

CONSORTIUM AGREEMENT

Platform for autonomous self-deploying and operation of wireless sensor-actuator networks cooperating with aerial objects.

AWARE Proposal n° 033579

This AGREEMENT is made on **May the 30th of 2006**

BETWEEN:

(1) Asociación de Investigación y Cooperación Industrial de Andalucía - AICIA	located at : Camino de los Descubrimientos, s/n 41092 Sevilla SPAIN
(2) Technische Universitaet Berlin – TUB	located at: Strasse des 17 Juni 135 10623 Berlin GERMANY
(3) Flying-Cam SA – FC	located at: Rue du Passage d'Eau, 1A 4681 Oupeye BELGIUM www.flying-cam.com
(4) Universiteit Twente - UT	located at: Drienerlolaan 5 PO Box 217 7522 NB Enschede NETHERLANDS
(5) Universität Stuttgart - USTUTT	located at: Keplerstraße 7 70174 Stuttgart GERMANY http://www.uni-stuttgart.de
(6) SELEX Sensors and Airborne Systems Limited	located at: Christopher Martin Road SS14 3EL Basildon UNITED KINGDOM http://www.selex-sas.com
(7) ITURRI, S.A.	located at: Roberto Osborne, 5 41007 Sevilla SPAIN http://www.iturronline.com

relating to the Project entitled AWARE, No 33579, 6th Framework Programme- Priority 2 “Information Society Technologies” (IST), European Commission. (“The Project”)

Preamble

The European Commission, in the framework of the IST Priority has accepted the Proposal "AWARE" n° 033579 submitted by the Partners hereinabove nominated.

The Partners have decided to execute the Contract awarded by the Commission for this Project.

The Partners agree that the followings articles are based on the Contract between the Commission and the Partners as described in Article 1.2 in this Consortium Agreement.

This Preamble is part of the Consortium Agreement.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

Article 1 Scope of Contract, Definitions

1.1. Contract Definitions

Words defined in the Contract or in Article II.1 of its Annex II have the same meaning in this Agreement and Proposal.

1.2. Additional Definitions

Agreement	means this Consortium Agreement and any proper amendments thereof made in accordance with Article 18.
Appendix A	means the Appendix A to this Agreement detailing each Partners Project Share and the related share in funding.
Contract	means the Cost Reimbursement Contract n° IST 033579 including its Annexes by and between the Commission and the Partners for the undertaking by the Partners of the Project.
Commission	means the European Commission
Co-ordinator	means AICIA
Deliverables/ Project Deliverables	means the Deliverables of the Project defined in Annex I of the Contract.
PM	means the Project Manager as defined in Article 3.
POL	means the Project Office Leader as defined in Article 3.
PC	means Project Committee as defined in Article 4.
PMT	means Project Management Team as defined in Article 4.
PTB	means the Project Technical Board as defined in Article 4.
PO	means the Project Office as defined in Article 4.
Partner or Partners	means a party or the parties to this Agreement.
Project Share	means for each Partner, that Partners share of the total cost or the Project as shown in the Contract, further detailed in Appendix A.
End User(s)	means the end user(s) of the AWARE results as defined in Annex I
Proposal	means the proposal for the Project submitted to the Commission
RTD	means Research and Technological Development.
Industrial Contractors	means Flying-Cam SA, SELEX and Iturri.

Academic/Non-Profit

Contractors	means AICIA, Technische Universitaet Berlin, Universiteit Twente and Universität Stuttgart.
User Group	means the User Group to be defined according to the Annex I.
Project Start	means the official date of the Project start as defined in the Contract (article 4.2) and Annex II (t0).
Project Plan	means the Plan defined in Annex I.
Proprietary Information	means any technical or commercial information including (without limitation) specifications, drawings, designs, samples, models, equipment, computer software and knowhow originally disclosed by one Partner ("the Disclosing Partner") to another Partner ("the Receiving Partner") directly or through another Partner under this Agreement which is in written, other visual or machine readable form and clearly marked or designated by the Disclosing Partner as proprietary (or is communicated orally on a basis of confidentiality and subsequently presented in written, visual or machine readable form to the Receiving Party within thirty (30) days of such communication). All the protections and restrictions in this Agreement relating to the use and disclosure of Proprietary Information shall apply during such thirty (30) day period. Proprietary Information also includes any information which can be obtained by examination, testing or analysis of any hardware or material substance or any component part of such hardware or material substance provided by the Disclosing Partner even though the requirements above for marking and designation have not been fulfilled.
WP	means the agreed Work Packages
WPL	means the agreed Work Package Leaders
Intermediate Report	means the Intermediate six monthly reports (months 6, 18, 30) defined in Annex I.
Management Report	means the Management yearly reports (months 12, 24, 36) defined in Annex I
Final Report	means the Final Report (month 36) defined in Annex I.
Final Review	means the Final Review of the Project.
Project Start	means the official Project start as defined in the contract and Annex II.
Force Majeure	means the circumstance(s) within Article 14
Knowledge	means Knowledge as defined in Annex II.
Pre Existing	
Know How	means the Pre Existing Know How as defined in Annex II.
Project Results	means the results obtained in the Project, including the information generated by the Project.
First Project Critical Review	means the internal Project Review to be conducted by partners after the First General Experiments according to Annex I
Second Project Critical Review	means the internal Project Review to be conducted by partners after the Second General Experiments according to Annex I
Specification Review	means the internal Project Review to be conducted by partners immediately after the Specification (month 6) according to Annex I
Integration Review	means the internal Project Review to be conducted by partners immediately after the integration (month 30) according to Annex I

Article 2 Purpose and Duration

2.1 Purpose

This Agreement sets out in Articles 3 to 4 how the Project will be managed and sets out in Articles 5 to 19 the Partners obligations, rights and liabilities complementing, but not conflicting with, those set out in the Contract.

