

**Collaboration Agreement
for Interdisciplinary Collaborative Research**

PROJECT

(authentic version: Dutch version)

This Collaboration Agreement is executed by and between the undersigned:

1. **IMEC (Interuniversitair Micro-Electronica Centrum) vzw**, whose registered office is at Kapeldreef 75, 3001 Leuven, Belgium, Register of Legal Entities BE0425.260.668 and hereby duly represented for the present purposes by Mr. Ludo Deferm in his capacity as Executive Vice-President, hereafter referred to as “IMEC”
2. “Details partner 1”
3. “Details partner 2”
4. “Details partner 3”

Hereinafter individually referred to as the “Party” and collectively as the “Parties”.

INTRODUCTION

- WHEREAS IMEC is the world-leading R&D and innovation hub in nanoelectronics and digital technologies;
- WHEREAS one of the objectives of IMEC is to perform demand driven research activities whereby the aim is to develop and gather generic knowledge in the medium term and whereby the creation of clusters between the economic, scientific and social actors concerned is encouraged by means of, but not limited to, the co-operation in Interdisciplinary Collaborative Research projects (ICON), composed of two (2) project parts, namely;
 - a research part consisting of non-economic activities to be carried by the Research Organizations with funding from IMEC. This funding relates to public funding to research organisations for the implementation of non-economic activities within the meaning of the European legislation on state aid for Research and Development and Innovation. The Parties undertake to comply with the regulations regarding state aid whereby any form of indirect state aid to third parties in general, and to the External Partners in particular, is excluded;
 - an industrial part to be carried out by companies, being the External Partners who can apply for funding from Flanders Innovation & Entrepreneurship (VLAIO) pursuant to the decision of the Flemish Government of 12 May 2017 regarding the granting of aid to companies for research and development with a knowledge-intensive character in Flanders. In the event of a positive decision regarding the funding of companies by VLAIO, an agreement will be concluded between the Hermes Fund and the participating companies.
- WHEREAS the present Collaboration Agreement is intended to regulate the i) conditions regarding the funding by IMEC of the Research Organisations for their performance of the research part and ii) arrangements of co-operation between the Parties for the implementation of the *ICON project* and the valorisation of the foreground;
- WHEREAS “company name abbreviated” is engaged in the business of “field of work company” and has acquired extensive technological expertise in the field of “specialization company”;
- WHEREAS “company name abbreviated” is engaged in the business of “field of work company” and has acquired extensive technological expertise in the field of “specialization company”;
- WHEREAS “company name abbreviated” is engaged in the business of “field of work company” and has acquired extensive technological expertise in the field of “specialization company”;
- WHEREAS the *ICON project* consists of an active effective collaboration between the Parties taking into account the interests and the financial and other contribution of each Party, both at the level of the entire project and at the level of the work packages (as detailed in the Project description);
- WHEREAS the Parties and IMEC wish to define the terms and conditions governing their participation in this *ICON project*;

NOW, THEREFORE, the Parties hereto agree as follows:

ARTIKEL I. DEFINITIONS

When used in this Agreement, the following words and expressions shall have the meaning as stated hereunder:

- I.1. “*Application Programming Interface*” or “*API*” means the collection of all data and information for specific *Software* to allow a skilled *Software* developer to create *Software* that interfaces and interacts with other specified *Software*.
- I.2. “*Background*” means the information that is *Needed* for the performance of the *ICON project* or *Use* of the *Foreground* and that is held by a *Party* prior to the commencement date of the *ICON project* (as stipulated in the *ICON project* proposal approved by the Executive Board of IMEC) as well as copyright and other *Intellectual Property Rights* pertaining to such information, the application for which has been filed before the commencement date of the *ICON project*. For the information held by *Research Organizations* this definition shall only apply to information that has been developed by the *Research Groups*.
- I.3. “*Use*” means the direct or indirect utilization of *Foreground*:
 - (a) in further research activities other than the research activities covered by the *ICON project*,
 - (b) for developing, creating, including manufacturing, and marketing a product or process; or
 - (c) for creating and providing a service.
- I.4. “*Limited Source Code Access*” means:
 - (a) access to *Object Code* or, where the normal use of such *Object Code* requires *API*, access to such *Object Code* and *API*, or
 - (b) if (a) is not available, access to the *Source Code*.
- I.5. “*Source Code*” of *Software* is the code written by the programmer in a formal programming language normally used to implement changes to it, including without limitation the comments and procedural code such as job control language and scripts to control compilation and installation.
- I.6. “*Source Code Access*” means the access to the *Source Code* as *needed* by a *Party* for the performance of its activities within the context of the *ICON project* or for *Use* of the *Foreground*.
- I.7. “*Software*” means a specific collection of instructions to carry out a process in, or convert into, a form executable by a computer, and filed in a tangible medium of expression.
- I.8. “*Fair, reasonable and non-discriminatory conditions*” means appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for *Access Rights*, for example the actual or potential value of the *Foreground*, *Background* or *Sideground* to which *Access Rights* are requested and/or the scope, duration or other characteristics of the *Use* envisaged.
- I.9. “*Foreground*” means the results, including information, whether or not eligible for protection which are generated under the *ICON project*. Such results include rights relating to copyright, design and model rights, patent rights, plant variety rights or other similar forms of protection.
- I.10. “*Legitimate Interests*” means any interest of a scientific, strategic, commercial or any other nature of a *Party* that can be invoked by such *Party* in the cases described in the Agreement.

Therefore, such Party must prove that when its interest is not taken into account, the damages incurred by such Party are disproportional.

- I.11. “*Hardware Equivalents*” means the collection of descriptions that can be used to build the electronics and mechanics of the hardware, such as, but not limited to, electronic diagrams, mechanical drawings, PCB lay-out, programmable logic.
- I.12. “*ICON project*” means the ICON research project entitled “**title project in full**” as described in Exhibit I to this Agreement.
- I.13. “*Indirect Use*” with regard to *Access Rights for Use* granted in accordance with the terms and conditions of the Agreement includes the right for a Party and its *Affiliated Entities* who are granted *Access Rights* to have a third party make products or render services for the account of and for the use, sale or disposal by the Party or its *Affiliated Entities*. Prerequisite is that a substantial part of the specifications of such products and/or services have been designed by or for such Party or its *Affiliated Entities*.
- I.14. “*Intellectual Property Rights*” means patent, patent applications and other rights with regard to inventions, copyrights (including, without limitation, the copyright protection of Software), designs and models, including applications for designs and models, and any other similar or equivalent legal intellectual property rights anywhere in the world, excluding the rights in *Confidential Information* and know-how.
- I.15. “*Research Organizations*” means “**list of participating research organizations**”
- I.16. “*External Partner*” means “**list of participating external partners**”.
- I.17. “*Needed*” and “*Necessary*” means in respect of the performance of the *ICON project* and/or *Use* of the *Foreground*, technically essential. In the following cases, technically essential is further defined as follows:
- (a) where *Intellectual Property Rights* are concerned: unauthorized use of the *Intellectual Property Rights* when no *Access Rights* have been granted.
 - (b) where *Confidential Information* is concerned: except as otherwise agreed upon between the Parties, only the *Confidential Information* exchanged between the Parties during the performance of the *ICON project* is considered as technically essential.
- I.18. “*Object Code*” (or executable code) means *Software* in machine-readable compiled and/or executable form, including, but not limited to, byte code form and machine readable libraries used for linking procedures and functions to other *Software*.
- I.19. “*Research Group/department*” means the research group(s)/departments of the *Research Organizations* that perform part(s) of the *ICON project* as defined in Exhibit I to the Agreement.
- I.20. “*Open Source Software*” means the *Software* that is distributed according to *Open Source Terms*.
- I.21. “*Open Source Terms*” means the licensing conditions that require that the use, copying, modification and/or distribution of *Software* or any other work (“*Work*”) and/or any other work that is a modified version of or is a derivative work of such *Work* (in such case “the *Derivative Work*”) be subject, in whole or in part, to one or more of the following conditions:
- (a) where the *Work* or *Derivative work* is *Software*, that the *Source Code* automatically be made available to any third party, whether royalty-free or not;
 - (b) that permission to create modified versions or derivative works of the *Work* or *Derivative Work* be granted to any third party;
 - (c) that a royalty-free license relating to the *Work* or *Derivative Work* be granted to any third party that requests it.

