

## PARTNERSHIP AGREEMENT

THIS PARTNERSHIP AGREEMENT is based upon

REGULATION on the implementation of the European Economic Area (EEA) Financial Mechanism 2009-2014, and the REGULATION on the implementation of the Norwegian Financial Mechanism 2009-2014, hereinafter referred to as the 'Regulation', adopted on 2013-04-17, and the EEA/Norway Financial Mechanism Project Contract, hereinafter referred to as the 'Project Contract'.

BETWEEN:

**INSTYTUT OCEANOLOGII Polskiej Akademii Nauk**- Institute of Oceanology Polish Academy of Science, hereinafter referred to as '**IOPAN**', whose registered office is in Sopot, at PowstańcówWarszawy 55, Sopot, PL-81-712, Poland, and represented by JanuszPempkowiak, Director, duly authorized for the purposes hereof

- the Project Promoter -

**Partner 1 – Uniwersytet Gdański** hereinafter referred to as **UG** whose registered office is at Bażyńskiego 1a, 80-952 Gdańsk, Poland, and represented by Prof. Bernard Lammek - Rector, duly authorized for the purposes hereof

**Partner 2 – Morski Instytut Rybacki – Państwowy Instytut Badawczy** hereinafter referred to as **MIR-PIB**, whose registered office is at Kołłątaja 1, 81-332Gdynia, Poland, and represented by Prof. Tomasz Linkowski, Director, duly authorized for the purposes hereof

**Partner 3 - Norwegian Polar Institute**, hereinafter referred to as **NP**, whose registered office is at Hjalmar Johansensgt. 14, Tromsø N-9296, Norway and represented by Nalan Koc, Research Director, duly authorized for the purposes hereof

**Partner 4- University Centre in Svalbard**, hereinafter referred to as **UNIS**, whose registered office is at Forskningsparken, Pb 156, Longyearbyen9171, Norway and represented by Helen Flå, Assistant Director, duly authorized for the purposes hereof

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

relating to the Project entitled »**Glaciers as Arctic Ecosystem Refugia**«

in short »**GLAERE**«

hereinafter referred to as "Project".

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Programme Operator as part of the Research Programme of the EEA/Norway Grants Framework.

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the Project Contract.

The Parties are aware that this Partnership Agreement had been prepared using the DESCA model Partnership Agreement and it is partly based on that model. Explanations to the DESCA model are available at [www.DESCA-FP7.eu](http://www.DESCA-FP7.eu).

ACTING ON THE BASIS OF:

- The agreement between the Kingdom of Norway and the European Union on a Norwegian financial mechanism for the period 2009-2014,
- The regulations on the implementation of the Norwegian financial mechanism for the period 2009-2014 adopted by the Norwegian Ministry of Foreign Affairs in accordance with article no 8.8 of the agreement between the Kingdom of Norway and the European Union on a Norwegian financial mechanism for the period 2009-2014 concluded on the 11<sup>st</sup> of February 2011, hereinafter referred to as the "Regulations",
- Memorandum of Understanding regarding implementation of the Norwegian financial mechanism for the period 2009-2014,
- the Agreement in the range of the Programme named "Polsko - Norweska Współpraca Badawcza (Polish-Norwegian Research Cooperation)" between the Norwegian Ministry of Foreign Affairs and the Ministry of Regional Development of the Republic of Poland,
- The agreement on the implementation of the Programme named "Polsko - Norweska Współpraca Badawcza (Polish-Norwegian Research Cooperation)" within the framework of the Norwegian financial mechanism for the period 2009-2014 between the Ministry of Regional Development and the National Centre for Research and Development,
- other legal acts connected with the implementation of the Norwegian financial mechanism for the period 2009-2014 and the Programme named "Polsko - Norweska Współpraca Badawcza (Polish-Norwegian Research Cooperation)".

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

## **Section 1: Definitions**

### **1.1 Definitions**

Words beginning with a capital letter shall have the meaning defined either herein or in the Regulation including its Annexes or in the Project Contract including its Annexes without the need to replicate said terms herein.

### **1.2 Additional Definitions**

#### **“Partnership Plan”**

Partnership Plan means the description of the work and the related agreed Partnership Budget, including the payment schedule.

#### **“Partnership Budget”**

Partnership Budget means the allocation of all the resources in cash or in kind for the activities as defined in the Project Contract and in the Partnership Plan thereafter.

#### **“Defaulting Party”**

Defaulting Party means a Party which the Steering Committee has identified to be in breach of this Partnership Agreement and/or the Project Contract as specified in Article 4.2 of this Partnership Agreement.

**“Needed” means:**

*For the implementation of the Project:*

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

*For Use of own Foreground:*

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

**“Software”**

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

**"Funding"**

Funding means the value of the financial support provided to the Project Promoter and other Parties of this Agreement with public funding on the basis of Project Contract and the current Agreement.

**“Partnership”**

Partnership means the consortium operating on the basis of this Partnership Agreement and represented by the Project Promoter.

**"Financial year"**

Financial year means a year in accordance with the calendar year.

**"Force Majeure"**

Force majeure - an event or a series of events beyond the control of the Parties, which prevent, in whole or in part to perform the obligations arising from this Partnership Agreement, which the Parties could not predict and which could not prevent or overcome them by working with due diligence.

**"The Project Contract"**

The Project Contract means this agreement for the implementation and financing of the Project implemented within the framework of the Polish-Norwegian Research Cooperation signed between the National Centre for Research and Development and The Project Promoter.

**"The Project Contract"**

The Programme Operator - the National Centre for Research and Development.

## **Section 2: Purpose**

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

The Project Promoter and the Parties undertake to co-operate in accordance with the terms and conditions of this Partnership Agreement in order to execute and fulfill the Project Contract.

The Project Promoter and the Parties commit themselves in doing everything in their power to jointly implement the Project in accordance with the Project Contract and to support one another with the aim to reach the objectives of the Project. This also includes the commitment to produce qualitative outputs and to achieve the results set in the Project Contract.

The Parties entitle the Project Promoter to represent the Parties in the Project, but neither the Project Promoter nor any other Party shall be entitled to act or to make legally binding declarations on behalf of another Party, except the Project Promoter right to act on behalf of another Party explicitly given on the basis of this Agreement. The Parties commit themselves to undertake all reasonable steps necessary to support the Project Promoter in fulfilling its obligations specified in the Project Contract and this Agreement.

