

## **SIBO PROGRAM FRAMEWORK AGREEMENT**

This SIM-SIBO Program Framework Agreement (the “**Agreement**”) is entered into on **[DATE]** (the “**Effective Date**”) by and between the following parties:

**STRATEGISCH INITIATIEF MATERIALEN VZW**, having its offices at Technologiepark-Zwijnaarde 48, 9052 Gent, registered under company number 0872.622.292, duly represented by Mr. Guido Verhoeven, director (“SIM” or the “Coordinator”); and

**PARTY 2**, having its offices at **[address]**, registered under company number **[number]**, duly represented by **[name + title]** (“**[Party 2]**”); and

**PARTY 3**, having its offices at **[address]**, registered under company number **[number]**, duly represented by **[name + title]** (“**[Party 3]**”); and

**PARTY 4**, having its offices at **[address]**, registered under company number **[number]**, duly represented by **[name + title]** (“**[Party 4]**”); and

**PARTY 5**, having its offices at **[address]**, registered under company number **[number]**, duly represented by **[name + title]** (“**[Party 5]**”).

### **RECITALS**

**WHEREAS**, the Partners (as defined below) have submitted a proposal for a program to SIM as part of its program funding, entitled “**[name of the program]**”;

**WHEREAS**, the program proposal was approved by SIM (the approved program hereinafter the “**Program**”);

**WHEREAS**, project proposals within the Program may be approved by SIM and *Fonds Voor Innoveren En Ondernemen* (“**FIO**”) from time to time in the future;

**WHEREAS**, for each Project (as defined below) where Research Institutions are receiving funding from FIO, they will enter into a Project-specific agreement with FIO (the “**FIO Agreement**”) containing the details of funding through SIM reserved budgets;

**WHEREAS**, for each ICON and O&O Project the Project Companies will also enter into a FIO Agreement which will contain the details of funding of the Project Companies through FIO budgets;

**WHEREAS**, this Agreement sets forth the specific terms and conditions on which SIM shall coordinate, monitor and evaluate the Program and the approved Projects as well as the commitments among and between SIM and the Partners to perform the Program and the approved Projects;

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

### **ARTICLE 1 DEFINITIONS**

As used in this Agreement, the following capitalized terms shall have the meanings set forth in this

article:

- 1.1 “Access Right”: means a non-exclusive, non-sublicensable licence to use Foreground or Background (as the case may be). An Access Right to Software does not include any right to receive source code, object code ported to a certain hardware platform or Software documentation in any particular form or detail, but only as available from the Partner granting the Access Right.
- 1.2 “Affiliate”: means any legal entity that is under the direct or indirect control of a Partner, or under the same direct or indirect control as a Partner, or that is directly or indirectly controlling a Partner. ‘Control’ means (a) the direct or indirect holding of more than fifty percent (50%) of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity; or (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.
- 1.3 “Background”: means information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions), know-how, software and material which is not generally known to the public and which is held by a Partner prior to the start of a Project, as well as copyrights, patent rights or other intellectual property rights pertaining to the foregoing, the application for which has been filed before the start of the Project, and which is needed by another Partner for carrying out its tasks in a Project or for Exploitation of its own Foreground.
- 1.4 “Defaulting Party”: means a Partner which the Program Steering Committee has identified to be in breach of this Agreement as specified in Article 3.5.5.
- 1.5 “Exercise Term”: means (a) in respect of Background, the period of time starting on the date of first contribution to a Project of the Background which is the subject of the request for Access Rights and ending eighteen (18) months after the end of all Projects to which the Background was contributed; and (b) in respect of Foreground, the period of time starting on the generation of the Foreground which is the subject of the request for Access Rights and ending eighteen (18) months after the end of the Project in which the Foreground was generated.
- 1.6 “Exploitation”: means utilisation in further research activities other than those covered by the Program (including contract research), or for developing, creating and marketing a product or process, or for creating and providing a service. For the avoidance of doubt, Exploitation does not include the granting of licenses.
- 1.7 “Financial Contribution”: means the financial contribution of FIO to the Projects within the Program.
- 1.8 “Foreground”: means the results, including information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions), know-how, software and material, whether or not they can be protected, which are generated under a Project. Such results include rights related to copyright, design rights, patent rights, plant variety rights, or similar forms of intellectual property rights.
- 1.9 “Market Price”: means a compensation equivalent to the market price.

- 1.10 "Partner": means a party to this Agreement other than SIM.
- 1.11 "Program Bodies": shall have the meaning ascribed to such term in article 3.1.
- 1.12 "Program Company": means an entity other than a research institution that is a Partner to this Agreement.
- 1.13 "Program Manager": shall have the meaning ascribed to such term in article 3.1.
- 1.14 "Program Participation Fee" : shall have the meaning ascribed to such term in article 4.5.
- 1.15 "Project": means a SIM-SBO Project, a SIM-ICON Project or a SIM-O&O Project within the Program, as the case may be.
- 1.16 "Project Agreement": means a Project specific agreement entered into between the Partners to a particular Project.
- 1.17 "Project Budget": means the SIM and FIO approved allocation of all the resources in cash or in kind for the activities within a particular Project.
- 1.18 "Project Company": means a company involved in a specific SIM-ICON Project or SIM-O&O Project, as the case may be.
- 1.19 "Project Leader": means the Partner that has been appointed project leader for a specific Project.
- 1.20 "Project Manager": means the individual appointed by the Project Leader as responsible for the day-by-day fulfilment of the tasks of the Project Leader.
- 1.21 "Project Party": means a Partner that has signed a Project Agreement.
- 1.22 "Project Plan": means the description of the work and the related agreed Project Budget, as defined in the applicable FIO Agreement.
- 1.23 "Project Research Institution": means a research institution that has signed a Project Agreement.
- 1.24 "Software": means a computer program as referred to in article XI.294-295 of the Code of Economic Law (Codex Economisch Recht).

## **ARTICLE 2      SUBJECT**

- 2.1 **Performance of the Program.** Each Partner will use its reasonable endeavours to carry out the Program and the Projects to which it participates in a timely and efficient manner. It shall perform the tasks allotted to it in Project Plans and provide the human resources, materials, facilities and equipment that are designated as its responsibility in these Project Plans. Each party shall further comply with its obligations under this Agreement, the FIO Agreements and the Project Agreements to which it is a party, and nothing in this Agreement shall be understood as a limitation of any of a Partner's obligations under the FIO Agreements. Each Partner shall further (i) actively take part in meetings of the Program Bodies and the Project Steering Committees of the Projects to which it participates, (ii) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this Agreement, the FIO Agreements and the Project Agreements to which it is a party and inform SIM of any unavoidable obligations which may arise which may have implications for any of its obligations thereunder, (iii) obtain all authorisations, licences, certifications, permits, inspections, consents and approvals needed to

carry out its tasks under the Projects, (iv) ensure that it complies with the provisions of the state aid framework as laid down in the Community Framework for State Aid for Research and Development and Innovation (2014/C 198/01) (as may be amended or replaced in the future, “**State Aid Framework for R&D&I**”), and (v) provide SIM directly with all information requested for the purposes of the proper administration of the Program and for controls and audits and ensure that the rights to carry out audits set forth herein are extended to any subcontractors.

