

# DELIVERABLE

**Project Acronym:** LoCloud  
**Grant Agreement number:** 325099  
**Project Title:** Local content in a Europeana cloud

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## D.7.1

### Consortium Agreement

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**Author:** Rob Davies, MDR

**Contributors:** Kate Fernie, Barbara Morganti, Gunnar Urtegaard, all partners

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## Change Log

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## CONSORTIUM AGREEMENT

### Section 1 Preamble

The purpose of the Consortium Agreement is to implement the project specified in Annex I, called "**Local content in a Europeana cloud (LoCloud)**" (the "project"), under the Information and Communications Technologies (ICT) Policy Support Programme (the "ICT PSP") and under the conditions laid down in the grant agreement n. 325099.

The Consortium was formed and the Project commenced with an effective date of 1st March 2013 and has a duration of 36 months.

This Consortium Agreement is made BETWEEN:  
Kulturdepartementet - Ministry of Culture (NRA),  
the Coordinator

- **MDR PARTNERS (CONSULTING) LIMITED** (MDR), established in FITZGERALD ROAD MORTLAKE 2B, SW14 8HA LONDON – UNITED KINGDOM, represented by its legal/statutory representative, Mr. Rob Davies, Chief Executive Officer, or his authorised representative,

- **NATIONAL TECHNICAL UNIVERSITY OF ATHENS** (NTUA), established in HEROON POLYTECHNEIOU 9, 15780 ATHENS - GREECE, represented by its legal/statutory representative, Prof. Ioannis Avaritsiotis, Vice Rector, or his authorised representative,

- **INSTYTUT CHEMII BIOORGANICZNEJ PAN** (PSNC), established in NOSKOWSKIEGO 12-14, 61704 POZNAN - POLAND, represented by its legal/statutory representatives, Prof. Marek Figlerowicz, Director, and/or Prof. Jan Węglarz, Director, or their authorised representatives,

- **Ministerio de Educacion, Cultura y Deporte** (MECD), established in PLAZA DEL REY 1, 28071 MADRID - SPAIN, represented by its legal/statutory representatives, Dr. Jesús Prieto de Pedro, Director General for Fine Arts and Cultural Assets and Archives and Libraries, and/or Ms. María Antonia Carrato, Deputy Director for Library Coordination, or their authorised representatives,

- **KULTURARVSSTYRELSEN** (KUAS), established in H.C. ANDERSENS BOULEVARD 2, 1553 COPENHAGEN V - DENMARK, represented by its legal/statutory representatives, Ms. Anne Mette Rahbæk, Director General, and/or Ms. Trine Nielsen, Director, or their authorised representatives,

- **BIBLIOTECA JUDETEANA OCTAVIAN GOGA - CLUJ** (BJC), established in CALEA DOROBANTILOR 104, 400691 CLUJ NAPOCA - ROMANIA, represented by its legal/statutory representatives, Ms. Sorina Stanca, Director, and/or Mrs. Floarea Elena Mosoiu, Deputy Director, or their authorised representatives,

- **MINISTERIE VAN ONDERWIJS, CULTUUR EN WETENSCHAP** (RCE), established in RIJNSTRAAT 50, 2500 BJ DEN HAAG - THE NETHERLANDS, represented by its legal/statutory representative, Mr. Cees van 't Veen, Director Rijksdienst voor het Cultureel Erfgoed, or his authorised representative,

- **NARODNI PAMATKOVY USTAV** (NPU), established in VALDSTEJNSKE NAMESTI 3, 118 01 PRAHA - CZECH REPUBLIC, represented by its legal/statutory representative, Mrs. Nadezda Goryczkova, Director-General, or her authorised representative,

- **UNIVERSIDAD DEL PAIS VASCO EHU UPV** (UPV EHU), established in BARRIO SARRIENA S N S N, 48940 LEIOA - SPAIN, represented by its legal/statutory representatives, Prof. Fernando Plazaola, Vice-Rector for Research, and/or Mrs. Miren Lorea Bilbao, Financial Manager, or their authorised representatives,

