

RENAISSANCE CONSORTIUM AGREEMENT

Project acronym:

RENAISSANCE

Project full title:

Renewable ENergy Acting In SuStainable And Novel Community
Enterprises

Contract no.:

TREN/ 05/FP6EN/SO7.51482/513477, as amended by Amendment No1

Prepared by:

Hespul, April 2007

Reviewed on June & October 2007.

**Initials of
Signatories**

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**Initials of
Signatories**

General Information

This AGREEMENT is made on 31st October 2007 BETWEEN:

No	Full Name	Short Name	Country
1	Bracknell Forest Borough Council	BFBC	UK
2	TV Energy Ltd	TVE	UK
3			
4	University of Reading	UoR	UK
5	South East England Development Agency	SEEDA	UK
6	Bracknell Regeneration Partnership (STANHOPE)	BRP	UK
7	Slough Heat and Power	SH&P	UK
8	Zaragoza City Council, Environment Department	Ayto-Zaragoza	Spain
9	Sociedad Municipal de Rehabilitación Urbana y Promoción de la Edificación de Zaragoza, S.L.	SMRUZ	Spain
10	Fundación Ecología y Desarrollo	ECODES	Spain
11	Ecociudad Valdespartera Zaragoza	EVZ	Spain
12	Endesa Energía, S.A.	EDE	Spain
13	Centro Nacional de Energías Renovables	CENER	Spain
14	University of Zaragoza	UdZ	Spain
15	URBIC Engineering	URBIC	Spain
16	Communauté urbaine du Grand-Lyon	Grand-Lyon	France
17	SEM Lyon-Confluence	Lyon-Confluence	France
18	Hespul	HESPUL	France
19	Agence Locale de l'Energie de l'Agglomération Lyonnaise	ALE	France
20	Enertech	Enertech	France
21	INSA de Lyon (CETHIL)	INSA-CETHIL	France
22	SCI Lyon Confluence La Presqu'île (Lot A)	LOT A	France
23	SCI Lyon Islands (Lot B)	LOT B	France
24	La Confluence-Ilot C (Lot C)	LOT C	France
25	University of Barcelona	UB	Spain
26	Region of Lombardy	LOM	Italy
27	Endesa Cogeneración y Renovables S.A.	ECyR	Spain

Relating to the Project entitled RENAISSANCE (Renewable ENERGY Acting In Sustainable And Novel Community Enterprises), Proposal no: 513477.

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WHEREAS:

(A) The *Parties*, having considerable experience in the field concerned, have submitted a *Proposal* for a *Project* entitled Renewable ENergy Acting In SuStainable And Novel Community Enterprises (**RENAISSANCE**) to the *Commission* in Sustainable energy systems program, as part of the Sixth Research and Technological Development Framework Programme

(B) The *Parties* wish to specify or supplement, between themselves, the provisions of the *Contract*

IT IS HEREBY AGREED AS FOLLOWS:

1.0 Definitions

1.1 Contract Definitions

Words defined in the *Contract* or in the *Contract*, Annex II.1 have the same meaning in this *Consortium Agreement* and appear in italics. Other terms used in this *Consortium Agreement* have the meanings detailed in clause 1.2

1.2 Additional Definitions

"Access Rights" means licences and user rights to knowledge or pre-existing know how as defined in the *Contract*.

"Contract" means the Contract No. **TREN/05/FP6EN/SO7.51482/513477** (including its Annexes) , as amended, following its Amendment No 1 for the undertaking by the *Parties* of the *Project*. *Contract* also means, as applicable, any *Contract* amendment made pursuant to its terms.

"Commission" means the European Commission

"Consortium Agreement" or **"Agreement"** means this agreement as signed and agreed by all *Parties*

"Community Steering Groups (CSG)" means separate country based groups which will be established to oversee the day-to-day progress of the work in each of the three communities. All *Parties* will be included in these CSGs.

"Coordinator" is the intermediary to the *Commission*. He/she is authorised to execute the Project management, and shall report and be accountable to the *Project Steering Group* (PSG) under the conditions set forth in Clause 5.3.

"Defaulting Party" means a *Party* breaching its obligations of this *Consortium Agreement*.

“Project Steering Group” (PSG) means the key members, representing all the *Parties*, and headed by the consortium leader, that will guarantee the smooth running of the *Project*, through effective supervision and efficient decision-making. The group will comprise seven (7) key members. The Group will ensure that the *Project* work schedule and objectives are adhered to by all *Parties* and it will review *Project* progress (work plans, activities, objectives and achievements) every 6 months and address any problems with Directorate General for Transport and Energy (DG TREN) if necessary. Further details of the membership of this group are contained in Clause 5.2.

“Project Management Plan” means the annual extrapolation and adjustment of the Project plan with respect to work share, changes and budget allocations to be prepared annually for submission and approval by the *Commission* in accordance with the conditions of *Contract Annex II*.

“Party” or “Parties” means a *Party* or the *Parties* to this *Consortium Agreement*.

“Project Deliverables” or “Deliverables” means reports, including progress reports and certified audit reports, as well as hardware and software referred to in the *Contract* and in this *Consortium Agreement* that have to be delivered to the *Coordinator*, Sub-Project Coordinator(s), if any, and/or the *Commission*.