## **Section 3: Entry into force, duration and termination**

### **3.1 Entry into force**

An entity becomes a Party to this Partnership Agreement upon signature of this Partnership Agreement by a duly authorized representative.

This Partnership Agreement shall have effect from the date of beginning of the Project.

A new Party enters the Partnership upon signature of the accession document [Attachment 3] by the new Party and the Project Promoter and approval of such accession by the Programme Operator. Such accession shall have effect from the date identified in the accession document and decision of the Programme Operator.

### **3.2 Duration and termination**

This Partnership Agreement shall continue in full force and effect until complete fulfillment of all obligations undertaken by the Parties under the Project Contract, the Project application supplied to the Programme Operator and under this Partnership Agreement.

However, this Partnership Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Partnership Agreement.

If the Programme Operator terminates the Project Contract or a Party's participation in the Project Contract is terminated, this Partnership Agreement may be terminated in respect of

the affected Party/ies, subject to the provisions surviving the expiration or termination under Art. 3.3 of this Partnership Agreement.

In no case will the Partnership Agreement extend beyond 31 December 2016, unless it is amended or modified in accordance with Article 6.3.6.

Each Party is aware that the Programme Operator may terminate the Project Contract in particular in following circumstances:

- 1) are not performed the duties connected with the promotion of the Project,
- 2) the Project audit was not made in accordance with the provisions of this Agreement,
- 3) there were other irregularities in carrying out the Project, which make further implementation of this agreement or the Project impossible or aimless,
- 4) there were discovered financial irregularities in connection with the implementation of the Project and their causes and effects were not removed,
- 5) the information given in the information, request for payment, report or documents provided on the basis of this Agreement, does not correspond to the facts,
- 6) purchase of goods, services or works in a manner contrary to point 12.6 of the Agreement regarding public procurement,
- 7) costs associated with the implementation of the Project were incurred in contravention of the provisions of the public procurement in cases where the application of these provisions is mandatory,
- 8) financial support has not been used in accordance with the intended purpose.

In such cases this Partnership Agreement may be terminated by the Project Operator.

Termination of the Project Contract or this Partnership Agreement, does not release the Parties from the obligation to settle with the received financial resources and prepare a final report, within 30 days from the date of termination.

In the event of termination of the Project Contract or this Partnership Agreement each Party is obliged, to repay all financial support received on the basis of this Agreement.

Such obligation do not affect the right of the Parties of the Partnership Agreement to claim the compensation from the Party which actions or omissions caused termination of the Project Contract or this Partnership Agreement. Such Party which actions or omissions in the performance of its obligations caused termination of the Project Contract or this Partnership Agreement will be responsible to cover the costs of the other Parties participation in the Project and claims addressed to the Parties by the National Centre for Research and Development. In such circumstances will not apply restrictions or limitations of contractual liability included in point no 5.2 of this Agreement.

Termination of the Project Contract for the reasons specified above may result in the inability to receipt by the Project Promoter financial support from public funds, which are at the disposal of the National Centre for Research and Development, for a period of 1 year from the date of refund provided under the Project Contract or payment of the contractual penalty specified in point no 3.4 of this Agreement. In exceptional cases it is possible to waive the exclusion referred to in the preceding sentence.

### **3.3 Survival of rights and obligations**

The provisions relating to Access Rights and Confidentiality, for the time period mentioned therein, as well as for Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this Partnership Agreement.

Termination shall not affect any rights or obligations of a Party leaving the Partnership incurred prior to the date of termination, unless otherwise agreed between the Project Promoter and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

### **3.4 Changes in the subject matter of the Project**

Making changes to the Project without the consent of the National Centre for Research and Development and The Project Promoter shall be inadmissible and may be considered as the ground for the termination of the current Agreement and the Project Contract without notice. Each Party is obliged to inform the Project Promoter of any proposed changes in the implementation of the Project.

If case of the need to make changes in the implementation of the Project during its implementation, the Party shall submit to the Project Promoter in paper and electronic form request for amendments and the reasons for it, not later than 20 days from the date of occurrence of the causes leading to change, and no later than 4 months before the completion date stated in the Project Contract, and shall also include a draft of the annex to this Agreement, with the exception that update of the Payment schedule does not require preparation of an annex to the Agreement. Update of the payment schedule shall be made by the Project Promoter with the consent of the National Centre for Research and Development, depending on the availability of financial resources in the budget.

The Project Promoter is entitled to request from each Party additional clarifications and additions to the application for changes to the implementation of the Project, as indicated above. The Party is obliged to provide the above information within 10 days from the receipt of such request.

Following situations may not be considered as a change in the conditions of the implementation of the Project:

- 1) transfers between the various categories of costs not exceeding 15% of the amount within the category of what follows and offset within the category to which the transfer occurs (+/-15%), with the proviso that this rule does not apply to costs within the category of salaries and indirect costs,
- 2) changes the time each task execution Schedule of the Project not more than 4 months, at the same time the completion of the Project,
- 3) transfers of appropriations between budget years, insofar as this does not affect the timetable of the Project implementation and Project budget,
- 4) offsets the costs between the various Project's tasks not exceeding 20% of the amount within the framework of the task with which pivoted and within the framework of the tasks for which followed by offset (+/-20%) of the financial support of such task subject to transfers specified in the in point no 1 above.

The transfers presented in points no 1) and 4) shall not result in an increase in the participation of financial support in relation to the value of the Project.

### **3.5 Reimbursement of the financial support provided within the implementation of the Project and contractual penalties**

In the event of termination of the current Agreement, each Party shall repay to the Project Promoter all financial support transferred to them, within 7 days from the date of such request, together with interests at the rate specified for tax arrears to the bank account of the Project Promoter.

In the case of failure to refund the full amount, together with interests as set out for tax arrears, the payment is in proportion to the amount of arrears, understood as the amount of financial support provided to the return (without interests) and the amount of interests as for tax arrears in respect insofar as on deposit, the amount remains delinquent for the amount of principal interests.

In case of the failure to comply with the time limits regarding the final date of implementation of the Project due to the reasons attributable to the Party, in addition to the obligation to return the received funds, the Project Promoter will be entitled to demand from the responsible Party the contractual penalty amounting to 2% of the amount of the financial support arising from the Project Contract, for each started month delay.