- **ASPLAN VIAK INTERNET AS** (AVINET), established in FOSSHAUGANE CAMPUS U2, 6863 SOGNDAL - NORWAY, represented by its legal/statutory representative, Mr. Tor Gunnar Øverli, Managing Director, or his

authorised representative,

- **VILNIAUS UNIVERSITETAS (VUKF)**, established in UNIVERSITETO G. 3, 01513 VILNIUS - REPUBLIC OF LITHUANIA, represented by its legal/statutory representative, Dr. Jūras Banys, Rector, or his authorised representative,

- **UNIVERSITY OF YORK (UoY ADS)**, established in HESLINGTON HALL, YO10 5DD YORK - UNITED KINGDOM, represented by its legal/statutory representative, Ms. Heather Watson, Manager, or her authorised representative,

- **JAVNI ZAVOD REPUBLIKE SLOVENIJE ZA VARSTVO KULTURNE DEDISCINE (IPCHS)**, established in METELKOVA ULICA 6, 1000 LJUBLJANA - REPUBLIC OF SLOVENIA, represented by its legal/statutory representative, Dr. Jelka Pirkovic, Director general, or her authorised representative,

- **Provincie Limburg (B) (Provincie Limburg)**, established in UNIVERSITEITSLAAN 1, 3500 HASSELT - BELGIUM, represented by its legal/statutory representatives, Mrs. Renata Camps, provinciegriffier, and/or Mr. Igor Philtjens, gedeputeerde, or their authorised representatives,

- **DEPARTEMENT DE LA GIRONDE (CG33)**, established in ESPLANADE CHARLES DE GAULLE 1, 33074 BORDEAUX - FRANCE, represented by its legal/statutory representatives, Mr. Gérard MARTY, Managing Director, and/or Mr. Eric DES GARETS, Vice managing director, or their authorised representatives,

- **JARA, ZAVOD ZA RAZVOJ KNJIZNIC (Zavod Jara)**, established in ST. JURIJ 52, 1290 GROSUPLJE - REPUBLIC OF SLOVENIA, represented by its legal/statutory representative, Ms. Breda Karun, Director, or her authorised representative,

- **FUTURE LIBRARY (Future Library)**, established in TSOUPELI 10, 59100 VERIA - GREECE, represented by its legal/statutory representatives, Dr. Dimitrios Protopsaltou, Programme Manager, and/or Mr. Ioannis Trochopoulos, Cofounder, or their authorised representatives,

- **FUNDACAO MUSEU NACIONAL FERROVIARIO ARMANDO GINESTAL MACHADO (FMNF)**, established in COMPLEXO FERROVIARIO DO ENTRONCAMENTO, P-2334-909 ENTRONCAMENTO - PORTUGAL, represented by its legal/statutory representatives, Mr. Júlio Duarte Arroja, President, and/or Mr. Jaime Ramos, Vogal, or their authorised representatives,

- **UNIVERSITAET DUISBURG-ESSEN (UDE)**, established in UNIVERSITAETSSTRASSE 2, 45141 ESSEN - GERMANY, represented by its legal/statutory representatives, Mr. Wolfgang Sellinat, Budget Director, and/or Mrs Astrid Hilker, Head of Department Research Affairs/Third Party Funding, or their authorised representatives,

- **AIT ANGEWANDTE INFORMATIONSTECHNIK FORSCHUNGSGESELLSCHAFT MBH (AIT)**, established in KLOSTERWIESGASSE 32/I, 8010 GRAZ - AUSTRIA, represented by its legal/statutory representatives, Mrs. Gerda Koch, CEO, and/or Prof. Walter Koch, Director, or their authorised representatives,

- **STIFTELSEN LANSMUSEET VASTERNORRLAND (ABMR)**, established in MURBERGET, 871 21 HARNOSAND - SWEDEN, represented by its legal/statutory representatives, Dr. Lillian Rathje, Director, and/or Mr. Ågren Sverker, Ordförande, or their authorised representatives,

- **Pencho Slaveykov Regional Library (PSRL)**, established in SLIVNITSA BLVD. 34, 9000 VARNA - BULGARIA, represented by its legal/statutory representative, Mrs. Emiliya Staneva-Milkova, Director, or her authorised representative,

