

MESH

ANNEX VI – JOINT CONVENTION BETWEEN PARTNERS

Agreement between Project Partners Concerning the Collaboration

for the implementation of project D081:

Development of a framework for **M**apping **E**uropean **S**eabed **H**abitats (MESH),

within the framework of the INTERREG IIIB NWE Programme

Agreement between the following Partners:

LEAD PARTNER

1. Joint Nature Conservation Committee, Monkstone House City Road, Peterborough, PE1 1JY, United Kingdom

REGIONAL PARTNERS

2. University of Gent, Renard Centre of Marine Geology, Krijgslaan 281, S-8 9000 Gent, Belgium
3. IFREMER, Technopolis 40, 155 rue Jean-Jacques Rousseau, 92138 ISSY-LES-MOULINEAUX.
4. Marine Institute, Galway Technology Park, Parkmore, Galway, Ireland
5. Alterra-Texel, PO Box 167, 1790 AD Den Burg, Texel, The Netherlands
6. TNO-MEP, Environment, Energy and Process Innovation, Laan van Westenenk 501 7334 DT Apeldoorn, The Netherlands
7. The Secretary of State for Environment, Food and Rural Affairs of Nobel House, 17 Smith Square, London SW1P 3JR acting through the Centre for Environment, Fisheries and Aquaculture Science, Burnham Laboratory, Remembrance Avenue, Burnham-on-Crouch, Essex, CM0 8HA, UK
8. Department of Agriculture and Rural Development/Queen's University Belfast, Newforge Lane, Belfast BT9 5PX, Northern Ireland
9. English Nature, Northminster House, Peterborough, PE1 1UA, UK
10. Envision Mapping Ltd, The Old School, Newton by the Sea, Alnwick, Northumberland, NE66 3EE, UK
11. National Museums and Galleries of Wales, Cathays Park, Cardiff, Wales
12. Natural Environment Research Council, British Geological Survey, Kingsley Dunham Centre, Keyworth, Nottingham NG12 5GG, UK

Constitution of lead partner

The Joint Nature Conservation Committee (JNCC) was established by section 28(4) of the 1990 Environmental Protection Act to carry out the functions listed in Section 133. English Nature, Scottish Natural Heritage (Nature Conservancy Council for Scotland) and the Countryside Council for Wales act jointly through the Committee to deliver special statutory responsibilities for nature conservation in Great Britain and internationally. The three country councils jointly fund the Committee's expenses in accordance with Schedule 7 to the Act.

The relationship between English Nature and the JNCC has been formalised in a financial memorandum approved by the Department of Environment Food and Rural Affairs. The

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Accounting Officers of the three councils share responsibility for overall expenditure on the JNCC and it has been agreed that the Accounting Officer for English Nature shall have lead responsibility for the JNCC's financial affairs. Consequently, English Nature in their lead financial capacity signs this agreement on behalf of the Committee.

INTRODUCTION

In order to implement the Development of a framework for Mapping European Seabed Habitats (MESH) Project, hereinafter referred to as "the Project" approved by the Programme Steering Committee on 27/28 November 2003, in the framework of the INTERREG IIIB NWE Programme and the Grant Offer Letter of the Office of the Deputy Prime Minister dated 1 June 2004 the Partners shall commit to the following:

ARTICLE 1 SUBJECT OF THE AGREEMENT

1.1 The subject of this agreement is to establish a Collaboration in order to implement the Development of a framework for Mapping European Seabed Habitats (MESH) Project.

1.2 The terms of reference of the Project are indicated in the annexes. The Annexes comprise:

- Annex A: the Grant Offer Letter of the Office of the Deputy Prime Minister dated 1 June 2004
- Annex B: the Action Plan of the Project with its time schedule and detailed budget included in the finalised Application Form as received by the NWE Secretariat on 26 May 2004.
- Annex C: a list of background knowledge provided to the Project by each Partner.
- Annex D: a list of products from the Project together with details of their ownership by Partners.

1.3 Each annex is added to the agreement and is an integrated part of it. In the event of any conflict or inconsistency between the annexes and the Articles of this Agreement, the Articles shall prevail.

ARTICLE 2 DEFINITION OF PARTNERS

2.1 In this agreement the Partners shall be:

The Lead Partner

Hereinafter referred to as "Lead Partner", the organisation responsible for the overall Project, to whom the Grant Offer Letter confirming the Community's contribution is addressed. This organisation is the sole responsible party to the Office of the Deputy Prime Minister concerning the due implementation of the Project. The Office of the Deputy Prime Minister in turn is responsible to the NWE Programme Steering Committee (NWE PSC).

The Regional Partners

Hereinafter referred to as "Regional Partners", the organisations responsible for the regional activities of the Project and the co-ordination of these activities. They cater for the implementation of the Project according to the Action Plan, the implementation schedule and the budget included in the finalised Application approved by the NWE PSC ("Approved Application").

Hereinafter, unless otherwise stated, the "Lead Partner" and the "Regional Partners" will be referred to collectively as the "Partners"

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Except where the context requires otherwise, the Lead Partner shall also be considered a Regional Partner.

