

# IGREENGrid



## WP1: D1.2 IPR MANUAL



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## Abstract

This document aims at answering one of the deliverables associated to the WP1, the D1.2 “IPR Manual”.

This Deliverable has to provide the rules and methods to manage the intellectual property according to the criteria established by the partners in the Consortium Agreement, taking into consideration the issue of the confidentiality of the DSOs network data.

This document is structured in three main issues:

- Foreground management, treated in chapter 2.
- Access Rights, treated in chapter 3.
- Exchange of data and non-disclosure of information, treated in chapter 4.

The document also provides the main procedures to manage confidentiality of data by addressing key issues: identification and protection of confidential data, transformation and organization of data exchange and data usage.

Done consistently with the current state of IGREENGrid project, this analysis would have to be updated considering any new development of the experimentation.



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# 1 Introduction and scope of the document

The IGREENGrid partners recognize the great importance to the protection of Intellectual Property Rights (IPR), since they have an impact on their individual competitiveness, and the general economic well-being. A high standard of IPR protection is necessary to protect and encourage the growing body of high value-added, high technological content necessary for the EU to become an advanced knowledge-based economy.

The IPR matter is regulated by the Regulation (EC) No 1906/2006, by the Grant Agreement signed by the Coordinator and the European Commission (on the basis of the model established by the Commission in accordance to Articles 19(8) and 18(2) of the mentioned Regulation) and by the Consortium Agreement IGREENGrid. For the sake of clarity, nothing in this document may be in conflict with the above mentioned documents. Furthermore, the “Guide to Intellectual Property Rules for FP7 projects” (issued by the European Commission – see [ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf) ) is to be taken into the due account, in the management of the IPR matter.

CA includes the corresponding clauses regarding to the intellectual property right of the Demo Projects information with reference to the information that they will provide to IGREENGrid in order to protect their knowledge, and the knowledge developed during IGREENGrid. In advance, project partners commit to do not use the information from Demos without the previous formal approval from the data owner (non-disclosure agreements).

The aim of this document is to provide an overview of the Intellectual Property Rights (IPRs) corresponding to the knowledge developed in the project. And also, how to manage the IPR problems during and after the end of IGREENGrid project.

The provisions relating to Access Rights, Confidentiality, for the life of the projects, as well as to Liability, Applicable law and Settlement of Disputes shall survive the expiration or termination of the CA.

Termination shall not affect any rights or obligations of a partner leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Steering Committee and the leaving Partner.

In respect of any information or materials (incl. Foreground and Background) supplied by one Partner 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 outside the project.

Therefore,

- the recipient Partner shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and

- The partner who grants Access Rights shall not be liable in case of infringement of IPR by the partner receiver.

## 1.1 Notations, abbreviations, acronyms and definitions

API	Application Programming Interface. Application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.
Access Right	Licences and user rights to foreground or background owned by another participant in the project.
Background	Information which is held by beneficiaries prior to their accession to the EC-GA, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to the EC-GA, and which is needed for carrying out the project or for using foreground.
CA	Consortium Agreement.
Confidential Information	All the information the Partners will provide to each other in relation to the execution of the Project or to its agents or representatives, including, without limitation, third parties, subcontractors, attorneys, accountants, consultants, and financial advisors, technical advisors or advisors in general (collectively, "Confidential Representatives") or the Partners Affiliates or their Confidential Representatives, either in written or electronic form or orally, and which is either non-public or confidential.
DoW	Description of Work.
EU	European Union.
Foreground	Results, including information, materials and knowledge, generated in a given project, whether or not they can be protected. It includes intellectual property rights (IPRs such as rights resulting from copyright protection, related rights, design rights, patent rights, plant variety rights, rights of creators of topographies of semiconductor products), similar forms of protections (e.g. sui generis right for databases) and unprotected know-how (e.g. confidential material).
EC-GA	Grant Agreement.
Held	Background or Sideground being "Held" or "held" by a Partner means that such Partner can legally grant, or require someone other than any of the other Partners to grant Access Rights under and/or to such Background or Sideground without the consent of, and without being obliged to account to or make any payment to any third party outside the project.
IPR	Intellectual Property Rights.
Object Code	Software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for linking procedures and functions to other software and the Software Documentation necessary for use of such Object Code.
Partner	Each one of the parties that signed the Consortium Agreement of IGREENGrid



	Project.
RfP	Rules for Participation.
Sideground	Information other than Foreground developed or otherwise acquired by a Partner after entering into the EC-GA, also in the framework of parallel projects outside the CA, as well as copyright or other IPRs pertaining to such information, which is Held by a Partner and is Needed for carrying out the Project or for Using the Foreground.
Software	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.
Software Documentation	Software information, being technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a software programme.
Source Code	Software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation and the Software Documentation necessary for use of such Source Code.
Third parties	Parties that didn't sign the Consortium Agreement of IGREENGrid Project.

**Table 1 (Acronyms & Definitions)**



## 2 Foreground Management

According with the definition of Foreground (see Chapter 1.1), thus includes the tangible (e.g. prototypes, micro-organisms, source code and processed earth observation images) and intangible (Intellectual Property) results of a project. Results generated outside (Sideground) a project (i.e. before, after or in parallel with a project) do not constitute foreground.

### 2.1 Owership of Foreground

In order to be able to prove ownership (as well as the date of generation) of Foreground, it is strongly recommended that all participants maintain documents showing the development of the generation of knowledge or results, e.g. laboratory notebooks, in accordance with proper standards. This may help avoid or resolve disputes between participants about the origin of certain results and any attached IPR.

In addition, partners must ensure that, where necessary, they reach an agreement with their employees and other personnel if the latter are entitled to claim rights to Foreground (including third parties outside the project, such as subcontractors, students, etc.), in order for the participant to be able to meet its contractual obligations. Such agreements may for instance involve a formal transfer of ownership, or at least the granting of appropriate access rights (with a right to sublicense).

For academic institutions, this is especially relevant regarding (a) "non-employees" such as students (both undergraduate and postgraduate, e.g. PhD students), and (b) researchers in those countries having a specific type of "professor's privilege" regime (according to which the researchers concerned may have some personal rights to the results of university research).

### 2.2 Joint Ownership

In the event that several Partners have jointly developed Foreground (i.e. where separate parts of some results cannot be attributed individually to different Partners) and unless those Partners concerned agree in writing on a different solution, such Foreground will be jointly owned.

The Partners that developed the joint Foreground shall seek to agree between them arrangements for applying for, obtaining and/or maintaining the relevant IPRs and shall strive to set up among themselves appropriate joint ownership agreements in order to do so.

These joint ownership agreements shall specify, inter alia, the applicable arrangements in case of the extension of rights as well as the allocation and assumption of expenses in connection with its protection.

For the avoidance of doubt, joint ownership of an invention, design or work shall not affect the obligations arising under the CA or under the EC-GA.

Joint ownership of the Foreground shall not affect ownership or rights of a Partner to its own Background and Sideground, in particular pre-existing knowledge, know-how, patents, patent applications, and similar protected IPRs.

Where no joint ownership agreement has yet been concluded:

- each of the joint owners shall be entitled to Use their jointly owned Foreground on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and
- each of the joint owners shall be entitled to grant non-exclusive licenses to third parties outside the project, without any right to sub-license, subject to the following conditions:
  - a) at least forty five (45) calendar days prior notice must be given to the other joint owner(s); and
  - b) fair and reasonable compensation in market terms must be provided to the other joint owner(s).

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

## 2.3 Transfer of Foreground

When foreground ownership is transferred, the assignor must follow the procedures of EC-GA Article II 27, to conclude appropriate arrangements to ensure that its contractual obligations with respect to dissemination, use, and the granting of access rights are passed on to the new owner (the "assignee"), as well as by the latter to any subsequent assignee.

Each Partner may identify specific third parties outside the consortium it intends to transfer the ownership of its Foreground, and shall ensure that the rights of the other Partners will not be affected by such transfer.