2.2 Duration

This Agreement shall come into force on the date of signature of the Contract by the Commission, and shall thereafter continue in full force and effect until complete discharge of all obligations undertaken by the Partners under the Contract and under this Agreement as well as any amendment or extension thereof.

Article 3 Co-ordinator

The **Project Coordinator**, AICIA, nominates the **Project Manager PM (PM)** Anibal Ollero, and the **Project Office Leader (POL)** Pedro Moreu.

The **PM** is responsible for both the administrative execution of the Project as well as for the technical progress. The PM has the following administrative duties: 1) is the contact point between the Partners and the Commission; 2) carries out reporting towards the Commission; 3) has responsibility for Project procedures and administration (Quality Management System); manages the approval process for Deliverables and other documents; is responsible for implementing decisions made by the PC and for communicating Project status and results towards the PC. With respect to the technical progress of the Project, the PM is responsible for the following issues: 1) maintains the overall technical vision of the project; 2) ensures a common approach on technical directions and solutions; 3) assists in building consensus in the case of disagreements; and 4) identifies potential problems with interactions between different WPs. The PM has overall responsibility for the management of the User Group and the coordination of any potential dissemination activities and standards contributions. The PM is aided in his work and can delegate parts of it (in particular, administrative duties) to the Project Office.

The POL has together with the Project Manager the authority for implementing and verifying compliance with all quality evaluation policies and procedures related to the Project. The list of Quality Assurance (QA) tasks includes: 1) Develop the QA plan including QA project instructions, procedures, checklists (e.g., audit checklists, inspection checklists) and reports (e.g., deliverable report formats); 2) Monitor Project development to ensure that initial Project plan goals are met within time and budget; 3) Review internal and external deliverables following an internal review process prior to its delivery to the Commission, for consistency, clarity, technical content, and adherence to the QA standards; 4) Conduct audits of processes prior to each development phase of the Project and assure specifications for each phase.

Article 4 Project Management

The management structure of the Project includes the Project Committee (PC), which is the ultimate decision body and the highest authority, and the Project Management Team (PMT) which is responsible for day-to-day management of the Project.

The PC is the representation of every Partner in the Project; each Partner has a single vote in it. These representatives will have sufficient authority within their organisation to take the corrective actions considered by the PC, including the resolution of the conflicts that could arise during the Project. If necessary the Partners will replace the representatives. These replacements will be communicated to the Project Manager and other partners, and will be implemented with a minimum delay that will be in any case lower than fifteen (15) days. The PC is chaired by a representative of the Project Coordinator. The PC will constitute itself with a general Project kick-off meeting within the first four weeks after the Project Start; this meeting is called by the Project Manager. The remaining meetings will be also called by the Project Manager and will normally take place in conjunction with General Project meetings, every four months, or more often if necessary. The quorum will be the half plus one of the number of its members. If there is no a consensus, the decisions will be made by the majority of the votes given. If the result is tie, PM will have the casting vote.

The **PMT** will be responsible to make technical and management decisions to the normal progress of the project, set clear objectives, compares the progress of the Project against milestones, and ensures that it is in line with its technical goals. The PMT will highlight and resolve any technical issues between the Partners, where needed. In case of deviations from the project plan, the PMT will take corrective action. The PMT takes final responsibility for reviewing and approving deliverables and other external documents such as publications and standards contributions, and ensures that periodic progress reports are delivered on time. The PMT is finally responsible for financial management of the Project. The PMT will meet every 4 months, in conjunction with the General Project meetings., or more often if necessary. Concerning the calling of the meetings, representatives replacements, quorum and majorities for decisions making, the same rules as for the PC, as established in the former paragraph will apply.

The PMT comprises the Project Manager (PM), Project Technical Board (PTB) and Project Office (PO).

The Project Technical Board (PTB) consists of the **Workpackage Leaders (WPL)** and the PM who heads the Board. The WPL have extensive experience in the specialised activities that are proposed for each particular WP. The PTB form the actual technical guidance group of the Project. Their task is to ensure that the objectives of the WPs are met and that the required interactions between those Workpackages take place in a suitable and timely fashion. The WPL coordinates the technical work within its WP in line with the overall Project Plan. The WPL is responsible of the following issues: 1) schedules the deliverables and their content and interrelationships, ensuring timely delivery of a high quality; 2) organizes Partner meetings and other communication mechanisms when necessary; coordinates planning with related WPs and manages the exchange of information with them.

