematic Areas “Call for Expression of Interest”;
- 2) ERNCIP Thematic Areas “Member Registration Form”.

16. Signature(s)

[INSERT NAME AND FULL ADDRESS OF THE ORGANISATION]

The [insert name of the organization], having read the Membership Agreement, authorize the undersigned employee(s) to apply and join the ERNCIP TG [insert name of the TG].

Signature(s)

Name(s)

Title(s)

The undersigned [insert name of the Employee(s)] applies to join this Thematic Group, and agrees to abide with the contents of this Membership Agreement.

Signature(s)

Name(s)

Title(s)

Date

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