ARTICLE 2A INTERPRETATION

2A.1 In this Agreement, the following expressions shall, unless the context otherwise requires, have the following meanings:

<u>Expression</u>	<u>Meaning</u>
"Action Plan"	the action plan for the Project contained in Annex B
"Grant Offer Letter"	the grant offer letter a copy of which is contained in Annex A
"NWE PSC"	the NWE Programme Steering Committee
"NWE Programme"	the Interreg IIIB NWE Programme
"Products"	the products that are intended to result from the Project as briefly described in Annex D
"Project"	the project defined in the "Introduction" that precedes Article 1 of this agreement
"Project Steering Group"	the project steering group established by the Partners pursuant to Article 3 of this agreement

2A.2 Headings are for ease of reference and shall not be taken into account in construing this agreement.

2A.3 Where appropriate, words denoting the singular shall include the plural and vice versa.

2A.4 Reference to any statute or statutory provision shall include a reference to the statute or statutory provision as from time to time amended, extended or re-enacted.

ARTICLE 3 DUTIES AND OBLIGATIONS OF THE PARTNERS

3.1 The Partners commit themselves to do everything reasonable in their power to foster the implementation of the Project. They shall accept the NWE Programme subsidy as mentioned in the Grant Offer Letter and the obligations formulated in this agreement.

3.2 In particular, the Lead Partner shall perform the following duties and obligations:

- appoint a Project Manager who shall accept the operational responsibility for the implementation of the overall Project and a Financial Manager;
- start the Project according to the Action Plan ;
- manage the implementation of the Project as a whole (and endeavour to do so within the time schedule stated in the approved action plan) and fulfil its obligations arising from the approval of the NWE Programme grant;
- receive the NWE Programme grant;
- transfer the appropriate amounts of the NWE Programme grant to the other Partners in accordance with their grant claim or adjustments made by the NWE Secretariat;
- establish, provide a secretariat to, and chair a Project Steering Group that will oversee the management of the project; as chair, the Lead Partner will have a casting vote in the event of a tied decision by the Project Steering Group;

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- monitor progress of the Project and present summary reports to the Project Steering Group;
- manage and verify appropriate spending of the NWE Programme grant;
- carry out the Project's overall accounting and, subject to the fulfilment by the other Partners of their obligations under Article 11, produce all documents required for the final audit;
- establish the division of mutual responsibilities with the Regional Partners;
- edit and transfer periodical progress reports, final reports, follow up budget documents, payment claims, financial reports and applications for budgetary or term amendments to the NWE PSC; and,
- in the event of partner deficiency, implement the re-assignment of tasks amongst the Partners and negotiate with the NWE PSC for re-allocation of corresponding ERDF budget according to the proposal agreed by the Project Steering Group (see Article 4.3).

3.3 The **Regional Partners** and the **Lead Partner** (in its function as a Regional Partner) shall perform the following duties and obligations:

- appoint a regional manager for the portion of the Project for which they are responsible and give the Lead Partner a guarantee that they are entitled to represent the Regional Partner in the Project;
- provide an appropriate representative to attend the Project Steering Group;
- implement the portion of the Project for which they are responsible as indicated in the approved Action Plan and fulfil the obligations arising from the approval of the NWE Programme grant; and,
- notify the Lead Partner immediately of any event that could lead to a temporary disruption, final discontinuation or any other deviation from the Action Plan.

ARTICLE 4 OBLIGATIONS OF THE PARTNERS

4.1 Every Partner shall accept the rules and the obligations set forth in the Grant Offer Letter and see to compliance with these rules and obligations for their part of the Project. Each Partner shall indemnify the Lead Partner against any loss or damage, costs or expenses (including legal costs and expenses) suffered by the Lead Partner as a result of any claim made against it under the Grant Offer Letter which arises from the first mentioned Partner's non-compliance with such rules and obligations.

4.2 Every Partner shall accept the Project's budget and pledges to releasing their part of the co-funding.

4.3 In the event of a default by one Partner, the other Partners via the Project Steering Group shall use all reasonable endeavours to rapidly agree (by a simple majority of the Partners other than the defaulting Partner) a proposal to make good the deficiency in a manner that is acceptable to the NWE PSC.

4.4 Every Partner commits to keeping separate accounts and to providing the required data in the agreed format to draw up activity reports and financial reports.

4.5 Every Partner agrees to provide the Lead Partner or their auditors with the required data and explanations to allow the Lead Partner to complete the interim and final grant claims.

4.6 Every Partner agrees to provide the Lead Partner or their auditors with such audited claims, data or explanation as is required by the Lead Partner's auditors to allow them to certify the claims prior to submission to the NWE Secretariat.

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4.7 Every Partner will be held responsible for their regional budget (including the reclamation of funds by the NWE PSC in case of failure) up to the amount as to which the Partner participates in the Project.

4.8 Every Partner pledges to implement the Communication and Publicity measures as set out in the Communication Plan submitted as part of the project application [see Annex B].

4.9 Every Partner is committed to taking part in the evaluation and the dissemination of the Project results in accordance with the NWE PSC's requirements.

ARTICLE 4A PROJECT STEERING GROUP

4.1 The Project Steering Group shall meet twice per year or with such other frequency as the Partners may from time to time agree. Unless all of the Partners otherwise agree, the Lead Partner shall give the other Partners not less than 14 days written notice of each such meeting.

4.2 Where an Article of this agreement indicates that an act requires the agreement or consent of the Project Steering Group, this shall mean the agreement or consent of a simple majority (or a 2/3 majority in the case of Article 18.3) of the members from time to time of the Project Steering Group (excluding any member who the relevant Article indicates should be excluded) expressed either at a meeting of the Project Steering Group or in writing addressed to the Lead Partner. The Lead Partner shall notify the other Partners as soon as reasonably practicable of any agreements or consents given by the Project Steering Group as a result of written votes received by it.

