



FIREWORKS



Draft Governance Rules for the FIRE Initiative

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Abstract

FIRE (Future Internet and Research and Experimentation) is best value to the European taxpayers when securing its sustainability. With sustainability it is meant to ensure availability of the built infrastructure, services, easy accessibility to them and hence maximum usage. FIRE landscape is heterogeneous and operations to the date dependant on sporadic and insecure project funding. FIREworks is to work on the dilemma and firstly discussion on the strategy level has been pursued to tackle the challenge. On the other hand a common nominator, originating from the actors of the field, is promoted to host the FIRE aside from research and development activities carried out by the individual projects. This deliverable is a draft of a governance model that is subject to discussion and potentially agreement among parties that subscribe to the FIRE initiative. The long-term goal of the initiative is the establishment of an organisation that operates a future internet research and experimentation facility.

1 Text of the (draft) governance model

This version of the governance model is to be negotiated and agreed among the parties, members of the FIRE Initiative by a signed letter.

The agreement is valid until December 31st, xxxx and can be extended subject to agreement of its responsible bodies.

FIRE Initiative Agreement

Between

1. Party 1

2. Party 2

3. Party 3

4. ...

Joined in January xxxx by signed Declaration of Accession:

1. Accession party 1

2. Accession party 2

3. ...

all hereinafter referred to as "Original FIRE Party "

Preamble

Whereas the need for a future Internet research and experimentation facility including platforms and testing environments to be supported by a broad range of partners has become widely accepted. This lead to the conclusion, to establish an entity to perform the activities related to future Internet research and experimentation, in particular enhancing the development of cross-national, heterogeneous and modular experimental facility, as described in XXXX, hereinafter referred to as "FIRE Initiative".

Whereas the Original FIRE Parties, representing important European ICT industry and academic stakeholders have a common interest in an economically sustainable facility.

Whereas FIRE has found a broad interest within European telecommunications industrial companies, telecommunications operators, universities and research institutes in its aim to push toward improving the European R&D in the area of future Internet and to accelerate Europe's transformation into an Information Society.

Whereas FIRE participation shall be open for partners, which are able and willing to comply with the rules of FIRE and contribute significantly to the FIRE Initiative by investing their skill and knowledge, capacity and the necessary costs into research and development projects to be performed in co-operation with other partners.

Whereas the Original FIRE Parties have decided to install with a minimum of cost and labour a flexible and effective organisation to ensure that FIRE can be executed within the envisaged goals by interested co-operating partners in Europe.

Now, therefore, the Original FIRE Parties have agreed as follows:

I Definitions

For the purpose of this FIRE Initiative Agreement shall mean:

I.1 FIRE Initiative Agreement means the present agreement

I.2 FIRE Initiative (hereinafter “the Initiative” or “the FIRE Initiative”)

The FIRE Initiative will concentrate on comprehensive testing and experimentation on a large scale, which is a unique requirement of the future Internet research. The role and the added value of FIRE can be identified in the deployment and operation of large-scale testing and experimental facilities that enable the trial and evaluation of protocols, concepts, technologies, services and system solutions. FIRE Initiative is to promote and participate in the development of a high quality international information and telecommunications infrastructure for the benefit of Information Society.

In a dynamic and competitive environment the objectives of FIRE are subject to permanent revision and updating, for example in respect of forthcoming new technologies, which must flow into the FIRE Initiative or new fields of application, which may arise out of market and research demands.

I.3 FIRE Work areas

The main FIRE work areas, as further described in the FIRE Initiative, are as follows:

- Services & Applications
- Management of Services, Systems and Networks
- Multimedia
- Customer Equipment, Home Networks and Terminals
- Broadband Access Networks
- Mobile & Wireless Networks
- Broadband Transport Networks (Metropolitan and Core/Backbone)
- Components
- Security

However, the list is not exhaustive, but rather all relevant areas found to be in the scope for future internet research benefiting from experimentation described above will be covered, and the mandate of FIRE Initiative is to work for identifying needs and providing structures and services for filling the emerging gaps in experimentation offerings.