In case of non-execution of this Agreement, in whole or in part, or misuse of the Project's financial support, in addition to the obligation to return the received funds, the Project Promoter will be entitled to demand from the responsible Party the contractual penalty amounting to 10% of the amount of the financial support arising from the Project Contract.

Each Party is aware that the National Centre for Research and Development may withhold the financial support arising from the Project Contract and impose on the Parties of the Project, the repayment obligation mentioned in the current point of the Agreement in the case of a decision being the result of the action of the Norwegian Ministry of Foreign Affairs or the Ministry of Regional Development.

## **Section 4: Responsibilities of Parties**

### **4.1 General principles**

#### **4.1.1. Parties general tasks and obligations**

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

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

Each Party shall promptly provide all information required by the Project Promoter or by the Steering Committee to carry out its tasks, required by the Programme Operator or arising from the resolutions of the Project Contract, the Project application supplied to the Programme Operator, Partnership Plan, Partnership Budget, and under this Partnership Agreement.

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

Each Party shall immediately inform the Project Promoter in writing of all changes in their organisation legal or factual situation that may affect the Partnership Agreement and notify the Project Promoter of the intention to make such amendments to their organizational and legal status, that may have a direct impact on the implementation of the Project.

Each Party shall also provide to the Project Promoter upon its request information about the status of the implementation of the Project and spending of allocated financial resources, as well as the results of the Project and their use, in the course of the implementation of the Project and for a period of 5 years after its completion.

#### 4.1.2. Partners tasks and obligations

Each Partner of this Partnership Agreement, notwithstanding the other provisions of this Agreement, undertakes, in particular, to:

- 1) comply with the legal framework of the Norwegian financial mechanism for the period 2009-2014, referred to in the preamble of this Agreement,
- 2) spending received financial resources in the framework of the implementation of the Project in such a way as to ensure their optimum use in accordance with the best practices and economic enabling the full and fair competition between potential contractors,
- 3) ensure the promotion of the Project, in accordance with the requirements on information and publicity being the annex to the Regulations mentioned in the preamble to this Agreement, and on the request of the Project Promoter, to provide support and participate in the events organised in the framework of information and promotion of the Programme,
- 4) share or transfer, at the request of the Project Promoter, the National Centre for Research and Development, the Ministry of Regional Development and the Ministry of Finance (being Audit Institutions), all documents and information relating to the implementation of the Project,
- 5) make any necessary and appropriate arrangements in order to improve or change the way of the Project management at the request of the Project Promoter,
- 6) store Project's documentation for a further period of 5 years from the date of approval of the Project final report by the National Centre for Research and Development,
- 7) ensure the sustainability of the Project for a period of at least 5 years from the date of approval of the Project final report by the National Centre for Research and Development.

Each Partner to this Partnership Agreement shall prepare and submit to the Project Promoter in paper and electronic form, in accordance with the template provided by the Project Promoter or set out on the website of the Project, the following documents:

- 1) interim report,
- 2) final report,
- 3) the report of the scientific publications.

The interim report from the scientific research in the previous calendar year shall be prepared and submitted to the Project Promoter not later than 15<sup>th</sup> of February of each year of implementation of the Project after the conclusion of this Agreement.

The interim report describes progress in the implementation of the Project as at on the 31<sup>st</sup> of December.

The interim report for the previous year of the implementation of the Project shall not be required in cases where the time limit for completion of its implementation is not later than 30<sup>th</sup> of June of the last year of the Project.

The final report, together with the costs incurred within the framework of the Project, each Party shall submit to the Project Promoter, within 30 days from the date of the completion of the implementation of the Project. The final report contains the report of the scientific publications including the complete list of publications related to the results of the Project and a summary of and references to all the scientific publications in relation to the results of the Project, which must be supplied no later than 30 days from the date of publication. Publications related to the results of the Project should include a statement on the financing of the Norwegian financial mechanism.

In the case of irregularities in the documents submitted by the Party, the responsible Party is obliged to remove them within 14 days from the date of receipt of the request.

#### **4.2 Breach**

In the event a Steering Committee identifies a breach by a Party of its obligations under this Partnership Agreement or the Project Contract (e.g.: a Partner producing poor quality work), the Project Promoter or the Party appointed by the Steering Committee if the Project Promoter is in breach of its obligations under this Partnership Agreement or the Project Contract will give written notice to such Party requiring that such breach be remedied within 15 calendar days.

If such breach is substantial and is not remedied within that period, or if the breach is of such a nature that it cannot be remedied, the Project Promoter, or in the case that the Project Promoter is in breach of its obligations, the Steering Committee may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

#### **4.3 Involvement of third parties**

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains solely responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Partnership Agreement and of the Project Contract. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Partnership Agreement and the Project Contract.

### **Section 5: Liability towards each other**

#### **5.1 Warranties and their limitations**

The Project Promoter and each Party is solely liable for the statements/commitments made in its declaration, included in the latest Project application.

In respect of any information or materials (incl. Foreground and Background) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. However, Parties shall use their best effort to provide other Parties with information or materials that are used for Project implementation free from limitations that may arise from copyright, intellectual property or proprietary rights of third parties, or, if this is impossible, provide other Parties with information allowing to identify person or body holding copyright, intellectual property or proprietary rights to information or materials in question.

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliates) exercising its Access Rights, except for the providing of such information or materials without indicating the possibility of restrictions on the use of them.

In case of non-fulfilment of obligations of a Party having financial consequences for the funding of the Project as a whole, the Project Promoter may demand compensation from the

defaulting Party to cover the sum involved.

## **5.2 Limitations of contractual liability**

Within this Partnership, each Party shall hold harmless the other Party and indemnify it from liabilities, damages and costs resulting from the non-compliance of its individual duties and obligations as set forth in the Project Contract and this Agreement.

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

A Party's aggregate liability towards the other Parties collectively shall be limited to the Party's share of the total costs of the Project as identified in Project Contract, provided such damage was not caused by a willful act or gross negligence.

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

## **5.3 Damage caused to third parties**

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

## **5.4 Force Majeure**

No Party shall be considered to be in breach of this Partnership Agreement if such breach is caused by Force Majeure. Each Party will notify The Project Promoter and the Steering Committee of any Force Majeure without undue delay proving those circumstances by providing documentary evidence of the events of Force Majeure and their impact on the course of the Project. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by The Project Promoter.

In the case when the further implementation of the Project is impossible for reasons of Force Majeure, the Project Promoter is obliged to terminate the current Agreement.