- **Biblioteka grada Beograda (BGB)**, established in KNEZ MIHAILOVA 56, 11000 BELGRADE - SERBIA, represented by its legal/statutory representatives, Mrs. Jasmina Ninkov, Direktor, and/or Mrs. Milijana Jokić, assistant direktor, or their authorised representatives,

- **HACETTEPE UNIVERSITESI (HU)**, established in SIHHIYE YERLESKESI, 06532 ANKARA - TURKEY, represented by its legal/statutory representatives, Prof. MURAT TUNCER, Rector, and/or Prof. Cem SARAC, Vice Rector, or their authorised representatives,

- **CYPRUS UNIVERSITY OF TECHNOLOGY (CUT)**, established in ARCHBISHOP KYPRIANOS 31 LIMASSOL SAVINGS CO OPERATIVE BANK BUILDING 3R, 3603 LIMASSOL - CYPRUS, represented by its legal/statutory representative, Dr. Charalambos Chrisostomou, Head of Research and International Relations Service, or his authorised representative,

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- **LATVIJAS ARHEOLOGU BIEDRIBA** (LAB), established in ARSENALA IELA 3-7, LV-1050 RIGA - REPUBLIC OF LATVIA, represented by its legal/statutory representatives, Mr. Uldis Kalējs, Vice-chairman, and/or Rūta Kraukle, Member of Board, or their authorised representatives,

- **Minjastofnun Íslands /The Cultural Heritage Agency of Iceland** (CHAI), established in SUDURGOTU 39, 101 REYKJAVIK - ICELAND, represented by its legal/statutory representative, Dr. Kristín Huld Sigurðardóttir, General Director, or her authorised representative,

- **ATHENA RESEARCH AND INNOVATION CENTER IN INFORMATION COMMUNICATION & KNOWLEDGE TECHNOLOGIES** (ATHENA), established in ARTEMIDOS 6 KAI EPIDAVROU, 151 25 MAROUSSI - GREECE, represented by its legal/statutory representatives, Prof. Yannis Ioannidis , President of the Board, and/or Prof. Timoleon Sellis, Vice President of the Board and Director of IMIS/ ATHENA RC, or their authorised representatives,

- **THE DISCOVERY PROGRAMME LBG** (DP), established in MERRION SQUARE 63, DUBLIN 2 DUBLIN - IRELAND, represented by its legal/statutory representative, Prof. Terry Barry, Chairman, or his authorised representative,

- **UNIVERZITA KOMENSKÉHO V BRATISLAVE** (PrifUK KAEG), established in SAFARIKOVO NAM 6, 818 06 BRATISLAVA 16 - SLOVAK REPUBLIC, represented by its legal/statutory representative, Prof. Karol Mičieta, chancellor, or his authorised representative,

- **FONDAZIONE RANIERI DI SORBELLO** (FRS), established in PIAZZA PICCININO 9, 06122 PERUGIA - ITALY, represented by its legal/statutory representative, Prof. Ruggero Ranieri, President, or his authorised representative,

- **GRADSKA KNJIZNICA RIJEKA** (GKR), established in MATIJE GUPCA 23, 51000 RIJEKA, CROATIA, represented by its legal/statutory representative, Mrs Tuskan Mihocic Gorana, Director, or his authorised representative,

- **2Culture Associates Ltd**, established in 3 HORSEFAIR LANE, CRICKLADE, SWINDON, SN6 6BN, UK, represented by its legal/statutory representative, Ms Kate Fernie, director, or her authorised representative,

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

## Section 2: Definitions

### 2.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules for Participation or in the Grant Agreement including its Annexes without the need to replicate said terms herein.

### 2.2 Additional Definitions

#### "Background"

Background refers to information, including IP rights, held by the participants prior to their accession to the grant agreement and needed for the project.

#### "Consortium Plan"

Consortium Plan means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the Network Partner Group.

#### "Consortium Budget"

Consortium Budget means the allocation of all the resources in cash or in kind for the activities as defined in Annex I of the Grant Agreement and in the Consortium Plan thereafter.