For the avoidance of doubt, licensing conditions that merely permit the possibility to apply these conditions, but do not impose any of these conditions, are not “*Open Source Terms*”.

- I.22. “*Agreement*” means the terms and conditions of the Collaboration Agreement, including its Exhibits, as executed by and between the Parties.
- I.23. “*Force Majeure*” means any event outside the control of the Party affected by *Force Majeure*
- (a) that occurs after the signing of the *Agreement*;
 - (b) that upon execution of the *Agreement* was not reasonably foreseeable; and
 - (c) the consequences of which cannot be remedied by the affected Party without incurring unreasonable expenses and/or delay by such affected Party.

Force Majeure includes, but is not limited to, war, civil riot, government action, natural disasters, exceptional weather conditions, the collapse of or the general unavailability of transport and communication facilities, fire, explosions and general energy shortages.

- I.24. “*Sideground*” means information, other than *Foreground*, developed or otherwise acquired by a Party after the commencement date of the *ICON project* as well as copyright or other *Intellectual Property Rights* regarding this information, and which has been explicitly introduced by this Party in a way that another Party will need this information for the implementation of the *ICON project* or for the *Use of the Foreground*.
- I.25. “*Access Rights*” means the licenses and user rights to the *Background*, *Sideground* and *Foreground*.
- I.26. “*Affiliated Entity*” means any legal entity:
- (a) any legal entity (i) Controlling a Party; (ii) under the Control with a Party; or (iii) Controlled by a Party, for as long as such Control lasts, and
 - (b) listed as *Affiliated Entity* in Exhibit 3 to the *Agreement*.
- Control (Controlling or Controlled) is acquired through the direct or indirect:
- (a) ownership of more than 50% of the nominal value of the issued share capital of the entity or of more than 50% of the issued share capital entitling the holders to vote for the election of directors or persons performing similar functions; or
 - (b) rights acquired by any other means to elect or appoint directors of the entity or persons performing similar functions who have a majority vote.
- I.27. “*Confidential Information*” means any and all information of whatever nature and disclosed in whatever form by a Party (“*disclosing Party*”) to another Party (“*receiving Party*”) in connection to the *ICON project* and (i) when disclosed in written or other tangible form is explicitly marked as confidential or (ii) when disclosed orally or in any other intangible form is confirmed as confidential within thirty (30) days after such disclosure is made, or (iii) it concerns information that is obviously of a confidential nature.
- I.28. “*Work Package*” means the part(s) of the *ICON project* that are described in Exhibit I to the *Agreement*.

ARTIKEL 2. SUBJECT OF THE AGREEMENT

The purpose of the *Agreement* is to:

- (1) describe the tasks of each Party within the *ICON project* ;
- (2) organize the administration of the *ICON project*;
- (3) define the rights and obligations of each Party, including each Party’s potential liabilities; and

- (4) define the rules regarding the *Intellectual Property Rights* and *Access Rights to Background, Sideground and Foreground*.

ARTIKEL 3. SUBCONTRACTING

No *Party* is authorized to subcontract, in whole or in part, any of the tasks described in Exhibit I to any third party without the prior written approval of IMEC. The conditions as provided in this Article are not applicable in the following cases:

- (a) the performance of routine tasks that do not concern a core part of the *ICON project* and that a *Party* does not wish to perform itself (such as, but not limited to, the performance of routine tests, the construction of part of a prototype, part of the programming);
- (b) the performance of tasks by the *Affiliated Entity(ies)* specified in Exhibit 3 (including the specification of the tasks and number of man hours to be performed by such *Affiliated Entity(ies)*);
- (c) the work of (individual) consultant(s) who are specified in the *ICON project* proposal – Exhibit I. This list of consultant(s) may be updated during the performance of the *ICON project* provided such that the *Party* desiring to add a consultant promptly informs the project steering committee of its intention and that its proposal is accepted by the *Parties*. The *Parties* shall not unreasonably refuse or condition a *Party's* request for subcontracting.

ARTIKEL 4. PERFORMANCE OF THE *ICON PROJECT*

- 4.1. Each *Party* shall make all *Necessary* and reasonable efforts to ensure the efficient performance of the *ICON project*. In particular, each *Party* particularly undertakes to:
 - promptly, and with due care, knowledge, dedication and, in conformity with recognized professional standards, carry out the tasks allocated to the *Party* in the relevant *Work Package*;
 - promptly and in accordance with the conditions described in the *Agreement* provide all information and documentation required for the performance of the contractual obligations;
 - immediately notify the project leader of any and all events or circumstances that might affect the careful and uninterrupted performance of the *ICON project* (in particular, but not limited to, the (possible) modifications to the financial conditions provided in Exhibit I to the *Agreement*);
 - use all reasonable endeavours to ensure the accuracy of any information and/or material(s) a *Party* supplies to the other *Parties* and use all reasonable endeavours to correct any error and/or mistake in such information and/or material(s) of which the other *Parties* are notified.
- 4.2. Each *Party* undertakes to provide evidence of the performance of its tasks within the *Work Packages* by issuing regular reports in accordance with the provisions provided in the *Agreement*. The lay-out and reports to be provided within the context of the *Agreement* must conform to the instructions and notes laid down by IMEC. A sample status report (including final report) together with a sample financial report to be used by the *Parties* for the purposes of the *Agreement* are attached as Exhibit 4 to the *Agreement*.
- 4.3. Each *Party* undertakes to reply fully and accurately within a reasonable time to any additional request for information from IMEC regarding events and/or circumstances that may jeopardize or interrupt the correct performance of the *Agreement* (reported by the *Party* in accordance with Article 4.1 of the *Agreement* and which have been formulated by IMEC (or as the case may be by the project leader)).
- 4.4. Each *Party* shall provide (a) sufficient qualified personnel and (b) equipment and materials as required for the performance of the *ICON project*. The *Parties* undertake to provide the material and/or equipment detailed in Exhibit I free of charge within the context of the *ICON project*. The material and equipment are and remain the exclusive property of the *Party* which makes

such material and equipment available (hereinafter “the Borrower”). The *Party* using the material and equipment (hereinafter “the User”) will use this material and equipment on a due diligence basis exclusively within the context of the *ICON project*. Upon termination of the participation of the User in the *ICON project*, the Borrower shall be entitled to re-collect the material and equipment that the Borrower made available.

- 4.5. Where it is provided that persons of the *Research Organizations* participate in the *ICON project* under the university scholarship system, the Parties that are not *Research Organizations* take into account that these persons are involved for part of their activities in the regular activities of a doctoral research within the relevant *Research Group(s)/department(s)*. However, this will not affect the obligations of IMEC and the *Research Organization* regarding the performance of the *ICON project*.

ARTIKEL 5. CONSULTATION AND DECISION-MAKING

The project leader and the research leader will consult regularly with the IMEC program manager in order to observe the correct performance of the *ICON project*.

5.1. Project leader, Research leader, Work Package leader and IMEC Innovation Manager

5.1.1. Project leader

“name project leader” (name *Party*) will be appointed as the project leader.

The project leader shall only be responsible for the following activities:

- the co-ordination of the activities of the *ICON project*, such as the co-ordination between *Work Packages*;
- the verification of the observance of each *Party* of its obligations as detailed in the *Agreement*;
- the administrative management of the *ICON project*;
- the preparation of six monthly status reports, using the template provided by IMEC (Exhibit 4 to the *Agreement*) and the delivery of such report to the *Parties*;
- the preparation and dissemination of documents required within the context of the project steering committee’s operations (e.g. agenda and minutes);
- acting as the contact person between the *Parties* whereby the project leader, among others, is responsible for the transmission of correspondence between the *Parties* and with third parties and for the exchange of information between the *Parties* and/or third parties;
- acting as the intermediary between the *Parties* in order to ensure efficient and accurate communications regarding the progress of the *ICON project*.

The project leader is not entitled to act or to make legally binding declarations or commitments on behalf of any other *Party(ies)*.

If the project leader is no longer able to fulfil his responsibilities as a project leader, he/she can appoint another person to take over these responsibilities. In this case, he/she shall notify the other *Parties* in writing prior to this transfer.