- 2.2 **No warranty regarding outcome of scientific research.** Although each of the Partners will use reasonable endeavours to carry out the Program and the Projects to which it participates in accordance with the respective Project Plans, no Partner undertakes that any research will lead to any particular result, nor does it guarantee a successful outcome to the Program and/or the Projects.
- 2.3 **Information and materials.** Each Partner undertakes to notify promptly, in accordance with the governance structure of the Program, any significant information, fact, problem or delay likely to affect the Program or a particular Project. Each Partner shall promptly provide all information reasonably required by a Program Body or by the Coordinator to carry out its tasks. Subject to article 10.1, each Partner shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Partners.
- 2.4 **Project Agreements.** For each specific Project, the Partners involved shall enter into a Project Agreement within four (4) months from approval of the Project by SIM and FIO. The provisions with regard to Background, Foreground and Access Rights set forth herein (articles 6.4.a) and 7.4 shall only apply to SIM-SBO Projects and the articles 6.4.b) and 7.5 shall only apply to SIM-ICON Projects), shall be integrated into these Project Agreements by simple reference. Unless to the extent expressly allowed otherwise in these articles, the Project Agreements shall not contain any provisions relating to Foreground, Background or Access Rights that deviate from the provisions contained herein. In case of conflict between this Agreement and a Project Agreement, this Agreement shall prevail.
- 2.5 **Involvement of third parties.** The Project Plan shall indicate where subcontractors are used in each Project. Any subcontracting shall comply with the laws on public procurement, if applicable. A Partner that subcontracts part of its work under a Project to a third party (including but not limited to Affiliates) remains solely responsible for the carrying out of these tasks and for such third party’s compliance with the applicable provisions of the Project Agreement, the FIO Agreement and this Agreement. It will ensure that the involvement of a third party does not affect the rights of the other parties under the Project Agreement, the FIO Agreement or this Agreement.

## **ARTICLE 3 GOVERNANCE STRUCTURE**

### 3.1 General structure

The organisational structure of the Program shall comprise the following bodies (the “**Program Bodies**”):

- (a) Program Steering Committee: the ultimate decision-making body
- (b) Program Management Committee: the supervisory body for the execution of the Projects within the Program
- (c) IP Board: the body responsible for the follow-up of the intellectual property used or generated in the Program

The Program Manager is the individual appointed by the Coordinator as responsible for the day-by-day fulfillment of the tasks of the Coordinator.

3.2 General operational procedures for all Program Bodies

3.2.1 **Representation in meetings.** Any member of a Program Body (a "Member"):

- (a) may be present or represented at any meeting of such Program Body
- (b) may appoint a substitute or a proxy to attend and vote at any meeting

3.2.2 **Convening meetings.** SIM shall convene meetings of that Program Body.

	Ordinary meeting	Extraordinary meeting
Program Steering Committee	At least twice a year	At any time upon written request of the Program Management Committee or 1/3 of the Members of the Program Steering Committee or IP Board
Program Management Committee	At least quarterly	At any time upon written request of 1/3 of the Members of the Program Management Committee
IP Board	At least twice a year	At any time upon written request of the Program Manager or of 1/3 of the Members of the IP Board

3.2.3 **Notice of a meeting.** SIM shall give notice in writing of a meeting to each Member of that Program Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated below.

	Ordinary meeting	Extraordinary meeting
Program Steering Committee	45 calendar days	15 calendar days
Program Management Committee	14 calendar days	7 calendar days
IP Board	21 calendar days	7 calendar days

3.2.4 **Agenda.** SIM shall prepare and send each Member of that Program Body a written agenda no later than the minimum number of days preceding the meeting as indicated below.

Program Steering Committee	21 calendar days (10 calendar days for an extraordinary meeting)
Program Management Committee	7 calendar days
IP Board	7 calendar days

3.2.5 **Adding agenda items.** Any agenda item requiring a decision by the Members of a Program Body must be identified as such on the agenda. Any Member of a Program Body may add an item to the original agenda by written notification to all of the other Members of that Program Body up to the minimum number of days preceding the meeting as indicated below.

Program Steering Committee	14 calendar days (7 calendar days for an extraordinary meeting)
Program Management Committee	2 working days
IP Board	5 working days

During a meeting the Members of a Program Body present or represented can unanimously agree to add a new item to the original agenda.

3.2.6 **Written decision-making.** Any Member may participate in meetings by teleconference, video-conference or any other technology that enables everyone participating in the meeting to communicate interactively and simultaneously with each other. Any decision may be taken without a meeting if SIM circulates to all Members of the Program Body a written document which is then signed by the majority required for the decisions taken therein.

3.2.7 **Binding nature.** Decisions of the Program Bodies will only become binding once the relevant part of the minutes has been accepted according to article 3.4.1.

### 3.3 Quorum for all Program Bodies

Each Program Body shall deliberate and decide validly if two-thirds (2/3) of its Members are present or represented. SIM will not count for the quorum.

### 3.4 Minutes of meetings of all Program Bodies

3.4.1 SIM shall produce written minutes of each meeting which shall be the formal record of all decisions taken. SIM shall send the draft minutes to all Members within ten (10) calendar days of the meeting. The minutes shall be considered as accepted if, within fourteen (14) calendar days from sending, no Member has objected in writing to SIM with respect to the accuracy of the draft of the minutes.

3.4.2 SIM shall send the accepted minutes to all the Members of the Program Body.

### 3.5 Specific operational procedures for the Program Steering Committee

In addition to the rules described in article 3.2 through 3.4, the following rules apply:

3.5.1 **Members.** The Program Steering Committee shall consist of at least one representative of each party (a "Program Steering Committee Member"), it being understood that a party may not delegate more representatives than the greatest number of research groups of a research institution involved in the Program. Each Program Steering Committee Member or its substitute or proxy appointed in accordance with article 3.2.1 (b) shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in article 3.5.5.

3.5.2 **Chair.** The Program Manager shall chair all meetings of the Program Steering Committee.

3.5.3 **Voting Power.** Each Partner shall have one vote at the meeting of the Program Steering Committee. This vote may be split up by a Partner among its representatives present at the meeting.

3.5.4 **Majorities.** Decisions shall be taken by a majority of two-thirds (2/3) of the votes.

3.5.5 **Decisions.** The Program Steering Committee shall undertake, and decide on, the following matters:

*Content, finances and intellectual property rights*

- (a) proposals to SIM for changes to Annex I - "Program Description"
- (b) proposals to SIM for changes to the Projects
- (c) proposals for new projects to be submitted exclusively by the Partners to SIM in response to a SIM call for projects within the Program
- (d) deciding on major changes in work under the Projects (e.g., termination, creation, or reallocation of top level work packages)
- (e) withdrawals from the Exhibits 2 to the Project Agreements ("Background included")
- (f) additions to Attachment 3 - "Third Parties"
- (g) approving procedures and policies for use and dissemination of the Foreground (including press releases and publications)
- (h) approval of exclusive and sole licenses to Background or Foreground to which Partners have the right to request Access Rights

*Evolution of the Program*

- (i) entry of a new party to the Program and approval of settlement on reasonable conditions of accession
- (j) providing advise at the request of SIM on new projects submitted (or to be submitted) to SIM by third parties (whether or not in combination with Partners) in response to a SIM call for projects within the Program
- (k) additions of or changes to subcontractors
- (l) withdrawal of a Partner from the Program and approval of settlement on conditions of withdrawal
- (m) declaration of a Partner to be a Defaulting Party, remedies to be performed by a Defaulting Party and proposal to SIM for termination of a Defaulting Party's participation in the Program and measures relating thereto
- (n) escalation of a matter to SIM if a Partner deems that its legitimate interests are seriously affected by a decision of a Program Body and no amicable resolution has been found at the level of the Program Steering Committee
- (o) proposal to SIM for suspension of all or part of the Program or a Project
- (p) proposal to SIM for termination of the Program or a Project

All proposals made by the Program Management Committee and the IP Board shall also be considered and decided upon by the Program Steering Committee.