The Parties shall take all reasonable steps to minimise the effects of Force Majeure on the performance of the work under this Partnership Agreement, and shall if necessary agree on appropriate measures to be taken.

## **Section 6: Governance structure**

### **6.1 General structure**

The Project Promoter is the decision-making body of the Partnership.

The Project Promoter is also the legal entity acting as the intermediary between the Parties and the Programme Operator. The Project Promoter shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Project Contract and this Partnership Agreement.

The Steering Committee is the supervising body for the execution of the Project.

## **6.2 Members**

The Steering Committee shall consist of one representative of each Party (hereinafter referred to as “Member”).

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 6.3.6 of this Partnership Agreement.

The Project Promoter shall chair all meetings of the Steering Committee and appoint the chairperson, unless decided otherwise by the Steering Committee

The Parties agree to abide by all decisions of the Steering Committee regarding substantive issues of the implementation of the Project. The Steering Committee is not authorised to act in the range of financial or legal aspects of the implementation of the Project. Such matters are assigned to The Project Promoter. In the range of organizational aspects of the Project the Steering Committee shall act in agreement with the Project Promoter. This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Article 11.8 of this Partnership Agreement.

## **6.3 Operational procedures for the Steering Committee**

### *6.3.1 Representation in meetings*

Any Member:

- should be present or represented at any meeting;
- may appoint a substitute or a proxy to attend and vote at any meeting;
- and shall participate in a cooperative manner in the meetings.

### *6.3.2 Preparation and organisation of meetings*

#### 6.3.2.1 Convening meetings:

The chairperson shall convene ordinary meetings of the Steering Committee at least once every six months and shall also convene extraordinary meetings at any time upon written request of any Member.

#### 6.3.2.2 Notice of a meeting:

The chairperson shall give notice in writing of a meeting to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

#### 6.3.2.3 Sending the agenda:

The chairperson shall send each Member a written original agenda no later than 14 calendar days preceding the meeting, or 7 calendar days before an extraordinary meeting.

#### 6.3.2.4 Adding agenda items:

Any agenda item requiring a decision by the Members must be identified as such on the agenda.

Any Member may add an item to the original agenda by written notification to all of the other Members no later than 7 calendar days preceding the meeting.

6.3.2.5 During a meeting of the Steering Committee the Members present or represented can unanimously agree to add a new item to the original agenda of the meeting.

6.3.2.6 Any decision may also be taken without a meeting if the chairperson circulates to all Members a written document which is then signed by the defined majority of Members (see Article 6.3.3 of this Partnership Agreement below).

6.3.2.7 Meetings of the Steering Committee may also be held by teleconference or other telecommunication means.

6.3.2.8 Decisions will only be binding once the relevant part of the minutes has been accepted according to Article 6.3.5 of this Partnership Agreement.

### *6.3.3 Voting rules and quorum*

6.3.3.1 The Steering Committee shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).

6.3.3.2 Each Member shall have one vote.

6.3.3.3 Defaulting Parties may not vote.

6.3.3.4. Members shall seek an amicable resolution of disagreements. In projects with more than two partners, decisions shall be taken by a majority of two-thirds (2/3) of the votes.

### *6.3.5 Minutes of meetings*

6.3.5.1 The chairperson shall send draft minutes of each meeting which shall be the formal record of all decisions taken, to all Members within 10 calendar days after the meeting.

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

6.3.5.3 The chairperson shall send the accepted minutes to all the Members of the Steering Committee, and to the Project Promoter, who shall safeguard them. If requested the Project Promoter shall provide authenticated duplicates to Parties.

### *6.3.6 Decisions of the Steering Committee*

The Steering Committee shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein, with the limitation specified in point 6.2 above.

The following decisions shall be taken by the Steering Committee:

Content, finances and intellectual property rights

- Proposals for changes to Project Contract to be agreed by the Project Promoter and the Programme Operator

- Changes to the Partnership Plan (including the Partnership Budget) to be agreed by the Project Promoter

- Withdrawals from Attachment 1 (Background included)

- Additions to Attachment 2 (Background excluded)
- Additions to Attachment 4 (Listed Affiliated Entities)
- Additions to Attachment 5 (List of Third Parties)

#### Evolution of the Partnership

- Declaration of the Project Promoter to be a Defaulting Party
- Remedies to be performed by a Defaulting Party
- Termination of the Project Promoter being a Defaulting Party's participation in the Partnership and measures relating thereto

In the case of abolished tasks as a result of a decision of the Steering Committee, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

### **6.4 Project Promoter**

6.4.1 The Project Promoter shall be the intermediary between the Parties and the Programme Operator and shall perform all tasks assigned to it as described in the Project Contract and in this Partnership Agreement.

6.4.2 In particular, the Project Promoter shall be responsible for:

- Monitoring compliance by the Parties with their obligations
- Keeping the address list of Members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting reports and other deliverables (including financial statements and related certifications) to the Programme Operator
- Transmitting documents and information connected with the Project to any other Parties concerned
- Administering the financial contribution of the Norwegian-Polish Funds and fulfilling the financial tasks described in Article 7.3
- Providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Project Promoter when such copies or originals are necessary for the Parties to present claims
- Entry of a new Party to the Partnership and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the Partnership and the approval of the settlement on the conditions of the withdrawal
- Declaration of a Party to be a Defaulting Party
- Termination of a Defaulting Party's participation in the Partnership and measures relating thereto
- Proposal to the Programme Operator for suspension of all or part of the Project
- Proposal to the Programme Operator for termination of the Project and the Partnership Agreement

The Parties mutually agree that the Project Promoter should consult the Steering Committee, before taking a decisions set forth above regarding: entry of a new Party, withdrawal of a Party, declaration of a Party to be a Defaulting Party and termination of a Defaulting Party's participation in the Partnership.

6.4.3 If the Project Promoter fails in its tasks presented above, the Steering Committee may propose to the Programme Operator to change the Project Promoter.

6.4.4 The Project Promoter shall not be entitled to act or to make legally binding declarations on behalf of any other Party.

6.4.5 The Project Promoter shall not enlarge its role beyond the tasks specified in this Partnership Agreement and in the Project Contract.