5.1.2. Research leader

On behalf of the *Research Group(s)/department(s)* “name research leader” (name research organization – name research group) is appointed as the research leader. The research leader takes over the responsibilities of the project leader if no project leader is appointed.

The research leader looks after the interests of the different *Research Organizations*.

If the research leader is no longer able to fulfil his responsibilities as a research leader, (s)he can appoint another person to take over these responsibilities. In this case, (s)he shall notify the other *Parties* in writing prior to this transfer.

5.1.3. Work Package leader

For every *Work Package* a Work Package leader is appointed who will be responsible for:

- The management of the *Work Package* in order to follow up the progress of the activities as included in the *Work Package*;
- Intermediate reporting: at least every 6 months (as part of the status report) to the project leader. This report details the progress of the *Work Package* (% completed) and possible bottlenecks and risks.

5.1.4. IMEC Innovation Manager

IMEC appoints “name program manager” as IMEC Innovation Manager.

The IMEC Innovation Manager supervises:

- the coherence between *ICON* project objectives, envisaged innovation objectives, available resources and required efforts;
- the observance of commitments and obligations as agreed in this *Agreement*.

Where required the IMEC Innovation Manager shall make or require adjustments in order to guarantee that the objectives are achieved and IMEC's strategic objectives are respected.

The IMEC Innovation Manager is the contact person for all *Parties* in case of questions regarding the *ICON* project process.

If IMEC decides, in the course of the *ICON* project, to change the IMEC Innovation Manager, the *Parties* shall immediately be notified of this in writing.

5.2. Project steering committee

5.2.1. The *Parties* shall each appoint a project representative (hereinafter called *Project Representative*) to the project steering committee who will attend the project steering committee's meetings. Each *Party* shall use all reasonable efforts to maintain the continuity of its representation in the project steering committee.

5.2.2. The project steering committee is composed of:

- The project leader,
- The research leader,
- The IMEC Innovation Manager,
- The *Project Representatives*.

The project steering committee shall be responsible for:

- Evaluating and managing the progress of the *ICON* project and, if needed, preparing proposals to modify the *ICON* project;
- The creation of the project workspace to ensure project documents and information can be managed in a central location.
- Submitting proposals for the review of the project description as specified in Exhibit I to the *Agreement* and the forwarding of such proposal to IMEC (via IMEC Project Administration) and the *Parties*;
- Budget changes and shifts first need to be approved by the project steering committee, after which they are sent to IMEC via Project Administration. Only

following approval by IMEC may these budget changes be considered to have been approved.

- Deciding upon actions to be taken against a defaulting *Party* in accordance with the provisions of Article 11.3;
- Evaluating the *Foreground*;
- Approving publication in accordance with the procedure provided in article 9.2 of the *Agreement*;
- Approving reports;
- Deciding upon the introduction by a *Party* (*Parties*) in the *ICON project* of *Open Source Software* as *Background* or *Sideground* in the event that the *Foreground*, products and/or services of the *ICON project* in whole or part are to be released according to the *Open Source Terms*.
- If required for the efficient progress of the project, the *ICON project* steering committee can accept a new partner to be part of the project consortium. Acceptance by the project steering committee shall require the agreement of every member of the project steering committee. The project steering committee shall follow the correct procedure for this.
- If required for the efficient progress of the *ICON project*, the project steering committee can decide to install a user group. The project steering committee shall follow the correct procedure for this (see also 6.4)
- The availability, via the project workspace, of the approved deliverables as listed in Exhibit I.

- 5.2.3. The project leader shall convene a meeting of the project steering committee at least once every six (6) months. The project leader shall also convene the project steering committee whenever the needs of the *ICON project* so require, or if one *Party* so requests. Meetings of the project steering committee shall be convened by the project leader with at least fifteen (15) days' prior written (e.g. e-mail, facsimile) notice to each member. This notice, sent by the project leader to each *Party*, shall be accompanied by an agenda or a link to a website displaying the agenda that has been drawn up by the project leader. The agenda shall be deemed to have been accepted unless one or more *Parties* notifies the project leader and the other *Parties* in writing of additional items for the agenda at least two (2) working days before the meeting date.

Minutes of the project steering committee meetings shall be transmitted to the *Parties* by the project leader within thirty (30) days after each meeting. The minutes shall be considered as accepted by the *Parties* if, within fifteen (15) days from receipt of the minutes, no *Party* has made any objection in writing to the project leader.

By means of a proxy, *Parties* may be represented within the project steering committee by another *Party*. The representing *Party* must prove the legitimacy of its proxy by submitting a properly signed proxy together with any instructions provided by the *Party* being represented at the project steering committee meeting.

For its deliberations to be valid, a quorum of all the members of the project steering committee must be present or represented. Unless expressly provided otherwise by the *Agreement*, decisions may only be made with the agreement of members present or represented. Whenever a *Party* fails to attend or be represented by proxy at two successive steering committee meetings, then the remaining *Parties* may reach a decision or take action without the participation of the absent *Party*.

Any decision requiring a vote at the project steering committee must be identified as such on the agenda, unless there is unanimous agreement by all parties present or represented to vote on an issue that was not included in the agenda for that meeting.

The deliberations and actions of the steering committee shall be governed by the following rules:

- (a) either during a meeting where the members are present or represented. Steering group members may also attend the meeting via telephone or video-conference;
- (b) either without a meeting with prior notice of at least seven (7) days, and without voting, provided that:
 - i. the decision is approved by the number of members required to make such a decision;
 - ii. the approved decision is reduced to writing and signed by these members;
 - iii. the proposed action is submitted to all members of the steering committee for approval.

The project steering committee shall be chaired by the project leader.

Additional agreements concerning the operation of the project steering committee may be established by the project steering committee in a separate document (i.e. internal regulations).

5.3. Work Package meetings

The project leader shall ensure that regular discussions are held with the Work Package leader(s). The project leader shall convene a Work Package meeting whenever required for discussion of the content of the *Work Package* and its progress or upon motivated request of a Party.

This Work Package meeting is composed of:

- The project leader;
- The *Project Representative* of each *Party* involved in that *Work Package*; and
- The Work Package leader of the relevant Work Package

Following the proposal of the project leader other persons involved in the *ICON project* may be invited on an ad-hoc or regular basis to this Work Package meeting.

The IMEC Innovation Manager shall be informed on a timely basis when a Work Package meeting is being convened, shall receive all documents and reports provided to the meeting attendees, and shall be entitled to attend all Work Package meetings.

5.4. Project meetings

To stimulate the interaction and information exchange between *Research Groups* and external parties, the project leader shall organize regular meetings (no less often than once every 6 months) between all the people involved in this *ICON project*.

This Project meeting is composed of:

- The project leader;
- The research leader;
- The Work Package leaders;
- The IMEC Innovation Manager
- The *Project Representative* of the *Parties* involved in the *ICON project*
- Other stakeholders of the *Parties* contributing to the *ICON project*

Each Work Package leader shall give a status report on the activities of his/her Work Package and the progress made on his/her Work Package.

The project leader and research leader shall give a short status report regarding the global progress of the *ICON project* at each project meeting. The aim of the Project meeting is to inform all the people involved about any agreements entered into, decisions of the steering committee and other project related information.

ARTIKEL 6. CONTRIBUTION BY THE PARTIES, REPORTING, AUDIT AND USER GROUP

6.1. Contribution by the Parties

- 6.1.1. IMEC only owes a financial compensation to the *Research Organizations* for their performance of the tasks within the scope of the *ICON project*. The other Parties shall bear the costs associated with the performance of their tasks within the *ICON project*.
- 6.1.2. The financing by IMEC of the research part of the *ICON project* that is carried out by the *Research Organizations* amounts to 100% of the budget of these *Research Organizations* for the *ICON project*.
- 6.1.3. The financing by IMEC will under no circumstances exceed 50% of the total supported budget of the *ICON project*. To avoid any misunderstanding, the total supported budget of the *ICON project* consists solely of the sum of the budget of on the one hand the budget of the External Parties who receive funding from Flanders Innovation & Entrepreneurship (VLAIO) and Innoviris (Brussels) and on the other hand from the budget of the *Research Organizations*. If the total supported budget of the *ICON project* changes (for whatever reason) this 50% rule remains fully applicable. Subject to article 6.1.1 no Party will be obliged to contribute financially to costs incurred by other Parties due to their participation in the *ICON project*.