3.6 Specific operational procedures for the Program Management Committee

In addition to the rules described in article 3.2 through 3.4, the following rules apply:

3.6.1 **Members.** The Program Management Committee shall consist of the Program Manager and all of the Project Managers (the "Program Management Committee Members").

3.6.2 **Chair.** The Program Manager shall chair all meetings of the Program Management Committee.

3.6.3 **Voting Power.** Except for SIM which will have no voting power, each Program Management Committee Member present or represented in the meeting shall have one vote.

3.6.4 **Majorities.** Decisions shall be taken by a majority of two-thirds (2/3) of the votes.

3.6.5 **Tasks.** The Program Management Committee shall

- (a) monitor the effective and efficient implementation of all Projects
- (b) collect information at least every six (6) months on the progress of all Projects, examine that information to assess the compliance of each Project with its Project Plan and, if necessary, propose modifications of the Project Plan (including the Project Budget) to the Program Steering Committee
- (c) prepare the content and timing of press releases and joint publications
- (d) prepare the meetings, propose decisions and prepare the agenda of the Program Steering Committee
- (e) make proposals to the Program Steering Committee to suspend or terminate all or part of the Projects or the Agreement, or to terminate the participation of one or more Partners
- (f) analyse and document, at the request of the Program Steering Committee or at its own initiative, a presumed breach of responsibilities of a Partner under a Project and prepare a proposal of remedies to the Program Steering Committee
- (g) advise the Program Steering Committee on ways to rearrange tasks and budgets of a Partner in the case of abolished tasks as a result of a decision of the Program Steering Committee
- (h) make proposals to the Program Steering Committee for the admission of new parties to this Agreement, a FIO Agreement and a Project Agreement in order for said new parties to participate to a Project
- (i) properly execute and implement the decisions of the Program Steering Committee
- (j) approve changes of Project Leaders and Project Managers

3.7 Specific operational procedures for the IP Board

In addition to the rules described in article 3.2 through 3.4, the following rules apply:

3.7.1 **Members.** Each party shall delegate one representative with voting power to the IP Board (the "IP Board Members"). Each IP Board Member may be assisted at the meetings by an expert in the field of matters to be discussed by the IP Board at a particular meeting.

3.7.2 **Chair.** The Program Manager shall chair all meetings of the IP Board.

3.7.3 **Voting Power.** Except for SIM which will have no voting power, each IP Board Member with voting power present or represented in the meeting shall have one vote.

3.7.4 **Majorities.** Decisions shall be taken by a majority of two-thirds (2/3) of the votes.

3.7.5 **Tasks.** The IP Board shall

- (a) keep a register of Foreground generated within each Project in the Program
- (b) keep a register of patents filed on Foreground
- (c) keep a register of all Background set forth in the Exhibits 2 of all Project Agreements
- (d) register all requests for licenses to Background (except for third party requests for non-exclusive licenses to Background) and Foreground
- (e) register all granted licenses to Background (except from non-exclusive licenses to Background granted to third parties) and Foreground
- (f) make proposals to the Program Steering Committee on the approval or rejection of the granting of exclusive and sole licenses to Background or Foreground to which Partners have the right to request Access Rights

- (g) approval of publications or public disclosure of Foreground
- (h) provide guidance on information that may be disclosed during User Committee meetings
- (i) provide guidance to the Program Steering Committee on intellectual property issues

### 3.8 The Coordinator

#### 3.8.1 **Tasks.** The Coordinator shall

- (a) provide direction and leadership to the Program Bodies
- (b) establish communication with and between all parties
- (c) establish a User Committee on the Program level and organise a meeting of the User Committee for each running SIM-SBO Project at least every year and for a first time one year after the commencement of the first SIM-SBO Project within the Program
- (d) transmit documents and information connected with the Projects to and between Project Leaders, as appropriate, and any other Partners concerned
- (e) keep the address list of Members and other contact persons updated and available

#### 3.8.2 **Authority.** The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other party.

## **ARTICLE 4 FINANCIAL PROVISIONS, CONTROLS AND AUDITS**

4.1 **Maximum contribution.** The Financial Contribution of FIO to the Partners for each Project in the Program shall be as set forth in the FIO Agreement. The Partners shall use the Financial Contribution exclusively for the performance of their tasks under the Projects within the Program. All payments shall be made by FIO directly into the accounts of the Partners. The Partners will have no claims whatsoever against SIM with respect to funding of the Program or the Projects.

4.2 **Controls.** SIM may take all initiatives it deems suited to control and monitor the performance of the Program and the Projects, including by visiting the facilities of the Partners where the Program and the Projects are performed.

4.3 **Audits.** Up to seven (7) years after approval by SIM of the final financial reporting on each Project, a certified external auditor of SIM's choice may perform financial audits on the proper execution of the Projects hereunder. SIM or the auditor shall give at least fourteen (14) days written notice in advance to the Partner concerned. The Partner shall ensure that the external auditor is provided direct access to its facilities and that detailed and complete information is made available promptly upon the first request of the external auditor in order to ensure an efficient performance of the audit. The audit shall take place during the Partner's normal working hours and the auditor will keep confidential any information that it may acquire in the fulfillment of its tasks. On the basis of the conclusions of the audit, SIM shall take all appropriate measures which it considers necessary.

4.4 **Retention of documents.** The Partners shall keep the originals of all (written or digital) documents relating to this Agreement for up to seven (7) years from approval by SIM of the final financial reporting on each particular Project.

4.5 Each Program Company will pay a yearly fee to SIM to participate in the Program ("**Program Participation Fee**"). The amount of the Program Participation Fee is determined on a yearly basis by the general assembly of members of SIM, is payable for each SIM program separately and depends on the qualification of the Program Company as a small or medium sized company or a large company, as defined in the Commission Recommendation of 6 May 2003 concerning the

definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422) (OJ L 124, 20.5.2003, pp. 36–41). The general assembly of members of SIM may grant a rebate on the Program Participation Fee to Program Companies that are a member of SIM.

- 4.6 The yearly contribution will be invoiced by SIM for a first time on the date the Program is approved by SIM and thereafter at each anniversary of such date and will be payable within thirty (30) days from the invoice date.
- 4.7 A company that has become a new Program Company to the Program through the signature of the accession document pursuant to article 11.2 for the purpose of participating to a new Project within the Program will be under the obligation to pay the Program Participation Fee as from the date of submission of the proposal of the Project for approval to SIM and FIO (but conditional on such approval).
- 4.8 If a Program Company has not paid its yearly contribution when due, it will be summoned to pay the amount outstanding. Failure to pay within the term set in the summons may result in the termination of its participation in the Program and this Agreement by SIM.