“Project Share” means for each *Party* that *Party's* share of the total cost of the *Project* as shown in the *Contract*.

“Proposal” means the proposal for the *Project* submitted by the *Parties* to the *Commission*, including any amendments.

1.3 Further Understandings

In order to clarify certain ambiguities appearing in the provisions of the *Contract*, the *Parties* have agreed on the following interpretations:

(a) **“Indirect utilisation of Knowledge”** in the *Contract's* definition of Use includes, for and on behalf of the *Party* concerned, use by having products and/or services developed, made and/or provided

(b) **“Fair and Non-discriminatory Conditions”** means fair market conditions

(c) **“Pre-existing Know-How”** refers only to that pre-existing know how which is developed by the research team or research Centre actively involved in the Project.

2.0 Subject of the Agreement

2.1 Purpose

The *Parties* to this *Consortium Agreement*, acknowledging that :

- Three new members, namely **SCI Lyon Confluence La Presqu'île, SCI Lyon Islands**, and **La Confluence-Ilot C** did access to the Contract, by letter dated 17/10/2006, with effect from 01/07/2006 ;
- Bracknell Forest Borough Council is no longer assuming the role of *coordinator* of the Project since 17/10/2006;
- The *Consortium* has designated the Communauté Urbaine de Lyon (Grand-Lyon), with the assistance of HESPUL, as the new *coordinator* of the project, with effect from 18/10/2006;

the purpose of this *Consortium Agreement* is :

- to replace the previous version of the *Consortium Agreement* signed in 2005 ;
- to apportion the obligations detailed in the *Contract* No. TREN/05/FP6EN/SO7.51482/513477 (including its Amendment N°1 and its Annexes) between the *Parties* ,
- to facilitate the fulfilment of the research work and related services and activities allocated to the *Parties* under the *Contract* (and as described in more detail in *Contract* Annex I) by setting forth the terms and conditions pursuant to which the *Parties* agreed to function and cooperate in the performance of their respective tasks under the *Contract*.

2.2 Nature of the Agreement

Nothing contained in this *Consortium Agreement* shall constitute or be deemed to constitute either a partnership or any formal business organisation or legal entity between the *Parties*. Each *Party* shall act as an independent Contractor and not as the agent of any of the other *Parties*. Nothing contained in this *Consortium Agreement* shall be construed as constituting or organizing the sharing of profits or losses arising out of the efforts of any other *Party* hereunder. Any participation as a *Party* in this *Project* requires either signatory to the *Contract* or accession to it.

In case of conflict between this *Consortium Agreement* or parts of it and the *Contract*, the latter will have precedence.

3.0 Responsibilities of each Party

3.1 General Responsibilities

Each *Party* hereby undertakes with respect to other *Parties* to use all reasonable endeavours to perform and fulfil, promptly, actively and on time, all of its obligations under the *Contract* and this *Consortium Agreement*.

Without prejudice to the requirements of all the *Parties* to fulfil their respective obligations under the *Contract*, the *Parties* in particular undertake with each other that they shall:

- a) Take part, when appropriate, in all meetings of the *PSG* and *CSG* or to send a representative
- b) Ensure that no commitments which are incompatible with the Renaissance *Project* are entered into and avoid conflicts of interest.
- c) Obey the rules for participation
- d) Endeavour to promote equal opportunities between men and women in the implementation of the *Project*
- e) If not accomplished before the execution of the principal *Contract*, agree to sign the letter of accession to the *Contract*

3.2 Responsibilities towards the Coordinator and the PSG

Without prejudice to the requirement of each *Party* to provide information to the *coordinator* in accordance with the *Contract*, each *Party* undertakes that they shall ensure that the *coordinator* is able to comply with its obligations under the *Contract*. In particular, but without prejudice to the forgoing, each *Party* shall:

- a) Promptly supply to the *coordinator* all such information or documents as the *coordinator* needs to fulfil its obligations
- b) Provide data requested by the *Commission* or the *Coordinator* in a timely manner
- c) Inform the *Coordinator* of who is designated to manage and monitor the work of the *Party*
- d) Ensure that all *deliverables* are submitted to the *Coordinator* within the timescales required in the *Contract*.
- e) Ensure that final reports are submitted to the *Coordinator* in accordance with the *Contract*
- f) Provide the *Coordinator* with information regarding the framework of controls and audits
- g) Inform the *Coordinator* in the event that any eligibility criteria established for the rules of participation and the financial regulation change during the *Project* period.
- h) Ensure that all communications with the *Commission* are made through the *Coordinator*.
- i) Accept the termination and suspension arrangements that apply within the *Contract*
- j) Inform the *Coordinator* immediately of anything that affects the implementation of the *Project* or delays its implementation.
- k) Provide such information as necessary to the *Coordinator* in order to enable negotiations with the *Commission* regarding any amendments required to the *Contract* (particularly to address delay etc).