#### "Defaulting Party"

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Defaulting Party means a Party which the Network Partner Group has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Article 4.2 of this Consortium Agreement.

“Needed”

means:

For the implementation of the Project:  
Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources.

For Use of own Foreground:  
Access Rights are Needed if, without the grant of such Access Rights, the Use of own Foreground would be technically or legally impossible.

“Software”

Software means sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression.

**Section 3: Purpose**

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

**Section 4: Entry into force, duration and termination**

**4.1 Entry into force**

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

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

A new Party enters the Consortium upon signature of the accession document Attachment 2 by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

**4.2 Duration and termination**

This Consortium Agreement shall continue in full force and effect until complete fulfillment of all obligations undertaken by the Parties under the EC-GA and under this Consortium Agreement.  
However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement and Annex II of the EC-GA Article II.10.  
If the Commission does not award the EC-GA or terminates the EC-GA or a Party's participation in the EC-GA, this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Art. 4.3 of this Consortium Agreement.

**4.3 Survival of rights and obligations**

The provisions relating to Access Rights and Confidentiality, for the time period mentioned therein, as well as for Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this Consortium Agreement.  
Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Network Partner Group and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

**Section 5: Responsibilities of Parties**



## LoCloud Consortium Agreement

### 5.1 General principles

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

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

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

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

### 5.2 Breach

In the event a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the EC-GA (e.g.: a partner producing poor quality work), the Coordinator or the party appointed by the Network Partner Group if the Coordinator is in breach of its obligations under this Consortium Agreement or the EC-GA will give written notice to such Party requiring that such breach be remedied within 30 calendar days. If such breach is substantial and is not remedied within that period or is not capable of remedy, the Network Partner Group may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

### 5.3 Involvement of third parties

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

## Section 6: Liability towards each other

### 6.1 No warranties

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

Therefore,

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

### 6.2 Limitations of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act or by a breach of confidentiality.

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

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

### 6.3 Damage caused to third parties

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

Background.			
<b>6.4 Force Majeure</b>			
No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure. Each Party will notify the competent Consortium Bodies of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.			
<b>Section 7: Governance structure</b>			
<b>7.1 General structure</b>			
The organisational structure of the Consortium shall comprise the following Consortium Bodies:			
<b>Network Partner Group</b> as the ultimate decision-making body of the Consortium			
<b>Project Management Board</b> as the supervisory body for the execution of the Project which shall report to and be accountable to the Network Partner Group			
The Coordinator is the legal entity acting as the intermediary between the Parties and the European Commission. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the EC-GA and this Consortium Agreement.			
The Management Support Team assists the Project Management Board and the Coordinator.			
<b>7.2 General operational procedures for all Consortium Bodies</b>			
<b>7.2.1 Representation in meetings</b>			
Any member of a Consortium Body (hereinafter referred to as "Member"): should be present or represented at any meeting of such Consortium Body; may appoint a substitute or a proxy to attend and vote at any meeting; and shall participate in a cooperative manner in the meetings.			
<b>7.2.2 Preparation and organisation of meetings</b>			
<b>7.2.2.1 Convening meetings:</b> The chairperson of a Consortium Body shall convene meetings of that Consortium Body.			
	Ordinary meeting	Extraordinary meeting	
Network Partner Group	At least once a year	At any time upon written request of the Project Management Board or 1/3 of the Members of the Network Partner Group	
Project Management Board	At least once every six months	At any time upon written request of any Member of the Project Management Board	
<b>7.2.2.2 Notice of a meeting:</b> The chairperson of a Consortium Body shall give notice in writing of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated below.			
	Ordinary meeting	Extraordinary meeting	
Network Partner Group	45 calendar days	15 calendar days	