## **Section 7: Financial provisions**

### **7.1 General Principles**

#### *7.1.1 Distribution of Financial Contribution*

The financial contribution of the Programme Operator to the Project shall be distributed by the Project Promoter according to:

- the Partnership Budget as included in the Partnership Plan
- the approval of reports by the Programme Operator, and
- the provisions of payment in Article 7.3.

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

#### *7.1.2 Justifying Costs*

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

Costs incurred in the Project are eligible for a contribution in the case of the total fulfillment of the conditions included in the § 8 of the Project Contract.

All eligible costs must be incurred according to the principles of fair competition, openness and transparency, and in the absence of a conflict of interest as the lack of impartiality and objectivity in relation with the realisation of this Agreement and the Project Contract.

Accrued value added tax (VAT) may be qualified as eligible, if in accordance with separate legal regulations, the Party shall not be entitled to a refund or deduction of this VAT tax, and if this tax has been accrued in respect of eligible costs incurred.

Financial support expended for purposes other than those specified in this Agreement and the Project Contract will result in the recognition of such costs as non-eligible costs.

#### *7.1.3 Indirect costs*

Each party chooses one of the following methods of calculating indirect costs:

- *Indirect costs are identified and justified by accounting system of the Project Promoter and/or the other Party - The Project Partner as being incurred in direct relationship with the eligible direct costs attributed to the Project;*
- *Indirect costs of the Project are identified as a flat rate of up to 20% of its total direct eligible costs, excluding its direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the Project Promoter;*
- *Indirect costs of the project are identified as a flat-rate of up to 60% of the total direct eligible costs, excluding its direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the Project Promoter. If these Project Promoters or partners change their status during*

*the life of the project, this flat rate shall be applicable up to the moment they lose their status*

*Indirect costs in the case of the **Project Promoter - IOPAN** are **20 %** of the total direct eligible costs, excluding the direct eligible costs for subcontracting and cost of the resources shared by third parties, which are not used on the premises of such Partner of the Project, and are **244 256 PLN**.*

*Indirect costs in the case of the **Project Partner 1 - UG** are **20 %** of the total direct eligible costs, excluding the direct eligible costs for subcontracting and cost of the resources shared by third parties, which are not used on the premises of such Partner of the Project, and are **118 826 PLN**.*

*Indirect costs in the case of the **Project Partner 2 – MIR-PIB** are **32 %** of the total direct eligible costs, excluding the direct eligible costs for subcontracting and cost of the resources shared by third parties, which are not used on the premises of such Partner of the Project, and are **57 639 PLN***

*Indirect costs in the case of the **Project Partner 3 - NPI** are **5 %** of the total direct eligible costs, excluding the direct eligible costs for subcontracting and cost of the resources shared by third parties, which are not used on the premises of such Partner of the Project, and are **54 695 PLN**.*

*Indirect costs in the case of the **Project Partner 4 - UNIS** are **5 %** of the total direct eligible costs, excluding the direct eligible costs for subcontracting and cost of the resources shared by third parties, which are not used on the premises of such Partner of the Project, and are **18 860 PLN**.*

The indirect costs, their rates and maximum amount are determined by each Party in a relevant Attachment to this Partnership Agreement constituting a budget breakdown for this Party.

#### *7.1.4 Funding Principles*

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

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

#### *7.1.5 Financial Consequences of the termination of the participation of a Party*

A Party leaving the Partnership shall refund all payments it has received except the amount of contribution accepted by the Programme Operator or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Article 5.2 of this Partnership Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks. Any additional costs which are not covered by the Defaulting Party shall in principle be apportioned to the remaining Parties pro rata to their share in the total costs of the Project as identified in the Partnership Budget.

## **7.2 Budgeting**

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

## 7.3 Payments

### 7.3.1

Payments to Parties are the exclusive tasks of the Project Promoter.

In particular, the Project Promoter shall:

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

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

The Project Promoter shall ensure that all appropriate payments to the Parties of funds received from the Programme Operator are made without unjustified delay, and not later than 15 days after the Project Promoter has received payment from the Programme Operator. Costs accepted by the Programme Operator will be paid to the Party concerned, taking into account the amounts already paid for the reporting period concerned.

The Project Promoter states that the condition that other Party will receive the next advance payment is demonstrating of bearing by that Party the costs of at least 70% of all received advances.

In order to receive the next advance payment, subject to the condition specified above in previous sentence, the Party is obliged to prepare and submit to the Project Promoter a information including request for payment (in the paper and electronic format) prepared on the form provided by the Project Promoter. Such information and requests for payment shall be prepared and provided to the Project Promoter no later than 10<sup>th</sup> day of month following the end of each quarter of the implementation of the Project, except the last information in each financial year which shall be prepared and provided to the Project Promoter no later than the end of the third quarter of financial year and except the final Project report which shall be prepared and provided to the Project Promoter until the 15<sup>th</sup> of February of the last year of the Project implementation.

Each Party informed by the Project Promoter of bugs or deficiencies in provided information and request for payment, is required to remove them within 10 days from the date of receipt of the request.

The Project Promoter informs that not removed bugs or deficiencies in the information and request for payment may result in rejection of the application for payment and suspension of payment of further financial support or limit the payment only to the amount of the properly qualified eligible costs.

The Project Promoter informs that the information and request for payment provided by the Party will be verified within 15 days from the date of receipt of the correct and complete information and request for payment, subject to the provisions presented above. The Project Promoter states payment of the advance does not mean approval of the costs incurred in their financial terms.

The total amount of financial support paid in the form of advances and refunds for the implementation of the Project shall not exceed 95% of the value of the Project. The remaining amount will be paid as the final payment after approval of the Project final report by the National Centre for Research and Development. The final payment will be subject to the full, substantive and financial implementation of the Project.

In the event of a change in bank account number, each Party is obliged to transfer the Project Promoter immediately in writing about such changes, at the latest on the day on which the Party will provide information or report and request for payment. The Party mutually agree that changing of the bank account number does not require preparation of an annex to the current Agreement.

In case of payment by the Project Promoter on the incorrect bank account number due to failure of the Party in the obligation included in the previous sentence, the costs associated with making the transfer shall be borne by the Party.

Revenues from the sale of scientific research equipment purchased or produced with the financial support obtained during implementation of the Project, shall be repaid to the bank account specified by the Project Promoter.

The sum of bank interest earned on the amount of financial support provided for the implementation of the Project shall be presented in the final Project report and returned to the bank account specified by the Project Promoter.

Unused financial resources for the implementation of the Project, after completion of the Project, shall be repaid to the bank account specified by the Project Promoter.

Each Party is obliged to carry evidence of all costs incurred for the implementation of the Project. Documents should be drawn up and kept with due observance of the provisions of national law and the EU community law. On each original financial document shall indicate the following information: number of agreement on implementation and financing of the Project, the category, and the number of task.

The Project Promoter informs that the National Centre for Research and Development has the right to carry out checks and audits of documentation mentioned above at any time and at any stage of the Project and over a period of 5 years after the end of the Project.

Each Party is obliged to prepare, upon request of the Project Promoter, and send in the electronic and paper form documents certified as true copied within 3 days from the date of such request.

Acceptance of Party request for payment does not waive or affect the possibility of different findings and results of the inspections and audits.

The Project Promoter is entitled to withhold any payments due to a Party identified to be in breach of its obligations under this Partnership Agreement or the Project Contract or to a Party which has not yet signed this Partnership Agreement.

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

### **7.3 Currency exchange rules**

The payment to the Project Promoter is made in Polish Zloty (PLN) and is calculated using the Euro exchange rate published by the European Central Bank on the date of the launch of the Core 2012 Call that is 17 September 2012.

Reports of the Parties provided to the Project Promoter regarding the costs with respect to the Project shall be calculated in Polish Zloty (PLN) on the basis of the medium exchange rate of the European Central Bank on the last day of each accounting period.

Any payments made by the Project Promoter to the other Parties shall be executed in Polish Zloty (PLN).

Parties are obliged to cover from their own resources all losses sustained as a result of differences in exchange rates and differences between the value of the granted resources expressed in EUR and that of the actually incurred costs of the Project's implementation expressed in PLN.

## **Section 8: Foreground**

Regarding Foreground, shall apply with the following additions:

### **8.1 Joint ownership**

In case of joint ownership, each of the joint owners shall be entitled to use the joint Foreground as it sees fit, and to grant non-exclusive licenses, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

The joint owners shall agree on all protection measures and the division of related cost in advance.

### **8.2 Transfer of Foreground**

8.2.1 Each Party may transfer ownership of its own Foreground following the procedures of the Project Contract.

8.2.2 It may identify specific third parties it intends to transfer the ownership of its Foreground to in Attachment (5) to this Partnership Agreement. The other Parties hereby waive their right to object to a transfer to listed third parties according to the Project Contract.

8.2.3 The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment (5) after signature of this Agreement requires a decision of the Steering Committee and the Project Operator.

8.2.4 The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, a Party may be subject to confidentiality obligations which prevent it from giving the full 45 days prior notice for the transfer as foreseen in the Project Contract.

### **8.3 Dissemination**

#### *8.3.1 Publication*

8.3.1.1 Dissemination activities including but not restricted to publications and presentations shall be governed by the procedure of the Project Contract subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties concerned at least 45 days before submitting a work for the publication. Any objection to the planned publication shall be made in accordance with the Project Agreement in writing to the Project Promoter and to any Party concerned within 30 days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

8.3.1.2 An objection is justified if

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

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

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

#### *8.3.2 Publication of another Party's Foreground or Background*

For the avoidance of doubt, a Party shall not publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the Party's Foreground, without the other Party's prior written approval. For the avoidance of doubt, the mere absence of an objection according to 8.3.1 is not considered as an approval.

#### *8.3.3 Cooperation obligations*

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

#### *8.3.4 Use of names, logos or trademarks*

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

Information of the Partnership of the Parties will be included in all of the information provided to the public in connection with the Project, including the press mentions.

All trademarks and logos of the the Parties will be presented on all printed promotional materials of the Project, on the respective websites of the Parties, as well as in the implementation by the Parties other activities within the Project.

Any materials containing the logotypes of the Parties will be sent to the other the Parties in order to approve them before the printing or publication.

The Parties will be referred in all promotional materials of Project as "Partners".

### **Section 9: Access Rights**

#### **9.1 Background covered**

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

#### **9.2 General Principles**

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

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

9.2.3 If the Steering Committee considers that the restrictions have such impact, which is not foreseen in the Partnership Plan, it may propose the Project Promoter to decide to update the Partnership Plan accordingly.

9.2.4 Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.

Access Rights shall be free of any administrative transfer costs.

Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties according to the Project Contract.

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

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

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

### **9.3 Access Rights for implementation**

Access Rights to Foreground and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.

### **9.4 Access Rights for Use**

9.4.1 Access Rights to Foreground if Needed for Use of a Party's own Foreground including for third-party research shall be granted on Fair and Reasonable conditions.

Access rights for internal research activities shall be granted on a royalty-free basis.

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

9.4.3 A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Art. 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

### **9.5 Access Rights for Affiliated Entities**

Affiliated Entities have Access Rights under the conditions of the Project Contract.

Such Access Rights to Affiliated Entities shall be granted on fair and reasonable conditions and upon written bilateral agreement.

Affiliated Entities which obtain Access Rights in return grant Access Rights to all Parties and fulfill all confidentiality and other obligations accepted by the Parties under the Project Contract or this Partnership Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliate Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Foreground.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

## **9.6 Additional Access Rights**

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

## **9.7 Access Rights for Parties entering or leaving the Partnership**

### *9.7.1 New Parties entering the Partnership*

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

### *9.7.2 Parties leaving the Partnership*

#### 9.7.2.1 Access Rights granted to a leaving Party

##### *9.7.2.1.1 Defaulting Party*

Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the Project Promoter to terminate its participation in the Partnership.

##### *9.7.2.1.2 Non-defaulting Party*

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Foreground developed until the date of the termination of its participation.

It may request Access Rights within the period of time specified in Art. 9.4.3.

#### 9.7.2.2 Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the Project Contract and this Partnership Agreement as if it had remained a Party for the whole duration of the Project.

## **9.8 Specific Provisions for Access Rights to Software**

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software.

Parties' Access Rights to Software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

## **9.9 Access to results of the Project**

The Parties mutually agree that access to results of the Project shall be granted to each person or organisation/body interested in non-commercial use of the outputs and results produced during the Project implementation. In order to implement that rule each Party shall grant a non-exclusive and royalty-free license to each person or organisation/body interested in non-commercial use of the outputs and results produced by such Party during the Project implementation.

The Parties also mutually agree that they will divide or disseminate the Project results accordingly to market conditions and up to the range of their participation in the implementation of the Project resulting from the Project application and Project Contract, and division and carrying out the tasks related to each Party within the Project.