I.4 FIRE Participants

FIRE Participants are the parties to this FIRE Initiative Agreement and companies or research institutes or universities, explicitly named in the Project contracts of FIRE Projects, having acceded the FIRE Initiative Agreement by signing the Declaration of Accession according to Art. IV, or having accepted the FIRE rules and regulations (which for the avoidance of doubt include the relevant provisions of this FIRE Initiative Agreement as well as any further provisions applicable thereto) by signing a Declaration of Acceptance according to Article VI.

I.5 FIRE Parties

The FIRE Parties are the Original FIRE Parties and the parties having acceded to the FIRE Initiative Agreement in accordance with the provisions of Article IV.

I.6 FIRE Projects or Projects

The FIRE Initiative is executed in form of various Projects within one (or more) of the FIRE Work areas, the technical description of which are defined in the so-called FIRE Project contracts, and recognised by the FIRE Initiative which includes the bodies set-up in Article III hereinafter.

I.7 Commission of the European Union

The representatives of the Commission of the European Union expressing their interest into a co-operation in future Internet research and experimentation in Europe, willing to subsidise FIRE Participants participating in FIRE Projects and willing therefore to monitor and control the execution of the FIRE Initiative.

I.8 Affiliated Company

Any company or other legal entity, of which a FIRE Participant now or hereafter owns or controls directly or indirectly 50 % or more of the voting shares or by which a FIRE Participant now or hereafter is owned or controlled directly or indirectly by 50 % or more of the voting shares, but any such company shall be deemed to be an affiliated company only so long as such ownership or control exists.

Affiliated Companies to a FIRE Participant are also such companies or legal entities, which are in the same ownership or under the same control in the aforementioned sense as the respective FIRE Participant.

Affiliated Companies to FIRE Participants are also such companies or legal entities, which are commonly controlled in the aforementioned sense by these FIRE Participants.

I.9 Non-European company

In the context of this FIRE Initiative Agreement, any company or legal entity which is directly or indirectly controlled by a company not being resident in a country of Europe.

I.10 FIRE Core group

is the group of representatives, constituted in accordance with Art. III.1.1. hereof and primarily composed of representatives of the Original FIRE Parties.

I.11 FIRE Organisation

is the organisational structure of FIRE, including all the bodies as described in Art. III of this FIRE Initiative Agreement.

I.12 Other definitions

Access Rights: means licences and user rights to Knowledge or Pre-existing know-how.

Knowledge: means the results, including information, whether or not they can be protected, arising from a FIRE Project, as well as copyrights or rights pertaining to such results following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

Pre-existing know-how: means the information which is held by the FIRE Participants prior to the conclusion of a consortium agreement, or acquired in parallel with it, as well as copyrights or rights pertaining to such information following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

Use: means the direct or indirect utilisation of Knowledge in research activities or for developing, creating and marketing a product or process or for creating and providing a service.

Application Programming Interface or API: means interface materials containing all data and information to allow skilled Software developers to create Software, which interfaces or interacts with other specified Software. Such API shall as minimum contain the data types and structures, constant and macro definitions, function and procedure definitions including their name, parameters, parameter count and parameter data type(s) and any data type or function results thereof, as set forth in header files, specifications and related documentation, all so as to enable Software to invoke some or all of the Software relevant to the API; together with the Software Documentation (if any) necessary for use of such API.

Limited Source Code Access: means (i) access to Object Code; or (ii) where normal use of such Object Code requires an API, access to Object Code and such API; or (iii) if neither (i) nor (ii) is available, Source Code Access.

Object Code: means Software in machine-readable, compiled and/or executable form (including, but not limited to, byte code form) and the Software necessary for use of such Object Code.

Software: means a software program being sequences of instructions to carry out a process in, or convertible into, a form executable by a computer or similar device or hardware in the form of applications, components and libraries, and fixed in any tangible medium of expression.

Software Documentation: means information being technical information relating to the design, development, comprehension, use or maintenance of any version of a Software program.