If the 50% rule is not (no longer) observed, the Parties shall decide to change the contents of the *ICON project* on the understanding that the effective collaboration between the Parties remains assured. In such case the contribution of each Party is evaluated and modified in joint consultation. In this event, the principle set out in the previous paragraph remains applicable provided that the contribution of the Parties can change by a maximum of 20% of the estimated contribution as specified in Exhibit I.

In addition to the information obligation as detailed in Article 4.1, each Party shall in good faith inform the project steering committee in due time, fully and accurately about (1) any proposals to modify the *Agreement* and/or (2) possible deviations of the *Agreement*. The information will always be provided in writing and shall only be effective as from the approval hereof by the project steering committee and modification of the *Agreement* in accordance with the terms and conditions detailed herein.

6.2. Reports

The Parties undertake to use the IMEC online tool made available by IMEC for the requested reports.

6.2.1. Financial report to IMEC

Annually, the Parties shall submit a financial statement (at the level of the *Work Packages*) to IMEC, detailing the expenses they have incurred. The Parties that are not *Research Organizations* shall submit their financial statements no later than 31 January at the latest and the *Research Organization(s)* shall submit their financial statement no later than 30 June.

6.2.2. Status report to IMEC

By means of periodic status reports, the project leader shall report to IMEC about the progress of the *ICON project*. The report shall detail the services performed by each Party and the *Foreground* developed as detailed in Exhibit I of the *Agreement*. Such interim reports shall be provided at least every six months. When needed the *ICON project* may be modified by the project steering committee in accordance with the terms and conditions of Article 5 of the *Agreement*.

6.2.3. Final report to IMEC

At the latest two (2) months following the termination of the ICON project, the project leader shall, together with the Parties, prepare a final report and submit it to IMEC. The final report consists of both general and individual sections and shall contain at least the following items:

- the extent to which the innovation objectives have or have not been met;
- a general evaluation of the ICON project;
- a general valorisation report with a general overview of the valorisation opportunities for the Foreground;
- individual valorisation reports of all Parties. Beneficiaries receiving Hermes Fund/Innoviris funding have the possibility to submit this part directly to Hermes Fund/Innoviris if it contains confidential information that cannot be shared with other Parties.

6.2.4. Follow-up report on valorisation

Upon IMEC's request, each *Party* shall provide an update report at the end of a period of three, five or ten years (in exceptional cases) following the date of termination of the *ICON project* in order for IMEC to evaluate the valorisation of the *Foreground*. Such request shall be issued by IMEC by registered mail addressed to the *Party* requested to provide such update report and associated information. The requested *Party* is obliged to provide the update report and associated information within two (2) months following such request. Taking into consideration the update report and the associated information provided by the *Party*, IMEC shall be able to determine the full or partial performance of the obligations regarding the valorisation of the *Foreground*.

Each *Party* undertakes to correctly complete the information sheets regarding the valorisation of the *Foreground* transmitted by IMEC for monitoring purposes three (3) and five (5) years following the first valorisation report.

6.2.5. The deliverables included in Exhibit I shall be made available to the *Parties* during and following the termination of the *ICON project* subject to the terms and conditions approved by the project steering committee.

6.3. Audit

6.3.1. IMEC shall verify the accuracy, regularity and reasonableness of the costs invoiced or to be invoiced, irrespective of possible audits by the Court of Audit. Each *Party* shall retain, and have available for the Court of Audit and IMEC, all items substantiating the expenses claimed for a period of seven (7) years following the approval of the final report.

6.3.2. IMEC shall be entitled to take any initiative that it considers reasonably necessary to audit and monitor the technical performance of the *ICON project*, including visits to workplaces. IMEC shall inform the *Party* concerned in writing at least fifteen (15) days prior to such visit.

6.3.3. Each *Party* shall render all reasonable assistance regarding the audits and the information to be provided.

6.4. User Group

Parties can form a user group. This is a guiding commission that observes the optimal implementation of the *ICON project* and the valorisation of the *Foreground*.

The user group shall be formed by members who belong to the relevant economical target group(s). Each *Party* has the right to propose one member. The other *Parties* can refuse a proposed member if their *Legitimate Interests* were to encounter a disproportionate loss.

The user group shall give advice concerning the progress of the *ICON project* and the possibility to valorise the developed *Foreground*, as agreed in the user group agreement. For this purpose the user group has the right to view the developed *Foreground*, taken into account the conditions of the user group agreement.

ARTIKEL 7. CONFIDENTIALITY

- 7.1. The receiving *Party* undertakes to use the *Confidential Information* exclusively:
- (a) in accordance with the terms and conditions detailed in the *Agreement*;
 - (b) for the performance of its obligations in the context of the *Agreement* or as needed for the exercise of the *Access Rights* granted by the *Agreement*.

The receiving *Party* undertakes not to use the *Confidential Information* for any other purpose.

- 7.2. Each receiving *Party* undertakes to take the same degree of care in maintaining the security of the *Confidential Information* as it applies to maintain the security of its own *Confidential Information*, but no less than a reasonable degree of care.
- 7.3. Without the prior written consent of the *disclosing Party*, the *receiving Party* is not authorized to disclose, transfer or disseminate, in whole or in part, directly or indirectly, any *Confidential Information*, in any form whatsoever, to any third party other than a third *Party* specified in Article 7.7.
- 7.4. The obligation of confidentiality as detailed in the *Agreement* shall bind the *Parties* during the term of the *Agreement* and for a period of five (5) years after the termination of the *Agreement*. The obligation of confidentiality to be observed by the receiving *Party* shall not apply or shall cease to apply to *Confidential Information* in respect of which the receiving *Party* invokes one of the exceptions listed in Article 7.5. For clarification, the restriction of the obligation of confidentiality, as mentioned in the first sentence of this Article 7.4, does not apply to personal data for which mandatory law is applicable.
- 7.5. No information disclosed by the *disclosing Party* shall be deemed to be (or to remain) *Confidential Information*, to the extent the receiving *Party* can show that the information concerned:
- (a) was publicly available at the time of disclosure or has become publicly available by no wrongful act or omission on the part of the *receiving Party* or any of its *Affiliated Entities*;
 - (b) was already in the possession of the *receiving Party* or one of its *Affiliated Entities* without being subject to a confidentiality obligation at the time of disclosure;
 - (c) was lawfully obtained by the *receiving Party* or any of its *Affiliated Entities* from a third party free to disclose such information; or
 - (d) is developed by the *receiving Party* or any of its *Affiliated Entities* independently from and without reliance upon the other *Party's Confidential Information*.

For the avoidance of doubt: Article 7.5 does not grant an *Affiliated Entity* of a *Party* any right to the *Confidential Information*, other than the rights expressly detailed in Article 7.7 hereunder.

- 7.6. If any receiving *Party* is required, or is likely to be required, to disclose *Confidential Information* in order to comply with applicable laws or regulations or pursuant to a court or administrative order, such *Party* shall be entitled to disclose the *Confidential Information* provided that the following conditions are observed:
- (a) the *receiving Party* shall notify the *disclosing Party* hereof; and
 - (b) the *receiving Party* shall comply with the *Disclosing Party's* reasonable instructions to protect the confidentiality of the *Confidential Information*.

7.7. For the avoidance of doubt, the obligations not to disclose any *Confidential Information* as detailed in the *Agreement* shall not be interpreted so as to prevent the communication of the *Confidential Information* to:

- (a) any other *Party (Parties)* to the extent *needed* to perform the *Agreement*;
- (b) any *Affiliated Entity* or subcontractors, insofar as strictly *needed* for the performance of the *Agreement*;
- (c) any third party insofar as strictly *needed* for technical reasons and permitted *Use of the Foreground*.
- (d) to the members of the user group (see article 6.4)

With respect to any permitted disclosure of any of the *Confidential Information* by the receiving *Party* to a third party including but not limited to its *Affiliated Entities* and subcontractors, the receiving *Party* shall ensure that appropriate arrangements are in place to safeguard the confidentiality of the *Confidential Information* prior to its disclosure. The receiving *Party* is liable for any breach of confidentiality by the third party.