- l) Understand that, if the *Project* is suspended in whole or part any Contractual performance, it is done at the own cost and risk of the *Party*.
- m) Submit audit certificates required in accordance with the *Contract* and that the audit arrangements in Article II.26 are complied with.
- n) Ensure that the transmission requirements for reports laid out in the *Contract* are complied with.
- o) Ensure that non satisfactory performance is remediated as soon as reasonably practicable
- p) Co-operate with all the other *Parties* to ensure that solutions are found to make good any breach within the period required in the *Contract*
- q) Comply with the confidentiality requirements detailed in the *Contract*
- r) Comply with the communication of data requirements detailed in the *Contract*
- s) Comply with the non assignment provisions
- t) Be aware of the reimbursement provisions within Annex II, article II.31
- u) Comply with the provisions relating to the participation of the *Parties* contained within Annex III of the *Contract*
- v) Comply with the provisions relating the updating of implementation plans and the annual review contained within Annex III of the *Contract*

3.3 Obligations of the Parties towards each other

(a) Each *Party* undertakes to use reasonable endeavours:

- to notify the *Coordinator* promptly of any significant problem and delay likely to affect the success of the *Project*; and to work with the *Coordinator* to find a solution to the problem and to mitigate the delay
- to inform other *Parties* of relevant communications it receives from third *Parties* in relation to the *Project*.

(b) Each *Party* shall use reasonable endeavours to ensure the accuracy of any information or materials it supplies hereunder or under the *Contract* and to promptly correct any error therein of which it is notified. The recipient *Party* shall be entirely responsible for the use to which it puts such information and materials.

4.0 Rules for Dissemination and Use

4.1 Confidentiality

All *Parties* undertake to preserve the confidentiality of any document, information, knowledge, know how or other material communicated to them in relation to the execution of the *Project* as set out in Annex II, Article II.9.

For the avoidance of doubt, it is stated that the confidentiality obligations under the EU Contract and this *Consortium Agreement* shall not be interpreted as to prevent the communication of information:

- a) as is needed to be communicated to comply with applicable laws or regulations or with a court of administrative order provided that insofar as reasonably possible the complying Party shall have informed the owner of the information of such need and shall have complied with such owner's reasonable instructions designed to protect the confidentiality of such information
- b) to any affiliate or to any other third *Party* (including the *Commission*) insofar as needed for the proper carrying out of the Contract and/or this *Consortium Agreement*;
- c) to any third Party (including to the public) as strictly needed for technical reasons and insofar as needed for proper use of a Parties' own knowledge from the Project.

The confidentiality obligation stipulated above does not extend to information for which the beneficiary Party can prove:

- a) had a public nature prior to its communication by the disclosing *Party* or fell within the public domain after its communication by the disclosing *Party*
- b) was already in its possession at the time of signature of this *Consortium Agreement*;
- c) was received by a third Party without any breach of obligation, or
- d) can be documentarily proved to have been developed by the receiving Party independently of the work performed under this *Consortium Agreement*.

4.2 Ownership of results

All *Parties* shall comply with the with the Intellectual Property Rights provisions in Annex II. Article II.32, II.33, II.34, II.35 and II.36

4.3 Dissemination of knowledge

The *Parties* undertake to ensure that they will engage with actors beyond the Project community and with the public as a whole to help to spread awareness and knowledge and to explore wider impacts and links of the *Project* as set out in Annex II, Article II.10.3.

4.4 Publications, Press Releases and Reports to the Commission

4.4.1 Publications and Press Releases

If the *Party* have agreed a *Project Deliverable* to be available to the public, any *Party* may use information included in such *Project Deliverable* without any notification to the other *Parties* and without any other *Parties'* consent. In the publication, proper references to the origin and generator of the information shall be made.

For the avoidance of doubt, it is stated that unless otherwise agreed between the *Parties* concerned, no *Party* shall have the right to publish or allow the publication of

data which includes knowledge of another Party, pre-existing know-how of another Party or confidential information of another *Party* even where such data is amalgamated with such first Party's knowledge, pre-existing know-how or other information, document or material. Any use of such other Party's data justifies objection to the publication by the *Party* concerned.

4.4.2 Reports to the Commission

Periodical technical and financial reports have to be presented as *deliverables* to the DG TREN. As the *Coordinator* has the responsibility of presenting these reports, the *Parties* will help in their preparation by seriously committing themselves to follow the instructions made by the *Coordinator*, within the deadlines that are asked for.

5.0 Organisational Provisions

5.1 Organisational Structures

The organisational structures for the *Project* shall be:
The *PSG*
The *CSG*

Other committees can be created as deemed necessary by the *Parties* and should report to the *CSG* or *PSG* as appropriate. The *Commission* may participate as an observer at the meetings of the *PSG*.

5.2 The Project Steering Group (PSG)

5.2.1 Composition

There will be a minimum of three (3) designated *PSG* members from France and Spain, and one (1) designated *PSG* member from Italy. Individual *PSG* members will be responsible for representing all participants from their countries. Membership details at the commencement of this agreement are detailed in Clause 5.2.2

A precondition of change to the membership of the *PSG* is the agreement of the *Parties*.

There will also be an option to include one or two other non-voting advisors per country, as required, to support the *PSG* members for example in translation, in Project management, etc.

PSG members can be represented by other team members to ensure as much flexibility as possible in representation.

The *PSG* chair and secretariat will be provided by the *Coordinator*.

5.2.2 Membership

The *PSG* is to be made up of the following members, their participation having been agreed by the *Parties* during the preparation of this *consortium agreement*.