ARTICLE 5 RESPONSIBILITIES

5.1 Under the terms of the Grant Offer Letter, the Lead Partner is the sole responsible party to the Office of the Deputy Prime Minister who in turn is responsible to the NWE PSC concerning the due implementation of the Project and compliance with obligations arising from the approval of the NWE Programme grant.

5.2 Each Regional Partner is directly and exclusively responsible to the Lead Partner for the due implementation of their respective part of the Project and for the proper fulfilment of their duties and obligations as set out in this agreement and its Annexes.

5.3 The Partners agree that any Partner who fulfils the obligations of a defaulting Partner towards the Office of the Deputy Prime Minister (either by taking any action or by paying any amount) has a recourse claim against the defaulting Partner for all direct losses suffered in that connection but subject always to the limitations of liability contained in this Agreement.

5.4 None of the Partners shall be entitled to impose any duties or responsibilities on other Partners beyond the terms and conditions of this agreement.

5.5 Each Partner who provides to another Partner information or materials that are intended to form part of or underly any of the Products shall both use reasonable endeavours to ensure that such information or materials are accurate and provide them together with a statement that will reasonably allow the recipient Partner to understand the nature of and reason for any doubts (or possible doubts) about the accuracy of the information or materials. (For the avoidance of doubt, any information or materials supplied to the providing Partner by a third party shall be accompanied, when forwarded to the recipient Partner, by any relevant disclaimers from such third party.) Each Partner shall, in any case, use reasonable endeavours to ensure the accuracy of any information or materials it supplies under this Agreement and shall promptly correct any error therein of which it becomes aware.

5.6 Except where the supplying Partner is in breach of any of its obligations under Article 5.5 (or where Article 5.7 applies), the recipient Partner shall be entirely responsible for its own use to which it puts such information and materials and the supplying Partner shall be under no obligation or liability in respect of such use. Where the supplying Partner is in breach of its obligations under Article 5.5, the supplying Partner shall indemnify the recipient Partner

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against any loss or damage suffered by the recipient Partner as a result of any third party claims arising from such breach. Except as expressly provided in this Agreement, no warranty condition or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or fitness for purpose of such information or materials.

5.7 Each Partner (the "Indemnifying Partner") shall indemnify each of the other Partners (the "Indemnified Partner") from all losses, costs, damages and expenses incurred or suffered by the Indemnified Partner as a result of any third party claim that the use by the Indemnified Partner for the purpose of fulfilling its obligations in respect of the Project of information or materials provided by the Indemnifying Partner infringes any patent, copyright or other intellectual property rights of a third party. This indemnity is subject to:

5.7.1 the Indemnifying Partner being given immediate and complete control of such claim;

5.7.2 the Indemnified Partner not prejudicing the Indemnifying Partner's defence of such claim;

5.7.3 the Indemnified Partner giving the Indemnifying Partner all reasonable assistance with such claim.

The exclusions and limitations of liability set out at Articles 5.9 and 5.10 below shall not apply to any liability of a Partner under this Article 5.7 which arises from a breach by the Partner of article 5.8 below.

5.8 Each Partner agrees not to use knowingly, as part of a deliverable or in the design of such deliverable or in any information supplied hereunder or under the Project, any proprietary rights of a third party unless the Partner has first obtained a licence to use those third party proprietary rights on terms approved in advance in writing by the Project Steering Group.

5.9 No Partner shall be responsible to any other Partner (whether for breach of contract, negligence or otherwise) in respect of loss of profit, loss of revenue, or loss of contracts or for indirect or consequential loss or damages.

5.10 The aggregate liability of each Partner under or in connection with this agreement (whether for breach of contract, negligence or otherwise) shall not exceed the total budgeted contribution of the Partner to the Project as set out at Annex B.

5.11 Nothing contained in this Article 5 shall operate to limit or exclude the liability of any of the Partners for death or personal injury caused by its negligence.

ARTICLE 6 DURATION OF THE AGREEMENT

6.1 This agreement shall be deemed to have taken effect on 1 May 2003.

(The NWE PSC has taken 01 May 2003 as the Project's starting date for eligible expenses. The expenses incurred by the Partners prior to that date shall be deemed non-eligible.)

6.2 The period in which the Project must be concluded may be altered with the NWE PSC's permission. Such a modification as approved by the NWE PSC will apply to every Partner.

6.3 This agreement shall terminate three months after the distribution by the Lead Partner of the last of the NWE Programme grant payments following the approval of the final Activity Report and Payment Claim by the NWE PSC.

6.4 Following the termination of the agreement, every Partner is obligated to comply with the obligations concerning the keeping and filing of documents as set out in Article 12.

6.5 Termination of this agreement for any reason shall not affect the coming into or continuance in force of those Articles of this agreement that are intended to come into or

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continue in force after such termination including, without limitation, Articles 5,12,16,17, 20, 21, 22, 27, 28, 29 and 30.

6.4 Termination of this agreement shall be without prejudice to the rights of any of the Partners which may have accrued up to the date of termination.

ARTICLE 7 WORKING LANGUAGES

7.1 The working language of the collaboration established by this agreement shall be English.

ARTICLE 8 EXTENSION OF THE AGREEMENT

8.1 This agreement is entered into for the duration stipulated in Article 6 and cannot be extended except by written agreement of all of the Partners.