Source Code: means Software in human readable form such as is normally used to enable modifications to be made to it (including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation) together with the Software Documentation necessary for use of such Source Code.

Source Code Access: means access to Source Code as necessary for a FIRE Participant for execution of its part of the specific FIRE Project or for such FIRE Participant's Use.

II Scope

II.1 FIRE Organisation

By signing this FIRE Initiative Agreement the Original FIRE Parties agree to establish the FIRE Organisation, which includes the bodies listed in Art. III for performing the FIRE Initiative.

II.2 Purpose of FIRE Organisation

Scope and purpose of the FIRE Organisation is to stimulate, organise and co-ordinate testing and experimentation work within the goals of the FIRE Initiative executed by FIRE Participants. The FIRE Organisation is a non-profit making organisation.

II.3 Office of FIRE Organisation

The Office of the FIRE Organisation may be incorporated as a legal entity in a form to be agreed upon by the FIRE Parties, on the condition that the FIRE Core Group, deciding with two third majority, has recommended to the FIRE Parties the creation of a legal entity.

III Executive Bodies

Executive bodies of FIRE Organisation are the FIRE Core Group, the FIRE Support Group, the FIRE Strategy Group and the FIRE Office.

III.1 FIRE Core Group

III.1.1 Composition of the FIRE Core Group

The FIRE Core Group will be established, in accordance with the following.

The composition of the FIRE Core Group should reflect the participation in the FIRE Initiative and an appropriate mixture in respect to balance of participating countries, fields and levels of activities, while staying at a count level compatible with effective decision-making processes.

The FIRE Core Group will consist of representatives of the following Original FIRE Parties:

Party 1, Party 2, party 3, xxxx as long as they remain a FIRE Party.

Parties having acceded to this FIRE Initiative Agreement are entitled to designate a candidate to become a member of the FIRE Core Group.

The FIRE Core Group will be composed by up to fifteen members, being representatives of the Original FIRE Parties as outlined hereinabove and representatives of Parties having acceded to the FIRE Initiative Agreement, the latter being elected by the FIRE Parties, deciding with a two third majority.

Each member of the FIRE Core group has one vote. The Chairman and the Vice-Chairman are elected by the members of the FIRE Core Group on an annual basis.

Any FIRE Party may not have more than one representative as member in the FIRE Core Group.

The designated representatives of the FIRE Parties should attend the meetings of the FIRE Core Group in person. Authorised proxy is allowed in exceptional cases only.

The FIRE Core Group may decide to remove a FIRE Party represented in the FIRE Core Group, if such FIRE Party becomes an Affiliated Company to another FIRE Party having a representative in the FIRE Core Group or to a company not being resident in a country of Europe, or if the criteria for the membership would no longer apply.

A FIRE Party, who has appointed a representative into the FIRE Core Group, can from time to time replace its representative.

III.1.2 Tasks and Responsibilities of the FIRE Core Group

The FIRE Core Group is mainly responsible for:

- the Programme strategy and coherence;
- the representation of the Programme in front of the European Commission;
- Interface and influence to the EC for all issues related to the FIRE Initiative;
- the decision on tasks and guidelines for the FIRE Support Group (e.g. for Project selection and FIRE Participant search);

- the definition and updating of guidelines for the structure and organisation of the Programme; the admission and control of rules for Programme and Project management;
- the selection of Projects, assisted by the FIRE Support Group's recommendations;
- the execution and overall management of the Programme;
- the decision on Projects in individual cases, such as potential conflict of interest between FIRE Participants or participation in a Project of a non-European company. Such companies may be allowed to participate as FIRE Participants with the same rights and duties as other European FIRE Participants (except for participation in the executive bodies of the programme, see Art. III), if they have demonstrated:
 - the existence of substantial R&D activities in Europe,
 - the existence of decision power in Europe for the further implementation of research results into commercial products,
 - the added-value of their contribution to the FIRE Initiative
- the approval of the budget for the FIRE Organisation
- the financial audit of the FIRE Organisation

III.1.3 FIRE Core Group Meetings

The FIRE Core Group shall perform its work in regular meetings, at least three times a year.