PSG Position	Organisation
1. Chairman & Lyon Representative	Grand Lyon (F)
2. Chairman assistance & Lyon Representative	Hespul (F)
3. Lyon Representative	SEM Lyon confluence (F)
4. Zaragoza Representative	Ayto-Zaragoza (E)
5. Zaragoza Representative	EVZ (E)
6. Zaragoza Representative	SMRUZ (E)
7. Lombardy Representative	Region Lombardy (I)

5.2.3 Role

The *PSG* will guarantee the smooth running of the *Project*, through effective supervision and efficient decision-making. Specifically its role is:

- a) To provide *Project* management, leadership and co-ordination to the *Parties* taking part in the RENAISSANCE initiative
- b) Monitor *Project* progress, resources and budgets to ensure successful *Project* delivery
- c) To ensure effective and transparent financial management of the *Project*
- d) Oversee annual reporting to the *Commission*
- e) Resolve any contractual issues and to ensure fairness between *Parties*

5.2.4 Responsibilities

The responsibilities of the *PSG* are:

- a) To formulate and agree policy related to the group
- b) To coordinate the definition, division, development and delivery of the tasks
- c) To oversee the budget and production of audit certificates
- d) To advise, support and authorise the execution of difficult decisions by the *coordinator* (for example: changes of partner, re-negotiation of budget distribution, resolution of conflicts within the *consortium*, etc.)
- e) To agree any reimbursement of costs by a *Party* if, due to the actions of that *Party*, extra administrative costs have been incurred by the *Coordinator*. The *PSG* will determine if it would be appropriate for the *Party* to meet those extra administrative costs and what the level of the payment should be (see Clause 7.6, next to last sentence)

5.2.5 Meetings:

All meetings should be subject to a formal documentation procedure comprising the preparation of an agenda circulated to all *Parties* in advance of the meeting highlighting items, and the preparation of full minutes circulated to all Parties within 21 days of the meeting.

Any items for discussion that impact on the budget for a *Party* not represented on the PSG will need to be supported by papers previously circulated to all Parties.

Kick-off meeting: The first meeting of *the* PSG (Kick-off Meeting of the Project) will take place after start of the *Project*.

Ordinary Meetings: Ordinary *PSG* meetings will take place during the *Project* every 6 months (or less as appropriate as the Project progresses) on a rolling basis to be agreed between the three countries. They will be organised by the local host, with due assistance from the *PSG* representatives and the Coordinator. The *Parties* may ask the *PSG* for additional meetings with an agenda when necessary.

Exceptional meetings: the *PSG* will have the power to call an exceptional meeting when considered necessary. These will be called when (but not limited to) circumstances indicate the risk of uncontrolled *Project* time and cost escalation and in the case of *Party* changes, resolution of serious conflicts or where there is the possibility of any breach of the *Contract* which required resolution. In exceptional circumstances, arrangements could also be made to meet electronically.

5.2.6 Scope and Power of the PSG

The *PSG's* scope of responsibility is all of the research, demonstration, training and dissemination activities of the *Project*.

Where it is necessary for decision making, France and Spain each will have three (3) votes and Italy will have one (1) vote. Each *Party* will ensure and undertakes with the other *Parties* that the appropriate internal resolution or authority is vested in that *Party's* representative at the *PSG*.

The *Parties* shall make every effort to adopt any proposed decision by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the decision shall be adopted by a three-fourths majority vote of the *Parties* present and voting at the *PSG* meeting.

However, in the event that the decision revolves around or affects a policy (i.e. A pre-agreed decision by a *Party* on a particular issue of importance to that *Party*) of any *Party*, then such decision shall be unanimous.

Day to day management and representation of the work of the *PSG* will be devolved to the *Coordinator*.(i.e. mainly Hespul, as the coordinator assistant of Grand Lyon under that aspect).

5.3 Project Coordinator

The *Coordinator* is the single point of contact between the *Commission* and the *Parties*. In this function the *Coordinator* shall:

- a) Sign the *Contract* with the *Commission* after authorisation by the *Parties* representing at least eighty percent (80%) of the *Project Shares* and who have acceded to the *Contract* and signed *Consortium Agreement*
- b) Collect from all *Parties* the cost and other statements for submission to the *Commission*
- c) Prepare, with the support of the members of the *PSG*, the reports and *Project* documents required by the *Commission*
- d) Ensure prompt delivery of all *deliverable* items in the *Contract* or requested by the *Commission* for reviews and audits, including the results of the financial audits prepared by independent auditors

5.3.1 Responsibilities of the Coordinator

The *Coordinator* is responsible for chairing the *PSG*. Pursuant to the *Contract*, the *Coordinator* is responsible for overall management of the *Project* with the support and collaboration of all *Parties*, in particular:

- a) To regularly report to the *PSG* on progress and activities
- b) To provide *Project* management, leadership and co-ordination to the *Parties* taking part in the *Project*
- c) To take the lead in the organisation of key shared *Project* resources e.g. *Project* communication network, website and literature and to develop promotional / reporting templates for the *Parties* as appropriate
- d) To undertake the gathering of information and compilation of the annual progress and financial reports for final submission to the *Commission*
- e) To arrange regular payments to all *Parties* as defined in the *Contract*;
- f) To meet with the *Commission* officials as required through the duration of the *Project*
- g) To develop a clear *Project* management plan (online) and ensure its use by all *Parties*
- h) To develop a dissemination strategy in agreement with all *Parties*
- i) To carry out risk assessment of the *Project* and contingency planning and continually monitor this
- j) To oversee the work undertaken by the *Project* work package groups and to monitor progress by these groups and to collate and disseminate all initial, interim and final progress reports from each work package.
- k) To establish clear terms of reference for the *PSG* and *CSGs* in agreement with all *Parties*
- l) To develop and deliver clear advice on intellectual property protection and a plan for managing this as required

- m) To oversee the arrangements for the *PSG* meetings in partnership with the meeting host country, to collect and issue all relevant documents for the meetings, take minutes and monitor follow up actions
- n) The establishment of *Project* wide advisory networks: Scientific (Universities, Research Groups), Developers, Utilities, Planners, Architects, Agencies under lead of a *Party* (e.g. ENDESA for utilities)
- o) Evaluate the effectiveness of the gender action plan required by the *Commission* and set out in Annex 1 to the *Contract*

Certain of these activities rely on other *parties* fulfilling their responsibilities in a timely manner. Should other *Parties* not fulfil such responsibilities, thereby impeding the work of the *coordinator*, the liability arrangements set out in Clause 7.6 will take effect.

5.3.2 No power of representation

Except in its capacity as the representative of the *Parties* described in the *Contract*, the *Coordinator* shall not be entitled to act or to make legally binding declarations on behalf of any other *Party*.

5.3.3 Submitting Deliverables

If one or more of the *Parties* is late in submitting of *Project Deliverables*, the *Coordinator* may submit the other *Parties' Project Deliverables* to the *Commission*. All *Parties* recognise that if all *Project Deliverables* are not received and approved by the *Commission*, payment of the grant will be withheld by the *Commission*.

5.4 The Community Steering Groups

5.4.1 Composition

Three separate country based *CSGs* will be established to oversee the day-to-day progress of the work in each of the three communities.

All *Parties* will be included in these *CSGs* along with the leading work package country representative organisation (sometimes this will be the actual work package leader but not always as work packages are shared amongst the three participating communities). The lead country organisation will in each case provide the Chairman for the *CSG*.

Each *Party* will ensure and undertake with the other *Parties* that the appropriate internal resolution or authority is vested in the *Parties* representatives at the *CSG*.

Sub-Contractors will also be included in these meetings at the discretion of the Chair to report to the Group on progress made. Other organisations might also be included from time-to-time if this is supportive to the overall Group activity.

5.4.2 Membership

Community Steering Groups (CSG)		
France (F): Lyon	Spain (E) : Zaragoza	Italy (I) : Region of Lombardy
Chair: Grand Lyon , plus community WP leaders	Chair: Ayto. Zaragoza, plus community WP leaders	LOM, plus community WP leaders
WP0: Grand Lyon + Hespul	WP0: Ayto. Zaragoza	WP0: LOM
WP1: INSA- CETHIL	WP1: UdZ	WP1.3, WP1.4 & WP1.5 only: LOM
WP2: ENERTECH	WP2: UdZ	None
WP3: SEM Lyon-Confluence (+ LOT A, LOT B and LOT C)	WP3: SMRUZ	None
WP4: HESPUL (+ Grand Lyon)	WP4: Ayto. Zaragoza	WP4: LOM
WP5: ALE	WP5: Ayto. Zaragoza	WP5: LOM

Actual representation on the group will be a matter for each group to decide and report back to the *PSG*.

5.4.3 Role

- a) To oversee the management of the *Project* in each community
- b) To oversee the delivery of the work packages
- c) To report to the *Project Coordinator* as required

5.4.4 Responsibilities

- a) To arrange and attend necessary meetings and events in the community
- b) To oversee the collaboration on and the production of the annual reports for the community and feed the necessary information required to the *Coordinator*
- c) To keep appraised and generally inform the *Coordinator* on any changes or concerns relating to the work in the community
- d) To provide progress reports from the *CSG* meetings to the *Coordinator* in a method to be agreed as most resource effective between the *Parties*. The timing of these reports will be just before each of the (6 monthly) meetings of the *PSG* and the reports will reflect progress made in the past 6 months.

5.4.5 Meetings

CSG meetings will be held at three times a year or as required by local circumstances. All meetings will be subject to a documentation process comprising prior circulation of an Agenda and supporting papers and circulation of minutes within 21 days of the meeting.

5.5 Revision of the Consortium Agreement

The *PSG* shall also be responsible for any revisions that need to be made to the *Consortium Agreement* in the duration of the *Project*, subject to the agreement of all *Parties*. Including:

- a) Modification of *Consortium Agreement* technical provisions
- b) Modification of *Consortium Agreement* financial provisions
- c) Withdrawal of *Parties*
- d) Acceptance of new *Parties*
- e) Termination of the *Agreement* after full completion of the *Project*
- f) Termination prior to the completion or upon early completion of the *Contract*

Provided that the above is consistent with the approval of the *Commission* required under the *Contract*.

Amendments or changes to this *Consortium Agreement* shall be made in writing and signed by an authorised signatory of each of the *Parties*.