Project Office (PO). The PO provides administrative support to the Project Manager; they are installed by the Project Coordinator AICIA. The Project Office Leader (**POL**) has together with the Project Manager the authority for implementing and verifying compliance with all quality evaluation policies and procedures related to the Project. The list of Quality Assurance (QA) tasks includes: 1) Develop a QA Plan including QA Project instructions, procedures, checklists (e.g., audit checklists, inspection checklists) and reports (e.g., deliverable report formats); 2) Monitor Project development to ensure that initial Project Plan goals are met within time and budget; 3) Review internal and external deliverables following an internal review process prior to its delivery to the Commission, for consistency, clarity, technical content, and adherence to the QA standards; 4) Conduct audits of processes prior to

each development phase of the project and assure specifications are agreed by the Partners prior to and for each phase.

Article 5 Responsibilities of each Partner

5.1 Towards the Project Co-ordinator and the Project Management Team

Each Party hereby undertakes:

- (a) promptly to supply to the Project Co-ordinator and the PMT with all information and documents reasonably required by the Coordinator or the PMT in connection with the Contract to fulfil their obligations as provided for in this Agreement or as the Commission may properly request and to keep the Project Co-ordinator and the PMT informed of all such requests from the Commission and responses thereto;
- (b) promptly to communicate or provide any information or decision which has to be given by it to the PMT for the purposes provided for in Article 4.3.

5.2 Towards each other

- (a) Each Partner hereby undertakes to use reasonable endeavours:
 - (i) itself, or as the case may be, jointly with others, to participate actively and to perform on time the tasks and Work Packages assigned to it alone or with said others under the time schedules shown in Annex I and to make available rights, according to Article 10.1 and part C of Annex II, and information in time to other Partners under the terms and conditions defined in the Contract and in this Agreement;
 - (ii) promptly to notify the Project Co-ordinator and each of the other Partners of any delay in performance;
 - (iii) to prepare and present the reports to be submitted to the Commission under the Contract both in sufficient time to enable the Co-ordinator to submit them to the Commission in accordance with the Contract time scales, and in accordance with the formats required (including suitable disclaimers in respect of liability under the EC Contract Annex II).
- (b) Each Partner undertakes to use all reasonable endeavours to ensure the accuracy of any information or materials it supplies to any of the other Partners hereunder or under the Contract and promptly to correct any error therein of which it is notified. The recipient Partner shall be entirely responsible for the use to which it puts such information and materials.
- (c) In addition to the obligations specified in Annex II, article II.35d of the Contract, each Partner agrees not to use knowingly, as part of a deliverable (including without limitation a software product) or in the design of such deliverable, any proprietary rights (such as intellectual property rights or Proprietary Information) of a third party for which such Partner has not acquired the right to grant licences and user rights to the other Partners. unless all of the other Partners have accepted such use in writing, such acceptance not to be unreasonably withheld.

- (d) If any Partner proposes to employ a subcontractor such employment shall only be on terms which enable that Partner to carry out its obligations under the Contract and this Agreement as if such employment had not occurred and shall be subject to the approval of the Commission as provided for in the Contract. That Partner shall not without the prior written agreement of the other Partners grant to the subcontractor any rights to or under any Pre-Existing Know-How or Knowledge of the other Partners.

5.3 Coordination and follow-up strategies

(a) Reports.

Each partner will submit each 6 months an activity report summarising the work done in each relevant WP and the resources spent, as well as on problems encountered and schedule changes, if any. Based on these reports the PM, assisted by the POL, will prepare the Intermediate Reports (months 6, 18, 36), the yearly Activity Reports (months 12, 24, 36), and the yearly Management Report (months, 12, 24 and 36). These documents will contain the work undertaken, achievements, deliverables submitted (or delayed), deviations from Project Plan and work for the following period, current level of expenditures of the Partners and its concordance with the financial plan of the Project. The PM will send the reports to the Commission. At the end of the Project, the PM assisted by the WPL, will compose a consolidated Final Report addressing technical progress based on milestones achieved. The Final Report will emphasise on the implementation and exploitation of Project Results.

(b) Reviews.

At Project level, several reviews will be organised. Their purpose is to provide the Commission and the Partners with information on the status of the Project: Kick-off (T0), Specification Review (T0+6months), First Project Critical Review (T0+12months), Second Project Critical Review (T0+24months), Integration Review (T0+30months), Final Review (T0+36months).

Article 6 Common Charges – Payments

- 6.1 Each Party shall bear its own costs in connection with the making of the Proposal and the negotiation of the Contract. In respect of carrying out of the Project the Partners shall be reimbursed according to the Contract.
- 6.2 The expenses to be borne by the Project Co-ordinator shall be as stipulated in the Contract. Any additional expenditure of a Party will be reviewed on a case-by-case basis, subject to acceptance by the Commission.
- 6.3 As the Contract provides for payments by the Commission to be made solely to the Project Co-ordinator, this Project Co-ordinator shall ensure that, within thirty (30) calendar days following receipt by it of:
- (a) notification from the Project Co-ordinator bank or the Commission that any such payment has been forwarded to the Co-ordinator's bank account specified to the Commission for the purpose of receiving such payment, and
 - (b) advice from the Commission as to the amounts included in such payments for each of the Partners,
 - (c) corresponding payment being credited in the Project Co-ordinator bank account.

whichever of (a) (b) or (c) above is received later, the appropriate sums, according to the amount included by the Commission in such payment, are transferred in EUROS

to each of the other Partners to the relevant EURO bank account specified in the Contract or Appendix I, (or otherwise timely notified in writing to the Project Co-ordinator).