These third parties outside the consortium must be added to Attachment 6 of CA ("List of Third Parties to whom the transfer of the ownership of the Foreground is permitted in accordance with EC- GA Article II.27.2"), this modification requires a decision of the Steering Committee, after the corresponding agreement with the affected parties.

The Partners recognize that in the framework of a merger or an acquisition of an important part of its assets, a Partner may be subject to confidentiality obligations which prevent it from giving the full forty five (45) calendar days prior notice for the transfer as foreseen in Annex II of the EC-GA, Article II.27.2.

## 2.4 Dissemination

Dissemination activities including but not restricted to publications and presentations shall be



governed by the content and procedures of Article II.30.3 of Annex II of the EC-GA subject to the provisions established in this Section.

Dissemination activities shall be compatible with IPRs, confidentiality obligations and the legitimate interests of the owner of the Foreground.

## 2.4.1 Publication

Prior notice of any planned publication shall be given to the other Partners concerned at least thirty (30) calendar days before the publication. Any objection to the planned publication shall be made in writing to the Coordinator and to any Partner concerned within twenty (20) calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted (\*).

An objection is justified if

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

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

If an objection has been raised the involved Partners 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 Partner shall not unreasonably continue the opposition if appropriate actions are performed following the discussion.

(\*) In order to facilitate their identification by the public and the Commission, dissemination materials (e.g. publications, websites, etc.) concerning results from FP7 projects need to contain the following specific sentence, included in the Grant Agreement (Article 45 RfP – Article II.30.4 of GA):

*The research leading to these results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) under grant agreement n° xxxxxx.*

Translations of this sentence in Union languages other than English must be used where applicable.

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

For the avoidance of doubt, a Partner may not publish Foreground or Background or Sideground Held by another Partner, even if such Foreground or Background or Sideground Held is amalgamated with the Partner's Foreground, without the other Partner's prior written approval. The mere absence of an objection according to 8.3.1 (Publication) is not considered as an approval.



### 2.4.3 Cooperation obligations

The Partners undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes Foreground, Background (with the exception of the Background listed in Attachment 3 of CA as Background excluded) or Sideground Held by them. However, confidentiality and publication clauses have to be respected.

Where a person carrying out work on the Project on behalf of a Partner (the “Relevant Partner”) needs to include Background or Foreground of another Partner in a publication to qualify for a degree, approval for Use shall be obtained from the appropriate Partner owning such rights or affected by such Use in accordance with the provision of Articles 8.3.1 and 8.3.2 of CA. To ensure that the planned date of publication can be met the approval of the Relevant Partners shall be sought at least three (3) months before the latest date on which (pursuant to the qualification procedures) the contents of the planned publication can be altered.

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

- (i) without the unanimous agreement of the Partners and
- (ii) provided no Partner who would be adversely affected by the publication has vetoed such publication.

### 2.4.4 Use of Names, logos or trademarks

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



## 3 Access Right

### 3.1 Background Included and Excluded

The partners have identified in the Attachment 2 of CA the Background Held by it, to which it is willing to grant Access Rights, (hereinafter referred to as “Background Included”). Such identification may be done by e.g. naming a specific department of a Partner and/or by naming a clearly specified subject matter or IPR.

Any Partner may add further Background or Sideground to the Attachment 2 of CA during the Project by written notice sent to the Coordinator, who will add it without need of further action and will notify it to the Partners. However, only the Steering Committee can permit a Partner to withdraw any of its Background Included from the Attachment 2 of CA.

The Partners, or its Third Parties (In accordance with Clause 10 of the List of Special Clauses of the EC-GA) or Subcontractors (in accordance Art. II.7 of the Annex II to the EC-GA), may decide to include certain Sideground under the Attachment 2 of CA. Such Sideground shall then be considered as Background Included for the purposes of the Consortium Agreement.

The Partners agree that all Background and Sideground not listed in the Attachment 2 of CA shall be explicitly excluded from Access Rights. For the sake of clarity, each Partner possibly availing itself of Third Parties (In accordance with Clause 10 of the List of Special Clauses of the EC-GA) or Subcontractors (in accordance Art. II.7 of the Annex II to the EC-GA), may also indicate the Background Included of such Third Parties or Subcontractors, subject to the obtainment of their written consent, in Attachment 2 of CA.

In addition, if a Partner wishes for the sake of clarity to exclude specific Background Held by it, it shall list such Background in the Attachment 3 of CA (Background not listed in Attachment 2 and Background listed in Attachment 3 will be hereinafter referred to as “Background Excluded”).

The Partner may withdraw any of its Background Excluded from the Attachment 3 of CA during the Project by written notice sent to the Coordinator, who will withdraw it without need of further action and will notify this to the Partners. However, only the Steering Committee can permit a Partner to add Background to the Attachment 3 of CA.

### 3.2 General Principles

Each Partner shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts and conduct within the Project do not infringe IPR for a third party outside the consortium.

As provided in the EC-GA Article II.32.3, Partners shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights. This communication will be made through

the Coordinator.

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

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 Partners according to the EC-GA Article II.32.7.

Access Rights for Implementation of the Project will last only for the duration of the Project.

Access Rights for Use of Foreground may last longer only if a particular agreement between the requesting and the granting Partners is signed.

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

All requests for Access Rights shall be made in writing.

Access Rights to Foreground, Needed to enable those Partners to carry out their own work under the Project are hereby requested and shall be deemed granted, as of the date of the EC-GA entering into force, on a royalty free basis to and by all Partners.

The granting of Access Rights may be made conditional on the acceptance of specific conditions on a written bilateral agreement aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

The requesting Partner must show that the Access Rights are Needed if so requested by the granting Partner.

### **3.3 Access Right for Implementation**

Access Rights to Foreground and Background Included Needed for the execution of the own work of a Partner under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background Included in Attachment 2 of CA.

### **3.4 Access Right for Use**

Access Rights to Foreground if Needed for Use of a Partner's own Foreground including for third-party research shall be granted on a fair and reasonable conditions and upon written agreement to be signed by the concerned Parties.

Access Rights to Background Included if Needed for Use of a Partner's own Foreground shall be granted on fair and reasonable conditions and upon written agreement to be signed by the concerned Parties.

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

A request for Access Rights for Use may be made up to twelve (12) months after the end of the Project or, in the case of Art. 9.7.2.1.2 (Non-defaulting Party), as specified therein.

	Access right to <i>background</i>	Access right to <i>foreground</i>	Timing (to request access right)
For implementing the project	Yes, if a participant needs them for carrying out its own work under the project (Article 49.1-2 RfP ; Article II.33.1-2 of EC-GA)		Until the end of the project (Article 48.6 RfP; Article II.32.4 of EC-GA)
	Royalty-free, unless otherwise agreed before acceding to the Grant Agreement (Article 49.2 RfP; Article II.33.2 of EC-GA)	Royalty-free (Art. 49.1 RfP; Art. II.33.1 EC-GA)	
For use purposes (exploitation + further research)	Yes, if a participant needs them for using its own foreground (Article 50.1-2 RfP; Article II.34.1-2 of EC-GA)		Until 1 year (unless otherwise agreed) after the end of the project or the termination of the participant concerned (Article 50.4 RfP ; Article II.34.4 of EC-GA)
	Either royalty-free, or on fair and reasonable conditions to be agreed (Article 50.1-2 RfP; Article II.34.1-2 of EC-GA)		
Notes	Provided that the participant concerned is free to grant such access rights (Article 49-50.2 RfP; Article II.33-34.2 of EC-GA)		
	The background needed may be defined by the participants (Article 47 RfP; Article II.31 of EC-GA)		

Table 2 (Summary of the main access rights)

### 3.5 Access Rights for Affiliated Entities

Affiliated Entities have Access Rights under the conditions of the EC-GA Article II.34.3.

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 will in return grant Access Rights to all Partners and fulfil all confidentiality and other obligations accepted by the Partners under the EC-GA or the Consortium Agreement as if such Affiliated Entities were Partners.