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Project Management Board	14 calendar days	7 calendar days	
<p>7.2.2.3 Sending the agenda: The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body a written (original) agenda no later than the minimum number of days preceding the meeting as indicated below.</p>			
Network Partner Group	21 calendar days, 10 calendar days for an extraordinary meeting		
Project Management Board	7 calendar days		
<p>7.2.2.4 Adding agenda items: Any agenda item requiring a decision by the Members of a Consortium Body must be identified as such on the agenda. Any Member of a Consortium Body may add an item to the original agenda by written notification to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.</p>			
Network Partner Group	14 calendar days, 7 calendar days for an extraordinary meeting		
Project Management Board	2 working days		
<p>7.2.2.5 During a meeting the Members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.</p>			
<p>7.2.2.6 Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document which is then signed by the defined majority (see Article 6.2.3.) of all Members of the Consortium Body.</p>			
<p>7.2.2.7 Meetings of each Consortium Body may also be held by teleconference or other telecommunication means.</p>			
<p>7.2.2.8 Decisions will only be binding once the relevant part of the Minutes has been accepted according to Article 7.2.5.</p>			
<h3>7.2.3 Voting rules and quorum</h3>			
<p>7.2.3.1 Each Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).</p>			
<p>7.2.3.2 Each Member of a Consortium Body present or represented in the meeting shall have one vote.</p>			
<p>7.2.3.3 Defaulting Parties may not vote.</p>			
<p>Decisions shall be taken by a majority of two-thirds (2/3) of the votes.</p>			
<h3>7.2.4 Veto rights</h3>			
<p>7.2.4.1 A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of a Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.</p>			
<p>7.2.4.2 When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting only.</p>			
<p>7.2.4.3 When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 days after the draft minutes of the meeting are sent.</p>			
<p>7.2.4.4 In case of exercise of veto, the Members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its Members.</p>			
<p>7.2.4.5 A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.</p>			
<p>7.2.4.6 A Party requesting to leave the Consortium may not veto decisions relating thereto.</p>			

## 7.2.5 Minutes of meetings

7.2.5.1 The chairperson of a Consortium Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send the draft minutes to all Members within 10 calendar days of the meeting.

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

7.2.5.3 The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Coordinator, who shall safeguard them.  
If requested the Coordinator shall provide authenticated duplicates to Parties.

## 7.3 Specific operational procedures for the Consortium Bodies

### 7.3.1 Network Partner Group

In addition to the rules described in Article 7.2, the following rules apply:

#### 7.3.1.1 Members

7.3.1.1.1 The Network Partner Group shall consist of one representative of each Party (hereinafter Network Partner Group Member).

7.3.1.1.2 Each Network Partner Group Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 7.3.1.2. of this Consortium Agreement.

7.3.1.1.3 The Coordinator shall chair all meetings of the Network Partner Group, unless decided otherwise in a meeting of the Network Partner Group.

7.3.1.1.4 The Parties agree to abide by all decisions of the Network Partner Group.  
This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Article 12.8.

#### 7.3.1.2 Decisions

The Network Partner Group shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. In addition, all proposals made by the Project Management Board shall also be considered and decided upon by the Network Partner Group.

The following decisions shall be taken by the Network Partner Group:

Content, finances and intellectual property rights

- Proposals for changes to Annex I of the EC-GA to be agreed by the European Commission
- Changes to the Consortium Plan (including the Consortium Budget)
- Additions to Attachment 1 (Background excluded)
- Additions to Attachment 2 (Accession document)
- Additions to Attachment 3 (List of Third Parties)

Evolution of the Consortium

- Entry of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal
- Declaration of a Party to be a Defaulting Party
- Remedies to be performed by a Defaulting Party
- Termination of a Defaulting Party's participation in the Consortium and measures relating thereto
- Proposal to the European Commission for a change of the Coordinator
- Proposal to the European Commission for suspension of all or part of the Project
- Proposal to the European Commission for termination of the Project and the Consortium Agreement

## LoCloud Consortium Agreement

### Appointments

On the basis of Annex I, the appointment if necessary of:

- Project Management Board Members

### 7.3.2 Project Management Board

In addition to the rules in Article 7.2, the following rules shall apply:

#### 7.3.2.1 Members

Project Management Board shall consist of the Coordinator, the Project Manager, the European representative, all work package leaders and up to three members of the Network Partner Group (hereinafter Project Management Board Members).