In circumstances not created by default of the Co-ordinator where it is not reasonably possible for the Project Co-ordinator to ensure transfer of payment within thirty (30) calendar days from its receipt from the Commission because there are problems in correctly identifying the sum to be transferred to a Partner the Project Co-ordinator undertakes to transfer appropriate sums with a minimum of delay.

The Project Co-ordinator will use reasonable endeavours to notify the Partners promptly of the date and amount transferred to their bank accounts in any case where a Partner has requested such notification.

Article 7 Confidentiality

7.1 As respects all information (including Knowledge and Pre-Existing Know-How and whether oral, (which is communicated on a basis of confidentiality and subsequently presented in written, visual or machine readable form within 30 days of such communication) in writing or computer form), whether of a technical nature or otherwise relating in any manner to the business or the affairs of another Partner, as is disclosed to a Partner on a confidential basis and is clearly marked or designated as being proprietary and confidential by any other Partner hereunder or otherwise in connection with the Project whether pending or after execution of the Contract each Partner (in addition and without prejudice to any undertaking given by that Partner under the terms of the Contract as to use or confidence) undertakes to each of the other disclosing Partners that :

- (a) It will not during a period of five (5) years from the date of receipt use any such information for any purpose other than in accordance with the terms of this Agreement, and
- (b) During the period of five (5) years treat as (and use reasonable endeavours to procure that the same be kept) confidential and not disclose the same to any other person without the prior written consent of such other Partner in each case;
- (c) Not to copy reproduce or reduce to writing any part of such information except as may be reasonably necessary for the purposes referred to in this Agreement
- (d) To procure that each Partner to whom the information is disclosed under this Agreement is made aware of the provisions of this Agreement prior to such disclosure to it and that such Partner is bound by obligations of confidentiality which are no less onerous than those contained in this Agreement

Provided always that:

- (i) such undertaking shall not in any case be deemed to extend to any information which the receiving Partner can show:
 - (A) was at the time of receipt published or otherwise generally available to the public,

- (B) has after receipt by the receiving Partner been published or become generally available to the public otherwise than through any act or omission on the part of the receiving Partner,
 - (C) was already in the possession of the receiving Partner at the time of receipt without any restriction on disclosure.
 - (D) was rightfully acquired from the others without any undertaking of confidentiality imposed by the disclosing Partner,
 - (E) was developed independently of the work under the Contract by the receiving Partner, or
- (ii) if information communicated in a confidential basis is required by the Commission or (against similar undertakings of confidence as are contained in this Agreement) by any permitted third party insofar as necessary for the proper carrying out of the Contract and/or the exploitation of Knowledge, this communication is subject to the written consent of the disclosing Partner. If the disclosing Partner does not provide such consent and the information is necessary for the proper carrying out of the Contract, then the conflict resolution procedure in Article 1.5 will be applied.
- (iii) nothing in this Article 7.1 shall prevent the communication of information as is needed to be communicated to comply with applicable laws or regulations or with a court or administrative order provided that insofar as reasonably possible the complying Partner shall have informed the owner of the information of such need and shall have complied with such owner's reasonable instructions designed to protect the confidentiality of such information.

7.2 Notwithstanding the provisions of Article 7.1 each Partner may enter into a technical cooperation or licensing arrangement with a third party in respect of any minor amounts of the Knowledge of another Partner (and any minor amounts of the Pre-Existing Know-How of another Partner which are associated with that Knowledge) which have been unavoidably incorporated into or amalgamated with the first Partners own Knowledge or Pre-Existing Know-How. In such circumstances and upon request of the first Partner, the other Partner shall grant to it non-exclusive rights under its Knowledge or Pre Existing Know How against terms and conditions to be agreed, provided that no major business interest of such Partner opposes the grant of such rights.

7.3 As respects any permitted communication of any of the information referred to in Article 7.1 by the recipient Partner to any other person (including but not limited to its affiliates) such Partner will use reasonable endeavours to procure due observance and performance by such other person of undertakings referred to in Article 7.1 and all relevant undertakings in the Contract.

7.4 No provision in this Article 7 will limit the rights of the Partners under the Contract.

Article 8 Liabilities

8.1 Liabilities towards each other

In respect of information or materials supplied by one Partner to another hereunder or under the Contract, the supplier shall be under no obligation or liability other than as

stated in Article 5.2 (b) and no warranty condition or representation of any kind is made, given or to be implied in any case as to the sufficiency, accuracy or fitness for purpose of such information or materials, or, subject to Article 5.2 (c), the absence of an infringement of any proprietary rights (such as intellectual property rights or proprietary information) of third parties by the use of such information and materials, and the recipient Partner shall in any case be entirely responsible for the use to which it puts such information and materials.

8.2 Indemnification of each other

Each Party shall indemnify each of the other Partners, within the limits set out in Articles 8.3 and 8.6, in respect of liability resulting from acts or omissions of itself and of its employees and agents provided always that such indemnity shall not extend to claims for indirect or consequential loss or damages such as but not limited to loss of use, profit, revenue, contracts or the like.