Access Rights may be refused to Affiliate Entities if such granting is contrary to the legitimate interests of the Partner 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 Partner to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Partner.

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

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

## **3.6 Additional Access Rights**

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

## **3.7 Access Right for Partners entering or leaving the Consortium**

### **3.7.1 New Partners entering the Consortium**

All Foregrounds developed before the accession of the new Partner shall be considered to be Background Included with regard to said new Partner. Therefore, and for the sake of the clarity, before the accession of a new Partner, the Coordinator will ask the Technical Quality Office to make a list with all the Foreground developed so far.

### **3.7.2 Partners leaving the Consortium**

#### **3.7.2.1 Access Rights granted to a leaving Partner**

##### **3.7.2.1.1 Defaulting Partner**

Access Rights granted to a Defaulting Partner and such Partner's right to request Access Rights shall cease immediately upon receipt by the Defaulting Partner of the formal notice of the decision of the Steering Committee to terminate its participation in the Consortium.

##### **3.7.2.1.2 Non-defaulting Partner**

A non-defaulting Partner leaving voluntarily and with the other Partners consent shall have Access Rights to the Foreground developed until the date of the termination of its participation. The time

limit for its right to request these Access Rights shall start on the same date and end four (4) months later.

### **3.7.2.2 Access Rights to be granted by any leaving Partner**

Any Partner leaving the Project shall continue to grant Access Rights pursuant to the EC-GA and the Consortium Agreement as if it had remained a Partner for the whole duration of the Project.

## **3.8 Specific Provision for Access Right to Software**

### **3.8.1 General principles**

For the avoidance of doubt, the general provisions for Access Rights provided in the Section 9 of CA are applicable also to Software as far certain exception described in this section.

Partners' 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 Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Partner granting the Access Rights.

The intended introduction of Intellectual Property Rights (including, but not limited to Software) under Controlled Licence Terms in the Project requires the approval of the Steering Committee to implement such introduction into the Consortium Plan.

### **3.8.2 Access to Software**

Access Rights to Software which is Foreground shall comprise:

- Access to the Object Code; and
- where normal use of such an Object Code requires an Application Programming Interface, Access to the Object Code and such an API and, subject to the written agreement of the owning Partner, Access to the Source Code; and
- if a Partner can show that the Source Code is Needed, that is to say that the execution of its tasks under the Project or the Use of its own Foreground is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary.

Background shall only be provided in Object Code unless otherwise agreed between the Partners concerned.



## 3.8.3 Software license and sublicensing right

### 3.8.3.1 Object Code

#### 3.8.3.1.1 Foreground – Rights of a Partner

Where a Partner has Access Rights to Object Code and/or API which is Foreground for Use, such Access shall, in addition to the access for Use foreseen in section 3.4 (Access Rights for Use), as far as Needed for the Use of the Partner's own Foreground, comprise the right:

- to make an unlimited number of copies of Object Code and API; and
- to distribute, make available, market, sell and offer for sale such Object Code and API in connection with products or services of the Partner having the Access Rights;

provided however that any such product, process or service has been developed by the Partner having the Access Rights in accordance with its rights to use such Object Code and API for its own Foreground.

The granting of these Access Rights shall be subject to a previous written agreement with the owner Partner.

If it is intended to use the services of a third party for the purposes above described, the Partners concerned shall agree on the terms thereof with due observance of the interests of the Partner granting the Access Rights as set out in Article 9.2 (General Principles) of the CA.

#### 3.8.3.1.2 Foreground - Rights to grant sublicenses to end-users

In addition, Access Rights to Object Code which is Foreground shall, as far as Needed for the Use of the Partner's own Foreground, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a non-exclusive sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code alone or as part of, or in connection with or integrated into products and services of the Partner having the Access Rights and, as far as technically essential:

- to maintain such product/service;
- to create for its own end-use interacting interoperable software in accordance with the Council Directive of 14May 1991 on the legal protection of computer programs (91/250/EEC).

The granting of these Access Rights shall be subject to a previous written agreement with the owning Partner.

#### 3.8.3.1.3 Background

For the avoidance of doubt, where a Partner has Access Rights to Object Code and/or API which is Background, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Partners.

### **3.8.3.2 Source Code**

#### **3.8.3.2.1 Foreground – Rights of a Partner**

Where, in accordance with section 3.8.1 (Access to Software), a Partner has Access Rights to Source Code which is Foreground for Use, Access Rights to such Source Code, as far as Needed for the Use of the Partner's own Foreground, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service.

The granting of these Access Rights shall be subject to a previous written agreement with the owner Partner.

If it is intended to use the services of a third party or subcontractor for the purposes of this section, the Partners shall agree on the terms thereof, with due observance of the interests of the Partner granting the Access Rights as set out in Article 9.2 (General Principles) of the CA.

#### **3.8.3.2.2 Foreground – Right to grant sublicenses to end-users**

In addition, Access Rights to Source Code which is Foreground, as far as Needed for the Use of the Partner's own Foreground, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.

Further sublicensing of Source Code is explicitly excluded.

The granting of these Access Rights shall be subject to a previous written agreement with the owner Party.

#### **3.8.3.2.3 Background**

For the avoidance of doubt, where a Partner has Access Rights to Source Code which is Background, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Partners.

### **3.8.4 Specific formalities**

Each sublicense granted according to the provisions of Article 9.8.4 (Source Code) of CA shall be made by a traceable agreement specifying and protecting the proprietary rights of the Partner or Partners concerned.

## **3.9 Protection**

### **3.9.1 Application for protection of other Partner's Foreground**

In case a Partner ("Originator") decides in its sole discretion that it does not intend to seek adequate and effective protection over certain of its Foreground issuing from the Project, then, the Originator shall inform in writing the other Partners, through the Coordinator, and any Partner interested in applying to obtain and maintain such protection shall advise the other Partners



through the Coordinator and in writing within one (1) month of receipt of relevant notice.

In case several Partners are interested in so applying, they shall strive to set up amongst themselves and with the Originator appropriate agreements to this end. Should no other Partner show an interest in so applying, the Coordinator shall inform the EC in accordance with Article II.28.3 of the EC-GA. The foregoing shall be without prejudice to the Access Rights of all Partners which shall remain unaffected.

### **3.9.2 Protection of Project name / acronym of the Project and filing of a domain name**

After having carried out all searches for prior rights that may be required, the Partners may agree that the Coordinator or any other Partner shall be in charge of proceeding, in its own name, with the filing of the Project name / acronym for the Project as a trademark as well of a corresponding domain name. The Partners shall agree on the extent of the protection sought.

Furthermore, the Partners shall also explicitly agree in writing on clear rules regarding the use of this trademark by the Partners, including after the end of the Project; so that the Partners are bound to make whatever arrangements are necessary to ensure that all of them will be entitled to continue using the Project name, acronym or logo after the expiration of the Grant Agreement and the Consortium Agreement.



## 4 Exchange of data and non-disclosure of information

### 4.1 Exchange of data

In order to successfully develop the Project, the Partners will exchange data between them. All data exchanged not publicly available shall be subject to confidentiality as specified this Section.

Moreover, Detailed System Data shall not be communicated between all Partners of the CA but shall only be exchanged between Distribution System Operators, due to the fact the access to Detailed System Data is legally restricted by the European Union and/or domestic laws. As a result, DSOs shall only communicate Detailed System Data to other DSOs, subject for the latter, as a recipient, to comply with the confidentiality obligation as foreseen in next section (Non-disclosure of information).

As an exception to the previous paragraph, for the strict necessity of the Project and only in this case, DSOs shall provide Aggregated or Equivalent System Data on specific geographical areas that shall be accessible to Partners in charge of network calculation task. These Partners will be subject to confidentiality as specified in next section (Non-disclosure of information). Such disclosure to other Partners is subject to the explicit confirmation by the DSOs of their agreement that the Detailed System Data communicated by them are sufficiently aggregated to be considered as Aggregated System Data.

If, for the purpose of the Project, DSOs have to collect data from other Partners within the Consortium these data will remain confidential in accordance with next section (Non-disclosure of information) and used for the sole purpose of the Project.