6.0 Financial Provisions

6.1 General Principles

Each *Party* shall bear its own costs incurred in connection with the performance of the *Contract* and this *Consortium Agreement*, carrying out of the *Project* work and implementation of the *Project*; following the *Commission* rules in respect of the definition of “eligible cost” (see Annex II-Part B of the *Contract* “Financial provisions”).

In particular, each *Party* will be in charge of the total amount of costs of their Audit Certificates, accordingly to article 9 of the *Contract*.

6.2 Payments

The *Coordinator* shall receive all payments made by the *Commission*. The *Coordinator* will transfer, in accordance with the *Contract* and the budget allocation, the appropriate sums to the respective *Parties* with minimum delay, but not later than sixty (60) calendar days from the receipt thereof from the *Commission*.

The *Coordinator* shall notify each *Party* promptly of the date and amount transferred to its respective bank account and shall give the relevant references.

To the extent that serious concerns regarding the financial soundness of one or several *Parties* exist, the *Coordinator* has the authority to require the appropriate letter to prove that the corresponding *Party* is able to fulfil their financial obligations with regard to the *Contract* and this *Consortium Agreement*. Until this is provided, the *Coordinator* is entitled to refuse the disbursement of the financial contributions of the *Commission* to this *Party*.

Furthermore, the *Coordinator* has the right to retain any payment if a *Party* is late in submitting or refuses to provide deliverables as defined in Clause 3.2 of the *Consortium Agreement* and *Contract* Annex II.

6.3 Financing plans

The *Project* financial details and plans are agreed by all *Parties* to be as set out in Annex I to the *Contract* including:

- a) The total *Project* cost
- b) Financial contributions of each *Party*
- c) *Commission* contributions
- d) Outside, third party financial assistance
- e) Expenses and financing plan
- f) Annual budget for each *Party*

6.4 Mutual payments

Under certain circumstances, several *Parties* may incur common expenses (personnel, equipment, etc.). Where these expenses are likely to be incurred, the *Coordinator* should be notified as soon as possible and involved in discussion on how the payment of this type of expense by each *Party* is to be handled and on how it is to be clearly reported to the *Commission* for the community contribution to those costs. The outcomes of these discussions will be reported to the *PSG* for approval.

Relevant considerations which will require discussion and agreement, include:

- a) Reimbursable advance of a *Party* and method of reimbursement
- b) Joint accounts and conditions of paying in funds
- c) Terms of payment
- d) Currency
- e) Impact of exchange rates and bank transfer costs
- f) Payment of taxes
- g) Interest, if any
- h) Identification of management costs beyond that provided by the *Contract*

6.5 Eligible Costs

Parties undertake to ensure that they:

- a) Comply with the eligible costs criteria set out in the *Contract* Annex II, II.19
- b) Where there is any doubt on what constitutes an eligible cost, the matter should be referred to the *Coordinator* who will clarify the issue with the *Commission* as necessary
- c) Are aware of the liquidated damages provision in Annex II, II.30 where a *Party* has overstated expenditure

6.6 Costs to be registered under management activity

Costs for management of the *Consortium* shall be reimbursed by the *Commission* financial contribution, up to 100 % of the costs incurred. However, the *Commission* contribution of 100% of management costs is limited to 7 % of the *Commission* funding.

This limit of 7% may mean that some management costs are not covered entirely by the *Commission* financial contribution. For this reason the management tasks and the related costs must be detailed and easily identified in each of the *Parties'* accounting system. Reference should be made to the *Contract* and the related financial guidelines.

The tasks considered as 'technical' should be clearly identified as such. It must be anticipated that coordination and management tasks are of a different nature. Beyond the 100% funded 7% management budget there is no funding for management purposes per se. Certain research coordination activities linked to technical issues could be implemented in the RTD work packages to benefit from the funding rates appropriate to those activities.

Where there is any doubt on what constitutes a management costs, the matter should be referred to the *Coordinator* who will clarify the issue with the *Commission* as necessary.

7.0 Legal Provisions

7.1 Legal co-operation status

This *Consortium Agreement* and the *Contract* constitute the entire agreement between the *Parties* in respect of the *Project*, and supersede all previous negotiations, commitments and writings concerning the *Project* including any memorandum of understanding between the *Parties* (whether or not with others) which relate to the *Project* or its *Proposal* to the *Commission*.

This *Agreement* shall take the legal form of a binding agreement between all *Parties*.

7.2 Applicable law

This *Agreement* shall be construed according to and governed by the law provided in the *Contract*.

7.3 Duration of the Agreement

This *Consortium Agreement* shall come into force as of the date of its signature by the *Parties*, but shall have retroactive effect from the date of the *Contract* Signature by the *Coordinator* and shall continue in full force and effect until terminated in accordance with Clause 7.5 or until complete discharge of all obligations for carrying out of the *Project* undertaken by the *Parties* under the *Contract* and under this *Consortium Agreement*, whichever is later.

7.4 Extension to the Agreement

Any calls for extensions to the duration of the *Project*, either as a result of a request by the *Commission* or by other *Parties*, will be considered by the *PSG* which will also seek the agreement of the other *Parties*.

Any calls for extension of the consortium membership, either as a result of a request by the *Commission* or by other *Parties*, will be considered by the *PSG* under the provisions of Article 3 of the *Contract*.

All *Parties* recognise and accept the requirement for annual reviews, costs statements, certificates and assume the associated costs.

7.5 Termination of the Agreement

7.5.1 Rules for Termination

No *Party* shall be entitled to withdraw from this *Consortium Agreement* and/or participation in the *Project* unless:

- a) That *Party* has obtained the prior written consent of the other *Parties* (such consent will not be unreasonably withheld in order to preserve the flexibility of the *Contract*), and also of the *Commission*, to the withdrawal from, or termination of, the *Contract*; or
- b) That *Party's* participation in the *Contract* is terminated by the *Commission* pursuant to the provisions of the *Contract*, Annex II- section 2 (articles II-15, II.16, II.17, II.18); or
- c) The *Contract* is terminated by the *Commission* for any reason whatsoever, provided always that a *Party* shall not by withdrawal or termination be relieved from its responsibilities under this *Consortium Agreement* or the *Contract* in respect of :
 - (i) that part of that *Party's* work on the *Project* which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or
 - (ii) any of its obligations or liabilities arising out of such withdrawal or termination.

In the event that a *Party's* participation in the contract is terminated by the *Commission* pursuant to the provisions of the *Contract*, that *Party* (whose participation has been terminated) will have no liability of any acts defaults or omissions of any *Party* who continues to participate in the contract, following that termination.

Parties undertake to ensure that:

- a) They co-operate with other *Parties* upon termination of their participation in the *Contract* and provide all reasonable information required to enable the *Project* to continue
- b) Any requests for termination of participation are submitted to the *Coordinator* in the first instance
- c) Any financial contributions which had not been spent on “eligible costs” are returned to the *Coordinator* in the event of termination
- d) Reports are provided to the *Commission* in accordance with the main *Contract* following a defaulting *Contractor’s* termination within the period required (through the *Coordinator*).
- e) On the expiry date or when a *Party* withdraws, or upon termination of the participation of a *Party*, the *Party* will return all documents exchanged during the period of cooperation, if required.
- f) With the exception of the cases where the participation of a *Party* is terminated by reason of default, the *Access Rights* accrued up to the date of termination and the obligations of grant *Access rights* pursuant to the *Contract* and this *Consortium Agreement* shall continue too be in full force and effect;
- g) *Defaulting Parties* are obliged to continue to grant *Access Rights* pursuant to the *contract* and this *Consortium Agreement*, but the *Access rights* granted to the *Defaulting Party* pursuant to this *Consortium Agreement* shall cease immediately upon termination of the participation of the *Defaulting Party* in the *Contract*.

7.5.2 Termination due to Bankruptcy or Liquidation

If any *Party* enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors, the other *Parties* shall, subject to approval by the *Commission*, be entitled to take over the fulfilment of such *Party’s* obligations and to receive subsequent payments under the *Contract* in respect thereof. In such event, all rights and obligations under the *Contract* and this *Consortium Agreement* shall in good faith be redistributed among the remaining *Parties* and the affected *Party* on the basis of the work performed by the affected *Party* prior to the occurrence of the above circumstance.

7.5.3 Termination of the Contract Due to No Fault

In the event that the *Contract* is terminated as a result of circumstances outside the control of the *Parties* (including without limitation force majeure, pursuant to Article II.15.5(e)) or if it is excessively difficult to continue with the *Project*, or if the *Project* is no longer viable, then each *Party* shall bear its own losses, costs, expenses and liabilities that arise as a result.

7.5.4 Financial Collective Responsibility

If the *Contract* is terminated where the participation of a *Party* is terminated, and that *Party* does not honour the reimbursement provisions within the *Contract* to the *Commission*, then in the event that any one or more of the remaining *Parties* to the

consortium agreement have to reimburse the *Commission* for this sum then the *Party* whose participation has been terminated shall indemnify these remaining *Parties* making the reimbursement from the costs arising there from.

7.6 Liability

If, as a result of an act of default of a *Party* or more *Parties* (“the defaulting Party”), there is :

- a) a claim by a third party against the *Coordinator*, any other *Party* or the *Commission*; or
- b) a suspension of all or part of the *Contract*
- c) a termination of all or part of the *Contract*
- d) funds are irrecoverable from the *Commission* where they would otherwise have been recoverable
- e) funds are repayable to the *Commission*
- f) the level of funds payable by the *Commission* is reduced
- g) there is a suspension of payment by the *Commission*

and the *Coordinator*, any other *Party* or the *Commission* thereby suffers any loss, cost, expense, liability or damage (“the Affected Party”) then the Defaulting *Party* will indemnify the Affected *Party* accordingly.

In the interest of all *Parties*, each *Party* will agree to:

- a) Ensure that they do all things to enable the *Coordinator* to comply with its obligations under the main *Contract*
- b) Ensure that they comply with their obligations owed to the *Consortium* as a whole under the *Contract*
- c) Ensure that they comply with their obligations to the *Commission* under the *Contract*.

In the event that extra administrative costs have been incurred by the *Coordinator* as a result of the act or default of a *Defaulting Party* pursuant to this clause, then should the *PSG* agree that it is appropriate to do so, the defaulting *Party* will indemnify the *Coordinator* from and against those extra administrative costs to such an extent that the *PSG* agrees.