## **ARTICLE 5 REPORTING**

- 5.1 **Project Reports.** The Project Leader of each Project shall submit a report to SIM pertaining to its specific Project no later than three (3) days before the deadlines set forth in the FIO Agreement or as otherwise requested by FIO or SIM. The layout and content of the reports shall conform to all requirements imposed by FIO.
- 5.2 **Approval and Rejection of Reports.** Within sixty (60) days from receipt of a report, SIM may:
  - (a) approve a report, in whole or in part or make the approval subject to certain conditions;
  - (b) reject a report by giving an appropriate justification and, if appropriate, start the procedure for termination of this Agreement or a Project in whole or in part; and
  - (c) suspend the time limit if one or more reports have not been supplied, or are not complete or if some clarification or additional information is needed or additional checks are being conducted. The suspension will be lifted from the date when the last report or the additional information requested is received by SIM. SIM shall inform the Project Leader concerned of any such suspension and the conditions to be met for the lifting of the suspension.

The absence of a response from SIM within this time-limit shall not imply its approval. Approval of the reports by SIM shall not imply approval by FIO.

- 5.3 **Sharing of reports with FIO.** SIM shall have the right to share any reports provided under this article with FIO.

## **ARTICLE 6 FOREGROUND**

- 6.1 **Ownership.** Foreground shall be the property of the Project Party carrying out the Project work generating that Foreground. Where any third party such as a student or subcontractor is involved in a Project, the Partner engaging that third party will ensure that said third party assigns any rights it may have in the Foreground to the Partner concerned in order to be able to give effect to the provisions of this Agreement.
- 6.2 **Protection of Foreground.** Each Partner may take such steps as it may decide from time to time to register and maintain any protection for its Foreground, including filing and prosecuting patent

applications. It shall provide at the latest at the day of filing written notice to the IP Board of the fact a filing has been made. Within one (1) month after filing, the Partner shall provide the IP Board sufficient details to enable it to trace the patent (application) after its publication. This obligation shall survive termination of the Program for twelve (12) months.

6.3 **Joint ownership.** Where several Project Partners have jointly carried out work generating Foreground and where it is impossible to distinguish each Partner's intellectual contribution to the creation of the Foreground, they shall have joint ownership of such Foreground.

6.4 **Non-patented joint Foreground.**

a) Specific provisions for SIM-SBO Projects

The joint owners of Foreground shall establish an agreement regarding the allocation and terms of exercising that joint ownership. However, where no joint ownership agreement has yet been concluded, each joint owner shall have the right to

- (a) use the Foreground for educational, research and Exploitation purposes, without being required to account to any other joint owner
- (b) grant Partners Access Rights for the performance of a Project in accordance with article 7.4.1
- (c) grant Partners Access Rights for Exploitation in accordance with article 7.4.2, subject to the following conditions: (i) at least forty-five (45) days prior notice must be given to the other joint owner(s), and (ii) fair and reasonable compensation must be provided to the other joint owner(s)
- (d) grant licenses to third parties for the performance of research and Exploitation, subject, however, to the conditions contained in (c) above and the procedures laid down in article 6.7 and 6.8 below

b) Specific provisions for SIM-ICON Projects

The joint owners of Foreground shall establish an agreement regarding the allocation and terms of exercising that joint ownership. However, where no joint ownership agreement has yet been concluded, each joint owner shall have the right to

- (a) use the Foreground for educational, research and Exploitation purposes, without being required to account to any other joint owner. However, if joint Foreground is owned by a Project Company and a Project Research Institution and as part of the adequate reflection of the work packages, contributions and respective interests of the Partners in their respective ownership and access rights (as meant by section 28(c) of the State Aid Framework for R&D&I), the Project Research Institution shall up until twelve (12) months after termination of the Project not use such Foreground in research on behalf of undertakings (as described in section 25 of the State Aid Framework for R&D&I ) aiming at the development of products or services that are directly competitive to those which the Project Company intends to develop as described in the Project Plan of the Project where such Foreground was generated
- (b) grant Partners Access Rights for the performance of a Project in accordance with article 7.5.1

- (c) grant Partners Access Rights for Exploitation in accordance with article 7.5.3 and 7.5.4, subject to the following conditions: (i) at least forty-five (45) days prior notice must be given to the other joint owner(s), and (ii) fair and reasonable compensation must be provided to the other joint owner(s) in as far as the aforesaid provisions do not require Access Rights to be granted at no cost
  - (d) grant licenses to third parties for the performance of research and Exploitation, subject, however, to the conditions contained in (c) above and the procedures laid down in article 6.7 and 6.8 below
- c) Specific provisions for SIM-O&O Projects

Joint ownership rights shall be discussed on a case-by-case basis by the Partners involved in a SIM-O&O Project and laid down in the SIM-O&O Project Agreement.

**6.5 Protection of patentable joint Foreground.** The owners of joint Foreground may take such steps as they may decide from time to time to register and maintain any protection for the joint Foreground, including filing and prosecuting patent applications. They shall provide at the latest at the day of filing written notice to the IP Board of the fact a filing has been made. Within one (1) month after filing, these Partners shall provide the IP Board sufficient details to enable it to trace the patent (application) after its publication. This obligation shall survive termination of the Program for twelve (12) months.

The joint owners shall establish an agreement regarding the financing of the patent application, the responsibilities for patent prosecution, the exploitation of the patent rights and the distribution of revenues obtained. However, where no such joint IP agreement has yet been concluded, the following rules shall apply:

- (a) all decisions regarding the filing, prosecution and maintenance of patent rights shall be made by mutual agreement between the joint owners
- (b) the joint owners shall appoint one of them as responsible for patent management
- (c) the other joint owners undertake to provide their assistance and to fulfil all formalities which are necessary to file, prosecute and maintain the patent rights;
- (d) the out-of-pocket expenses related to the patent rights shall be borne equally by all joint owners
- (e) profits from the Exploitation or licensing of the patent rights will be distributed equally over the joint owners
- (f) In the event a joint owner of Foreground is not (or no longer) willing to contribute to the expenses related to patent rights on the Foreground in one or several jurisdictions, it shall assign its rights in the Foreground and the patent right for the jurisdictions concerned to the other joint owners and shall fulfil all formalities and sign all documents required to perfect the transfer of its rights to the other joint owners. The Partner concerned shall not be entitled to any revenues generated from Exploitation or licensing of the patent rights in such jurisdictions, but shall be reimbursed for patent costs it has already borne, if and when revenues are obtained in these jurisdictions

For the avoidance of doubt, the provisions of article 6.4 shall not apply to Foreground that is claimed in a patent (application) filed pursuant to this article 6.5 and its resulting patent applications and patents.