With respect to Detailed System Data, DSOs shall be bound towards other DSOs by the same Confidential Information obligations described in next section (Non-disclosure of information) which is applicable to any exchange of information between all Partners and in addition, the DSOs shall not disclose Detailed System Data of other DSOs in any manner to any person or entity, including Affiliates or other entity of its group other than the DSOs Partners to the CA – for the avoidance of doubt, the Partners expressly confirm that they will not share Detailed System Data with any person or entity, with or without legal personality, of their respective groups having activities and/or interest other than distribution activities/interest.

Detailed System Data shall be automatically considered as Background excluded from the obligation to grant Access Rights, in accordance with section 3.1 (Background Included and Excluded) of this document.

### 4.2 Non-disclosure of information

Without the prior written consent of the owner of such Confidential Information, none of the

Partners and its Confidential Representatives or Affiliates and their Confidential Representatives will disclose it to any third party outside the project, and will not use it for any purpose other than executing the Project. The Partners, their Confidential Representatives and Affiliates and their Confidential Representatives shall not be considered third parties.

Confidential Information will include but shall not be limited to (irrespective of the form of communication): information concerning the Project; models, names of clients or partners, commercial proposals, maps, paper work, etc. disclosed by a Partner, its Confidential Representatives or its Affiliates and related to the Project, and all analyses, compilations, data, other studies or other documents prepared by the Partners or its Confidential Representatives or its Affiliates and their Confidential Representatives containing, or based in whole or in part on any such furnished Confidential Information and related to the Project.

It will not be considered Confidential Information the information that any of the Partner can document:

- i) is or becomes, through no improper action or inaction by the recipient Partner or any of its Affiliates or Confidential Representatives, generally available to the public, or
- ii) was in the recipient Partner's or any of its Affiliate's or Confidential Representative's possession or known by it, without restriction, prior to receipt from the disclosing Partner, provided the recipient Partner complies with restrictions imposed thereon by third parties outside the consortium, or
- iii) was rightfully disclosed to the recipient Partner or to any of its Affiliates or to any Confidential Representatives by a third party outside the consortium without restriction, or
- iv) was independently developed without use of any Confidential Information by the recipient Partner or by any of its Affiliates or by any Confidential Representatives.
- v) the disclosing Partner subsequently informs the recipient, by written means, that the Confidential Information is no longer confidential; or

Each Partner's confidentiality obligations shall terminate and expire after five (5) years from the expiry or termination of the CA except for Detailed System Data for which confidentiality obligations are not limited.

Subject to the recipients' Access Rights, granted pursuant to the CA, over Confidential Information which is Background, Foreground or Sideground, the recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the EC-GA:

- not to Use Confidential Information otherwise than for the purpose for which it was disclosed; unless explicit specification to the contrary, Confidential Information is always disclosed for the sole purpose of the Project.
- not to disclose Confidential Information to any third party outside the consortium without



the prior written consent by the disclosing Partner;

- not to copy or reproduce Confidential Information in any form whatsoever except as may be strictly necessary for the purpose of the performance of the Project;
- to ensure that the disclosing to its Affiliate or to a Confidential Representative shall take place provided that
  - the Affiliate and/or the Confidential Representative need to know the Confidential Information in order to implement the Project and
  - is bound by confidentiality obligation which are at least as burdensome as the confidentiality obligations under this Section
- to return to the disclosing Partner 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 keep a copy for archival purposes only. In this event, the recipients will inform in written about this to the disclosing Partner.

The recipients shall be responsible for the fulfilment of the above obligations on the part of their Affiliates and Confidential Representatives and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.

Each Partner shall be responsible also for any of its Confidential Representatives, its Affiliates and their Confidential Representatives' breach of the confidentiality provisions of this Section.

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

- the disclosure or communication of the Confidential Information is foreseen by provisions of the EC-GA; or
- the disclosure of the Confidential Information is required by law or regulation or by any competent court or by the applicable rules of any stock exchange or regulatory authority; or
- the disclosure of the Confidential Information is done pursuant to an order by a court or competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body.

Each Partner shall promptly advise the other Partner in writing of any unauthorized disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorized disclosure, misappropriation or misuse and shall take all reasonable steps, that are feasibly at its disposal, to mitigate any harmful effects the disclosing Partner may sustain or incur as a result of such a breach of this confidentiality obligation.

If any Partner 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 Partner, and comply with the disclosing Partner's reasonable instructions to protect the confidentiality of the information.

The confidentiality obligations under the CA and the EC-GA shall not prevent the communication of Confidential Information to the EC.

Each Partner acknowledges that the Confidential Information is and shall remain the sole and exclusive property of the disclosing Partner. Nothing contained in the CA has been construed as granting or conferring – without prejudice to the Access Rights - any further rights by licence or otherwise, expressly, impliedly, or otherwise for any intellectual property of the disclosing Partner, including but not limited to the disclosing Partner's rights in patent, copyright, invention, discovery or improvement made, conceived or acquired prior to or after the execution of the CA.



## 5 Main Procedures Summary

### 5.1 Identification of Confidential Information

All the information exchanged and/or generated by the partners in project scope should be classified according to the following criteria:

- i) PU, Public.
- ii) PP, Restricted to other program participants (including the Commission Services).
- iii) RE, Restricted to a group specified by the consortium (including the Commission Services).
- iv) CO, Confidential, only for members of the consortium (including the Commission Services).

**In case of doubt or if the information is not classified according the above criteria the information will be considered Confidential.**

### 5.2 Publication/Dissemination of Information

Prior notice of any planned publication (it means not yet published on IGREENGrid project web site, EC web sites or previously approved) shall be given to the other Parties concerned at least thirty (30) calendar days before the publication. Any objection to the planned publication shall be made by writing to the Coordinator and to any Party concerned within twenty (20) calendar days after reception of the notice (the objection has to include a precise request for necessary modifications). If no objection is made within the time limit stated above, the publication is permitted.

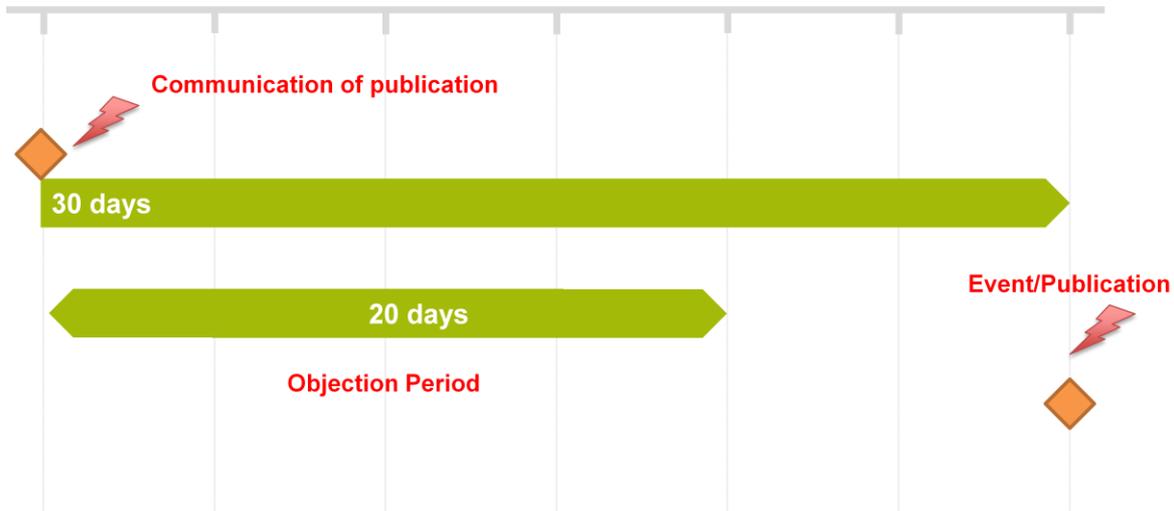


Figure 1 (Publications)

For the avoidance of doubt, a Partner may not publish Foreground or Background or Sideground Held by another Party, even if such information Held is amalgamated with the Partner's Foreground, without the other Partner's prior written approval. The mere absence of an objection is not considered as an approval.