III.1.4 Voting

Each member in the FIRE Core Group has one vote. Decisions require the majority of the votes of the members present or represented by proxy, except for the following: (i) the start-up budget according to Art. VII 1 requires unanimous vote; (ii) budget related issues except for the start-up budget, require a majority of two thirds of the votes of the members present or represented by proxy.

III.2 FIRE Chairman

The Chairman is representative and spokesman of the FIRE Organisation. He shall arrange and preside the FIRE Core Group meetings. The FIRE Chairman is elected by the FIRE Core group on an annual basis, the election date being at the end of the calendar year.

III.3 FIRE Vice Chairman

The Vice-Chairman is the representative and chairman of the FIRE Support Group. The FIRE Vice Chairman is elected by the FIRE Core group on an annual basis, the election date being at the end of the calendar year.

III.4 FIRE Director

The FIRE Core Group shall nominate a Director of the FIRE Office. The FIRE Director receives his task description from the FIRE Core Group and reports to the Chairman of the FIRE Core Group.

III.5 FIRE Support Group

III.5.1 Composition of the FIRE Support Group

The FIRE Core Group may install a permanent FIRE Support Group which has delegated responsibilities and which shall execute specific tasks and responsibilities. The FIRE Core Group will decide upon the working rules for the FIRE Support Group.

The number of members and the composition of the FIRE Support Group are decided by the FIRE Core Group.

The FIRE Core Group may decide to replace a member in the FIRE Support Group, if such member becomes an Affiliated Company to another FIRE Participant having a representative in the FIRE Support Group or to a company not being resident in a country of Europe, or if the criteria for his membership would no longer apply, or to have additional members appointed.

The FIRE Core Group Vice-Chairman is chairman of the FIRE Support Group.

III.5.2 Responsibilities of the FIRE Support Group

The FIRE Support Group will have a delegated responsibility from the FIRE Core Group for all decisions related to selection and monitoring of FIRE Projects.

Unless otherwise decided by the FIRE Core Group, the FIRE Support Group will perform the following tasks:

- Making proposals for and taking care of updating and implementation of guidelines for technical Projects;
- Recommendation to give FIRE recognition to Projects;
- Recommendations in case of major Project Changes;
- Advise to FIRE Core Group on all relevant issues.

III.6 FIRE Strategy Group

The FIRE Core Group may install from time to time and for a limited duration FIRE Strategy Groups which have delegated responsibilities and which shall execute specific tasks and responsibilities. As an example, FIRE Strategy Group may be created for the purpose of assisting the FIRE Core Group or the FIRE Support Group with monitoring the progress for the EC. Also a FIRE Strategy Group composed of scientific advisors may be created. Also a FIRE Strategy Group composed of legal experts of the FIRE Parties may be created.

The FIRE Core Group will decide upon the working rules for the FIRE Strategy Group.

Third parties participating in Strategy Group shall sign a non-disclosure agreement.

III.7 FIRE Office

The FIRE Core Group shall install a permanent Office directed by a Director of the FIRE Office. The Office will ensure the day-to-day administration and follow-up of the Initiative, according to Art. III 4.

The FIRE Office will consist of a team of experts on which the FIRE Director will have managerial responsibility.

The FIRE Office will have the following tasks and responsibilities:

- General administration of the FIRE Initiative,
- Accounting and billing of participation fees in accordance with Article VII hereof,
- Payment of FIRE Office costs, FIRE Office personnel according to the budget plan,
- Admission and control of the rules for participation to the Programme,
- Interface for all FIRE Participant, organisation of a Programme database,
- Monitoring of Projects, assisted by the FIRE Support Group, under FIRE Core Group responsibility,
- Information and communication to the FIRE Participants,
- Communication to the outside and interface with the EC on general issues, following instructions of the FIRE Core Group,

- Support and assistance to all other executive bodies in the FIRE Organisation.