The liability of a *Defaulting Party* pursuant to the provisions of this clause 7.6 shall be limited to the amount of its respective *Project Share*.

7.7 Suspension of the Contract

In the event that the *Contract* is suspended by the *Commission*, the *Parties* shall:

- a) Work together with a view to ensuring that the suspension is lifted by the *Commission* as soon as possible. This may involve the urgent provision of information by any one or more of the *Parties* to the *coordinator*, or the rectification by one or more *Parties* of less than satisfactory performance of the *Project*
- b) Where costs or losses result from the suspension, each *Party* shall bear its own costs or losses save where the costs or losses result from the act or default of one or more *Parties* in which event the indemnity provisions in Clause 7.6 shall apply.

7.8 Settlement of disputes

The *Parties* shall in the first instance attempt to resolve any disputes or differences arising in connection with this *Consortium Agreement* which cannot be settled amicably by mediation.

All disputes or differences arising in connection with this *Consortium Agreement* which cannot be settled amicably or by mediation shall be finally settled by arbitration in Brussels under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators to be appointed under the terms of those rules. In any arbitration in which there are three arbitrator(s), the chairman shall be of juridical education. The award of the arbitrators will be final and binding upon the *Parties* concerned.

7.9 Secondments

It may be necessary for *Parties* to second staff to other organisations. In this case, the *Parties* concerned will work together to agree on the conditions of such a secondment. The *Parties* will inform the *Coordinator* of such arrangements and the *Coordinator* will also be given the opportunity to comment upon the secondment arrangements.

7.10 Sub Contracting

All *Parties* will abide by the rules for Sub Contracting set out in the *Contract* 's Annex II- General Conditions, Article II.6.

Parties will inform the *Coordinator* if there are any proposed sub-Contracting arrangements and confirm that the Sub-Contracting requirements have been complied with as set out in the *Contract* General Conditions- Annex II, and the Annex 1. *Parties* should ensure that any Sub-Contracts entered into are auditable by the *Commission*.

Parties must also ensure that confidentiality, data communication, information and publicity requirements are complied with in any Sub-Contracts and ensure that payment terms on any Sub-Contract are compatible with payment arrangements under the main *Contract* and are auditable similarly.

In the event that a *Party* enters into a Sub-Contract for its obligations pursuant to the *Contract*, the *Party* shall still be bound by those obligations.

7.11 Force Majeure

Any *Party* that believes it will be, or is, affected by force majeure shall inform the *Coordinator* in writing of any events of force majeure as soon as they arise or it is believed that they may arise, stating the nature and likely duration of these and any resultant affects (particularly those which may affect the ability to fulfil Contractual obligations). Each *Party* will provide co-operation and information to the *Coordinator* in respect of circumstances relating to force majeure.

The *Parties* shall discuss in good faith the possibilities of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably possible. If such Force Majeure event is not overcome within 6 weeks after such notification, the transfer of tasks shall be carried out. In the event that transfer of tasks is not possible, the *Parties* will provide other assistance to the *Coordinator* to find solutions to overcome the Force Majeure as soon as reasonably practicable and subject to the agreement of the *Commission*. Any such solutions shall be put into operation at the earliest possible date.

7.12 Assignment

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

7.13 Language

This *Consortium Agreement* is drawn up in English, which language shall govern all documents, notices and meetings for its application and/or extension or in any other way relative thereto. Any translation costs shall be borne by the *Party* incurring the cost.

7.14 Counterparts

This *Consortium Agreement* may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Signatures

Insert signature pages for each partner

Partners' number	Partners	Partners' Acronym	Name & title of signatory	Date	Signature
1	Bracknell Forest Borough Council	BFBC			
2	TV Energy Ltd	TVE			
3					
4	University of Reading	UoR			
5	South East England Development Agency	SEEDA			
6	Bracknell Regeneration Partnership (STANHOPE)	BRP			
7	Slough Heat and Power	SH&P			
8	Zaragoza City Council, Environment Department	Ayto-Zaragoza			
9	Sociedad Municipal de Rehabilitación Urbana y Promoción de la Edificación de Zaragoza, S.L.	SMRUZ			
10	Fundación Ecología y Desarrollo	ECODES			

Initials of Signatories

11	Ecociudad Valdespartera Zaragoza	EVZ			
12	Endesa Energía, S.A.	EDE			
13	Centro Nacional de Energías Renovables	CENER			
14	University of Zaragoza	UdZ			
15	URBIC Engineering	URBIC			
16	Communauté urbaine du Grand-Lyon	Grand- Lyon			

17	SEM Lyon- Confluence	Lyon- Confluence			
18	Hespul	HESPUL			
19	Agence Locale de l'Energie de l'Agglomération Lyonnaise	ALE			
20	Enertech	Enertech			
21	INSA de Lyon (CETHIL)	INSA- CETHIL			
22	SCI Lyon Confluence La Presqu'île (Lot A)	LOT A			

**Initials of
Signatories**

23	SCI Lyon Islands (Lot B)	LOT B			
24	La Confluence- Ilot C (Lot C)	LOT C			
25	University of Barcelona	UB			
26	Region of Lombardy	LOM			
27	Endesa Cogeneración y Renovables S.A.	ECyR			

**Initials of
Signatories**