### 5.3 Joint Results Usage

The Partners that developed a joint Foreground shall seek to agree between them arrangements for applying for, obtaining and/or maintaining the relevant IPRs and shall strive to set up among themselves appropriate joint ownership agreements in order to do so.

For the avoidance of doubt, joint ownership of an invention, design or work shall not affect the obligations arising under the CA or under the EC-GA.

But in case that joint ownership agreement has not yet been concluded, the following schema should be followed:

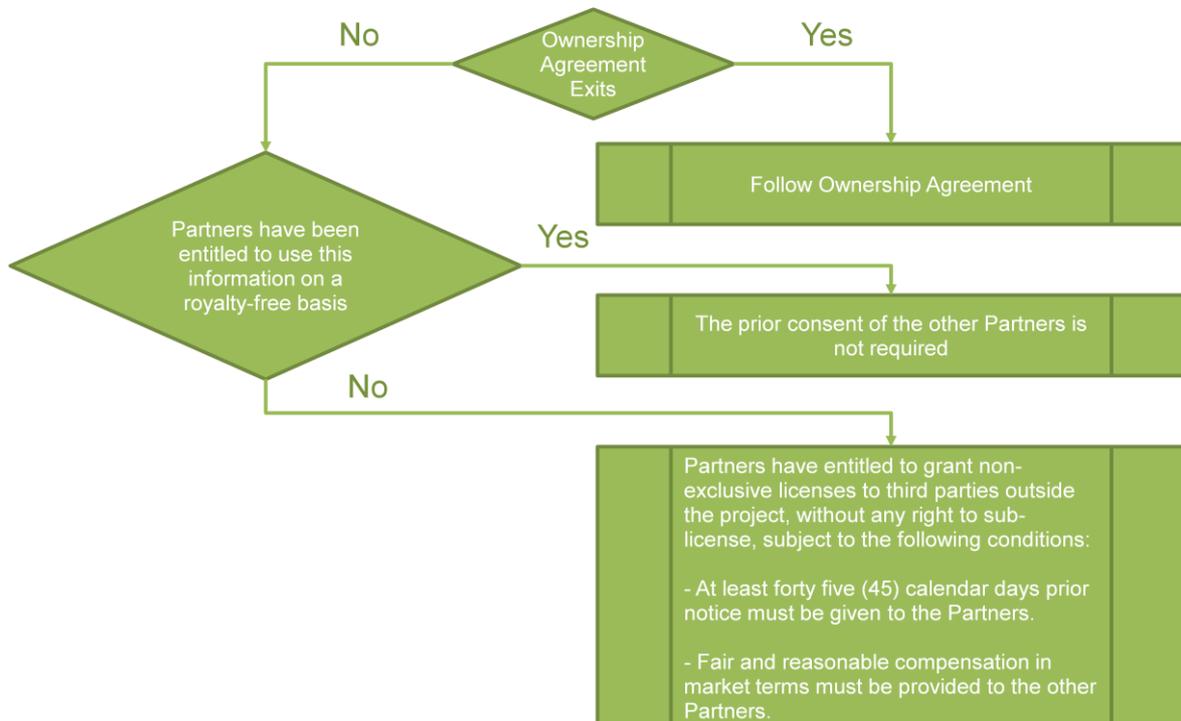


Figure 2 (Joint Result Usage)

## 5.4 Transfer of ownership information to third parties outside the projects

Because the Partners have not identified third parties outside the consortium which intends to transfer the ownership of its Foreground, in the Attachment 6 of CA, at this moment these **transfers are not allowed.**

**Any addition to Attachment 6 (list of Third Parties to whom the transfer of the ownership of the Foreground is permitted in accordance with EC-GA Article II.27.2) requires a decision of the Steering Committee,** after the corresponding agreement with the affected parties.

### 5.4.1 Transfer of information to GRID+, SINGULAR and SuSAINABLE projects, EEGI and Stakeholders Committee members

Although GRID+, SINGULAR and SuSAINABLE projects, EEGI and Stakeholders Committee members are not mentioned in the Attachment 6 of CA, they shall receive periodical information about the IGREENGrid project. In fact, according to the DoW, they are allowed to receive appropriate feedback in order to maximize the project impact.



## 6 Conclusion

The project partners are aware of their activity and are familiar with the privacy issue, regarding the customer's data protection tradition, and the confidential/sensible data provided by companies and manufacturers management. The privacy has been guaranteed from the beginning of the project, defining the fair use of data, assigning carefully the access to the data from this early stage, and has implemented since the beginning of the work the necessary signed agreements to grant the information covered by non-disclosure, and the confidentiality and fair use of knowledge and data.

The high industrial relevance of the project implies careful attention to IPR. That issue has been studied and included in the CA and it has been negotiated among all partners in order to protect properly the previous knowledge (background) of the partners, the knowledge developed in regional pilot projects and even during the project itself.

The CA includes proper clauses, regarding the intellectual property rights, dedicated to the protection of the demo projects data and knowledge. In advance, project partners are called to:

- avoid the use the information from demo projects for commercial purposes without the previous formal approval of the data owner;
- define the future exploitation of the knowledge generated during the project.



## 7 Annex I (Attachment 2 of CA: Background included)

Partner	Background Included
<b>IB Distribución</b>	The Background Included is limited to provision of data – real time and historic - and limited to the ones strictly needed for the execution of the Project.
<b>ERDF</b>	This Partner has not identified any Background Included.
<b>ENEL</b>	The Background Included is limited to: <ul style="list-style-type: none"><li>- Provision of data – real time and historic (limited to the ones strictly needed for the execution of the project).</li><li>- Generation connection rules.</li></ul>
<b>UFD</b>	This Partner has not identified any Background Included.
<b>RWE</b>	The Background Included is limited to provision of data – real time and historic - and limited to the ones strictly needed for the execution of the Project. For further questions please contact RWE Deutschland AG's department New Technologies.
<b>EAG</b>	The Background Included is limited to Provision of data – real time and historic (limited to the ones strictly needed for the execution of the Project).
<b>SAG</b>	The Background Included is limited to: <ul style="list-style-type: none"><li>- Provision of data – real time and historic (limited to the ones strictly needed for the execution of the Project).</li><li>- Generation connection rules.</li></ul>
<b>HEDNO</b>	This Partner has not identified any Background Included.
<b>AIT</b>	This Partner has not identified any Background Included.
<b>TEC</b>	This Partner has not identified any Background Included.
<b>RSE</b>	This Partner has not identified any Background Included.
<b>ICCS-NTUA</b>	This Partner has not identified any Background Included.

Table 3 (Background Included at the time of CA signature)



## 8 Annex II (Attachment 3 of CA: Background excluded)

### 1. IB Distribución

As for IBERDROLA, shall be excluded from Access Rights under this Consortium Agreement any information which is not explicitly included or authorised by written.

### 2. 2. ERDF

This Partner has not identified any Background Excluded.

### 3. ENEL

As for ENEL, shall be excluded from Access Rights under the Consortium Agreement:

- any information which is held by ENEL prior to and/or after the accession to the EC-GA, as well as IPRs pertaining to such information and which are not developed by ENEL in direct execution of the Project.
- any IPR, know-how and information with respect to which ENEL has prior commitments with third parties or a legal obligation which prevents it from granting Access Rights
- any IPR, know-how and information conveyed by third parties to ENEL
- any IPR, know-how and information covered under specific agreements and confidentiality agreements and therefore subject to third party rights.

Without prejudice to the above, the Background “excluded” includes also all present and future IPRs, know-how and any information in whatever form related to, but without being limited thereto, the “Telegestore”(Electronic Meter System). The Telegestore includes *inter alia* all its components (Central System and its interfaces with legacies, concentrator and meter equipments, protocols and algorithms).