**6.6 Transfer of Foreground.** Each Partner may transfer ownership of its own Foreground in connection with the transfer of all or substantially all of its business if it ensures that the rights of

the other parties will not be affected by such transfer. It shall thereto pass on its obligations regarding that Foreground to the assignee (including the obligation to pass those obligations on to any subsequent assignee). Subject to its obligations concerning confidentiality such as in the framework of a merger or an acquisition, the transferring Partner shall give at least thirty (30) days prior notice to the other parties and the IP Board of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the Foreground to permit the other Partners to exercise their Access Rights. Within thirty (30) days of the notification, any other Partner may object and demonstrate that the envisaged transfer of ownership would adversely affect its Access Rights. In that case, the intended transfer shall not take place until the new owner confirms in writing that it shall assume all obligations set forth in this Agreement, the FIO Agreements and the Project agreements to which the transferor is a party. The Partners hereby waive their right to object to a transfer to specific third parties listed in Attachment 3 hereto. Except in the event that a research institution transfers a co-ownership interest in its own Foreground to another research institution on the basis of an agreement between those entities which generally provides in such a transfer of a co-ownership right on results of research obtained by the transferring research institution's research group that generated the Foreground, each transfer by a Partner of its ownership rights in its own Foreground which does not happen in connection with a transfer of all or substantially all of its business shall be subject to the procedure and the rights of the other parties in the Program as laid down in article 6.7.

- 6.7 **Right of First Negotiation** If during the relevant Exercise Term a Party wants to grant a third party (other than its Affiliates) a non-exclusive exploitation license to Foreground it owns, it will promptly notify the IP Board in writing, which will in turn inform all the other Partners. During a period of three (3) months counting from the date of such notification to the IP Board (the "**Negotiation Period**") and subject to the waiver procedure set out in article 6.8 below, each such other Partner shall have the right to negotiate an exclusive or sole exploitation license to that Foreground. To the extent not conflicting with such exclusive or sole licenses granted to the Partners during the Negotiation Period and subject to the provisions of article 6.4 and 6.5 in case of jointly owned Foreground, the owner of the Foreground shall have the right to grant non-exclusive exploitation licenses to that Foreground to any third party after the Negotiation Period.
- 6.8 **Waiver of Access Rights.** Each Partner willing to grant a license to its Background or Foreground that would restrict (a right to request) an Access Right of another Partner, will promptly notify the Program Steering Committee, which will in turn inform the other Partners. The Program Steering Committee will waive the Partners' existing Access Rights and the right to request Access Rights in the future to said Background or Foreground to allow the owner of the Background or Foreground to grant such license unless a Partner explains that such Access Rights are needed (which decision will be made by the Program Steering Committee no later than three (3) months after receipt of the notification by the owner). To the extent possible, licenses restricting (rights to request) Access Rights shall be limited to the field of use of the licensee.
- 6.9 **Giving up Patent Rights.** If a Partner is no longer interested in maintaining patent rights on Background or Foreground of a Project, it shall no later than ten (10) weeks before the applicable deadline notify the IP Board hereof, which will inform the other Partners in the Program. During a period of eight (8) weeks each Program Company shall have the right to negotiate with the owner of the patent rights a license or assignment agreement for these patent rights.

## **ARTICLE 7      ACCESS RIGHTS**

### 7.1 General principles for all Projects

- 7.1.1 **Identification of Background.** Project Partners shall identify in Exhibit 2 of the particular Project Agreement the Background developed by their research groups (or acquired at the initiative of these research groups) involved in the Project to which they are ready to grant Access Rights, subject to the provisions of this Agreement. All Background not listed in said Exhibit 2 shall be explicitly excluded from Access Rights. The Project Partners agree, however, to negotiate in good faith additions to said Exhibit 2 if a Partner asks them to do so and those are needed.
- 7.1.2 **Additions and withdrawals of Background.** The owner may add its further Background to Exhibit 2 of the particular Project Agreement during a Project by written notice to the Program Manager. However, only the Program Steering Committee can permit a Project Party to withdraw any of its Background from said Exhibit 2.
- 7.1.3 **Restrictions to Access Rights.** The Project Partners shall inform the Program Management Committee as soon as possible of any limitation to the granting of Access Rights to their Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source Software in a Project). Such information may at the signing of this Agreement already be provided in Attachment 4.
- 7.1.4 **Use of Access Rights.** An Access Right to Background or Foreground shall be used only for the purposes for which it has been granted.
- 7.1.5 **Requests for Access Rights.** All requests for Access Rights shall be made in writing and shall explain why Access Rights are needed. Access Rights shall be granted upon written agreement.
- 7.1.6 **No implied licenses.** No Access Right or license to use any Background or Foreground is granted or implied by this Agreement except the rights explicitly granted in this Agreement. This Agreement does not affect the ownership of any Background and rights therein will remain the property of the Partner that contributes them to the Program or a Project.

## 7.2 Access Rights for Affiliates

- 7.2.1 **Requests by Affiliates.** An Affiliate has Access Rights to Background or Foreground under the same conditions as the Partner to which it is affiliated; provided, however, that Access Rights granted to an Affiliate under article 7.5.3 may be subject to the payment of an additional fee to the extent that granting Access Rights at no cost would conflict with the State Aid Framework for R&D&I. Notwithstanding the foregoing, Access Rights for Exploitation can only be applied for by an Affiliate to the extent that Exploitation of the Foreground in connection with which the Access Rights are to be applied for was entrusted to that Affiliate. Access Rights may be refused to an Affiliate if they would be contrary to the legitimate interests of the Partner which owns the Background or Foreground.
- 7.2.2 **Compliance by Affiliates.** Affiliates which obtain Access Rights shall fulfil all confidentiality and other obligations accepted by the Partners under this Agreement as if such Affiliates were Partners.
- 7.2.3 **Termination of Affiliates' Access Rights.** Access Rights granted to an Affiliate are subject to the continuation of the Access Rights of the Partner to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Partner. Upon cessation of the status as an Affiliate, any Access Rights granted to such former Affiliate shall lapse.

## 7.3 Access Rights for parties entering or leaving the Program

7.3.1 **New parties entering the Program.** All Foreground developed under the Projects before the accession of the new party shall be considered Background with regard to a new party entering the Program.

7.3.2 **Parties leaving the Program.** Access Rights granted to a Defaulting Party and such Partner's right to request Access Rights shall cease immediately upon termination of the Defaulting Party's participation to the Program.

A non-defaulting Partner 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. It may request Access Rights up until twelve (12) months after having left the Program.

Any Partner leaving the Program shall continue to grant Access Rights pursuant to this Agreement as if it had remained a Partner for the whole duration of the Program.

#### 7.4 Specific provisions for SIM-SBO Projects

7.4.1 **Access Rights for performance of a Project.** If a Partner needs access to SIM-SBO Background or SIM-SBO Foreground of a SIM-SBO Project Party for the performance of its tasks in the same or another Project within the Program and Access Rights are applied for during the Exercise Term, the SIM-SBO Project Party shall grant such Access Rights at no cost.

7.4.2 **Access Rights for Exploitation.** If a Partner needs access to SIM-SBO Background or SIM-SBO Foreground of a SIM-SBO Project Party for the Exploitation of its own Program Foreground and Access Rights are applied for during the Exercise Term, the SIM-SBO Project Party shall grant such Access Rights against Market Price.

#### 7.5 Specific provisions for SIM-ICON Projects

7.5.1 **Access Rights for performance of a Project.** If a Partner needs access to SIM-ICON Background or SIM-ICON Foreground of a SIM-ICON Project Party for the performance of its tasks in the same or another Project within the Program and Access Rights are applied for during the Exercise Term, the SIM-ICON Project Party shall grant such Access Rights at no cost.

7.5.2 **Access Rights to SIM-ICON Background for Exploitation.** If a Partner needs access to SIM-ICON Background of a SIM-ICON Project Party for the Exploitation of its own Program Foreground and Access Rights are applied for during the Exercise Term, the SIM-ICON Project Party shall grant such Access Rights against Market Price. Notwithstanding the foregoing, if the owner of the SIM-ICON Background is a Program Company and Access Rights are applied for in accordance with the foregoing, it shall enter into good faith negotiations with the requesting Partner concerning the Market Price against which Access Rights may be granted, but shall have no obligation to grant such Access Rights if this would severely affect its legitimate interests.

7.5.3 **Access Rights to SIM-ICON Foreground for Exploitation of Foreground of the same Project.** If a SIM-ICON Project Partner needs access to Foreground obtained by another Partner within the same SIM-ICON Project for the Exploitation of its own Foreground obtained in said SIM-ICON Project and applies for Access Rights during the Exercise Term and as part of the adequate reflection of the work packages, contributions and respective interests of the Partners in their respective ownership and access rights (as meant by section 28(c) of the State Aid Framework for R&D&I), the SIM-ICON Project Party shall grant such Access Rights at no cost. Notwithstanding the

foregoing, if the owner of SIM-ICON Foreground of a specific work package is a Program Company and Access Rights are applied for in accordance with the foregoing, it may refuse such Access Rights if the granting of such Access Rights would severely affect its legitimate interests. In case of such refusal by a Program Company of a request for Access Rights being made by a Project Research Institution and notwithstanding anything to the contrary in this article 7.5.3, any Access Rights granted (or to be granted) on SIM-ICON Foreground resulting from an equivalent work package of the same Project to such Program Company by the Project Research Institution to which Access Rights were refused will be against Market Price (even if such Access Rights had already been granted prior to the time of such refusal by the Program Company).

**7.5.4 Access Rights to SIM-ICON Foreground for Exploitation of Foreground of another Project.** If a Partner needs access to SIM-ICON Foreground of a SIM-ICON Project Party for the Exploitation of its own Foreground obtained in a different Project under the Program and Access Rights are applied for during the Exercise Term, the SIM-ICON Project Party shall grant such Access Rights against Market Price. Notwithstanding the foregoing, if the owner of the SIM-ICON Foreground is a Program Company and Access Rights are applied for in accordance with the foregoing, it shall enter into good faith negotiations with the requesting Partner concerning the Market Price against which Access Rights may be granted, but shall have no obligation to grant such Access Rights if this would severely affect its legitimate interests.

#### **7.6 Specific provisions for SIM-O&O Projects**

**7.6.1** Access Rights to SIM-O&O Background and SIM-O&O Foreground for the performance of Projects and Exploitation shall be discussed on a case-by-case basis by the Partners involved in a SIM-O&O Project and laid down in the SIM-O&O Project Agreement.

### **ARTICLE 8 NON-DISCLOSURE OF INFORMATION**

**8.1** All information in whatever form or mode of transmission, which is disclosed by a party (the "Disclosing Party") to any other party (the "Receiving Party") in connection with the Program or a Project and which has been 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 fifteen (15) days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information". The information which is not identified as confidential shall nevertheless be treated as Confidential Information by the Receiving Party, if it knows or should reasonably be expected to know about the secret and confidential nature of such information.

**8.2** The Receiving Party shall up until five (5) years after the end of the Program:

- (a) not use the Confidential Information otherwise than for the purpose for which it was disclosed
- (b) not disclose the Confidential Information to any third party without the prior written consent of the Disclosing Party

**8.3** The Receiving Party shall internally distribute Confidential Information on a strict need-to-know basis and apply the same degree of care with regard to the Confidential Information as with its own confidential information, but in no case less than reasonable care.

**8.4** The Receiving Party shall have its employees, collaborators, advisors and consultants comply with the confidentiality provisions hereof and shall ensure that they continue to do, as far as legally possible, during and after the end of the employment or the agreement with the advisor or consultant.

- 8.5 The foregoing obligations of this Article 8 shall not apply for disclosure or use of Confidential Information, if and in so far as the Receiving Party can show that:
- (a) the Confidential Information became public other than through a breach of the Receiving Party's confidentiality obligations
  - (b) the Confidential Information is received by the Receiving Party without any obligation of confidence from a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party
  - (c) the Confidential Information was already known to the Receiving Party prior to disclosure;
  - (d) the Confidential Information was developed by the Receiving Party completely independently of any such disclosure by the Disclosing Party
  - (e) the disclosure or communication of the Confidential Information is foreseen by provisions of the FIO Agreements
  - (f) the Disclosing Party informs the Receiving Party that the Confidential Information is no longer confidential
- 8.6 If a Receiving 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
- (a) notify the Disclosing Party
  - (b) comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information
- 8.7 A Receiving Party shall promptly advise the Disclosing Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.
- 8.8 A Receiving Party shall return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Receiving Party including all copies thereof and to delete all information stored in a machine readable form. If needed for the recording of ongoing obligations, the Receiving Party may however request to keep a copy for archival purposes only.
- 8.9 The confidentiality obligations under this Agreement shall not prevent the communication of Confidential Information by SIM to FIO.

## **ARTICLE 9 PUBLICATION**

- 9.1 **Prior notice of dissemination.** At least forty-five (45) days prior notice of any publication or other dissemination activity relating to the Program or a Project shall be given to the IP Board, including sufficient information concerning the planned publication or dissemination activity and the data envisaged to be published or disseminated. Within thirty (30) days of the notification, any of the parties may object to the envisaged dissemination or publication if it considers that its legitimate academic or commercial interests are compromised or that the protection of its Background or Foreground is adversely affected. Any objection to the planned dissemination or publication shall be made in writing to the Program Manager and to any party concerned with a precise request for necessary modifications. 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. If no objection is made within the time limit stated above, the publication or dissemination is permitted.

- 9.2 **Publication of another Party's Background or Foreground.** 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 article 9.1 is not considered as an approval.
- 9.3 **Cooperation obligations.** The parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree.
- 9.4 **Acknowledgment.** Unless SIM requests otherwise, any publications and publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc), must specify that the Program and/or Project has received research funding from the SIM reserved budget. The publishing Partner is responsible for assuring that a (digital) copy of every press release or publication of material based on or developed under the Program, clearly labeled with the Project name and number and other appropriate identifying information, are sent to SIM promptly after publication.
- 9.5 **Disclosure by SIM.** The Partners hereby authorize SIM to publish, in whatever form and on or by whatever medium, the following information: name of the Partners, title of the Program and the Projects, commencement date and duration of the Program and the Projects, the Financial Contribution to the Projects and the non-confidential summary of the Program and the Projects.

## **ARTICLE 10      WARRANTIES AND LIABILITY**

- 10.1 **No warranties.** In respect of any information or materials (including but not limited to Background and Foreground) supplied by one Partner to another Partner under the Program or a Project, no warranty or representation of any kind is made 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, (i) the recipient Partner shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and (ii) no Partner granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Partner (or its Affiliates) exercising its Access Rights. Notwithstanding the foregoing, each Partner shall bear sole responsibility for ensuring that its acts within the Program and the Projects do not knowingly infringe third party property rights. The express undertakings and warranties given by the parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.
- 10.2 **Indirect liability.** Except for express indemnification obligations under this Agreement for liability that may include such types of damages and damages caused by a wilful act, neither party shall be liable to another 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.
- 10.3 **Limitation of liability.** Except for express indemnification obligations under this Agreement and damages caused by a wilful act, a party's aggregate liability towards the other parties collectively shall be limited to the party's share of the total budget for all Projects to which it is a party.
- 10.4 **Liability of SIM.** SIM cannot be held liable for any acts or omissions of the Partners in relation to this Agreement. It shall not be liable for any defaults of any products, processes or services created on the basis of Foreground, including, for instance, anomalies in the functioning or performance thereof. Each Partner shall defend, indemnify and hold SIM effectively harmless from any action, complaint or proceeding brought by a third party against SIM as a result of damage caused, either by any of the Partner's acts or omissions in relation to this Agreement, or

by any products, processes or services created by the Partner on the basis of Foreground resulting from the Program or any Project thereunder.

- 10.5 **Human rights.** Each party declares that it will respect human rights (without giving any warranty for the partners with whom it works or cooperates), except if these are contrary with applicable legislation. For the purposes of this Agreement, “human rights” will have the meaning as attributed to it in the European Convention on Human Rights (ECHR) and the mandatory provisions of the European Social Charter. A party may terminate (its participation to) the Agreement if another party is involved in a serious or systematic violation of human rights as supported by clear and convincing evidence, according to the below-mentioned procedure. The party seeking to terminate (its participation to) the Agreement due to a serious or systematic violation of human rights ("Claimant") shall issue a motivated written notice to the other party. In the event of a dispute between the relevant parties as to whether or not there is a serious or systematic violation of human rights that cannot be settled amicably, this dispute shall be finally settled under the rules of arbitration of the International Chamber of Commerce (ICC) by one (1) independent, expert and impartial arbitrator appointed in accordance with the said rules. This arbitrator will be nominated by the relevant parties by agreement and in the absence of such agreement, such appointment will be made according to the ICC-rules. The language of the arbitration shall be Dutch. The venue of the arbitration proceedings shall be Ghent (Belgium). The arbitration proceedings and the arbitral award will be held strictly confidential. The relevant parties shall negotiate the reasonable remedial actions to address the involvement of the defaulting party in the proven (in case of a dispute, after an arbitral award) human rights violations. If the relevant parties are unable to find a reasonable solution to resolve the issue within a reasonable period of time, or if the defaulting party cannot demonstrate that its involvement in the proven human rights violations has been remedied, the Claimant may terminate (its participation to) the Agreement with immediate effect.

## **ARTICLE 11 ENTRY INTO FORCE, DURATION, SUSPENSION AND TERMINATION**

- 11.1 **Entry into force.** This Agreement shall have effect from the Effective Date.
- 11.2 **New Partners.** SIM may admit a third party approved by the Program Steering Committee to an existing Project and the Program. This new party shall sign the accession document in Attachment 1 hereto with SIM and an amendment to the relevant Project Agreements with the Partners involved in the Projects concerned. A legal entity participating to a new project proposal submitted to SIM in the scope of an existing Program that is not yet a Partner, will sign the accession document within sixty (60) days from notification of approval of the Project by SIM. An accession shall have effect as from the execution by SIM of the accession document.
- 11.3 **Duration.** This Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the parties under this Agreement and the Project Agreements.
- 11.4 **Suspension of the Program or Projects.** Each Project Leader shall immediately inform SIM in detail and in writing on any serious event that is likely to affect or delay the proper execution of the Project concerned. At the request of the Program Steering Committee, SIM may suspend the whole or part of a Project if force majeure or exceptional circumstances render the execution of a Project excessively difficult or uneconomic. In that event, suspension or postponement of the Projects that intend to use the expected Foreground of the affected Project may also be requested. The Program Steering Committee shall propose a date when the affected Project(s) may be reinitiated. SIM may also suspend the whole or part of the Program or a Project where it considers that the Partners involved are not fulfilling their obligations under this Agreement (including but not limited to the obligations concerning reporting and controls and audits). The Partners shall be informed without delay of the justification for suspension and the conditions

necessary to reinstate the Project and/or Program again. The suspension takes effect fourteen (14) days after notification by SIM. During the period of suspension, no costs may be charged to the Project and/or Program for carrying out any part of the work that has been suspended. The suspension of the whole or part of a Project and/or Program may be lifted once the parties have agreed on the continuation of the Project and/or Program and, as appropriate, any necessary modification, including extension of the duration of the Project and/or Program has been identified in writing. Any suspension and reinitiation of a Project by SIM will be aligned with the suspension and reinitiation of the Project by FIO under the FIO Agreement(s).

**11.5 Termination at will.** A Partner 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 Program Body and who is unable to solve the matter at the level of the Program Steering Committee may terminate this Agreement by giving two (2) months prior written notice to SIM. Such Partner shall promptly inform SIM of:

- (a) the reasons for the termination
- (b) the date on which the termination shall take effect
- (c) the Partner's proposal (if any) for reallocation of its tasks and budget within the Projects to which it participates

If FIO has approved the final report of each Project in which a Program Company was participating or if (the Program Company's participation in) each such Project has been early terminated, the Program Company may terminate this Agreement by giving prior written notice to the Coordinator.

**11.6 Termination by SIM.** SIM by a decision of its board of directors may terminate this Agreement, any particular Project or the participation of one or more Partners in this Agreement in the following cases:

- (a) where a Partner involved in a specific Project would not have signed the Project Agreement within four (4) months from the approval of the Project by SIM and FIO
- (b) in case of non-performance or poor performance of the work under any Project or a substantial breach of obligations under this Agreement or a Project Agreement that is not remedied within forty-five (45) days notice or that is not capable of remedy
- (c) where the Partner infringes a provision of the applicable law or breaches an obligation resulting from an act or omission by a Partner which has, or would have, the effect of prejudicing the SIM reserved budget through unjustified expenditure
- (d) where the required reports are not submitted or SIM disapproves the reports submitted
- (e) for major technical or economic reasons substantially adversely affecting the completion of the whole Program or one or more Projects or the potential use of the Foreground
- (f) where a Partner is found guilty of an offence involving its professional conduct by a judgment having the force of res judicata or if it is guilty of grave professional misconduct proven by any justified means
- (g) in case of force majeure, where any reactivation of the Program or the Project in question after suspension is impossible
- (h) where the conditions for participation in the Program or any particular Project established by SIM for the Program or the particular Project are no longer satisfied
- (i) where further to the termination of the participation of one or more Partners, the Partners do not propose to SIM the necessary modifications for the continuation of the Projects affected by the termination including the reallocation of task of the Partner whose participation is terminated within the time limit determined by SIM, or where SIM does not accept the proposed modifications
- (j) where for more than two (2) years a Research Institution has not been participating in any Project nor is a party to a new project proposal introduced at the Program Steering

Committee for submission to SIM, SIM will terminate that Research Institution's participation in the Program.