8.3 Claims of the Commission

If the Commission, in accordance with the provisions of the Contract, claims any reimbursement, indemnity or payment of damages from one or more Partners:

- (a) each Partner whose default has caused or contributed to the claim being made shall indemnify each of the other Partners against such claims, provided always that the total limit of liability of that Partner to all the other Partners shall not exceed twice that Partners's Project Share. Any excess shall be apportioned between all the Partners pro rata to their Project Shares; and
- (b) in the event that is not possible to attribute default to any Partner under (a) above, the amount claimed by the Commission shall be apportioned between all the Partners pro rata to Project Shares.

8.4 Liability towards third Parties

Subject always to such other undertakings and warranties as provided for in this Agreement and the Contract, each Partner shall be solely liable for any loss, damage or injury to third parties resulting from its carrying out its parts of the Project.

8.5 Contracts with third Parties

Each Party shall be fully responsible for the performance of any part of its share of the Project in respect of which it enters into any contract with a third party, e.g. a Subcontractor.

8.6 Default and remedies

In the event of a substantial breach, but not in case of Force Majeure, (as defined in accordance with Article 14), by a Partner of its obligations under this Agreement or the Contract which is irremediable or which is not remedied within sixty (60) days of written notice from the other Partners requiring that it be remedied or if the Commission terminates pursuant to Article II.15.5c, Annex II of the Contract or if Article 14.3 of this Agreement applies, the other Partners may jointly terminate this Agreement with respect to the Partner concerned (the « defaulting Partner ») by no less than one month's prior written notice.

Such termination shall take place with respect to such defaulting Partner as of the date of such notice, subject to the provisions in (a) to (b) below.

Notice of such termination shall be given to the Commission and the Commission shall be requested to terminate the Contract with respect to the defaulting Partner in accordance with Article II.15 of Annex II of the Contract, provided always that:

- (a) without prejudice to any rights of the other Partners, the licences granted to the defaulting Partner by the other Partners pursuant to this Agreement or to the Contract shall cease immediately but the rights and licences so granted by the defaulting Partner to the other Partners and their affiliates shall remain in full force and effect ;
- (b) the defaulting Partner shall :
 - (i) assume all reasonable direct cost increase (if any) resulting from the assignment to other Partner off the work allocated in Annex I to the defaulting Partner.
 - (ii) be liable for any resulting additional direct cost incurred by the other Partners, up to a total amount which taken together with any liability to the Commission under Article 8.3 shall no exceed the total maximum limit of liability specified in Article 8.2 in respect of the defaulting Partner, and any excess amount shall be shared between the Partners (including the defaulting Partner) pro rata to their Project Shares at the time of termination.

If the Commission does not terminate the Contract with respect to the defaulting Partner, such Partner shall be deemed to have agreed to a termination pursuant Annex II of the Contract with the provision that Article 8.6 (a) applies and that the agreement which is deemed to have been given by the defaulting Partner as aforesaid shall be without prejudice to the rights of the defaulting Partner to appeal against the termination.

8.7 Entire liabilities

Article 8 sets out the entire liability of each Partner arising from this Agreement, excluding where the contractor is a public body according to the Article II.18.3 of Annex II of the contract.

Article 9 Ownership, exploitation and transfer of results

9.1 Pre-existing knowledge and access rights.

- a) The provisions of this Agreement shall apply in a complementary manner to those provisions contained within Part C of Annex II of the Contract and are provided to assist the implementation of the Contract and shall not be deemed to apply in lieu thereof.

Each Party agrees to be bound by the terms and conditions of Part B Annex II to the Contract entitled «Intellectual Property Rights».which terms and conditions shall take precedence in the event of any conflict with the terms of this Agreement

- b) Each Partner agrees to grant to the other Partners the non-exclusive non transferable right to use the Pre-Existing Know-How (related to the role of the corresponding Partner in the Project), software or components (related to the role of the corresponding Partner in the Project) when needed to perform the activities in the Work Programme. In relation to this grant “needed” shall mean that, without the grant, the execution of the task assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources. Upon request, against terms and conditions to be agreed Partners may grant another Partner or Partners the right to use Pre Existing Know How as may be required on a case by case basis

These grants are strictly limited to such Partner for its own needs of research and development in the Project excluding any commercial use.

Such licence does not permit the use of any software for commercial exploitation, business use, resale or transfer to any third party.

An OEM license agreement will be needed for the parties to provide, sale or distribute products or components containing executable code of software belonging to one party.

Furthermore, after termination of the Project, each Partner which is owner of a Pre-Existing Know How in software shall not be obligated to upgrade or to provide maintenance for such software, without a specific and separate agreement defining the scope of work and price for such upgrade and/or maintenance to be negotiated in good faith and “bona fide”.

9.2 Results

The Parties agree to interpret and implement the provisions of this Agreement and of Part C of Annex II of the Contract as follows:

9.2.1 Protective rights – transfer of Knowledge

- (a) Each Party shall take appropriate actions to protect results developed by such Party under the applicable legislation including without limitation copyright or any other similar statutory right, and to protect such results to the extent reasonably possible as proprietary Information.
- (b) The results shall be property of the Partner or Partners who carried out the work leading to the result. Where several Partners have carried out work generating a result, they shall have non transferable free user rights for the developed result for it's own purposes. They can also agree among themselves different procedures on the allocation and the terms of exercising the ownership of the result.