ARTICLE 9 ACTIVITY REPORTS, PAYMENT CLAIMS AND PROGRESS REPORTS

9.1 Every Regional Partner commits to provide the Lead Partner with the information needed to draw up Activity Reports, Payment Claims and other specific documents as required by the NWE PSC. The Regional Partner will provide hard and electronic copies of such material.

9.2 The Lead Partner shall systematically send every Regional Partner all copies of Activity Reports, Payment Claims and other specific reports submitted to the NWE PSC.

9.2 The Lead Partner can require every Regional Partner to provide additional information or explanation necessary or appropriate to draw up a report or to comply with a NWE PSC request for information or a request for information from any other body that the NWE PSC has declared authorised thereto.

9.3 The Lead Partner shall keep the Regional Partners informed on a regular basis about all relevant communication between the Lead Partner and the Office of the Deputy Prime Minister, the NWE PSC and the NWE Programme Secretariat.

ARTICLE 10 BUDGETARY AND FINANCIAL MANAGEMENT

10.1 Under the terms of the Grant Offer Letter, the Lead Partner is the sole responsible party to the Office of the Deputy Prime Minister and the NWE PSC for the budgetary and financial management of the Project. It shall be responsible for the realisation and the transfer of Payment Claims and requests for modification of the budget to the NWE PSC. The Lead Partner may withhold or require the repayment of grant funds if required by the NWE Programme Secretariat under the terms of the Grant Offer Letter.

10.2 The Project budget approved by the NWE PSC shall determine the sum total of eligible expenditure, as well as its breakdown into the various items of expenditure, and distribution of expenditure between the Regional Partners.

10.3 The Partners acknowledge and agree that, pursuant to paragraph (14) of the Grant Offer Letter, they will accept payment of their grant from the Lead Partner in Euros and, where applicable, bear the exchange rate risk arising from the provision of the grant to the Lead Partner in Euros.

ARTICLE 11 ACCOUNTING PRINCIPLES

11.1 Every Regional Partner commits to keeping separate accounts in accordance with the rules prescribed by the NWE PSC and in accordance with the Grant Offer Letter concerning eligible expenditure.

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The accounts shall provide for registration in Euros of total expenses (expenditure) and of the return (income) related to the Project.

Accounting reports or other documents, including copies of all pieces of evidence shall be submitted to the Lead Partner in accordance with the schedule and requirements stipulated by the Lead Partner.

The Regional Partners are obliged to have their Project accounting certified by an accountant or auditor. All Partners must produce all documents and necessary information required for audit by local, regional, national or European auditors, and give access to their business premises in accordance with European Regulations.

11.2 Under the terms of the Grant Offer Letter, the Lead Partner is the sole responsible party to the NWE PSC concerning the realisation of Payment Claims and financial reports. The Lead Partner can request further information, explanations and evidence from the Regional Partners in order to try to ensure the reliability of the accounting and financial reports and documents drawn up by the Regional Partners.

In default of evidence or in the event of non-fulfilment of the NWE Programme rules concerning eligibility of expenses, the Lead Partner may ask the Regional Partner to rework the submitted financial documents. In case of repeated non-fulfilment, the Lead Partner shall be entitled to deny the expenses submitted by a Regional Partner. In that case the Lead Partner is obliged to inform the Regional Partner concerned on the denial of the expenses and the motivation thereto.

11.3 The financial, accounting and reporting policy of the Lead Partner (as well as its directions and requests towards the other Regional Partners in connection therewith) shall be based on the rules and regulations determined by the NWE Programme in respect of the Project and in general as interpreted by the Lead Partner. The Lead Partner shall use reasonable endeavours to obtain clarification and/or comfort in respect of such rules, regulations and interpretation where it considers this appropriate or where requested by any of the Regional Partners, in order to avoid differences of opinion with the NWE PSC which might lead the NWE PSC to reduce discontinue or even re-claim subsidies from one or more of the Regional Partners. The Lead Partner, however, shall not be responsible and/or liable towards the other Partners for any adverse consequences resulting from a different interpretation and/or approach of relevant rules and regulations by the NWE PSC at any stage of the Project.

11.4 The Lead Partner is responsible for the Project's overall accounts.

11.5 Each Regional Partner shall deliver claims to the Lead Partner twice a year:

- Each year by May 31, for the costs incurred during the period from November 1 to April 30, and other legitimate costs incurred before this date but not yet claimed,
- Each year by November 30, for the costs incurred during the period from May 1 to October 31, and other legitimate costs incurred before this date but not yet claimed.

11.6 Subject to the Regional Partners complying in a timely fashion with their obligations under this Article 11, the Lead Partner shall deliver twice a year the claims submitted by the Regional Partners to the NWE PSC Secretariat, by June 30 and December 31.

11.7 Should the NWE PSC require supplementary or interim claims, each Regional Partner shall deliver a claim to the Lead Partner at the date specified by the NWE PSC. In this case the dates for costs to be included will be notified by the Lead Partner.

11.8 Subject to the resolution of any dispute as to the total amount of the grant payments due, the Lead Partner shall use all reasonable endeavours to remit to the other Partners their share of the grant monies received by the Lead Partner from the NWE PSC within 30 days after the Lead Partner's receipt of those monies from the NWE PSC. The other Partners acknowledge that the amounts that they receive may not be the same as the amounts that they claim as a result of the matters referred in the last

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sentence of Article 11.3 above and/or budgetary restrictions affecting the NWE Programme.