The Coordinator shall chair all meetings of the Project Management Board, unless decided otherwise.

#### 7.3.2.2 Minutes of meetings

Minutes of Project Management Board meetings, once accepted, shall be sent by the Coordinator to the Network Partner Group Members for information.

#### 7.3.2.3 Tasks

7.3.2.3.1 The Project Management Board shall prepare the meetings, propose decisions and prepare the agenda of the Network Partner Group according to Article 7.3.1.2.

7.3.2.3.2 It shall seek a consensus among the Parties.

7.3.2.3.3 The Project Management Board shall be responsible for the proper execution and implementation of the decisions of the Network Partner Group.

7.3.2.3.4 The Project Management Board shall monitor the effective and efficient implementation of the Project.

7.3.2.3.5 In addition, the Project Management Board shall collect information at least every 6 months on the progress of the Project, examine that information to assess the compliance of the Project with the Consortium Plan and, if necessary, propose modifications of the Consortium Plan to the Network Partner Group.

7.3.2.3.6 The Project Management Board shall:

- agree on the Members of the Management Support Team, upon a proposal by the Coordinator
- support the Coordinator in preparing meetings with the European Commission and in preparing related data and deliverables
- prepare the content and timing of press releases and joint publications by the Consortium or proposed by the European Commission.

7.3.2.3.7 In the case of abolished tasks as a result of a decision of the Network Partner Group, the Project Management Board shall advise the Network Partner Group on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

### 7.4 Coordinator

## LoCloud Consortium Agreement

7.4.1 The Coordinator shall be the intermediary between the Parties and the European Commission and shall perform all tasks assigned to it as described in the EC-GA and in this Consortium Agreement.

7.4.2 In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations
- keeping the address list of Members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting reports and other deliverables (including financial statements and related certifications) to the European Commission
- transmitting documents and information connected with the Project to any other Parties concerned
- administering the financial contribution of the Union and fulfilling the financial tasks described in Article 8.3
- providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

7.4.3 If the Coordinator fails in its coordination tasks, the Network Partner Group may propose to the European Commission to change the Coordinator.

7.4.4 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party.

7.4.5 The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the EC-GA.

### 7.5 Management Support Team

The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the Project Management Board and shall assist and facilitate the work of the Project Management Board and the Coordinator for executing the decisions of the Network Partner Group as well as the day-to-day management of the Project.

## Section 8: Financial provisions

### 8.1 General Principles

#### 8.1.1 Distribution of Financial Contribution

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

- the Consortium Budget as included in the Consortium Plan
- the approval of reports by the European Commission, and
- the provisions of payment in Article 8.3.
- 

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

-

#### 8.1.2 Justifying Costs

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the European Commission. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the European Commission.

#### 8.1.3 Funding Principles

A Party which spends less than its allocated share of the Consortium Budget will be funded in accordance with its actual duly justified eligible costs only.

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

#### 8.1.4 Financial Consequences of the termination of the participation of a Party

A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by the European Commission or another contributor. Furthermore a Defaulting Party shall, within the limits specified

## LoCloud Consortium Agreement

in Article 6.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks. Any additional costs which are not covered by the Defaulting Party shall in principle be apportioned to the remaining Parties pro rata to their share in the total costs of the Project as identified in the Consortium Budget.

### 8.2 Budgeting

The Consortium Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

### 8.3 Payments

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

In particular, the Coordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts
- undertake to keep the Community financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

8.3.2

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

- Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the EU-Commission without undue delay and in conformity with the provisions of Annex II of the EC-GA. Costs accepted by the EU-Commission will be paid to the Party concerned, taking into account the amounts already paid for the reporting period concerned.

The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body to be in breach of its obligations under this Consortium Agreement or the EC-GA” or to a Beneficiary which has not yet signed this Consortium Agreement.

The Coordinator is entitled to recover any payments already paid to a Defaulting Party.

## Section 9: Foreground

Regarding Foreground, EC-GA Article II.12 shall apply with the following additions:

### 9.1 Joint ownership

9.1.1 In case of joint ownership, each of the joint owners shall be entitled to Use the joint *Foreground* as it sees fit, and to grant non-exclusive licenses, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners. The joint owners shall agree on all protection measures and the division of related cost in advance.