9.2.2 Sub-licensing rights

Each provider of a intellectual property or proprietary rights which has been entered into the Project as Pre-Existing Know-How retain all rights to sell them and derivate or enhanced versions hereof and therefore no sub-licensing rights shall automatically be granted to the other Parties.

9.3 Use of Knowledge

The provisions of the Contract relating to the “Use of Knowledge” shall apply to this Agreement.

9.4 Change of control

If a Partner controls another legal entity (“Affiliate”), upon cessation of the control of such Affiliate any licences or user rights granted to such Affiliate in respect of Knowledge and Pre-Existing Know-How shall lapse, provided however that Knowledge which has been incorporated into the products, processes, software or services of such Affiliate or which has been amalgamated with such Affiliate’s information may continue to be used by such Affiliate.

In such event, at the request of such Affiliate, the Parties shall grant to it non-exclusive licences to use their Knowledge on terms and conditions to be agreed. Upon such cessation of control, licences or user rights granted by such Affiliate to any Party under

or in respect of the Affiliates Knowledge or Pre-existing Know-How shall continue in full force and effect.

The “control” in this Article is defined in the same manner than in the guidelines of the proposal forms. i.e., Legal entity A controls legal entity B if: A, directly or indirectly, holds more than 50% of the share capital or a majority of voting rights of the shareholders or associates of B, or A, directly or indirectly, holds in fact or in law the decision-making power in B. Direct or indirect holding of more than 50% of the nominal value of the issued share capital in a legal entity or a majority of voting rights of the shareholders or associates of the said entity by public investment corporations, institutional investors or venture-capital companies and funds shall not in itself constitute a controlling relationship.

9.5 Joint inventions

- 9.5.1 If, in the course of carrying out work on the Project, employees and/or subcontractors of more than one Partner jointly make an invention, design, or work, and if the features of such joint invention, design, or work are such that it is not possible to separate them for the purpose of applying for or obtaining the relevant patent protection or any other intellectual property rights, the Partners concerned may jointly apply for the relevant patent or other intellectual property rights.
- 9.5.2 The arrangements for applying for and maintaining such patent or any other intellectual property rights shall be agreed between the Partners on a case-by-case basis, in accordance with the following principles but in accordance with and always subject to the terms of the Contract :
- (a) The invention, design, or work may be used by each of the jointly owning Partners concerned without accounting to other Partners.
 - (b) Any application for protection thereof and rights resulting therefrom shall be jointly owned by those of the Partners which elect to pay and continue to pay, an equal share in the costs of filing and maintaining such applications and resulting rights ;
 - (c) Each Partner, which is joint owner of such rights, shall be entitled to grant non-exclusive licences to the full extent of the rights, but only for as long as that Party remains a joint owner, by virtue of continuing to pay its share of the costs.
- 9.5.3 The Industrial Contractors hereby agree to pay a remuneration or royalties to Academic/Non-Profit Contractors owning Pre Existing Know How or Knowledge, where Academic/Non-Profit Contractors are neither in a position nor want to exploit their Knowledge and or Pre Existing Know How, in case of commercial exploitation of such Knowledge and or Pre Existing Know How by such Industrial Contractors upon request of the Academic/Non-Profit Contractor. Such financial compensations shall be subsequently specified in licence agreements between the Industrial Contractors and the Academic/Non profit Contractors on a case-by-case basis.

Article 10 Publications and press releases

The intended publications that could affect the knowledge of other Partners relating to their business or affairs, shall be delivered for review by the other Partners. The contents of the intended publications shall be considered as accepted by the other Partners, if no other Partner has objected in thirty (30) days after the receipt.

The procedures for press releases shall be agreed between the Partners.

However, the provisions of the present article should not represent an obstacle:

- either to the obligation incumbent upon researchers or teacher-researchers of the Academic Contractors, to establish a periodical activity report, or in the case of highly confidential information, a confidential report to their respective academic authorities, as this communication does not constitute a disclosure in the legal sense of the word according to industrial property laws,
- or to the presentation of a student's thesis to enable the possible application(s) for industrial property protection to be applied before the thesis is published. The thesis defence being organised nonetheless in a manner that guarantees the confidentiality of those results of the study for which the contractors desire confidentiality, but in accordance with applicable university regulations.

Without prejudice to any obligation of confidentiality in respect of another Partner, information, publications and oppositions pursuant to the Contract shall accord with the following.

- (i) When the Contractors have agreed a Project Deliverable is to be available to the public, as specified in Annex I, any Party may publish information from that Project Deliverable by including the appropriated references to the Deliverable and the authors.
- (ii) In respect of other publications, a copy of the planned publication shall be supplied together with the prior warning required by the Contract. Any opposition to the planned publication shall be made in accordance with the Contract in writing to the Project Coordinator and to any Partner concerned. If no such opposition is made within the time limit set in the Contract, the publication is permitted.

When there is an opposition, the involved Partners shall discuss how to overcome the justified grounds of the opposition (for example by amendment to the planned publication) and the opposing Partner shall not unreasonably continue the opposition if appropriate actions are performed following the discussion.