ARTICLE 12 VERIFICATION - KEEPING THE DOCUMENTS

12.1 Every Partner is obliged to keep the documents required for the verification of the implementation of the Project and eligible expenses and to make them available to the NWE PSC or persons or bodies appointed by the NWE PSC to that effect.

12.2 The Lead Partner as well as every Regional Partner, individually, must keep and file all accounting documents and other documents for a period of three years as from the date of the last transfer concerning the NWE Programme grant.

12.3 The national rules concerning the verification or the keeping of documents, from which the Partners may never deviate, shall remain applicable if they set forth stricter obligations.

12.4 The Partners shall refer to the budget approved by the NWE PSC, as well as to the detailed budget in order to determine the actual implementation of the eligible expenses.

ARTICLE 13 CO-OPERATION WITH THIRD PARTIES – DELEGATION AND OUT-SOURCING

13.1 In the event of co-operation with third parties (public or private bodies), of delegation of part of the activities or of outsourcing of a task to deliver an action or sub-action in Annex B, the Regional Partners shall remain the sole responsible parties to the Lead Partner and through the latter to the NWE PSC concerning compliance with their obligations by virtue of the conditions set forth in this agreement. No Regional Partner shall, however, enter into such cooperation agreement, delegation or outsourcing arrangement without the prior written approval of the Action Leader responsible for the delivery of the relevant action or sub-action (as specified in Annex B). The relevant Regional Partner shall provide such further information about these third party arrangements as may reasonably be requested by any of the other Partners.

13.2 If the Action Leader from whom approval would otherwise need to be sought under Article 13.1 is also the Regional Partner who requires the approval, then the Regional Partner shall instead seek approval from the Lead Partner (or, if the Regional Partner is the Lead Partner, from the Project Steering Group acting by a simple majority of the Partners other than the Lead Partner.)

13.3 The Regional Partners can, should they deem it necessary or sensible, notify their local partners of this agreement.

13.4 No partner shall have the right to transfer their rights and obligations under the terms of this agreement without the prior consent of the Project Steering Group.

ARTICLE 14 INSURANCE

14.1 The Partners are advised to make provisions for the entire duration of this agreement to insure themselves against all damages incurred by third parties caused by the implementation of the Project and the implementation of this agreement.

ARTICLE 15 INFORMATION & PUBLICISING RESULTS

15.1 To comply with Structural Fund regulations, the Lead Partner and the Regional Partners will submit and implement together a Communication Action Plan that ensures adequate promotion of the Project both towards potential beneficiaries and towards the general public.

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15.2 An acknowledgement that the Project has been co-funded by ERDF through the INTERREG IIIB NWE programme shall be stated explicitly in all the publications produced (individually or collectively by the Partners) concerning the Project, as well as during the organisation of events in connection with the Project.

ARTICLE 16 CONFIDENTIALITY

16.1 Although the nature of the implementation of this Project is public, certain information exchanged in the context of its implementation between the Regional Partners themselves or with the NWE PSC, can be confidential. However, nothing contained in this Article 16 shall be construed so as to prevent a Partner from disclosing information designated by another Partner as confidential where such disclosure is necessary to enable the recipient Partner to fulfil its obligations under this agreement including, without limitation, through the inclusion of the information in the Products to be made available to the public.

16.2 Subject to the second sentence of Article 16.1, each Partner undertakes to preserve the confidentiality of any document, information, knowledge, pre-existing know-how or other material communicated to it in relation to the execution of the Project, and which has been identified as confidential in relation to the execution of the Project, or where such information was provided orally, it has been confirmed as confidential in writing within 30 days after disclosure. Each Partner shall use such information only for the purposes of this agreement and shall disclose the same only to those of its directors, officers, employees, professional advisers, sub-contractors and other third party partners (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this agreement.

16.3 Unless otherwise agreed in writing by the relevant Partner(s), no license of Foreground Intellectual Property Rights granted pursuant to Article 17.13 below shall permit the licensee Partner to disclose confidential information comprised within the licensed Foreground Intellectual Property Rights where such disclosure would jeopardise any proposed application for registered intellectual property protection or continued trade secret protection.

16.4 Each Partner shall procure that all of its directors, officers, employees, professional advisers, sub-contractors and other third party partners who have access to any confidential information of the disclosing Partner shall be made aware of and subject to the confidentiality obligations of the Partner under Article 16.2. In addition, the recipient Partner shall not disclose any such confidential information to its sub-contractors or other third party partners without first obtaining their written agreement to confidentiality obligations no less onerous than those set out in this Article 16.

16.5 Without prejudice to Articles 16.2 and 16.4, the Partners commit to taking the same measures to maintain the confidential nature of the information, as they would do should it concern their own confidential information and, in any case, no less stringent measures than would be taken by a reasonably prudent owner of such confidential information.

16.6 The confidentiality obligations of the Partners under this Article 16 shall continue beyond the termination of this agreement but shall not apply to:

- information that is publicly disseminated without the publication being caused by default on the part of one of the Partners concerning their obligation to observe confidentiality;
- information which the disseminating Partner can prove that it possessed prior to the Project;
- information that is subsequently disclosed to the recipient Partner without any obligation of confidence by a third party who has not derived it directly or indirectly from the disclosing Partner.