ARTIKEL 8. INTELLECTUAL PROPERTY RIGHTS AND ACCESS RIGHTS

The terms and conditions of Article 8 are applicable notwithstanding the possibility provided by Article 12.1 to take appropriated measures vis-à-vis the *Parties* that do not observe their obligations detailed in the *Agreement*, and in particular those contained in Article 6.2.

8.1. Ownership

8.1.1. Background

The ownership rights to the *Background* are not affected by the terms and conditions of the *Agreement*. The *Background* is and remains the exclusive property of the contributing *Party*.

8.1.2. Foreground

8.1.2.1. Each *Party* shall remain the owner of the *Foreground* generated by such *Party* (or its subcontractor(s)).

The *Foreground* generated by one or more *Research Organizations* (or its subcontractor(s)) shall be co-owned with IMEC.

If, in the course of carrying out the work in the *ICON project*, this *Foreground* is generated by two or more *Parties* and if it is impossible to determine the respective contribution of each *Party* to or features of such *Foreground* or their respective contribution is indivisible, such that it is not possible to separate them for the purpose of applying for, acquiring, and maintaining the relevant *Intellectual Property Rights*' protection, such *Foreground* shall be jointly owned by these *Parties*, who shall be referred to as *Co-owners*.

8.1.2.2. Principles regarding jointly owned *Foreground*

- (a) The *Intellectual Property Rights* regarding the jointly owned *Foreground* shall be jointly owned by the *Co-owners*.
- (b) Unless otherwise agreed upon between the *Co-owners*, each *Co-owner* shall have for the duration of the corresponding *Intellectual Property Right(s)*, the non-exclusive and irrevocable right, without territorial or other restrictions, to:
 - (i) Use the jointly owned *Foreground*; and
 - (ii) grant non-exclusive licences to third parties

without needing the consent of or paying compensation to or otherwise accounting to any other Co-owner.

- (c) In order to guarantee an adequate protection of the jointly owned *Foreground*, the Co-owners will consult each other as soon as practicable of the opportunity to apply for a patent of any other similar protection. The Co-owners will agree who will be in charge of the preparation, application and follow-up of those applications and in what countries or jurisdictions these applications will be made. The application for a patent or any other protective measure related to the jointly owned *Foreground* requires the agreement of the Co-owners with the exception of the Co-owner(s) that do(es) not wish to share in the costs related to these applications in accordance with the stipulations of clause (d).
All external costs and contributions for the maintenance of such protection shall be borne by the Co-owners in equal parts, unless otherwise agreed upon.
- (d) If and when a Co-owner decides not to contribute or not to continue its contribution (as the case may be) to the costs of application for or maintenance of patent or other protection for the jointly owned *Foreground* for one or more countries or jurisdictions, such Co-owner shall:
- (i) immediately inform the other Co-owners of its decision in writing;
 - (ii) forthwith relinquish all its title to and interest in such jointly owned patents, patent applications for the countries or territories concerned to the other Co-owner(s) who contribute(s) or continue their (his) contribution, as the case may be, to such costs in accordance with paragraph (c) above; and;
 - (iii) lose its rights under paragraph (b) above with respect to such jointly owned patents and patent applications for the countries or territories concerned as of the moment of notification under paragraph (i) above, however, the Co-owner and its Affiliated Entities will be able to obtain non-transferable, non-exclusive *Access Rights* against market conditions, without the right to grant sub-licenses, for the lifetime of such jointly owned patents and patent applications for the countries or territories concerned. The Co-owner that does not contribute or continue to contribute to the costs of application for or the maintenance of a patent or other protection for the jointly owned *Foreground* is granted the non-exclusive, non-transferable, worldwide and irrevocable right to use the jointly owned *Foreground* covered by these patents and patent-applications for research activities, with or without third parties, against market conditions. In the context of this research, this Co-owner has right to grant sublicenses if this is needed for the execution of the research and/or if needed for the Use of the results of the research without requiring the consent of the other Co-owners or any explanation or accounting being due.
- (e) Each Co-owner of patents or patent applications or other *Intellectual Property Rights* protecting such jointly owned *Foreground* shall only have the right to bring an action for infringement of any such jointly owned rights with the consent of the other Co-owner(s). Such consent may only be withheld if such infringement action would be prejudicial to the *Legitimate Interests* of one or more of the other Co-owner(s), as demonstrated by it (them).

8.1.2.3. Assignment of ownership of the *Foreground*

Each *Party* may assign ownership of its own *Foreground* (including without limitation its share in the jointly owned *Foreground*, and all rights and obligations attached to it) to a third party without prior notification and approval being required from the other Co-owners.

Any such assignment shall be made subject to the *Access Rights* granted to the other *Parties* under this *Agreement*. The assigning *Party* shall ensure that such assignment does not prejudice such rights of the other *Parties*. The assigning *Party* shall ensure that each assignee of the *Foreground* shall be subject to all the obligations related to the *Foreground*.

8.2. Access Rights

8.2.1. Identification of *Background* and/or *Sideground*.

Each *Party* shall describe its *Background* or *Sideground* needed for the implementation of the *ICON* project and/or the *Use* in Exhibit 2 of the *Agreement* in a positive list. As far as the *Access Rights* are concerned, the *Background* or *Sideground* that is not described in Exhibit 2 by said *Party* shall be considered as not needed for the correct and uninterrupted performance of the *ICON* project nor for the *Use*. However, this does not apply to the *Background* or *Sideground* introduced by said *Party* during the *Project* in such a way that the *Background* or *Sideground* proves to be needed by another *Party* in order to perform the *ICON* project or for the *Use* of the *Foreground*.

Each *Party* is entitled to add additional *Background* or *Sideground* (but not to delete any) during the implementation of the *ICON* project by serving the other *Parties* a written notification without any formal amendment being required. The changes shall be accepted following approval by the project steering committee, and they will also be recorded in the project steering committee report.

8.2.2. General principles relating to *Access Rights*

8.2.2.1. All *Access Rights* needed for the performance of the *ICON* project and for *Use* are granted on a non-exclusive and worldwide basis.

8.2.2.2. Except in exceptional circumstances, no transfer costs shall be charged for the granting of *Access Rights*.

8.2.2.3. With the exception of the *Access Rights* that are deemed to be granted, the *Party* requesting *Access Rights* shall issue a written and motivated request to the *Party* obliged to grant the *Access Rights*. The written request shall describe the *Foreground* for which the *Access Rights* are needed. The request for *Access Rights* to *Foreground* developed by a *Research Group* (co-owned by IMEC) shall be directed to IMEC. The terms and conditions of the agreement as referenced hereunder shall be negotiated and executed with IMEC who will consult the *Research Group* concerned. The request for *Access Rights* to *Background* or *Sideground* shall be directed to the owner of the *Background* or *Sideground* at all times and the agreements shall be reached with the owner.

The specific conditions regarding the *Access Rights* for *Use* shall be formalized in a traceable format. The finalization of these formalities however shall not delay the granting of the *Access Rights* for *Use*.

In the event the *Parties* do not agree on the specific terms and conditions of the *Access Rights* for *Use* within a term of six (6) months following the request for *Access Rights* for *Use*, the *Parties* concerned shall jointly appoint an independent expert to propose appropriate terms and conditions. In the absence of an agreement between the *Parties* concerned to appoint an independent expert, either *Party* may invoke its rights under the dispute resolution process in the *Agreement*.

The advice of the independent expert shall be binding and the costs associated herewith shall be equally shared between the *Parties* concerned.

8.2.2.4. The request to negotiate the terms and conditions for *Access Rights* in accordance with the conditions of the *Agreement* is to be issued in writing at the latest within two (2) years following the expiration of the *ICON*

project. In the event of premature termination the terms and conditions provided in Articles 8.2 and 11 shall apply.

Following the expiration of the abovementioned periods, the obligation to grant and the right to obtain *Access Rights* as described in the *Agreement* shall terminate.

As an exception to the above, where patent applications have been filed on *Foreground*: without prejudice to the rights of the *Parties* as detailed above, the *Parties* agree that the *Access Rights*, subject to agreement between the *Parties* in accordance with the terms and condition of the *Agreement*, to such patent applications must be requested no later than six (6) months after the publication of the search report of these patent applications. At the end of the abovementioned period, the obligation to grant and the right to receive *Access Rights* shall expire. In the event that *Access Rights* are requested during the permitted six-month period, all the other provisions in the *Agreement* relating to the negotiation and grant of *Access Rights* shall apply.