9.1.2. Where a Party transfers ownership of *Foreground*, it shall pass on its obligations regarding that *Foreground* to the assignee including the obligation to pass those obligations on to any subsequent assignee.

9.1.3 Subject to its obligations concerning confidentiality such as in the framework of a merger or an acquisition of an important part of its assets, where a *Party* is required to pass on its obligations to provide *access rights*, it shall give at least 45 days prior notice to the other *Party* of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the *Foreground* to permit the other *Parties* to exercise their access rights.

9.1.4 Following notification in accordance with paragraph 2, any other *Party* may object within 30 days of the

## LoCloud Consortium Agreement

notification to any envisaged transfer of ownership on the grounds that it would adversely affect its *access rights*.

Where any of the other Parties demonstrate that their *access rights* would be adversely affected, the intended transfer shall not take place until agreement has been reached between the *Parties* concerned.

9.1.5 The Party who wants to transfer Foreground may identify specific third parties it intends to transfer the ownership of its Foreground to in Attachment (3) to this Consortium Agreement. The other Parties hereby waive their right to object to a transfer to listed third parties

9.1.6 The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer.

Any addition to Attachment (3) after signature of this Agreement requires a decision of the Network Partner Group.

9.1.7 In case of joint ownership, the joint owners must establish a separate joint ownership agreement regarding the allocation and terms of exercise of that joint ownership, according to the EC-GA Article II.12.

### 9.2 Dissemination

#### 9.2.1 Publication

9.2.1.1 Dissemination activities including but not restricted to publications and presentations shall be governed by the procedure of Article II.14 of the EC-GA with the exception of the notice periods indicated below to replace the default notice periods foreseen in the grant agreement.

Prior notice of any planned publication shall be given to the other Parties concerned at least 10 days before the publication. Any objection to the planned publication shall be made in writing to the Coordinator and to any Party concerned within 7 days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

9.2.1.2 An objection is justified if

- (a) the objecting Party's legitimate academic or commercial interests are compromised by the publication; or
- (b) the protection of the objecting Party's Foreground or Background is adversely affected.

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

9.2.1.3 If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate actions are performed following the discussion.

#### 9.2.2 Publication of another Party's Foreground or Background

For the avoidance of doubt, a Party shall not publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the Party's Foreground, without the other Party's prior written approval. For the avoidance of doubt, the mere absence of an objection according to 9.2.1 is not considered as an approval.

#### 9.2.3 Cooperation obligations

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

#### 9.2.4 Use of names, logos or trademarks

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

### Section 10: Access Rights



## LoCloud Consortium Agreement

### 10.1 Background covered

In accordance with and subject to the provisions of the EC-GA, any Party may enter in Attachment 1 any specific Background excluded from the obligation to grant Access Rights in accordance with the provisions of this Consortium Agreement. All other Background except that listed in Attachment 2 shall be available for the granting of Access Rights in accordance with the provisions of this Consortium Agreement.

### 10.2 General Principles

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

10.2.2 Parties shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Project).

10.2.3 If the Network Partner Group considers that the restrictions have such impact, which is not foreseen in the Consortium Plan, it may decide to update the Consortium Plan accordingly.

10.2.4 Any Access Rights granted expressly exclude any rights to sub-licence unless expressly stated otherwise. Access Rights shall be free of any administrative transfer costs. Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties.

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

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

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

### 10.3 Access Rights for implementation

Access Rights to Foreground Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis unless the beneficiaries concerned agree otherwise, according to the EC-GA Article II.15.

### 10.4 Access Rights for Use

10.4.1 Access Rights to Foreground shall be granted on a royalty-free basis.

10.4.2 Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on Fair and Reasonable conditions.

10.4.3 A request for Access Rights may be made up to 36 months after the end of the Project or, in the case of Art. 10.7.2.1.2, after the termination of the requesting Party's participation in the Project.