16.7 Notwithstanding the confidentiality obligations set out in this Article 16, the recipient Partner may disclose the disclosing Partner's confidential information to the extent that disclosure of the same is required by law or court order provided that, in such circumstances,

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the recipient Partner shall have informed the disclosing Partner promptly upon becoming aware of the relevant legal requirement or court order and of the recipient Partner's proposed form of disclosure of that information.

ARTICLE 17 OWNERSHIP AND EXPLOITATION RIGHTS

Definitions

17.1 Background Knowledge means all knowledge (including, without limitation, data, information, know-how, designs, drawings and specifications but excluding Foreground Knowledge), owned or controlled by a Partner in the same fields as, or fields related to, the Project, including such knowledge made available to it by third parties to the extent that the Partner is entitled to make available such knowledge upon the terms of this agreement.

17.2 Background Intellectual Property Rights means rights in know-how and confidential information, patent applications, patents, registered designs, (unregistered) design rights, copyrights (including the copyright on software in any code) and other similar rights, as well as applications for and the right to make applications for any such rights, (excluding Foreground Intellectual Property Rights), owned or controlled by a Partner in the same fields as, or fields related to, the Project, including such third party rights to the extent that the Partner is entitled to license the same on the terms of this agreement.

17.2A Annex C contains brief details of each Partner's Background Knowledge and Background Intellectual Property Rights. Each Partner shall notify the Lead Partner as soon as possible of any of its Background Knowledge and Background Intellectual Property Rights omitted from Annex C, whereupon such further Background Knowledge and Background Intellectual Property Rights shall be added to Annex C and notified as soon as reasonably practicable by the Lead Partner to the other Partners.

17.3 Foreground Knowledge means all information, data, know-how, inventions and other items generated by any Partner, or third party working for it, in the performance of the Project.

17.4 Foreground Intellectual Property Rights means rights in know-how and confidential information, patents, registered designs, (unregistered) design rights, copyrights (including the copyright on software in any code) and other similar rights, as well as applications for and the right to make applications for any such rights, subsisting in the Foreground Knowledge.

Ownership and responsibility

17.5 All Background Intellectual Property Rights provided or made available by a Partner for the purposes of the Project are and remain the exclusive property of the respective Partner (or, where applicable, its licensor).

17.6 Except as provided at Article 17.8 below, ownership to all Foreground Knowledge and all Foreground Intellectual Property Rights shall belong solely to the Partner generating the relevant knowledge or rights.

17.7 Except as provided in this Article 17.7, ownership of all Foreground Intellectual Property Rights in Foreground Knowledge jointly created by two or more Partners shall be owned jointly by those Partners in equal shares. Where, however, the contributions of each Partner to an item of jointly created Foreground Knowledge are discrete (in the sense that each part of the item can be attributed to one Partner alone), then each Partner shall have sole ownership of the Foreground Intellectual Property Rights in those discrete parts for which it is responsible in accordance with Article 17.6.

17.8 The Foreground Intellectual Property Rights in all Foreground Knowledge comprised by or included within the Products Annex D shall have joint ownership with equal share between all Partners. Such Foreground Knowledge and any Background Knowledge comprised within the Products (referred to collectively in this Article 17.8 as "Information") shall be made freely available to the public in accordance with the requirements of the Project and on the following terms:

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- (a) users shall be entitled to use the Information only for their own private use or for their internal business purposes;
- (b) users may not include any of the Information in products or services sold by them or otherwise provided by them for commercial gain without the written agreement of the owners of the relevant Foreground Intellectual Property Rights and any relevant Background Intellectual Property Rights;
- (c) users may not re-publish the whole or any substantial part of the Information without the written agreement of the owners of the relevant Foreground Intellectual Property Rights and any relevant Background Intellectual Property Rights.

No charge may be made by a Partner in connection with making such Information available on the terms set out in this Article 17.8 except for a reasonable charge in respect of the administrative costs of responding to a specific user request.

Information (as defined in this Article 17.8) will be made freely available to all Partners during and for the purposes of the Project, accepting that their use of such Information will, where applicable, be subject to the confidentiality obligations set out in Article 16 of this agreement.

17.9 Where ownership of Foreground Intellectual Property Rights rests solely with one Partner, all responsibility for determining and undertaking appropriate protection and all associated costs shall be borne by that Partner in its sole discretion.

17.10 Where ownership of Foreground Intellectual Property Rights rests with two or more Partners, then the Partners involved shall co-operate in determining and undertaking the appropriate protection and any associated costs (including the cost of maintaining the Protection) shall be borne by all the Partners in equal shares, unless otherwise agreed in writing by the Partners involved. In the absence of agreement as to the protection, if any, to be sought, then the question of what would be appropriate shall be referred to Expert Dispute Resolution as referred to at Article 17.18 below.

17.11 Partners shall maintain and manage the Information (as defined in Article 17.8) in a manner suitable for long-term national benefit depositing where possible this Information with appropriate national organisations.

17.12 In the event that an originating Partner is unable or unwilling to comply with its obligation under Article 17.10, it must notify the other Partners who will decide without undue delay whether or not they will pay the expenses in order to pursue the application and / or maintenance of any Foreground Intellectual Property Rights. If they do so decide, then the first-mentioned Partner shall, on request, execute such assignment of its interest in those Foreground Intellectual Property Rights as the other co-owning Partners may reasonably request. In such circumstances, the other co-owning Partners shall, upon execution of the assignment by the assigning Partner, pay to the assigning Partner such sum as is sufficient to reimburse it for the costs previously incurred by it in respect of the relevant Foreground Intellectual Property Rights pursuant to Article 17.10.