For the purposes of the evaluation of the Project during the implementation of the Project, and over a period of 5 years from the date of completion of the Project, each Party is obliged to cooperate with the National Centre for Research and Development, the Project Promoter or institution authorised by the Centre and provide information relating to the realized Project, in particular to provide information about the effects of economic and other benefits resulting from the implementation of the Project.

Due to the evaluation specified above, the National Centre for Research and Development, the Project Promoter or an authorized entity may request the Party for cooperation in the process of evaluation and, in particular, to participate in surveys, interviews and share information useful for the evaluation.

## **Section 10: Non-disclosure of information**

10.1 All information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Project Contract, for a period of 5 years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and

- to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only.

10.3 The Recipients shall be responsible for the fulfillment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.

10.4 The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

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

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

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

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

- notify the Disclosing Party, and
  - comply with the Disclosing Party's reasonable instructions,
- to protect the confidentiality of the information.

10.8 The confidentiality obligations under this Partnership Agreement and the Project Contract shall not prevent the communication of Confidential Information to the Programme Operator.

## **Section 11: Auditing**

Each Party provides auditing reports in accordance with rules and requirements stipulated in each Party's national legislation on audit of projects.

Audits and checks on the implementation of the Project shall be carried out by the National Centre for Research and Development, the Project Promoter or authorised by the Centre or the Project Promoter entities or other inspection institution under applicable law.

Each Party agrees that the Project Promoter will be entitled to establish the entity that will provide auditing report of the activities and documentation of the implementation of the Project in accordance with rules and requirements stipulated in each Party's national legislation on audit of projects. Parties also agree that auditing report prepared by such entity will be financed within the financial support for the implementation of the Project from the part of the funding granted to the Party.

Each Party shall keep available all its documents related to the Project. It shall retain for audit purposes all files, documents and data about the part of the Project for which the Party is responsible on customary data storage media in a safe and orderly manner until 31 December 2025; other possibly longer statutory retention periods, as might be stated by national law, shall remain unaffected. These obligations shall survive even if the Party is excluded from the Project or the Party has withdrawn from the Project.

Each Party shall submit a validation on the eligibility of the project-related expenditure by a controller designated/approbed by the respective country or body.

Each Party shall upon request submit to the Project Promoter or to the body appointed to that effect the accounting reports or other documents, including copies of all pieces of evidence (invoices, documents related to tender, bank statements, etc.), that have reference to the Project,

Each Party shall produce all documents required, provide necessary information and give access to business premises for first level controls, audits and evaluations.

Audits and checks may be carried out at any time during the execution of the Project and for a period of 5 years from the date of completion of the Project.

Audits and checks may be carried out both at the premises of the Project Promoter, the Parties - Project partners, as well as on the sites of the implementation of the Project.

Each Party shall be notified about audit not later than 7 days before the date of its launch.

On the basis of the results of the audit the National Centre for Research and Development has the right to suspend pending financial support until the clarification of objections or possible irregularities.

The National Centre for Research and Development or authorised the inspection body should be ensured access to sites and premises where the Project is implemented, the accounting computer system for the implementation of the Project, as well as all documents related to the implementation of the Project, including all documents and computer files and any other media related to the technical and financial management of the Project.

Each Party is obliged to provide at its own expense, the presence of people who provide explanations on the financial spending and other issues related to the implementation of the Project.

Failure to meet the obligations referred above is treated as the preventing of the inspection.

In the case of information on suspicion of irregularities in the implementation of the Project or other significant deficiencies, the inspection body may carry out ad hoc control without prior notification notice.

Each Party is obliged to keep separate accounting records of funds in the analytical division, which cost generic identification of monies disbursed for the implementation of the Project. If in accordance with applicable law, Parties are not required to keep the records, are obliged to keep records of the relevant descriptions in accordance with point no 7.3.2 of this Agreement, enabling the identification of monies disbursed for the implementation of the Project.

Each Party is required to store, in a way that ensures proper security, all data related to the implementation of the Project, in particular in relation to the financial management, technical documentation or procedures of concluding contracts with subcontractors, for at least 5 years from the date of completion of the Project.

In justified cases, the National Centre for Research and Development or the Project Promoter may extend the period specified in previous sentence.

The obligatory audit of the Project is a qualified expense if he at least after completion of 50% of the planned expenditure related to the Project.

In the case of an external audit, report on the audit shall be provided to the Project Promoter, together with the final report. Each Party is obliged to comply with the recommendations resulting from the audit and include them in the final report.

## **Section 12: Miscellaneous**

### **12.1 Attachments, inconsistencies and severability**

This Partnership Agreement consists of this core text and

- Attachment 1 (Background included)
- Attachment 2 (Background excluded)
- Attachment 3 (Accession document)
- Attachment 4 (Listed Affiliated Entities)
- Attachment 5 (List of Third Parties)
- Attachment 6 (Partnership Plan with Partnership Budget)

In case the terms of this Partnership Agreement are in conflict with the terms of the Project Contract, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this Partnership Agreement, the latter shall prevail.

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

### **12.2 No representation, partnership or agency**

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

### **12.3 Notices and other communication**

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

Formal notices:

If it is required in this Partnership Agreement (Article. 9.7.2.1.1 and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

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 Project Promoter. The address list shall be accessible to all concerned.

### **12.4 Assignment and amendments**

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

The rights and obligations and claims the Parties of the Project arising from the current Agreement may not be, during the implementation of and for the period of 5 years from the end of the Project, transferred to third parties without the prior consent of the Project Promoter.

Amendments and modifications to the text of this Partnership Agreement not explicitly listed in Article 6.3.6 require a separate agreement between all Parties.

### **12.5 Information and publicity**

Each Party of the Project is obliged to adhere to the principles of information and publicity relating to the Project in accordance with the information and publicity requirements included in the annex no 4 to the Regulations mentioned in the preamble to this Agreement.

Information about the financial support of the Project by the National Centre for Research and Development must be placed on promotional materials, information, training, education and publications connected with the implementation of the Project. Such actions must be documented.

Subject to the legal provisions concerning the protection of confidential business information the Project results should be widely disseminated through:

- 1) technical or scientific conference, or
- 2) scientific or technical journals or commonly available databases to ensure free access to the results obtained, or
- 3) software license software free or open access.