This Article is not applicable to *Access Rights* that are deemed granted in accordance with the terms and conditions of the *Agreement*.

- 8.2.2.5. At the latest two (2) months after expiration of the end of the ICON Project and at the latest two (2) months after expiration of the period of two (2) years after the end of the ICON Project, each Party must state in detail which *Access Rights Needed for Use* this Party has obtained from another Party in the performance of this *Agreement* (including those of each *Affiliated Entity* that obtains *Access Rights*) and in which the effective active collaboration with this Party (including those of each involved *Affiliated Entity*) exists. In case the Party cannot demonstrate this (adequately) or if IMEC decides that this is not (adequately) proved, this Party shall pay for all *Access Rights Needed for Use* (including those of each *Affiliated Entity* that has obtained *Access Rights* for which no effective collaboration can be demonstrated) a compensation to the Party that grants the *Access Rights* equal to the market price. If the decision about the effective active collaboration is disputed, this dispute shall be settled by an independent third party.

In case a Party voluntarily wants to terminate her participation in the Project earlier, abovementioned obligation remains also applicable to this exiting Party. At the latest two (2) months after date of exit and at the latest two (2) months after expiration of the term of two (2) years after date of exit, the exiting Party shall provide the necessary reports.

8.2.3. Access Rights to *Affiliated Entities*

- 8.2.3.1. Each Party hereby grants the right to the other Party to grant *Access Rights* to each of its *Affiliated Entities*, provided that this other Party commits the *Affiliated Entity* to the following conditions:

- (a) to respect the same conditions as the *Access Rights* of the other Party taking into account article 8.2.2.5. These *Access Rights* must always be granted at market conditions to the *Affiliated Entity* in case this *Affiliated Entity* cannot for itself demonstrate an effective active cooperation;
- (b) to fulfil all confidentiality and other obligations described in the *Agreement* as if such *Affiliated Entity* was a Party. *Access Rights* to any *Affiliated Entity* are subject to the continuation of the *Access Rights* of the respective Party and automatically terminate in case of termination of the *Access Rights* granted to the respective Party. In the event the *Affiliated Entity* does not observe its obligations and does not remedy a breach thereof within a reasonable period, all *Access rights* granted to such *Affiliated Entity* shall terminate.

The procedure for the granting of *Access Rights* to the *Parties* as set out in Article 8.2.4 shall also apply to *Affiliated Entities*.

8.2.3.2. Cessation of Control

Upon cessation of the *Control* of an *Affiliated Entity*, any *Access Rights* granted to such *Affiliated Entity* shall terminate except in the event that such termination shall have a disproportionately negative impact on the business of the *Affiliated Entity* (e.g. because certain *Background*, *Foreground* or *Sideground* has been incorporated in a product).

8.2.4. Access Rights for the performance of the *ICON* project resp. Use

8.2.4.1. Access Rights needed for the performance of the *ICON* project:

- (a) The *Access Rights* to *Background* and *Sideground* needed for the performance of the *ICON* project shall be deemed granted, free of charge, as of the commencement date of the *ICON* project.
- (b) The *Access Rights* to the *Foreground* needed for the performance of the *ICON* project shall be deemed granted, free of charge, as of the date of creation they are created.

8.2.4.2. Access Rights needed for Use

- (a) Each *Party* hereby grants to any *Party* *Access Rights* to the *Foreground* to the extent such *Party* needs the *Foreground* for Use of its own *Foreground*.

Such *Access Rights* shall be granted:

- (i) for free to all *Parties* participating in the same *Work Package* provided that an effective active cooperation can be demonstrated.
- (ii) against favourable conditions, these are better conditions than the normal commercial conditions, to all *Parties* not participating in the same *Work Package* provided that an effective active cooperation can be demonstrated. In this case the *Party* obliged to grant *Access Rights* is entitled to invoke a *Legitimate Interests* against the granting of such *Access Rights*.

In case no effective active cooperation can be demonstrated, these *Access Rights* must always be granted against marked conditions.

- (b) Each *Party* hereby grants to any other *Party* *Access Rights* to *Background* and *Sideground* to the extent such *Party* needs the *Background* or the *Sideground* for Use of its own *Foreground* against market conditions.

8.2.4.3. Special provisions concerning *Access Rights* to *Software*

- (a) General principles
 - (i) All the terms and conditions concerning *Access Rights* to *Background*, *Sideground* or *Foreground* as detailed in the *Agreement* also apply to *Software* that is *Background*, *Sideground* or *Foreground*. In the event of any inconsistency between the terms and conditions detailed in the *Agreement*, the terms and conditions of Article 8.2.4.3 shall apply.
 - (ii) *Access Rights* to *Software* do not require the creation and delivery of *Object Code* or *Source Code* ported to any particular hardware platform nor the creation and delivery of any *API* or *Software* documentation in any particular form or detail. *Access Rights* to *Software* only relate to the item as available at the moment of

granting of the *Access Rights* unless otherwise expressly agreed upon. Only in exceptional circumstances, will transfer costs be charged.

- (iii) Unless otherwise expressly provided in Article 8.2.4.3., no *Party* is obliged to grant *Access Rights* to the *Source Code*. All *Access rights* needed for the performance of the *ICON project* or *Use* will be granted in *Limited Source Code Access*.

(b) Software licence and sublicenses

- (i) *Access Rights* to *Object Code* and/or *API* needed for *Use* of the *Foreground* in accordance with the terms and conditions of Article 8.2.4.2 comprise the worldwide right to:

- use the *Software*:

- for research activities;
- for the creation and marketing of products and processes;

or

- for the creation and providing of services.

- distribute, make available or sell (including by using the services of a third party) such *Object Code* and/or *API* in accordance with the *Access Rights* granted in the *Agreement*;

- grant to each user buying/using such product and/or service a perpetual, irrevocable and worldwide licence to:

- use the *Object Code* and/or *API* as part of or in connection with any product or service of a *Party* having *Access Rights*;
- use the *Object Code* and/or *API* to maintain such product/services;
- use the *Object Code* and/or *API* to create for its own end-use interacting interoperable *Software* in accordance with the rights conferred by, and subject to the conditions of the European Directive of 14 May 1991 on the legal protection of computer programs;

- in the course of and for the purposes of the exercising of the rights described in (i) above, to make and have made an unlimited number of copies of such *Object Code* and/or *API*.

Nothing in this Article 8.2.4.3 affects the application of the terms and conditions provided in Article 8.2.4.4. In the event of any inconsistency between the provisions of Article 8.2.4.3 and Article 8.2.4.4, then Article 8.2.4.4 shall prevail.

- (ii) Where a *Party* has access to *Source Code* for *Use* of the *Foreground*, *Access Rights* to such *Source Code* shall, unless otherwise expressly agreed upon between the *Parties* concerned, comprise the worldwide right to copy, use and modify such *Source Code* as needed to support the exercise of the *Access Rights* granted to such *Party* in respect of the corresponding *Object Code*. Unless otherwise agreed upon between the *Parties* concerned, *Access Rights* to the *Source Code* do not include the right to sublicense such *Source Code* or make it available to any third party in whole or in part.

- (iii) Each sublicense granted in accordance with the provisions of Article 8.2.4.3(b) shall, if possible, be made by traceable agreement specifying and protecting the rights of the *Party* granting the *Access Rights*.

8.2.4.4. Open Source

The *Parties* acknowledge that the use in the *ICON project* or the introduction in the *ICON project* of *Background* or *Sideground*, controlled by a *Party*, pursuant to *Open Source Terms* may impair or otherwise affect the utilization or *Use* by another *Party* of the *Background*, *Sideground* or *Foreground*.

'Controlled' for the application of this Article means that a *Party* has the right to, either itself or through a third party, grant *Access rights* to the *Background* or *Sideground* without:

- (a) requiring the consent of a third party; or
- (b) owing any justification or financial compensation to a third party.