Any termination of a Project by SIM will be aligned with the termination of the Project by FIO under the FIO Agreement(s).

Termination of the participation of a Partner at SIM's initiative shall be notified to the Partner concerned, with a copy to the Project Leaders of the Projects affected and shall take effect on the date indicated in the notification. In the case of termination of this Agreement, all Partners shall be notified.

**11.7 Effect of Termination.** Within forty-five (45) days after the effective date of termination, the Partner whose participation is terminated shall submit all required reports referred to in Article 5 relating to the work carried out by this Partner under all Projects to which it participated up to the date on which the termination takes effect.

**11.8 Survival of rights and obligations.** The provisions relating to reporting, controls and audits, Access Rights and confidentiality, for the time period mentioned therein, as well as for liability, applicable law and settlement of disputes and any other articles that are by their wording or nature intended to survive shall survive the expiration or termination of this Agreement. Termination shall not affect any rights or obligations of a Partner leaving the Program incurred prior to the date of termination, unless otherwise agreed between the parties. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

## **ARTICLE 12 MISCELLANEOUS**

**12.1 Information duty.** Each Partner shall inform SIM in due time of:

- (a) any changes in persons who shall manage and monitor its work under Projects, and its contact details
- (b) any event which might affect the implementation of the Projects and the rights of SIM
- (c) any change in its legal name, address and of its legal representatives, and any change with regard to its organisational situation

**12.2 Force Majeure.** No party shall be considered to be in breach of this Agreement if such breach is caused by Force Majeure. Each party will notify SIM of any Force Majeure as soon as possible. If the consequences of Force Majeure for the Program or any particular Project are not overcome within six (6) weeks after such notification, the transfer of tasks (if any) shall be decided by the Program Steering Committee.

**12.3 Use of names, logos or trademarks.** Nothing in this Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the (collaborators of the) parties or any of their logos or trademarks without their prior written approval.

**12.4 Entire agreement.** This Agreement, consisting of this core text and

Annex I: Program description

Attachment 1: Accession document

Attachment 2: initial list of Members and other contact persons

Attachment 3: Third parties to which transfer of Foreground is possible without prior notice

Attachment 4: Informative List (pursuant to article 7.1.3)

constitutes the entire agreement between the parties relating to its subject matter.

- 12.5 **Severability.** Should any provision of this Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Agreement. In such a case, the parties shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.
- 12.6 **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 Agreement shall be deemed to constitute a consortium (as defined by Art. 1:19 of the Companies and Associations Code), joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the parties.
- 12.7 **Notices and other communication.** Any notice to be given under this Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator based on the initial list of Members and other contact persons in Attachment 2.

Formal notices:

If it is required in this Agreement 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.

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.

- 12.8 **Assignment.** Neither this Agreement nor any rights or obligations of the parties arising from this Agreement may be assigned or transferred, in whole or in part, to any third party without SIM's prior formal approval, which shall not be unreasonably withheld; subject, however, to the confirmation by the assignee that it agrees to be bound by the terms hereof.
- 12.9 **Applicable law.** This Agreement shall be construed in accordance with and governed by the laws of Belgium, without regard to any applicable conflict of law rules.
- 12.10 **Settlement of disputes.** All disputes arising out of or in connection with this Agreement, which cannot be solved amicably, shall be finally and exclusively settled by the Courts of Brussels. Notwithstanding the foregoing, each party shall have the right at any time to commence an action or proceeding in any court of competent jurisdiction in order to seek and obtain a restraining order or injunction, but not monetary damages, to enforce the confidentiality provisions set forth herein.
- 12.11 **Counterparts.** This Agreement may be signed in counterparts, each of which will be deemed to be an original as against any party whose signature appears thereon and all of which together constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, will bear the signature of all of the parties reflected hereon as signatories.
- 12.12 **Personal Data Processing.** Each party will comply with its respective obligations under all privacy and data protection laws and regulations applicable to the processing of personal data under this Agreement, including the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC

("GDPR"). In case a party qualifies as a processor of personal data for which another party acts as the controller, the parties will enter into a data processing agreement pursuant to article 28 of the GDPR. Each party may collect and process names and contact details of the other party's designated contact persons or employees (including those of its Affiliates and subcontractors), in order to be able to properly perform its tasks under this Agreement and any Project and to contact the other parties in this respect. Such personal data will not be used for any other purposes and will be deleted within a reasonable period after termination of this Agreement. Upon first written request hereto, a party will provide the requesting party and/or the relevant data subjects with additional information regarding its data processing activities, including - where appropriate - a copy of its applicable privacy and data protection policy.

**IN WITNESS WHEREOF**, the parties have executed and caused this Agreement to be executed and delivered on the date first above written.

**SIM**

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Mr. Guido Verhoeven  
Director

**PARTY 2**

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[name]  
[title]

**PARTY 3**

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[name]  
[title]

**PARTY 4**

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[name]  
[title]

**PARTY 5**

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[name]  
[title]

**ANNEX I – PROGRAM DESCRIPTION**

[non-confidential summary of the Program, ...]

## ATTACHMENT 1 - ACCESSION DOCUMENT

### ACCESSION DOCUMENT TO PROGRAM FRAMEWORK AGREEMENT

**ENTITY**, having its offices at **[address]**, registered under company number **[number]**, duly represented by **[name + title]**, hereby consents to become a party to the Program Framework Agreement with Effective Date **[Effective Date of the Program Framework Agreement]** relating to the Program "**[title]**" concluded between SIM, having its offices at Technologiepark-Zwijnaarde 48, 9052 Gent, registered under company number 0872.622.292, and **[list all other parties to the Program Framework Agreement]** and accepts in accordance with the provisions of the Program Framework Agreement all the rights and obligations of a Partner.

Further to a positive decision of the Program Steering Committee taken in accordance with article 3.5.5 (f) prior to the signature date of this Accession Document, the following companies are considered third parties to which transfer of Foreground is possible by **ENTITY** without prior notice for the purposes of article 6.6: **[list companies]**

For the purposes of article 7.1.3, **ENTITY** informs about the following restrictions to Access Rights: **[Informative list of background to which no access rights shall be granted - this list is for information purposes only - access rights under the Program Framework Agreement are only granted to Background explicitly listed in Exhibits 2 of the Project Agreements (or Attachment 1 of the Program Framework Agreement signed before 2013)]**

This accession document will become effective as of **(start datum project [month, dd, yyyy])**

**ENTITY**

**Name:**  
**Title:**  
**Date:**

**SIM**

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Mr. Guido Verhoeven  
Director  
**Date:**

**ATTACHMENT 2 - INITIAL LIST OF MEMBERS AND OTHER CONTACT PERSONS**

[to be completed]

**ATTACHMENT 3 - THIRD PARTIES TO WHICH TRANSFER OF FOREGROUND IS POSSIBLE WITHOUT  
PRIOR NOTICE**

[to be completed]

**ATTACHMENT 4 - INFORMATIVE LIST (pursuant to article 7.1.3)**

[to be completed]