Without prejudice to ENEL, the above mentioned IPRs include *inter alia*, but are not limited to, the following:

#### Patents and Patents Applications

1. Patent granted on 11.5.2005 by Ufficio Italiano Brevetti e Marchi n. 1327265, “Sistema di acquisizione remota dei consumi e di telegestione di utenze distribuite, anche di tipo domestico”, with noMI2001A002726, filed on 20.12.2001;
2. Patents granted by the European Patent Office (EPO): “System for the remote reading and control of electric energy consumption” (No EP 1548451; EP1456676) with Priority Number IT 2001M02726, filed on 20.12. 2001;



3. Patent Application "Method and system for detecting the phase wiring of an unknown phase voltage relative to a reference phase voltage" filed with EPO, publication No.WO2006018031, Application No 04764177.4 and filing date 16.8.2004;
4. Patent Application "Control meter with safety deactivation" filed with EPO, publication No. WO2005124373, Application No. 05754552.7 and filing date 7.6.2005;
5. Patent Application "Control meter with safety deactivation" filed with EPO, publication No. EP1607752, Application No. 04014022.0 and filing date 15.6.2004;
6. Patent Application "Method and apparatus for detecting the wiring phase of an arbitrary unknown phase voltage relative to a reference phase voltage" filed with EPO, publication No.WO2005116668, Application No. 04734683.8 and filing date 25.5.2004;
7. Patent Application "Method and system for remote updates of meters for metering the consumption of electricity, water or gas" filed with EPO, publication No.WO200515890, Application No. 03817921.4 and filing date 17.7.2003;
8. Patent Application "Electric circuit breaker" filed with EPO, publication No.WO2004093283, Application No. 037181777.0 and filing date 17.4.2003;
9. Patent Application "Device and method for detecting a street lamp fault", Application No. 07786947.7 and filing date 22.01.2010.
10. Patent Application "Electricity meter remote controllable disconnecter and electrical installation", Application No. PCT/EP2008/064669 and filing date 29.10.2008.
11. Patent Application "Electric breaker circuit and method of operating an electric breaker circuit", Application No. PCT/EP2009/054026 and filing date 03.04.2009

The list of the extensions or divisional applications of the aforementioned patents/patent applications may be found by using the patent search tool available on website of the World International Property Organization (WIPO).

#### Copyrights

12. Copyright on software, registered with S.I.A.E (Italian Public Register for software - Registro pubblico speciale per i programmi per elaboratore), on 19.8.2002 with number 002385, D003115, "Serial communication between host microcontroller and DLC Modemchip";
13. Copyright on software, registered with S.I.A.E on 17.8.2001 with number 002003, D002562, "Remote meter management";
14. Copyright on software, registered with S.I.A.E on 14.8.2001 with number 002001, "Local meter management".

Other Enel's Background "excluded":

- All knowledge, information and IPR's owned by Enel Distribuzione or its Affiliates, and which are not in the field of demand side management on electrical distribution networks;
- All knowledge, information and IPR's which are in the field of demand side management on electrical distribution networks but which are linked to commercial strategies of Enel Distribuzione or its Affiliates on the competitive market.
- ny data, guides and software applications related to the description, operation and maintenance of distribution networks, which have not been made publicly available;
- Any knowledge and data related to the customers which are either confidential or concern Enel Distribuzione's strategy;
- All commercial and financial information not publicly available;
- All the internal procedures and technical guidelines of Enel Distribuzione or of its Affiliates which have not been made publicly available.

**4. UFD**

This Partner has not identified any Background Excluded.

**5. RWE**

Priority	Application	Further Countries	Title	Application date	Publication date	Applicant
Country	Number					
DE	102009016624	WO etc.	METHOD AND DEVICE FOR CHARGING ELECTRICAL VEHICLES	08.04.2009	09.09.2010	RWE AG
DE	102009034887	WO etc.	DEVICE AND METHOD FOR PROVIDING ELECTRICAL ENERGY AT A LOAD CIRCUIT	27.07.2009	10.02.2011	RWE AG
DE	102009036816	WO etc.	CONTROLLING CHARGING STATIONS	10.08.2009	17.02.2011	RWE AG
DE	102009050042	WO etc.	CHARGING STATION FOR ELECTRIC VEHICLES HAVING NETWORK	10.08.2009	17.02.2011	RWE AG
DE	102010006527	EP	Adjustment of load profiles and/or supply profiles	01.02.2010	04.08.2011	RWE DEUTSCHALND AG
DE	102011051074	WO	Steuern der Verwendung von Energie	15.06.2011	Not yet published	RWE EFFIZIENZ GMBH
DE	102011121362	EP	Verfahren zum Regeln eines selbstgeführten Stromrichters	19.12.2011	Not yet published	RWE DEUTSCHALND AG
DE	102011113355	WO	System und Verfahren zum elektrischen Laden von Geräten	15.09.2011	Not yet published	RWE AG
DE	102012007632	open	Anordnung mit Netzüberwachungssystem	18.04.2012	Not yet published	RWE DEUTSCHALND AG
DE	102012017803	open	Notstromversorgungseinrichtung	10.09.2012	Not yet published	RWE EFFIZIENZ GMBH

**Table 4 (RWE Background Excluded)**



## 6. EAG

As for EAG, shall be excluded from Access Rights under this Consortium Agreement:

- any IPR, know-how, data and information which is held by EAG prior to and/or after the accession to the Consortium Agreement, as well as IPRs pertaining to such information.
- any IPR, know-how, data and information which are not developed by EAG or its subcontractor in direct execution of the Project.
- any IPR, know-how, data and information with respect to which EAG has prior commitments with third parties or a legal obligation which prevents it from granting Access Rights.
- any IPR, know-how, data and information conveyed by third parties to EAG
- any IPR, know-how, data and information covered under specific agreements and confidentiality agreements and therefore subject to third party rights.
- All knowledge, information and IPR's owned by EAG or its Affiliates, and which are not related to smart grids and smartmetering technology.
- All commercial and financial information not publicly available;
- All the internal procedures and technical guidelines of EAG or its Affiliates which have not been made publicly available.
- All knowledge, information and IPR's which are in the field of smart grids and smart metering but which are linked to commercial strategies of EAG or its Affiliates on the competitive market.
- Any data, guides and software applications related to the description, operation and maintenance of any assets, which have not been made publicly available;
- Any knowledge and data related to the customers which are either confidential, constricted by data privacy protection following Austrian law;

## 7. SAG

As for SAG, shall be excluded from Access Rights under the Consortium Agreement:

- any information which is held by SAG prior to and/or after the accession to the EC-GA, as well as IPRs pertaining to such information and which are not developed by SAG in direct execution of the Project.
- any IPR, know-how and information with respect to which SAG has prior commitments with third parties or a legal obligation which prevents it from granting Access Rights



- any IPR, know-how and information conveyed by third parties to SAG
- any IPR, know-how and information covered under specific agreements and confidentiality agreements and therefore subject to third party rights.
- All knowledge, information and IPR's owned by SAG or its Affiliates, and which are not in the field of demand side management on electrical distribution networks.
- All knowledge, information and IPR's which are in the field of demand side management on electrical distribution networks but which are linked to commercial strategies of SAG or its Affiliates on the competitive market.
- Any data, guides and software applications related to the description, operation and maintenance of distribution networks, which have not been made publicly available.
- Any knowledge and data related to the customers which are either confidential or concern SAG's strategy.
- All commercial and financial information not publicly available;
- All the internal procedures and technical guidelines of SAG or of its Affiliates which have not been made publicly available.
- Details of and IPRs resulting from following projects
  1. DG DemoNetz-Validierung (Aktiver Betrieb von elektrischen Verteilnetzen mit hohem Anteil dezentraler Stromerzeugung –Validierung von Spannungsregelungskonzepten) FFG-Nr. 825514
  2. ZUQDE (Smart Grids Modellregion Salzburg: Zentrale Spannungs- (U) und Blindleistungsregelung (Q) mit dezentralen Einspeisungen in der Demoregion Salzburg) FFG-Nr. 825468
  3. DG DemoNet – Smart LV Grid (Control concepts for active low voltage network operation with a high share of distributed energy resources), FFG-Nr. 829867
  4. SGMS – HiT (Smart Grids Modellregion Salzburg – Häuser als interaktive Teilnehmer im Smart Grid), FFG-Nr. 829996 and 834676

## 8. HEDNO

This Partner has not identified any Background Excluded.