IV Accession of Further Parties

The accession of further parties to this FIRE Initiative Agreement is subject to the approval of the FIRE Parties, deciding with a two third majority.

Any applicant, who is willing to become a party according to Annex A of this FIRE Initiative Agreement, must be considered under conditions of transparency and equal treatment.

All the FIRE Parties have in principle the same rights and obligations. Parties having acceded to this FIRE Initiative Agreement assume the rights and obligations as from the date they accede to this FIRE Initiative Agreement by signing the so-called "Declaration of Accession". With regard to participation in the costs of the FIRE Organisation, parties that have acceded to this FIRE Initiative Agreement shall contribute to the costs pro rata temporis from the time they have become a FIRE Party.

V Projects in FIRE

V.1

The testing and experimentation work within the FIRE Initiative shall be executed by FIRE Participants in individual Projects. Such projects may be funded under EC Framework Programmes or national Programmes in a European country. In some cases such Projects may not be funded by public agencies.

V.2

FIRE Participants in FIRE Projects shall execute their work under their own responsibility and at their own costs.

V.3

Proposals for Projects can be considered as appropriate under the guidance of the FIRE Core Group.

V.4

FIRE Projects are necessarily accomplished in co-operation by FIRE Participants according to Project Consortium Agreements (PCA) agreed and concluded between the FIRE Participants in the FIRE Project case by case.

V.5

The funding of FIRE Projects is not the responsibility of the FIRE Organisation.

VI FIRE Label

VI.1

All FIRE Participants have to declare to the FIRE Organisation that a Project Co-operation Agreement has been already or will be signed within a maximum 6 months period following the label decision.

TBD: The value of a labelling a project as FIRE project is unclear

VII Cost of FIRE Organisation

VII.1

TBD: A possible future FIRE organisation shall have a yearly budget and rules to produce and approve the budget, as well as define ways to finance it.

VII.2

Each FIRE Party shall bear its own costs resulting from the participation of persons or organisations in the FIRE Initiative.

VIII Confidentiality/Restriction in Use

VIII.1

It is understood and agreed by the FIRE Parties, that all technical and business information received from other FIRE Parties pursuant to or in connection with the performance of this FIRE Initiative Agreement shall be kept confidential towards third parties during and for 5 (five) years after the duration of the FIRE Initiative Agreement. The representatives in all executive bodies (Art. III), i.e. in the FIRE Core Group, the FIRE Support Group, the FIRE Office, and in all ad-hoc set up fora or FIRE Strategy Group, are obliged not to use the received information for any other purposes than performing the work within the FIRE Organisation.

VIII.2

This obligation as set forth in Art. VIII.1 here above shall not apply (i) to a specific receiving FIRE Party for any information which can be proved to be already known or becomes known to such receiving FIRE Party otherwise than by virtue of its participation under this FIRE Initiative Agreement, or is proved to be acquired/elaborated by such receiving FIRE Party independently and without using a confidential information from a disclosing FIRE Party or (ii) any information which is otherwise furnished lawfully or is within the public domain without breach of this FIRE Initiative Agreement.

VIII.3

Third parties within the meaning of this Article are not the PAs subsidising the FIRE Participants in the Projects, and the FIRE Parties' Affiliated Companies, provided that these Affiliated Companies undertake to keep substantially the same obligation as stipulated under this Article.

VIII.4

Publications concerning the results obtained under the execution of this FIRE Initiative Agreement from other FIRE Parties are subject to their previous approval.

IX Access Rights

IX.1 Introduction and general principles

IX.1.1

This Article IX covers the principles concerning Access Rights with regard to the co-operation of FIRE Participants in the FIRE Initiative. For such co-operation and the relevant PCA pursuant to Article V, Paragraph 4 of this FIRE Initiative Agreement the following conditions shall apply.

IX.1.2

Each FIRE Participant in a FIRE Project shall in accordance with the provisions of this Article IX, grant Access Rights to all other FIRE Participants (and all their Affiliated Companies) in such FIRE Project, provided all such Affiliated Companies grant Access Rights to all FIRE Participants (and their Affiliated Companies) and without prejudice to the FIRE Participants' obligations to contribute to the costs of the FIRE Organisation and to carry out the FIRE Project and to provide Project Deliverables, fulfil all confidentiality and other obligations accepted by the FIRE Participants under the PCA or this FIRE Initiative Agreement as if such Affiliated Companies were FIRE Participants. Access Rights to Affiliated Companies are subject to the continuation of the Access Rights of the respective FIRE Participant.

IX.1.3

Without prejudice to the provisions of Article IX.5.4., any Access Rights to be granted shall not, unless the owner of the Knowledge expressly agrees, confer any right to sub-license (other than to Affiliated Companies) and may be subject to appropriate undertakings as to confidentiality and to the restrictions contained in the partly limited Access Rights granted under this Article IX, but shall otherwise be unrestricted.

IX.1.4

The essential transfer cost for the granting of Access Rights shall be borne by the beneficiary FIRE Participant.

IX.1.5

Each FIRE Participant may enter into a technical co-operation or licensing arrangement with a third party in respect of its own Knowledge even if there are minor amounts of Knowledge owned by another FIRE Participant, or even of Pre-existing know-how (associated with that other FIRE Participant's Knowledge), unavoidably incorporated into or amalgamated with such own Knowledge. In such circumstances and upon request of the FIRE Participant entering the co-operation or arrangement, the other FIRE Participant shall grant non-exclusive rights to permit such co-operation or arrangement against terms and conditions to be agreed, provided such grant does not adversely affect a commercial interest of the other FIRE Participant.

IX.2 Ownership

IX.2.1

The Knowledge shall be owned by the FIRE Participant generating it and such generating FIRE Participant has the free and unrestricted right to use the Knowledge, subject to Art. IX.

If, in the course of carrying out work on a specific FIRE Project, a joint invention, design or work is made (more than one FIRE Participants are contributors to it), and if the features of such joint invention design or work are such that it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining the relevant patent protection or any other intellectual property right, the FIRE Participants concerned agree that they may jointly apply to obtain and/or maintain the relevant right.

The FIRE Participants concerned shall seek to agree between them and the other parties concerned arrangements for applying for, obtaining and/or maintaining such right on a case-by-case basis. Subject to any other agreement between the FIRE Participants concerned, the FIRE Participants concerned shall, so long as any such right is in force, be entitled to use and to license such right without any financial compensation to or the consent of the other FIRE Participants concerned.

For the avoidance of doubt, joint ownership of an invention, design or work shall not affect the obligations arising under this FIRE Initiative Agreement.

IX.3 Access Rights needed for the execution of the FIRE Project

IX.3.1

With regard to Knowledge, each of the FIRE Participants shall make available and shall grant non-exclusive, non-transferable rights and licenses to the other FIRE Participants participating in the same specific FIRE Project on a royalty free basis, where and to the extent that such Knowledge is necessary for the execution of their own research and development work under the said specific Project. These Access Rights to Knowledge shall be deemed granted to and by all FIRE Participants in the same specific FIRE Project, as of the effective date of the PCA for such FIRE Project.

IX.3.2

With regard to Pre-existing Know-how it is understood that each of the FIRE Participants has the required expertise, experience and background information to undertake its own work in the specific Project. However, there may be occasions on which it will be necessary for FIRE Participants to give access to their Pre-existing Know-how to execute a specific Project.

In these cases, if a FIRE Participant participating in a specific FIRE Project has to solve a particular problem in order to achieve the Project's research and development objectives, that FIRE Participant will be granted royalty-free Access Rights by the other FIRE Participants in the same specific FIRE Project to their appropriate Pre-existing Know-how to the extent necessary for this purpose - provided they are free to disclose and to license such Pre-existing Know-how.

IX.4 Access Rights for Use

IX.4.1

With regard to Knowledge each of the FIRE Participants shall make available and shall grant non-exclusive, non-transferable Access Rights to the other FIRE Participants of the same specific FIRE Project on a royalty-free basis, as far as the FIRE Participants have agreed for certain FIRE Participants in the FIRE Project on a balanced situation (comparable levels of expertise and resources). These Access Rights to Knowledge shall be deemed granted, as of the effective date of the PCA for such FIRE Project. For all other cases of Use, each of the FIRE Participants shall make available and shall grant non-exclusive, non-transferable Access Rights to the other FIRE Participants of the same specific FIRE Project on favourable conditions.

Access Rights to Pre-existing know-how for Use will be granted to the extent necessary to Use Knowledge on non discriminatory fair and reasonable conditions to and by all FIRE Participants in the same FIRE Project subject to a bilateral agreement between the FIRE Participants concerned, and provided that the FIRE Participant who grants the Access Rights is free to license said Pre-existing Know-how.

IX.5 Specific Provisions for Access Rights to Software

IX.5.1 Access to Source Code for Software

For the avoidance of doubt, the general provisions for Access Rights provided for in Articles IX.3 and IX.4 hereof are applicable also in case of Software.

Access Rights to Software does not comprise access to Source Code but only to Object Code, unless expressly otherwise provided for in this Article.

IX.5.2 Software as Pre-existing know-how

For Software, which is Pre-existing know-how, with regard to all FIRE Participants in the same specific FIRE Project, any Access Rights granted shall be in the form of Limited Source Code Access whether for the execution of the Project and/or for Use.

IX.5.3 Software as Knowledge

For Software, which is Knowledge, with regard to all FIRE Participants in the same specific FIRE Project, any Access Rights shall be in the form of Source Code Access.

IX.5.4 Software licence and sub-licensing rights

1. Access Rights to Object Code and/or an API for Use shall comprise, at least, the world-wide right to
 - a) use in research, to create/market a product/process, and to create/provide a service;
 - b) make and have made an unlimited number of copies of such Object Code and/or API;
 - c) distribute, make available, market, sell and offer for sale; even by using services of a third party, such Object Code and/or API alone or in connection with products or services of the FIRE Participant having the Access Rights; and
 - d) grant in the normal course of the relevant trade to end-user customers buying/using the product/services a perpetual, irrevocable, world-wide licence to:
 - (i) use such Object Code and/or API alone or in connection with or integrated into, products and services of the FIRE Participant having the Access Rights and, as needed,
 - (ii) maintain such product/service, and
 - (iii) create for its own end-use interacting interoperable Software in accordance with the Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC).
2. Where a FIRE Participant has Source Code Access to Knowledge for Use, Access Rights to such Source Code shall comprise, at least, a world-wide right to use, to make and have made copies, to modify and have modified, develop and have developed, to adapt and have adapted Source Code for research, to create /market a product/process, to create /provide a service and/ to sub-license such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software
3. Each sublicense granted according to the provisions of Article IX.5.4. hereof shall when practical be made by a traceable agreement specifying and protecting the proprietary rights of the FIRE Participant or FIRE Participants concerned.

IX.6 Have Made Rights

Access Rights include have-manufacture rights without restriction.

NOTE: there are more option for have made rights, which may be useful.

X Warranty and Liability

X.1

In performance of this FIRE Initiative Agreement the FIRE Participants shall use the diligence and care, which they usually employ in own business affairs.

X.2

Each FIRE Participant shall indemnify each of the other FIRE Participants in respect of the acts or omissions of itself and of its employees, agents and subcontractors (if any) provided always that such indemnity shall not extend to claims for indirect or consequential loss or damages such as but not limited to loss of profit, revenue, contract or the like.

X.3

No warranty condition or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or fitness for purpose of such information or materials delivered by any FIRE Participant under a specific FIRE Project, or the absence of any infringement of any proprietary rights of third parties by the use of such information and materials and the recipient FIRE Participant shall in any case be entirely responsible for the use to which it puts such information and materials.