The justified grounds of opposition are:

- (a) for business reasons concerning the inclusion of the opposing Partners Knowledge or Pre-Existing Know-How.
- (b) for protection reasons concerning Knowledge or Pre-Existing Know-How and the publication of the material identified in opposition would adversely affect such protection.

In the case of (b) above,

- (i) the Partners concerned shall cooperate to achieve such protection in respect of Knowledge or Pre Existing Know How and to overcome such barrier to publication.
- (ii) provided it does not significantly adversely affect the timing or content of the publication, the publishing Partner shall delay for an agreed period and/or modify the publication to enable the protecting Partner to take prompt action to avoid the proposed publication prejudicing the eventual grant of such protection in respect of Pre-Existing Know-How; and
- (iii) the opposing Partner shall use all reasonable endeavours to overcome such barrier to publication as quickly as possible. The publishing Partner shall postpone the publication of such material until such barrier has been overcome. However, the maximum time of postponement shall be three (3) months from the date of the

opposition unless (exceptionally) the Partners involved agree (or are required by law or enforceable regulation) to extend the postponement.

Where a person carrying out work on the Project on behalf of a Partner (the "Relevant Partner") needs to include Pre-Existing Know-How or Knowledge of another Partner in a publication for a qualification for a degree, the above procedures shall be followed save that the planned date of publication shall be deemed to be the date three months before the last date on which (pursuant to the qualification procedures) the contents of the planned publication can be altered.

However, except as stated below, no such publication will be made under the above procedure

- (i) without a majority agreement of the Partners and
- (ii) if a Party who would be adversely affected by the publication has vetoed such publication.

Notwithstanding the foregoing, such a publication can be made if the Relevant Partner has as soon as reasonably possible (preferably before submission of the Project proposal to the Commission, but in any case prior to entering the Contract or the Consortium Agreement (whichever is the later)) notified in writing the other Partners of the intention to make such a publication.

Article 11 Precedence

The Contract will take precedence over this Agreement and the Proposal

Article 12 No partnership or agency

Nothing in this Agreement shall be deemed to create a partnership, agency, joint venture, or business cooperation between the Partners or any of them, save that for the purposes of this Agreement and the Contract the Project Co-ordinators is entitled to act for the other Partners in accordance with the terms of the Contract and of Article 3.

Article 13 Assignment

No Partner shall, without the prior written consent of the other Partners, assign or otherwise transfer partially or totally any of its rights and obligations under this Agreement. Such consent will not be unreasonably withheld.

This provision shall not apply when such assignment or transfer is in favour of an affiliate of the Partner making the assignment or transfer.

Article 14 Force Majeure

14.1 The Partner shall not be liable for his failure to perform in accordance with the contractual requirements if and to the extent that performance of the Contract is shown to be delayed by reason of circumstances beyond the control of the Partner and which could not have been reasonably foreseen at the time of entering the Contract. The time for performance shall be extended as is reasonable having regard to those circumstances.

14.2 The Partner shall take all reasonable steps necessary to avoid a delay arising in those circumstances and to minimise the effects of any delay during those circumstances

14.3 The Partner shall notify the Project Co-ordinator as soon as practicable on becoming aware of the pendency or actual occurrence of a relevant circumstance, of its likely effect, how long it is estimated to last, on cessation of the circumstance(s) giving rise to the delay and the effects of the delay.

Article 15 Termination

- 15.1 No Partner shall be entitled to withdraw from or to terminate this Agreement and/or its participation in the Project unless :
- (a) that Partner has obtained the prior written consent, such consent not to be unreasonably withheld, of the other Partners and of the Commission to the withdrawal from or termination of the Contract, or
 - (b) that Partners participation in the Contract is terminated by the Commission pursuant to the provisions of Article II.15.5 of Annex II of the Contract, or
 - (c) The Contract is terminated by the Commission for any reason whatsoever, provided always that a Partner shall not by withdrawal or termination be relieved from:
 - (i) any of its obligations under this Agreement which are meant to survive such event ;
 - (ii) its responsibilities under this Agreement or the Contract in respect of that part of that Partners work on the Project which has been carried out (or which should have been carried out up to the date of withdrawal or termination), or
 - (iii) from any of its obligations or liabilities arising out of such withdrawal or termination.
- 15.2 In the event that any Partners participation in the Contract is terminated by the Commission pursuant to the provisions of Article II.15 of the Contract Annex II, then without prejudice to any other rights of the other Partners the provisions of Article 8.6 (a) and (b) shall apply correspondingly.
- 15.3 In the event that any Partner enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors the other Partners shall, subject to approval by the Commission, be entitled to take over the fulfilment of such Partners obligations and to receive subsequent payments under the Contract in respect thereof. In such event, all rights and obligations under the Contract and this Agreement shall in good faith be re-distributed among the remaining Parties on the basis of the work performed by the affected Partner prior to the occurrence of the above circumstances.
- 15.4 The provisions of Article 8 shall survive the expiration or termination of this Agreement (whether under Article 8.6 or otherwise) to the extent necessary to enable the Partners to pursue the remedies provided for in that Article.
- 15.5 The provisions of Articles 7 and 9 shall survive the termination or expiration of this Agreement.
- 15.6 Termination of the Agreement and/or cessation of licences granted to the defaulting Partner in accordance with Article 8.6 shall not terminate any sublicenses granted or agreed to be granted or offered by the defaulting Partner in accordance with Article 9.1.2 prior the date on which such termination of the Agreement and/or cessation of licences becomes effective, provided that the Partner which generated the software

results so sublicensed shall have the right to assignment of the defaulting Partners rights under such sublicenses.