Therefore, each *Party* shall, unless such *Party* obtained the prior approval from the project steering committee, refrain from using during the performance of the *ICON project* or introducing in the *ICON project*, *Background*, *Sideground* or *Foreground* that would (or probably would) cause the release of the *Background*, *Sideground* or *Foreground* (entirely or partially) in accordance with the *Open Source Terms*.

During the term of the *ICON project* and for a period of two (2) years following the termination of the *ICON project* no *Party* will release its *Foreground* pursuant to *Open Source Terms*, unless such release is the direct consequence of or is implicitly provided by the approval of the project steering committee.

8.2.4.5. Access Rights for a *Party* joining the *ICON project* after the commencement date of the *Agreement*

The following terms and conditions apply to the *Party(ies)* joining the *ICON project* after the commencement date of the *Agreement*:

- (a) as from the date of joining the *ICON project*, the new party shall be granted *Access Rights* in accordance with the terms and conditions specified in Article 8.2 and Article 8.2.4.5(b);
- (b) *Foreground* arising from the work performed by the *Party(ies)* before the date of joining by the new party is considered to be *Background* for such new *Party*. In relation to this *Foreground*, such new *Party* shall enjoy *Access Rights* under the same conditions as the *Access Rights* to *Background* provided for in the *Agreement*. For the avoidance of doubt, the project steering committee shall determine the *Foreground* that is to be considered to be *Background* in relation to the *Access Rights* for such new party.

8.2.4.6. Access Rights for withdrawing resp. excluded *Party*

The following terms and conditions apply to the *Party(ies)* in respect of whom the *Agreement* is terminated in accordance with the provisions specified in the *Agreement*:

- (a) In the event the participation of a *Party* to the *ICON project* is terminated upon request of such *Party*, the *Access Rights* granted prior to the termination and the obligations to grant *Access Rights* pursuant to the *Agreement* shall continue to be in full force and effect except that the *Access Rights* shall only be granted with respect to the *Background*, *Sideground* and *Foreground* existing at the time of such termination.
- (b) In the event the *Agreement* is terminated due to breach of contract, the defaulting *Party* is obliged to continue to grant *Access Rights* pursuant to the terms and conditions of the *Agreement* to the *Background*, *Sideground* and *Foreground* existing at the time of such termination. The *Access Rights* granted by the other *Party(ies)* to the defaulting *Party* shall cease immediately upon termination of the *Agreement*.

ARTIKEL 9. PUBLICATIONS AND COMMUNICATION

- 9.1. For the avoidance of doubt, no *Party* to the *ICON project* shall be entitled to publish or allow the publishing of any data that constitutes *Background*, *Sideground*, *Foreground* or *Confidential Information* of another *Party*, even where such data is amalgamated with such first *Party's Foreground*, *Background*, *Sideground* or other information, document or material, without the prior written consent of the other *Party*.
- 9.2. For each proposal to publish or communicate the *Foreground*, each *Party* shall request the prior written consent of the project steering committee. Therefore, the requesting *Party* shall issue a written request to the project leader. Within a period of thirty (30) working days following the communication of such request, the project steering committee shall decide whether or not the publication and/or communication is authorized or not. The consent may only be refused if the refusing *Party* can prove a *Legitimate Interests*. Under no circumstances shall the delay of the publication exceed a period of six (6) months.

In the absence of any response within the abovementioned period, it is deemed that the proposed publication or communication is authorized. If the project steering committee decides that *Intellectual Property Rights* cannot effectively be protected, the project steering committee may decide to postpone the publication and/or communication or to allow a limited, amended or alternative version of the information to be published or communicated. In this case a representative of the requesting *Party* shall be invited to the project steering committee and given a fair hearing. For a period of one (1) year after termination of the *Agreement* consent to publication or communication of *Foreground*, *Sideground* or *Background* shall to be given by the *Parties* (instead of the project steering committee). After this period, the restrictions with respect to *Foreground*, *Background*, *Sideground* and *Confidential Information* of other *Parties* shall remain into full force.

- 9.3. The consent of the project steering committee is not required for any publication by IMEC of information falling within the scope of (i) the applicable reporting obligations to IMEC, (ii) IMEC's annual reports or (iii) audit(s) to which IMEC is subject.
- 9.4. Each authorized publication and/or communication of the *Foreground* will mention that the *Foreground* is obtained within the *ICON project* of IMEC, and if applicable reference will be made to the project funding from VLAIO.

ARTIKEL 10. LIABILITY

10.1. Principles

10.1.1. Liability between the *Parties*

- (a) The obligation of each *Party* to carry out its tasks within the *Work Package(s)* of the *ICON project* does not entail an obligation on that *Party* to deliver results, but is merely a commitment to use all reasonable efforts to perform to the best of its ability the *ICON project* as set out in Article 4 of the *Agreement*.
- (b) None of the *Parties* shall be liable for any fault and/or negligence of another *Party* (*Parties*) resulting from the performance of the *Agreement*. Each *Party* shall be solely liable for any defects in its products and/or services resulting from the use of the *Foreground*. In the event a claim for such defects is instituted against the *Party* that is the owner of the *Foreground*, the *Party* using the *Foreground* in its products and/or services shall indemnify the other *Party*.
- (c) In respect to information or materials supplied by a *Party* to another *Party* under the *Agreement*, the supplying *Party* shall be under no obligation or liability other than as expressly stated in the *Agreement*. Except as otherwise expressly agreed, no warranty

condition or representation of any kind is made by, given by or to be implied against the supplying *Party* as to the sufficiency, accuracy or fitness for purpose of such information or materials, or, the absence of any infringement of any *Intellectual Property Rights* of third parties by the use of such information and materials, and the recipient *Party* shall in any case bear the entire risk of any consequences that may arise from the use of such information and materials. Notwithstanding the abovementioned, each *Party* hereby agrees to promptly inform the other *Parties* of any (threatened) claim of infringement of *Intellectual Property Rights* of a third party that comes to the attention of such *Party*.

10.1.2. Liability vis-à-vis third parties

Each *Party* is and remains fully liable for the performance of any part of its obligations under the *Agreement* and for any loss, damage or injury to third parties resulting from the performance of the *Agreement* or from the *Use of the Foreground, Background or Sideground*. Therefore, a *Party* against whom a claim is instituted by a third party shall enjoy a right of recourse against any other *Party* to the extent that the third party claim is the result of that other *Party's* fault and/or negligence. Each *Party* agrees to be summoned before the court seized with the dispute with the third party.

10.1.3. Liability for subcontractors

Subcontracting by a *Party* in accordance with the provisions of the *Agreement* of work to be performed in furtherance of the objectives of the *Agreement* shall not relieve that *Party* from its obligations and liabilities as detailed in the *Agreement*. Each *Party* shall be fully liable for the correct performance of any part of its activities and the compliance of its obligations detailed in the *Agreement*. Each *Party* agrees to take all necessary measures in order to ensure that the obligations applicable to such *Party* also apply to its subcontractors. Notwithstanding the above, each *Party* will remain liable for the breach of its contractual obligations and liabilities under this *Agreement* by its subcontractors.

10.2. Claims between *Parties*

10.2.1. Excluded liability

In no event shall any *Party* be liable toward another *Party* for any indirect or consequential damages, however caused or arising (such as tort or objective liability), including without limitation:

- (a) loss of profit, revenue, income, turnover, interests, savings, consignment, productions and business opportunities;
- (b) goodwill and anticipated savings;
- (c) loss of data or damage to reputation;
- (d) any type of indirect or consequential loss or damage.

10.2.2. Limitation of liability

The aggregate liability of each *Party* vis-à-vis the other *Parties* shall not exceed the total amount for the *ICON project* as detailed in Exhibit I of the *Agreement*.

10.2.3. Exceeding the scope of *Access Rights*

For the avoidance of doubt, the *Parties* hereto expressly agree:
The exclusions and limitations of liability detailed in this article shall not apply in respect of any activity involving the *Use of the Background, Sideground and/or Foreground* of another *Party* to the extent that such activity or use is not within the scope of the *Access Rights* granted by the

Agreement and in particular not within the scope of this Article concerning the exclusion and/or limitation of liability.

10.2.4. Exceptions

The limitations and exclusions of liability shall not apply in respect of any:

- (a) Fraud and wilful misconduct;
- (b) Death and/or injury to natural persons (in which case the amounts of the applicable insurances are applicable whereby the amounts can in no event be lower than the financial limitation of liability provided in the Agreement);
- (c) contradicting written agreement between the Parties (such as GDPR).