Each FIRE Participant shall be solely liable for any loss, damage or injury to third parties resulting from its carrying out its parts of the specific FIRE Project and from its Use of Knowledge and/or Pre-existing know-how.

XI Duration

XI.1

This FIRE Initiative Agreement shall come into force after having been signed by the Original FIRE Parties with effect as from 1st of January 2010.

XI.2

This FIRE Initiative Agreement will continue to be in full force and effect until the extended date December 31 2014, unless terminated in common agreement at the earliest on the date of December 31 2012.

XI.3

Starting from January 1 2011 only each FIRE Party has the right to withdraw from this FIRE Initiative Agreement by giving 6 months written notice to the Chairman of the Core Group.

If a FIRE Party withdraws according to Art. XI Paragraph 3, the FIRE Initiative Agreement will be continued between the remaining FIRE Parties.

XII Miscellaneous

XII.1

It is understood that for each FIRE Party the implementation of this FIRE Initiative Agreement shall not be contrary to the rules of the respective funding authorities of said FIRE Projects.

XII.2

Modifications and supplements to this FIRE Initiative Agreement inclusive of this Paragraph 2 are subject to written form signed by a duly authorised representative of each FIRE Party.

XII.3

In case of inconsistency of the FIRE Initiative with the wording of this FIRE Initiative Agreement the latter shall prevail.

XII.4

The FIRE Participants ensure that their employees also fulfil the obligations of this FIRE Initiative Agreement.

XII.5

The rights and obligations arising from this FIRE Initiative Agreement shall not be assigned to third parties other than Affiliated Companies without prior written approval of the other FIRE Parties.

XII.6

Any dispute of whatever nature in respect of or arising out of this FIRE Initiative Agreement, even those which arise after its termination, shall be settled amicably. If such a settlement fails, the dispute shall be subject to the jurisdiction of the competent court in Brussels, Belgium.

XII.7

The FIRE Initiative Agreement is governed by the laws of the country of Belgium.

XII.8

This FIRE Initiative Agreement and the accessions thereto are concluded, respectively declared, in the English language. In any case of translation into other languages the English language shall prevail.

XII.9

In the event that any provision of this FIRE Initiative Agreement by whatever reason is or will be found to be legally unenforceable or in any case of a loophole in the FIRE Initiative Agreement that needs to be filled in, the enforcement of the FIRE Initiative Agreement shall not be effected. The legally unenforceable provision/clause or the loophole to be filled in shall be substituted by a provision/clause which within the legal possibilities is nearest to that what the FIRE Parties would have intended if they had known the unenforceability or if they had envisaged the missing point in question.

Agreed as Undersigned

ANNEX A – DECLARATION OF ACCESSION

Declaration of Accession for FIRE Parties

Annex A to FIRE Initiative Agreement

Subject: Accession to FIRE Initiative Agreement

[full name and legal form of new FIRE Party], represented for the purpose hereof by [(name of legal representative) (function) or her/his/their authorised representative established in (full address : city/state/province/country)] acting as its legal authorised representative, hereby requests to become a FIRE Party to the FIRE Initiative Agreement and accepts, in accordance with the provisions of the aforementioned FIRE Initiative Agreement, all the rights and obligations of a FIRE Party starting the [date].

FIRE Organisation, represented for the purpose hereof by [(name of legal representative) (function) or her/his/their authorised representative established in (full address : city/state/province/country)] acting as its legal authorised representative, hereby certifies as representative of all the existing FIRE Parties that these FIRE Parties accept the request of [[full name of new FIRE Party] and agree to the accession of [full name and legal form of new FIRE Party] to the aforementioned FIRE Initiative Agreement as FIRE Party starting the [date].

Done in two copies, of which one shall be kept by *FIRE Organisation* and one by [name of new FIRE PARTY]

[full name and legal form of new FIRE Party]

.....

.....

(name)

.....

(signature)

FIRE Organisation

.....

(name)

.....

(signature)

This letter has to be printed on company paper, duly signed by an authorised person, and sent via registered mail to:
FIRE Office