## 9. AIT

As for AIT, shall be excluded from Access Rights under the Consortium Agreement:



- any information which is held by AIT prior to and/or after the accession to the EC-GA, as well as IPRs pertaining to such information and which are not developed by AIT in direct execution of the Project;
- any IPR, know-how and information with respect to which AIT has prior commitments with third parties or a legal obligation which prevents it from granting Access Rights;
- any IPR, know-how and information conveyed by third parties to AIT;
- any IPR, know-how and information covered under specific agreements and confidentiality agreements and therefore subject to third party rights.

#### **10. TEC**

This Partner has not identified any Background Excluded.

#### **11. RSE**

This Partner has not identified any Background Excluded.

#### **12. ICCS-NTUA**

This Partner has not identified any Background Excluded.



## 9 Annex III (Relation with publishers of scientific journals)

The following chapter has been extracted from "Guide to Intellectual Property Rules for FP7 projects" (Version 3) document of EC.

Many publishers require authors to sign an agreement by which authors transfer their copyrights to publishers and thereby exclude publication elsewhere. This type of agreement may also limit authors' rights to deposit articles into openly accessible repositories (open archives) upon publication.

A number of remarks should be made regarding such publication agreements:

- First of all, the provisions of a publication agreement apply only to a piece of text. They do not apply to any inventions or other knowledge (mathematical models, etc.) described in that text. The use, ownership, etc. of such inventions or knowledge are not affected by the publication agreement. Some publication agreements explicitly mention that such rights are retained by the participant or author(s).
- The main provision of such a publication agreement usually relates to the **transfer of the copyright** attached to the concerned text. Although it could be considered that such transfer only prevents the author(s) of the text from publishing this specific text, it must be noted that several publication agreements provide for the transfer of "copyright in the text and any modifications of it", which is of course much broader and rather vague, and should therefore be avoided. However, it should not be considered that a publication (copyright transfer) agreement prohibits the publication of any further paper by the project participants regarding their project in so far as no parts of first text are used (the underlying ideas may of course be used again but must be expressed differently).
- The obligations defined in the EC-GA are **not affected** by any subsequent publication (or other) agreement (cf. Article 18.3 RfP – Article II.3.i of EC-GA). In particular, the Commission is allowed to publish any non-confidential project results or related information, if it considers it appropriate, including by electronic means. It is the participants' responsibility to ensure that any subsequent agreement they might enter into with a publisher does not conflict with the Grant Agreement's provisions (for instance Article II.30 of EC-GA)).
- In many countries (including most Member States) and under the European Patent Convention, an invention is no longer patentable once it has been disclosed; therefore, special care should be exercised if the contemplated publication discloses unprotected foreground (cf. Article 46.3 RfP – Article II.30.2 of EC-GA).

It is suggested that authors considering publishing results in a scientific journal should:

- **Obtain** the necessary permission from the participant owning the foreground (even if this participant is the employer of the author) before submitting a paper for publication. The participants should ensure that they have internal procedures in place to deal with this as



they remain liable for the fulfilment of their obligations regarding the foreground vis-à-vis the Commission and other participants (including regarding protection and dissemination);

- **Discuss** this intention with the other participants and, if some (or all) of the foreground and/or background to be published belong to (an)other participant(s), seek its/their prior approval (no background or foreground may be disseminated without the approval of its owner); it has to be noted that although each participant must disseminate the foreground it owns, several participants may agree to disseminate jointly, as for example often occurs through co-authoring of a scientific publication);
- Carefully **check** the compatibility of the EC-GA with any publication agreement they are envisaging to sign;
- **Inform the publisher** of the obligations resulting from the Grant Agreement (in particular Art. II.3.i and II.30.4 EC-GA). A contractual provision could be inserted in the publication agreement to take this into account, for example:

*"The publisher agrees that the author retains the right to provide the European Commission for publication purposes with an electronic copy of the published version or the final manuscript accepted for publication."*

The publisher will also have to be made aware of the statement of financial support (see chapter 7.1 of "Guide to Intellectual Property Rules for FP7 projects") which must be mentioned.

## 10 Annex IV (EC-GA annex II related articles)

### II.7 Subcontracting

1. A *subcontractor* is a third party which has entered into an agreement on business conditions with one or more *beneficiaries*, in order to carry out part of the work of the *project* without the direct supervision of the *beneficiary* and without a relationship of subordination.

Where the *beneficiary* enters into a subcontract to carry out some parts of the tasks related to the *project*, it remains bound by its obligations to the *Commission* and the other *beneficiaries* under the *grant agreement* and retains sole responsibility for carrying out the *project* and for compliance with the provisions of the *grant agreement*.

Provisions of this *grant agreement* applying to *subcontractors* shall also apply to external auditors who certify financial statements or a methodology.

2. Where it is necessary for the beneficiaries to subcontract certain elements of the work to be carried out, the following conditions must be fulfilled:



- subcontracts may only cover the execution of a limited part of the *project*;
- recourse to the award of subcontracts must be duly justified in Annex I having regard to the nature of the project and what is necessary for its implementation;
- recourse to the award of subcontracts by a *beneficiary* may not affect the rights and obligations of the *beneficiaries* regarding *background* and *foreground*;
- Annex I must indicate the tasks to be subcontracted and an estimation of the costs.

Any subcontract, the costs of which are to be claimed as an eligible cost, must be awarded according to the principles of best value for money (best price-quality ratio), transparency and equal treatment. Subcontracts concluded on the basis of framework contracts entered into between a *beneficiary* and a *subcontractor*, prior to the beginning of the *project* in accordance with the *beneficiary's* usual management principles may also be accepted.

3. *Beneficiaries* may use external support services for assistance with minor tasks that do not represent per se *project* tasks as identified in Annex I.

## II.26 Ownership

1. *Foreground* shall be the property of the *beneficiary* carrying out the work generating that *foreground*.
2. Where several *beneficiaries* have jointly carried out work generating *foreground* and where their respective share of the work cannot be ascertained, they shall have joint ownership of such *foreground*. They shall establish an agreement regarding the allocation and terms of exercising that joint ownership.

However, where no joint ownership agreement has yet been concluded, each of the joint owners shall be entitled to grant non-exclusive licences to third parties, without any right to sub-licence, subject to the following conditions:

- a) at least 45 days prior notice must be given to the other joint owner(s); and
  - b) fair and reasonable compensation must be provided to the other joint owner(s).
3. If employees or other personnel working for a *beneficiary* are entitled to claim rights to *foreground*, the *beneficiary* shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under this *grant agreement*.

## II.27 Transfer

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



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

However, the *beneficiaries* may, by written agreement, agree on a different time-limit or waive their right to prior notice in the case of transfers of ownership from one *beneficiary* to a specifically identified third party.

3. Following notification in accordance with paragraph 2, any other *beneficiary* may object within 30 days of the notification or within a different time-limit agreed in writing, to any envisaged transfer of ownership on the grounds that it would adversely affect its *access rights*.

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

4. Where a *beneficiary* intends to transfer ownership of *foreground* to a third party established in a *third country* not associated to the Seventh Framework Programme, the *Commission* may object to such transfer of ownership of *foreground*, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations.

In such cases, the transfer of ownership shall not take place unless the *Commission* is satisfied that appropriate safeguards will be put in place and has authorised the transfer in writing.

In *projects* funded by *Euratom*, security considerations must be understood as being the defence interests of the Member States within the meaning of Article 24 of the Treaty establishing the European Atomic Energy Community.

## II.28 Protection

1. Where *foreground* is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection, having due regard to its legitimate interests and the legitimate interests, particularly the commercial interests, of the other *beneficiaries*.