Article 16 Conflict Resolution

- 16.1 Decisions concerning the normal running of the project will be taken by the Project Committee.
- 16.2 In case of dispute or difference between the Partners arising out of or in connection with this Agreement, the Partners shall first endeavour to settle it amicably. The key decision process and method for the resolution of disputes is covered: In the event of conflicts, the Project Manager (PM) will initiate a negotiation phase to settle the dispute. The PC will define the time schedule of this phase with a maximum duration of the negotiation of 20 days. If this fails and no solution is found, the PC will vote on the matter considering the simple majority of the votes given. If the result is tie, PM will have the casting vote.
- 16.3 All disputes or differences arising in connection with this Agreement which cannot be settled as provided for in the preceding clause shall be finally settled by arbitration in Brussels under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), by one or more arbitrators to be appointed under the terms of those Rules. All arbitration shall be in the English Language.
- 16.4 The award of the arbitrator(s) will be final and binding upon the Partners and may be enforced in the courts of any jurisdiction, insofar as not otherwise permitted by treaty or convention, by suit on the order or award or in any other manner provided by law
- 16.5 The Partners agree between themselves (and shall procure that the arbitration tribunal shall be obliged) to keep the award confidential
- 16.6 In addition each Partner acknowledges and agrees that damages would not be an adequate remedy for any breach of this Agreement and accordingly each Partner shall be entitled to seek in any court of competent jurisdiction without proof of special damage to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Agreement.

Article 17 Language

This Agreement is drawn up in English which language shall govern all documents, notices and meetings for its application and/or extension or any other way relative thereto.

Article 18 Applicable law

This Agreement shall be construed according to and governed by Belgian Law.

Article 19 Notices

Any notice to be given under this Agreement shall be sent by telefax and confirmed by mail to the following addresses:

(1) Asociación de Investigación y Cooperación Industrial de Andalucía - AICIA	Address: Camino de los Descubrimientos, s/n 41092 Sevilla SPAIN Fax: +34 95 448 7340 E-mail: aollero@cartuja.us.es
(2) Technische Universitaet Berlin - TUB	Address: Strasse des 17 Juni 135 10623 Berlin GERMANY Fax: +49 30 31421116 E-mail: hommel@cs.tu-berlin.de
(3) Flying-Cam S.A.-FC	Address: Rue du Passage d'Eau, 1A 4681 Oupeye BELGIUM Fax: E-mail: mlacivita@flying-cam.com
(4) Universiteit Twente-UT	Address: Drienerlolaan 5 PO Box 217 7522 NB Enschede NETHERLANDS Fax: +31 53 489 4590 E-mail: p.j.m.havinga@utwente.nl
(5) Universität Stuttgart - USTUTT	Address: Keplerstraße 7 70174 Stuttgart GERMANY Fax: +49 711 7816424 E-mail: marron@informatik.uni-stuttgart.de
(6) SELEX Sensors and Airborne Systems Limited	Address: Christopher Martin Road SS14 3EL Basildon United Kingdom Fax: +44 1268 885232 E-mail: michael.black@selex-sas.com
(7) ITURRI, S.A.	Address: Roberto Osborne 5 41007 Sevilla SPAIN Fax: +34 954 258479 E-mail: rgil@iturri.com

Article 20 Entire Agreement

This Agreement and the Contract and the Proposal constitute the entire agreement between the Parties in respect of the Project, and supersede all previous negotiations, commitments and writings concerning the Project.

Amendments or changes to this Agreement and the Proposal shall be valid only if made in writing and signed by an authorised signatory of each of the Parties.

As witness the Parties have caused this Agreement to be duly signed by the undersigned authorised representatives the day and year above written.

(1) Authorised to sign for and on behalf of **AICIA**

Signature

Name : Antonio Torralba

Title: General Manager

(2) Authorised to sign for and on behalf of **TUB**

Signature

Name:

Title: Dr.-Ing.

(3) Authorised to sign for and on behalf of **FC**

Signature

Name:

Title: Dr.

(4) Authorised to sign for and on behalf of **UT**

Signature

Name:

Title: Dr. In

(5) Authorised to sign for and on behalf of **USTUTT**

Signature

Name:

Title: Dr.

(6) Authorised to sign for and on behalf of **SELEX**

Signature

Name:

Title: Mr.

(7) Authorised to sign for and on behalf of **ITURRI**

Signature

Name:

Title: Mr.

APPENDIX A - PROJECT SHARES

Total project cost of all Parties

<i>Party's name</i>	<i>Global cost (Euros)</i>	<i>Funding (Euros)</i>
(1) AICIA	821.725,20	482.996,00
(2) TUB	542.756,00	542.756,00
(3) FC	530.903,00	266.952,00
(4) UT	590.501,00	296.750,00
(5) USTTUT	442.530,00	442.530,00
(6) SELEX	299.638,00	150.819,00
(7) ITURRI	232.394,00	117.197,00
<i>TOTAL</i>	3.460.447,20	2.300.000,00