Availability and Use

17.13 Each Partner shall be free to use and exploit its own solely owned Foreground Knowledge and Foreground Intellectual Property Rights and will, subject to the provisions of Article 16 including, without limitation, Article 16.3, be granted non-exclusive licenses (on fair market terms) to use the other Partners' Foreground Intellectual Property Rights (including Foreground Intellectual Property Rights co-owned with other Partners) in order to exploit its own solely owned or co-owned Foreground Knowledge and Foreground IPRs. In the event that the relevant Partners cannot agree the terms of the license (including the level of royalty) required by fair market terms, the issue shall be referred to Expert Dispute Resolution as referred to at Article 17.18 below.

17.14 If any of the Partners requires the use of another Partner's Background Knowledge in order to generate its Foreground Knowledge for the purpose of the Project then such

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Background Knowledge (and any corresponding Background Intellectual Property Rights) shall be made available by royalty-free, non-exclusive licence. The Partner supplying such Background Knowledge is responsible for seeking any necessary permissions for their use as part of the Project. No Partner shall be obliged to grant a licence of its Background Intellectual Property Rights to enable the commercial exploitation by another Partner of its Foreground Knowledge or Foreground Intellectual Property Rights.

17.15 No Partner can be obliged to ensure that the restrictions on use with which Background Knowledge or Foreground Knowledge results are published to a wider audience are not violated by third parties.

17.16 Partners are responsible individually and jointly for ensuring due acknowledgement is given in disseminated products to third parties for their contributions to the Project.

17.17 The Partners explicitly commit themselves, and without a time limit, to state that the implementation has taken place with the co-operation of the INTERREG IIIB NWE Programme.

Disputes

17.18 Where Expert Dispute Resolution is called for under this Article 17, the following provisions shall apply:

- (a) the issue shall be determined by an expert ("Expert") agreed upon by the Partners concerned or, failing agreement, by the President of the Law Society from time to time;
- (b) the costs of the Expert shall be borne equally by the Partners concerned unless the Expert, in the light of the conduct of those Partners, directs otherwise;
- (c) each Partner concerned shall co-operate fully with the Expert, including by the provision of such documentation and explanations as he may reasonably request. Each such Partner shall be entitled to make written representations to the Expert regarding the subject matter of the disagreement;
- (d) the Expert shall act as expert not as arbitrator and his decision shall be final and binding upon the parties except in the case of manifest error.

ARTICLE 18 NON-FULFILMENT OF OBLIGATIONS OR DELAY

18.1 Every Regional Partner is obliged to promptly inform the Lead Partner and to provide the latter with all the useful details should there be events that could jeopardise the implementation of the Project.

18.2 Should one of the Regional Partners be in default of its obligations, the Project Steering Group (acting by a simple majority of the Partners other than the defaulting Partner) may require him to remedy his default within such period of time as the Project Steering Group considers reasonable in all the circumstances.

18.3 Should the default not be remedied within the time specified pursuant to Article 18.2, the Lead Partner may decide to debar the Regional Partner concerned from the Project, with two thirds majority approval of other members of the Project Steering Group. The NWE PSC shall be promptly informed of such a decision.

18.4 The debarred Partner is obliged to refund to the Lead Partner any NWE Programme funds received which it cannot prove on the day of debarring that they were used for the implementation of the Project according to the definition of eligible expenses stated in the NWE Programme rules.

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18.5 In cases where the non-fulfilment of a Regional Partner's obligations has financial consequences for the funding of the Project as a whole, the Lead Partner may demand compensation to cover the sum involved subject to the limitations in Article 5.11.

ARTICLE 19 REDUCTION AND DISCONTINUATION OF THE NWE PROGRAMME SUBSIDY

19.1 Should the NWE PSC be forced to reduce or discontinue the grant referred to in the Grant Offer Letter Annex A and should this entail full or partial refunding of the NWE Programme funds already transferred, every Regional Partner is obliged to refund the NWE Programme funds to the NWE PSC (by way of the Lead Partner) according to the final financial settlement.

19.2 The final financial settlement, drawn up on the basis of the final expenditure certificate approved or denied by the NWE PSC, shall show, both for the overall Project as well as for every Regional Partner, the status of the eligible expenses approved by the NWE PSC, and the portion allocated to every Regional Partner of the NWE Programme grant. This determines the amount every Regional Partner must refund, and each Regional Partner shall indemnify and hold harmless the Lead Partner for the full amount of such community funds to be repaid by such Regional Partner, should the NWE PSC claim such funds from the Lead Partner.

ARTICLE 20 LEGISLATION IN FORCE

20.1 This agreement is governed by English Law, being the law of the country of the Lead Partner and, subject to Articles 17 and 22, the Partners irrevocably submit to the exclusive jurisdiction of the English courts.