Where a *beneficiary* which is not the owner of the *foreground* invokes its legitimate interest, it must, in any given instance, show that it would suffer disproportionately great harm.

2. Patent applications relating to *foreground*, filed by or on behalf of a *beneficiary* must include the following statement to indicate that said *foreground* was generated with the assistance of financial support from *[the Union]* *[Euratom]*:



**The work leading to this invention has received funding from the [European Union] [European Atomic Energy Community] Seventh Framework Programme ([FP7/2007-2013] [FP7/2007-2011]) under grant agreement n° [xxxxxx].**

Furthermore, all patent applications relating to *foreground* filed shall be reported in the plan for the *use* and *dissemination* of *foreground*, including sufficient details/references to enable the *Commission* to trace the patent (application). Any such filing arising after the final report must be notified to the *Commission* including the same details/references.

3. Where the *foreground* is capable of industrial or commercial application and its owner does not protect it and does not transfer it to another *beneficiary*, an *affiliated entity* established in a Member State or *Associated country* or any other third party established in a Member State or *Associated country* along with the associated obligations in accordance with Article II.27, no *dissemination* activities relating to that *foreground* may take place before the *Commission* has been informed. The *Commission* must be informed at the latest 45 days prior to the intended *dissemination* activity.

In such cases, [the Union] [Euratom] may, with the consent of the *beneficiary* concerned, assume ownership of that *foreground* and adopt measures for its adequate and effective protection. The *beneficiary* concerned may refuse consent only if it can demonstrate that its legitimate interests would suffer disproportionately great harm.

In the event [the Union] [Euratom] assumes ownership, it shall take on the obligations regarding the granting of *access rights*.

## II.29 Use

1. The *beneficiaries* shall use the *foreground* which they own or ensure that it is used.
2. The *beneficiaries* shall report on the expected *use* to be made of *foreground* in the plan for the *use* and *dissemination* of *foreground*. The information must be sufficiently detailed to permit the *Commission* to carry out any related audit.

## II.30 Dissemination

1. Each *beneficiary* shall ensure that the *foreground* of which it has ownership is disseminated as swiftly as possible. If it fails to do so, the *Commission* may disseminate that *foreground*.
2. *Dissemination* activities shall be compatible with the protection of intellectual property rights, confidentiality obligations and the legitimate interests of the owner(s) of the *foreground*.

In *projects* funded by *Euratom*, *dissemination* activities shall also be compatible with the defence interests of the Member States within the meaning of Article 24 of the Treaty



establishing the European Atomic Energy Community.

3. At least 45 days prior notice of any *dissemination* activity shall be given to the other *beneficiaries* concerned, including sufficient information concerning the planned *dissemination* activity and the data envisaged to be disseminated.

Following notification, any of those *beneficiaries* may object within 30 days of the notification to the envisaged *dissemination* activity if it considers that its legitimate interests in relation to its *foreground* or *background* could suffer disproportionately great harm. In such cases, the *dissemination* activity may not take place unless appropriate steps are taken to safeguard these legitimate interests.

The *beneficiaries* may agree in writing on different time-limits to those set out in this paragraph, which may include a deadline for determining the appropriate steps to be taken.

4. All publications or any other *dissemination* relating to *foreground* shall include the following statement to indicate that said *foreground* was generated with the assistance of financial support from [the Union] [Euratom]:

**The research leading to these results has received funding from the [European Union] [European Atomic Energy Community] Seventh Framework Programme ([FP7/2007- 2013] [FP7/2007-2011]) under grant agreement n° [xxxxxx].**

Any *dissemination* activity shall be reported in the plan for the *use* and *dissemination* of *foreground*, including sufficient details/references to enable the *Commission* to trace the activity. With regard to scientific publications relating to *foreground* published before or after the final report, such details/references and an abstract of the publication must be provided to the *Commission* at the latest two months following publication. Furthermore, an electronic copy of the published version or the final manuscript accepted for publication shall also be provided to the *Commission* at the same time for the purpose set out in Article II.12.2 if this does not infringe any rights of third parties.

## II. 31 Background covered

*Beneficiaries* may define the *background* needed for the purposes of the *project* in a written agreement and, where appropriate, may agree to exclude specific *background*.

## II. 32 Principles

1. All requests for *access rights* shall be made in writing.
2. 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.
3. Without prejudice to their obligations regarding the granting of *access rights*, *beneficiaries* shall inform each other 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*.

4. The termination of the participation of a beneficiary shall in no way affect the obligation of that *beneficiary* to grant *access rights* to the remaining *beneficiaries*.
5. Unless otherwise agreed by the owner of the *foreground* or *background*, *access rights* shall confer no entitlement to grant sub-licences.
6. Without prejudice to paragraph 7, any agreement providing *access rights* to *foreground* or *background* to *beneficiaries* or third parties must ensure that potential *access rights* for other *beneficiaries* are maintained.
7. Exclusive licences for specific *foreground* or *background* may be granted subject to written confirmation by all the other *beneficiaries* that they waive their *access rights* thereto.
8. However, where a *beneficiary* intends to grant an exclusive licence to *foreground* to a third party established in a *third country* not associated to the Seventh Framework Programme, the *Commission* may object to the granting of such an exclusive licence, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations.

In such cases, the exclusive licence shall not take place unless the *Commission* is satisfied that appropriate safeguards will be put in place and has authorised the grant in writing.

In *projects* funded by the European Atomic Energy Community, the *Commission* may also object to the intended grant of any non-exclusive licence to a third party established in a *third country* not associated to the Seventh Framework Programme on the same conditions as set out in this paragraph. Security considerations shall in case of such *projects* be understood as being the defence interests of the Member States within the meaning of Article 24 of the Treaty establishing the European Atomic Energy Community.

### II.33 Access right for implementation

1. *Access rights* to *foreground* shall be granted to the other *beneficiaries*, if it is needed to enable those *beneficiaries* to carry out their own work under the *project*.

Such *access rights* shall be granted on a royalty-free basis.

2. *Access rights* to *background* shall be granted to the other *beneficiaries*, if it is needed to enable those *beneficiaries* to carry out their own work under the *project* provided that the *beneficiary* concerned is entitled to grant them.

Such *access rights* shall be granted on a royalty-free basis, unless otherwise agreed by all *beneficiaries* before their accession to this agreement.

### II.34 Access right for use



1. *Beneficiaries* shall enjoy *access rights* to *foreground*, if it is needed to use their own *foreground*.

Subject to agreement, such *access rights* shall be granted either under *fair and reasonable conditions* or be royalty-free.

2. *Beneficiaries* shall enjoy *access rights* to *background*, if it is needed to use their own *foreground* provided that the *beneficiary* concerned is entitled to grant them.

Subject to agreement, such *access rights* shall be granted either under *fair and reasonable conditions* or be royalty-free.

3. An *affiliated entity* established in a Member State or *Associated country* shall also enjoy *access rights*, referred to in paragraphs 1 and 2, to *foreground* or *background* under the same conditions as the *beneficiary* to which it is affiliated, unless otherwise provided for in the *consortium agreement*. As the *access rights* referred to in paragraphs 1 and 2 require that access is needed to use own *foreground*, this paragraph only applies to the extent that ownership of *foreground* was transferred to an affiliate entity established in a Member State or *Associated country*. The *beneficiaries* may provide for arrangements regarding *access rights* for affiliated entities in their *consortium agreement*, including regarding any notification requirements.

4. A request for *access rights* under paragraphs 1, 2 or 3 may be made up to one year after either of the following events:

- a) the end of the *project*, or
- b) termination of participation by the owner of the *background* or *foreground* concerned.

However, the *beneficiaries* concerned may agree on a different time-limit.



## 11 References

### 11.1 Project Documents

List of reference document produced in the project or part of the Grant Agreement:

[DOW] – Description of Work

[EC-GA] – Grant Agreement

[CA] – Consortium Agreement

### 11.2 External documents

- [1] Guide to Intellectual Property Rules for FP7 projects (Version 3)