## **12.6 Public procurement**

Public contracts and services are granted within the framework of the Project in accordance with applicable national and EU public procurement law, including in accordance with article no 7.16 of the Regulations mentioned in the preamble to this Agreement and guidelines of the Minister for Regional Development in relation to the award of contracts in the framework of the EEA financial mechanism for the period 2009-2014 and the Norwegian financial mechanism for the period 2009-2014, which does not apply public procurement law regulations.

## **12.7 Mandatory national law**

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

## **12.8 Language**

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

## **12.9 Applicable law**

This Partnership Agreement shall be construed in accordance with and governed by the laws of Poland.

The ownership of copyrights arising from the implementation of the Project shall apply the provisions of the Polish act of the 4<sup>th</sup> of February 1994 on copyright and related rights (Journal of Laws of 2006, No 90 pos. 631, and as amended).

## **12.10 Settlement of disputes**

12.10.1 The Project Promoter and the Parties sign this agreement with the intention to cooperate amicably. Should a dispute, controversy or claim arise between the Project Promoter and the Parties or between the Parties under, out of or relating to this Agreement and any subsequent amendments of this Agreement including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, the Parties concerned are obliged to work towards a mutually acceptable settlement. Such disputes shall be referred to the Steering Committee.

12.10.2 If efforts to achieve an amicable settlement should fail, the Parties concerned are obliged to seek an out-of-court arbitration procedure of the ad-hoc arbitration committee. The place of arbitration shall be Sopot, Poland if not otherwise agreed upon by the conflicting Parties. Should however, any Party (e.g. a Public Body) show that certain provisions of its national law prevents it from submitting the relevant dispute to arbitration, or the Parties concerned did not agree on out-of-court arbitration procedure within 30 days after failure to find mutually acceptable settlement of the dispute, controversy or claim relating to this Agreement, then the concerned Parties will submit the dispute to the appropriate court of law, suitable for the seat of the Project Promoter, that shall have exclusive jurisdiction.

12.10.3 The Parties shall be obliged to accept and apply the decisions of the arbitration committee, subject to the applicable law hereby agreed upon and in compliance with the provisions of the European law.

**Section 13: Signatures**

AS WITNESS:

The Parties have caused this Partnership Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

# INSTYTUT OCEANOLOGII PAN

Signature(s)

Name(s) **Prof. Janusz Pempkowiak**

Title(s) Director, Institute of Oceanology PAS

Date

## **Partner 1- UniwersytetGdański**

Signature(s)

Name(s)- Prof. Bernard Lammek

Title(s) –Rector

Date

**Partner 2 - Morski Instytut Rybacki – Państwowy Instytut  
Badawczy**

Signature(s)

Name(s) -Prof. Tomasz Linkowski

Title(s) – Director

Date

**Partner 3 - Norwegian Polar Institute**

Signature(s)

Name(s) -Nalan Koc

Title(s) – Research Director

Date

## **Partner 4 - University Centre in Svalbard**

Signature(s)

Name(s) -Helen Flå

Title(s) – Assistant Director

Date

**[Attachment 1: Background included]**

Access Rights to Background made available to the Parties:

<b>Identification of the Party</b>	
Full legal name and address of the institution	INSTYTUT OCEANOLOGII Polskiej Akademii Nauk, Powstańców Warszawy 55, 81-712 Sopot, Poland
Abbreviated name	IOPAN
Party in the Project under the number	1-Project Promoter
<b>Brief description of the Background included</b>	
Instrument of protection	
Comments	IOPAN hereby includes Access Rights to know-how that has been created by the research team involved in the CLISED Project, pursuant to the technical Annexes. Access will only be granted as far as IOPAN is legally entitled to do so.

<b>Identification of the Party</b>	
Full legal name and address of the institution	<b>Uniwersytet Gdański</b> , Bażyńskiego 1a, 80-952 Gdańsk, Poland
Abbreviated name	UG
Party in the Project under the number	1
<b>Brief description of the Background included</b>	
Instrument of protection	
Comments	<b>UG</b> hereby includes Access Rights to know-how that has been created by the research team involved in the <b>GLAERE</b> Project, pursuant to the technical Annexes. Access will only be granted as far as <b>UG</b> is legally entitled to do so.

<b>Identification of the Party</b>	
Full legal name and address of the institution	<b>Morski Instytut Rybacki- Państwowy Instytut Badawczy</b> , Kołłątaja 1, 81-332 Gdynia, Poland
Abbreviated name	MIR-PIB
Party in the Project under the number	2
<b>Brief description of the Background included</b>	
Instrument of protection	
Comments	<b>MIR-PIB</b> hereby includes Access Rights to know-how that has been created by the research team involved in the <b>GLAERE</b> Project, pursuant to the technical Annexes. Access will only be granted as far as <b>MIR-PIB</b> is legally entitled to do so.

<b>Identification of the Party</b>	
Full legal name and address of the institution	<b>Norwegian Polar Institute</b> , Hjalmar Johansensgt. 14, Tromsø N-9296, Norway
Abbreviated name	NP
Party in the Project under the number	3
<b>Brief description of the Background included</b>	
Instrument of protection	
Comments	<b>NP</b> hereby includes Access Rights to know-how that has been created by the research team involved in the <b>GLAERE</b> Project, pursuant to the technical Annexes. Access will only be granted as far as <b>NP</b> is legally entitled to do so.

<b>Identification of the Party</b>	
Full legal name and adress of the institution	<b>University Centre in Svalbard</b> ,Forskningsparken, Pb 156, Longyearbyen 9171, Norway
Abbreviated name	UNIS
Party in the Project under the number	4
<b>Brief description of the Background included</b>	
Instrument of protection	
Comments	<b>UNIS</b> hereby includes Access Rights to know-how that has been created by the research team involved in the <b>GLAERE</b> Project, pursuant to the technical Annexes. Access will only be granted as far as <b>UNIS</b> is legally entitled to do so.

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

**[Attachment 2: Background excluded]**

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

**[Attachment 3: Accession document]**

No new party is accessing the Project in the moment of signing the Partnership Agreement at the beginning of the Project.

**[Attachment 4: Listed Affiliated Entities]**

No affiliated entities were identified in the moment of signing the Partnership Agreement at the beginning of the Project.

**[Attachment 5: List of Third Parties]**

No Third Parties were identified in the moment of signing the Partnership Agreement at the beginning of the Project.