ARTICLE 21 COMPLIANCE WITH LAW AND WITH COMMUNITY POLICY

21.1 The provisions of Community Law, particularly the provisions of Articles 30, 32 and 59 of the EC Treaty, as well as the provisions of the Community Directives (insofar as applicable to the relevant Partner) concerning co-ordination of procedures for the award of public service contracts, public supply contracts and public works contracts, and the provisions of Community environmental law must be complied with when entering into contracts concerning actions or investments in the context of this Project. The provisions of this agreement that unlawfully deviate from these provisions shall be deemed as unwritten.

21.2 In performing its obligations under this agreement, each Partner shall comply with all applicable law.

ARTICLE 22 DISPUTES BETWEEN REGIONAL PARTNERS

22.1 Should a dispute arise between Regional Partners of the Project, other than disputes expressed to be subject to Expert Dispute Resolution in accordance with Article 17.18, every Partner shall be entitled to submit the dispute to the Project Steering Group in order to reach a settlement.

The Lead Partner will inform the other Regional Partners and may, on their own initiative or upon request of a Regional Partner, ask the NWE PSC for advice.

22.2 Should a compromise through mediation of the Project Steering Group not be possible for such disputes under Article 22.1, every Regional Partner shall be obliged to request and accept arbitration carried out by an ad-hoc arbitration committee after having asked the NWE PSC for advice through the Lead Partner. This will consist of three expert arbitrators of three different nationalities, one of which being the same as the partner involved in the dispute, appointed by the Project Steering Group. If the Project Steering Group has not appointed all the expert arbitrators within one month of the Lead Partner's request to it to

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decide on such appointment, the Lead Partner shall have the authority to appoint all three expert arbitrators.

Every Regional Partner shall be obliged to accept and apply the decisions of the arbitration committee, subject to the applicable law hereby agreed upon and in compliance with the provisions of Community law, insofar as applicable.

22.3 Should a dispute arise between a Regional Partner(s) and the Lead Partner, other than disputes expressed to be subject to Expert Dispute Resolution in accordance with Article 17.18, the provisions in Articles 22.1 and 22.2 shall apply except that the Project Steering Group shall by a simple majority vote, nominate a Regional Partner to execute the functions assigned to the Lead Partner in those Articles.

ARTICLE 23 AMENDMENT OF THE AGREEMENT

23.1 This agreement shall only be amended by means of an annex to that effect signed by all parties involved.

Modifications to the Project (time schedule, budget) that have been approved by the NWE PSC can be carried out without amending the agreement.

ARTICLE 24 NO PARTNERSHIP/LEGAL SUCCESSION

24.1 No relationship of agency, joint venture or partnership shall exist or be deemed to exist between the Partners and, except as expressly provided in this agreement, no Partner shall have the authority to bind any other Partner without the latter's prior written approval.

24.2 In cases of legal succession (e.g. where the Lead Partner changes its legal form), the Lead Partner is obliged to transfer all duties under this contract to the legal successor.

ARTICLE 25 FORCE MAJEURE

25.1 No Partner shall be held liable for not complying with obligations ensuing from this agreement should the non-compliance be caused by force majeure. If such a case appears, the Partner involved has to announce this immediately in written form to the other Partners and indicate for how long it believes that the force majeure event is likely to last.

All events or circumstances outside the reasonable control of the Partners (or the relevant sub-contractor or other third party partner, as the case may be) and that impede the implementation of the agreement shall be deemed to constitute force majeure. Non-compliance by a Partner with the terms of this Agreement caused by the failure or delay of its sub-contractor or other third party partner shall not be considered to be an event of force majeure as regards that Partner unless the failure or delay was itself caused by force majeure affecting that sub-contractor or other third party partner.

ARTICLE 26 NULLITY

26.1 Should one of the provisions of this agreement be declared null or void in the national law of one of the parties or the law governing this agreement, this shall not render the remaining provisions null and void.

26.2 The fact that one of the Partners should not demand application of one of the provisions of the agreement does not imply that this Partner waives such provision.

ARTICLE 27 LAPSE OF TIME

27.1 Arbitration proceedings concerning any issue ensuing from this agreement may not be commenced more than three years after the occurrence of the facts giving rise to the claim or after the Partner making the claim first became aware of the facts giving rise to the claim.

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In the event of arbitration proceedings concerning a claim to refund funds, a period of three years following the last transfer shall be applied.

ARTICLE 28 TRANSLATION LANGUAGES

28.1 In the event of translation of this agreement and its Annexes, the English version shall prevail.

ARTICLE 29 DOMICILE/NOTICES

29.1 To the effect of this agreement, the Regional Partners shall choose domicile at the address stated in their letterhead where any official notifications can be lawfully served.

29.2 Any change of domicile shall be forwarded to the Lead Partner within 15 days following the change of address by registered mail.

29.3 All notices or other documents to be given under this agreement shall be in writing in the English language and shall be delivered by hand or sent by post on a "guaranteed delivery" basis or facsimile to the party concerned at its service address as specified in this Article 29. Any such notice or other document shall be deemed to have been received by the addressee if delivered, upon delivery; if posted, on the fourth working day following the date of posting; and if sent by facsimile, when the communication is transmitted to the recipient's fax number PROVIDED THAT a copy of the communication is sent by post on a "guaranteed delivery" basis or delivered by hand as soon as practicable after transmission.

ARTICLE 30 THIRD PARTY RIGHTS

30.1 A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

ARTICLE 31 EXECUTION OF THIS AGREEMENT

31.1 This agreement may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.

Drawn up at: Monkstone House City Road, Peterborough, PE1 1JY, United Kingdom
Date: 20/10/2004