### 10.5 Additional Access Rights

For the avoidance of doubt any grant of Access Rights not covered by the EC-GA or this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

### 10.6 Access Rights for Parties entering or leaving the Consortium

#### 10.6.1 New Parties entering the Consortium

All Foreground developed before the accession of the new Party shall be considered to be Background with regard

to said new Party.
<b>10.6.2 Parties leaving the Consortium</b>
<b>10.6.2.1 Access Rights granted to a leaving Party</b>
<b>10.6.2.1.1 Defaulting Party</b>
Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the Network Partner Group to terminate its participation in the Consortium.
<b>10.6.2.1.2 Non-defaulting Party</b>
A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Foreground developed until the date of the termination of its participation.

<b>10.6.2.2 Access Rights to be granted by any leaving Party</b>
Any Party leaving the Project shall continue to grant Access Rights pursuant to the EC-GA and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.
<b>10.7 Specific Provisions for Access Rights to Software</b>
For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software. Parties' Access Rights to Software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

<b>Section 11: Non-disclosure of information</b>
11.1 All information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".
11.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the EC-GA, for a period of 5 years after the end of the Project: <ul style="list-style-type: none"><li>- not to use Confidential Information otherwise than for the purpose for which it was disclosed;</li><li>- not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;</li><li>- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and</li><li>- to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only.</li></ul>
11.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.
11.4 The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that: <ul style="list-style-type: none"><li>- the Confidential Information becomes publicly available by means other than a breach of the Recipient's</li></ul>

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

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

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

11.7 If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure notify the Disclosing Party, and

comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

11.8 The confidentiality obligations under this Consortium Agreement and the EC-GA shall not prevent the communication of Confidential Information to the European Commission.

## Section 12: Miscellaneous

### 12.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and  
Attachment 1 (Background excluded)  
Attachment 2 (Accession document)  
Attachment 3 (List of Third Parties)

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

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

### 12.2 No representation, partnership or agency

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

### 12.3 Notices and other communication

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

Formal notices:

If it is required in this Consortium Agreement (Article. 10.6.2.1.1 and 12.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

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Other communication:

Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

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

### 12.4 Assignment and amendments

No rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Article 7.3.1.2 require a separate agreement between all Parties.

### 12.5 Mandatory national law

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

### 12.6 Language

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

### 12.7 Applicable law

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

### 12.8 Settlement of disputes

WIPO Mediation Followed, in the Absence of a Settlement, by WIPO Expedited Arbitration or by Court Litigation

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Brussels unless otherwise agreed upon. The language to be used in the mediation shall be English unless otherwise agreed upon.

WIPO Mediation Followed, in the Absence of a Settlement, by WIPO Expedited Arbitration

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of 60 days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be Brussels unless otherwise agreed upon. The language to be used in the arbitral proceedings shall be English unless otherwise agreed upon.

**[Attachment 1: Background excluded]**

Background excluded from Access Rights:

UPV/EHU hereby explicitly excludes from its obligation to grant Access Rights to:  
All Background generated by employees of the UPV/EHU other than those directly involved in the Project;  
All Background generated by employees of the UPV/EHU that are directly involved in the Project, which is outside the scope of the Project;  
Know-how/background that has been, and/or will be derived outside the project, which is covered under specific research agreements and confidentiality agreements and therefore subjected to third party rights the UPV/EHU is not able to grant access rights:  
All know-how in patents and current patent applications;  
Background developed under the terms of any other agreement with other parties.

UDE hereby excludes from its obligation to grant Access Rights to:  
Background Knowledge all Background generated by the University other than that generated by the members of the research group of Christian M. Stracke, Faculty of Economics and Informatics, Research Institute TELIT, who are directly involved in carrying out the Project.

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

**[Attachment 2: Accession document]**

ACCESSION

of a new Party to

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

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE EC-GA]

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

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE EC-GA]

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

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]  
Signature(s)  
Name(s)  
Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]  
Signature(s)  
Name(s)  
Title(s)

**[Attachment 3: List of Third Parties]**

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List of Third Parties to which transfer of Foreground is possible with prior notice to the other Partners and for which the other Partners have waived their right to object.