10.3. Force Majeure

10.3.1. If the performance of the Agreement is prevented or limited by Force Majeure, the contractual Party affected by the Force Majeure is released from the performance of those of its obligations that are directly affected or limited by Force Majeure provided that the affected Party:

- (a) promptly informs the other Parties of any giving rise to the event of Force Majeure;
- (b) uses all reasonable efforts to avoid or solve the circumstances of Force Majeure, and
- (c) shall continue the performance of its obligations as soon as moment the events of Force Majeure are removed.

10.3.2. Following the notification as detailed in Article 10.3.1 a), the Parties shall discuss in good faith the measures to be taken to deal with the Force Majeure and shall take all reasonable actions to minimize the consequences of the events of Force Majeure on the performance of the Agreement.

ARTIKEL 11. TERM OF THE AGREEMENT

11.1. The Agreement shall enter into force on the date of its execution by all Parties with retroactive effect as of the commencement date of the ICON project (see Exhibit I) and shall remain in full force and effect until all the obligations set out in this Agreement have been fulfilled, unless the Agreement is terminated prematurely in accordance with its terms and conditions detailed in the Agreement.

11.2. Termination of the Agreement following an evaluation

This Agreement may be terminated at any time by common accord between the Parties in the project steering committee if the Parties feel that the co-operation as described in the Agreement is failing to achieve the anticipated Foreground and/or for legal reasons. In such event, the Parties shall settle the consequences of the termination of the Agreement in a written "termination agreement", taking into consideration the principles set out in Article 8.2 and 11.4 of the Agreement.

11.3. Withdrawal and/or exclusion of a Party

Any Party may submit a written request to terminate its participation in the Agreement.

The other Parties may also apply for the termination of the participation of a Party in the ICON project (e.g. for breach of contract that is not remedied by the defaulting Party within thirty (30) days as from its receipt of written notification of the breach). This notification shall specify the reasons for terminating the ICON project against such Party as well as the proposals for the re-allocation of such Party's tasks.

In the above circumstances, the project steering committee may approve or reject such a request or propose other appropriate measures (final decision of the IMEC Executive Board).

Notwithstanding the fact that the project steering committee approves such request, the decision has to be ratified by the IMEC Executive Board and the *Agreement* must then be amended in writing with an addendum (amendment) to the *Agreement*. In the event a request to exclude a *Party* is formulated, the *Party* to whom the exclusion application relates may not vote on such decision, but it shall be invited before the project steering committee and given a fair hearing before any decision is taken by the project steering committee.

The termination of the *Agreement* regarding the *Party* concerned shall become effective on the date on which the project steering committee approves the decision to exclude the *Party*.

However, if no agreement can be reached between the *Parties* in the project steering committee concerning the exclusion of a *Party* for breach of contract that is not remedied by the defaulting *Party* within a period of thirty (30) calendar following its receipt of written notification from the other *Parties* participating in the *Work Package* detailing the nature of the breach and demanding that it be cured, the complaining *Parties* may decide unanimously to exclude the defaulting *Party* from further participation in the *Work Package* in question. It is explicitly agreed that the defaulting *Party* shall not take part in the vote on the exclusion decision.

11.4. Consequences of termination of the *Agreement*

11.4.1. Obligations intending to survive the termination of the *Agreement* shall remain in full force and effect after the termination of the *Agreement* (for whatever reason). These obligations include, *inter alia*, the Articles 4.5, 6.2, 6.3, 7, 8, 9, 10, 11.4, 12.1 and 12.4 and these remain in full force and effect after termination of the *Agreement*.

11.4.2. Upon termination of the *Agreement* in accordance with the provisions of Article 11.3, the excluded/withdrawing *Party* shall immediately (and at the latest within thirty 30 calendar days) provide a written report to IMEC on work carried out up to the date of the termination of the *Agreement*, including the *Foreground* developed, to IMEC.

ARTIKEL 12. MISCELLANEOUS

12.1. This *Agreement* shall be governed by the laws of Belgium. In the event that this *Agreement* and the VLAIO *Agreement* contain conflicting provisions, the conditions included in the VLAIO *Agreement*, including the project approved by the Hermes Fund, will apply to the innovation goal and the accompanying valorisation plan.

12.2. Any dispute arising from the interpretation and/or execution of the *Agreement* that cannot be solved amicably, shall be finally settled by the competent court located in Leuven (Belgium). Notwithstanding the foregoing, all difficulties, controversies and disputes between the *Parties* regarding *Intellectual Property Rights* that cannot be solved amicably, shall be finally settled by arbitration in accordance with the rules and procedures of CEPINA. The tribunal shall be composed of one (1) arbitrator and the proceedings shall be conducted in Dutch.

12.3. Except as provided in Article 8.1.2.3., no *Party* shall be entitled to assign, transfer or otherwise dispose of, in whole or in part, its obligations and rights under the *Agreement* without the prior written consent of the other *Parties*.

12.4. There is no hierarchical relationship between the *Parties* nor any other relationship other than the relationship specified in the *Agreement*. The *Parties* shall independently perform the *ICON project* in accordance with their own ideas and abilities.

12.5. Any and all notices within the context of the *Agreement* by any *Parties* to any other *Party* (or *Parties*) shall be in writing (e.g. by e-mail).

- 12.6. No other rights regarding the *Foreground*, *Sideground* or *Background* other than those rights expressly provided in the Agreement are granted by a *Party* or its *Affiliated Entity* to any other *Party* or *Parties* or their *Affiliated Entities*.
- 12.7. This Agreement contains the entire and only agreement between the *Parties* with regard to the performance of the *ICON project* and supersedes and cancels all previous oral and written communications. The *Exhibits* form an integral part of the Agreement.
- 12.8. Except as otherwise expressly provided in this Agreement cannot be amended or modified, except by a written document signed by all *Parties* unless such written document executed by the *Parties* is not required following the terms and conditions of the Agreement or as agreed upon between the *Parties*.
- 12.9. If any provision of the present Agreement violates any mandatory legislations (including state aid, export) or if any provision is declared, in whole or in part, invalid or unenforceable by any court or other competent authority, the relevant provisions of this Agreement shall be considered null and void and the remaining parts or Articles shall not be affected and shall remain valid and enforceable as if the illegal, invalid or unenforceable parts or clauses were not part of the Agreement. Any illegal, invalid or unenforceable part of an Article hereof shall be replaced by a provision that, to the extent legally permissible, adheres as closely as possible to what the Parties intended to accomplish in the part or the clause concerned. The Parties shall in good faith negotiate such new Article and agree to amend as promptly as possible following the declaration of illegality, invalidity or unenforceability.
- 12.10. In the event that a *Party* applies for or intends to request state aid for an activity that relates to the subject matter of this Agreement, such *Party* hereby commits to include the IMEC file as part of its application file for state aid. This IMEC file contains an overview of the ownership rules agreed upon between the *Parties* and described in Exhibit 2. Such *Party* shall in due time inform IMEC about its intention to apply for state aid so that IMEC has sufficient time to prepare the the IMEC file and give the IMEC file to the *Party* concerned.
- 12.11. The signature of a *Party* via a scanned or digitized image of a handwritten signature (e.g. scan in PDF format) or an electronic signature (e.g. via DocuSign), shall have the same force and effect as an original handwritten signature for the purposes of validity, enforceability and admissibility. Each *Party* receives a fully executed copy of the Agreement. Delivery of the fully executed copy via e-mail or via an electronic signature system shall have the same force and effect as delivery of an original hard copy.

Executed in XXX original copies, each Party acknowledging having received one (1) original copy of the Agreement.

Exhibits:

1. Description of *ICON* project
2. *Foreground – Background – Sideground*
3. *Affiliated Entities*
4. Reporting: reference documents

DRAFT

“name partner in full”

Mr. **“person with signatory authority”**
“position”

Date:

DRAFT

“name partner in full”

“name partner in full”

Mr / Mrs “person with signatory authority”
“position”

Mr “person with signatory authority”
“position”

Date:

Date:

DRAFT

IMEC vzw

Ludo Deferm
Executive Vice President

Date: