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Iteration on legal requirements with stakeholders in the clusters

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Abstract

The aim of this deliverable is to define Panlab legal framework in details, in order to provide legal base for operation of future Panlab Federation of testbeds. In order to define a set of legal documents, which is necessary to ensure a smooth operation of Panlab testbed federation, Panlab Charter and Requirements on Articles of Associations documents, referring Panlab Organisation as described in Panlab SSA project, were reviewed and approved by PII project consortium. Panlab legal documents are defined to establish appropriate legal rules, ensuring interconnection of the testbeds and realisation of various testing projects, where main intention is establishment and implementation of all legal rules in accordance within simple procedures, creating an easy way to deal with all necessary legal agreements. Thus, the federation contracts, consisting of so-called interconnection and testing contracts, are created by PII consortium, ensuring a simple and clear legal procedure for joining the Panlab federation and using its testing services. Besides federation contracts, several specific legal documents are drafted considering confidentiality rules, IPR issues, regulation of access rights, termination for breach rules, conflict resolution, and liability definition.

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Executive summary

The aim of this deliverable is to define Panlab legal framework in details, in order to provide legal base for operation of future Panlab Federation of testbeds. As planned for the first phase of creation of the Panlab legal framework in PII project, all necessary legal rules and documents are agreed among project partners, as defined in this deliverable. Representatives of legal departments of PII partners had the opportunity to express their first views on these documents. However this procedure is not supposed to be a legal validation and legal representatives may have further comments during a complementary detailed analysis.

In order to define a set of legal documents, which is necessary to ensure a smooth operation of Panlab testbed federation, Panlab Charter and Requirements on Articles of Associations documents, referring Panlab Organisation as described in Panlab SSA project, were reviewed and approved by PII project consortium. Panlab legal documents are defined to establish appropriate legal rules, ensuring interconnection of the testbeds and realisation of various testing projects, where main intention is establishment and implementation of all legal rules in accordance within simple procedures, creating an easy way to deal with all necessary legal agreements.

Thus, the federation contracts, created by PII consortium, ensure a simple and clear legal procedure for joining the Panlab federation, as Panlab partner providing testing facilities, and using testing services provided by Panlab, as Panlab user (customer). This is ensured by application of two types of the federation contracts; Interconnection and Testing contracts. Besides federation contracts, the following specific legal documents are drafted, in order to provide detailed legal base for operation of the Panlab federation:

- Confidentiality rules,
- IPR issues,
- Regulation of access rights,
- Termination for breach rules,
- Conflict resolution, and
- Liability definition.

The main part of the specific legal documents is defined as fixed legal text applying for all Panlab partners and customers. For several issues, which can be separately considered for particular testing offers and projects, so-called optional text within specific legal documents is provided. Even the drafted Panlab legal document provide all necessary legal rules for establishment and usage of the Panlab Federation, they cannot be used separately from other documents and rules for Panlab, which are created within the project. Thus, the legal documents are directly related to Panlab rules on technical specifications of testbeds and testing projects, operational Panlab rules, and commercial conditions for using and offering Panlab services, which are considered in other PII deliverables.

All legal documents drafted in this deliverable may be updated and possibly improved during the life of PII and then constitute an annex to PII Consortium Agreement. Final documents have to be validated within PII project, as follows:

- Operational update and validation should be carried out within technical PII work packages and by Panlab Office, which will be created within PII project as a logical entity, in order to include operational feedback, and proof if all necessary legal aspects of interconnected testing are covered in this deliverable.
- Legal validation should be carried out by representatives of PII participants' legal department, where this updated deliverable will be adopted as an extension of PII Consortium Agreement. With this, it will be confirmed that all PII partners agree on the specified legal rules.

The final document, after update and validation, will be submitted as a part of overall Panlab framework at the end of PII project.

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Abbreviations

CA - Consortium Agreement

GA - Grant Agreement

IPR - Intellectual Property Rights

SSA - Specific Support Action

SUT - System/service Under Test

CISG - (United Nations) Convention on Contracts for the International Sale of Goods

1 Introduction

The aim of this deliverable is to define Panlab legal framework in details, in order to provide legal base for operation of future Panlab Federation of testbeds. For this purpose, the Panlab SSA legal framework, developed in corresponding SSA FP6 project [1], is validated and refined providing concrete templates of legal text available in a real context of business relationships among stakeholders in the testing value chain. Thus, all PII project participants, where all of them are directly participating in WP1 and its Task 1.1 dedicated to legal framework, are involved in review of legal documents provided by Panlab SSA and in specification of all necessary legal documents, ensuring a full operation of future Panlab Federation from the legal point of view.

As planned for the first phase of creation of the Panlab legal framework in PII project, all necessary legal rules and documents are agreed among project partners, as defined in this deliverable. Representatives of legal departments of PII partners had the opportunity to express their first views on these documents. However this procedure is not supposed to be a legal validation and legal representatives may have further comments during a complementary detailed analysis. For the second phase of the legal framework creation, the following two steps are foreseen:

- Operational update and validation should be carried out within technical PII work packages and by Panlab Office, which will be created within PII project as a logical entity, in order to include operational feedback, and proof if all necessary legal aspects of interconnected testing are covered in this deliverable.
- Legal validation should be carried out by representatives of PII participants' legal department, where this updated deliverable will be adopted as an extension of PII Consortium Agreement. With this, it will be confirmed that all PII partners agree on the specified legal rules.

The final document, after update and validation, will be submitted as a part of overall Panlab framework at the end of PII project.

First activity in preparation of all legal documents and this deliverable was review and approval of so-called basic Panlab SSA legal documents:

- Panlab Charter and
- Requirements on Articles of Associations, referring Panlab Organisation as described in Panlab SSA [1].

Reviewed and approved versions, by PII project consortium, of the Panlab Charter and Articles of Associations can be found in Annex A.

The main part of work done within PII project was dedicated to creation of Panlab legal documents, ensuring legal basis for interconnection of testbeds joining the Panlab Federation and execution of various testing projects by customers using Panlab testing services. The Panlab legal documents are defined inline with the principles laid down in the Panlab Charter (Figure 1), ensuring simple procedure for joining and using Panlab federation of testbeds.

Panlab legal documents, providing all necessary legal rules for establishment and usage of the Panlab Federation, are naturally directly related to the following so-called Accompanying documents:

- Technical specifications of testbeds and testing projects,
- Operational rules, and
- Commercial conditions for using and offering Panlab services.

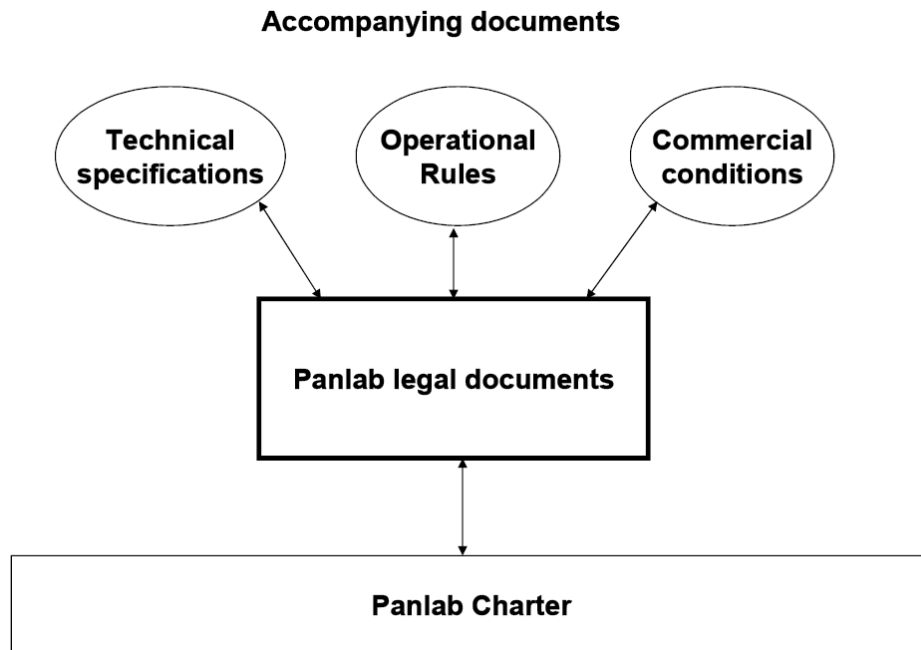


Figure 1: Panlab operational and legal documents

Technical specifications are necessary to define (i) testbeds available within Panlab Federation, e.g. including respective interfaces, protocols, interconnection opportunities, scheduling/availability, etc., and (ii) testing projects to be carried out within the Federation, which can include exact definition of a testing approach, its duration, execution, etc. These technical specifications are considered and will be defined within technical PII workpackages WP2 – WP5 and summarised in WP4 and Task1.2 within a Panlab Operational Framework. Thus, the Panlab legal documents will not directly include technical specifications but will include reference to them when required.

Similarly, the operational rules which define various procedures for connecting to Panlab federation and for using its services are considered in details in PII WP4 and Task 1.2. These rules will also not be a part of legal definitions and will be referenced by the legal documents as general operational rules of the Federation.

Commercial conditions for testbed offering will be separately analysed in PII Task 1.6 “Techno-socio-economic analysis”. Thus, the Panlab legal documents do not refer any specific issues related to commercial conditions for using testing services, which could be further negotiated by testbed providers and customers or specified in other PII deliverables and Panlab documents.

An overview of Panlab legal documents and description of their purpose are considered in Chapter 2. In Chapter 3, so-called Federation Contracts, considered in PII projects as main legal documents to be used for joining the federation and for using its testing services, are defined. Afterwards (Chapter 4), several specific legal documents related to the Federation Contracts and legal establishment of Panlab testbed Federation are specified.

2 Panlab Legal Documents – Overview

Since the purpose of the Panlab Federation of testbeds is to provide a number of interconnected testing facilities for various kinds of users it is necessary to establish appropriate legal rules, ensuring interconnection of the testbeds and realisation of various testing projects. On the other hand, establishment and implementation of all legal rules have to be realised in accordance within a simple procedure, creating an easy way to close all necessary legal agreements. Thus, it is ensured that participants of a testing project, which includes testbed providers (Panlab partners) and customers (Panlab users), can focus on definition of particular testing set-ups and their execution instead of unnecessary long negotiations on the legal issues.

To ensure an easy legal procedure within Panlab, all necessary legal documents will be provided as templates with possible options to be used by testbed providers and customers to conclude particular testing projects from the legal point of view. PII project consortium considered necessary legal issues to be solved and defined in preparation of the testing projects. Here, it can be distinguish among the following two types of the legal documents:

- Federation contracts and
- Specific legal documents

The federation contracts ensure a simple and clear legal procedure for joining the Panlab federation, as testbed owner providing testing facilities, and using testing services provided by Panlab, as Panlab customer. Here, two types of the federation contracts are provided (Figure 2):

- Interconnection contract and
- Testing contract

An interconnection contract is signed by Panlab Office¹ and testbed provider, in order to ensure legal inclusion of a Panlab partner within the Federation and enable provision of provider’s testing services within overall Panlab service offer. On the other hand, the testing contracts are used to ensure usage of Panlab testing services by the customers and their participation in particular testing projects. The federation contracts are defined in details in Chapter 3.

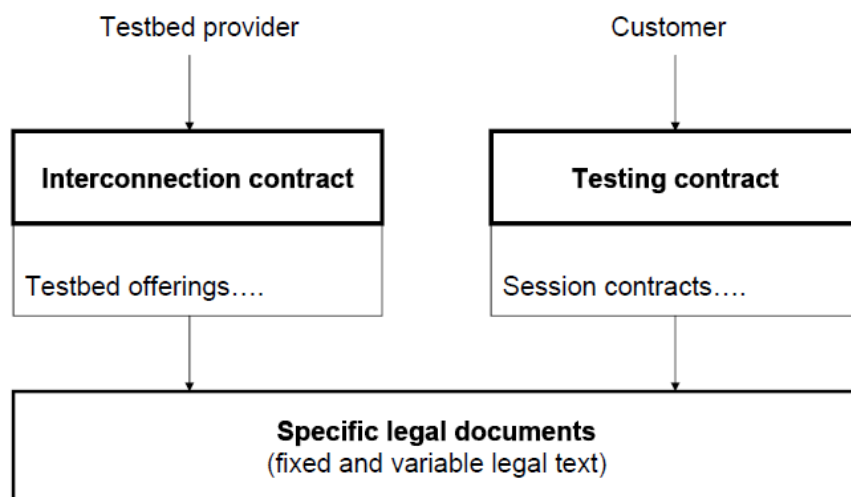


Figure 2: Panlab legal documents - Overview

In order to keep the federation contracts simple and clear, only the main aspects of the interconnection and testing contracts are specified. For further details on particular legal issues, the federation

¹ Please note that this point should require that Panlab Office should be a legal entity in order to be able to sign a contract. In the event no legal entity be set up for Panlab, an alternative could be that a test bed provider should sign a kind of Frame Agreement containing rules of the Federation (" to ensure inclusion of a Panlab partner with the Federation")

contracts refer to so-called Specific legal documents (Figure 2). Specific legal documents considered by PII project, which are detailed presented in Chapter 4, are the following:

- Confidentiality rules,
- IPR issues,
- Regulation of access rights,
- Termination for breach rules,
- Conflict resolution, and
- Liability definition.

The main part of the specific legal documents is defined as fixed legal text applying for all Panlab testbed providers and customers (Figure 2). For conflict resolution rules, described in Sec. 4.5, last instance of the conflict resolution can be chosen while specifying a particular testbed offer within corresponding interconnection contract (Sub-Sec. 3.1.3), which is considered as a variable (optional) part of the specific legal documents. Several options are available in definition of ownership on testing results and testbed configurations (Sub-Sec. 4.2.3) as well as definition of access rights to the test results (Sub-Sec. 4.3.2) to be used for negotiations on particular testing projects, as specified in the testbed offer.

3 Federation Contracts

3.1 Interconnection Contracts

3.1.1 Preamble

Intention is to use a unique interconnection contract or contract template for all testbeds joining the Panlab federation. With the conclusion of the interconnection contract, a testbed provider commits to offer its testing facility and to connect its administrative domain related to the facility with Panlab federation in accordance with: General Terms and Conditions for Joining Panlab Federation of Testbeds (Sub-Sec. 3.1.2).

Provision of specific testbed as a testing service to be offered by the federation (e.g. one testbed provider can provide several specific testbeds), is defined in a Testbed Offering (Sub.-Sec. 3.1.3), which is related to the specific testbeds.

3.1.2 General Terms and Conditions

Panlab testbed provider accepts and complies with:

- Panlab concept and fundamental principles in accordance with Panlab Charter.
- Describe engaged resources: A testbed provider is expected to provide resources to the federation such as testing and supporting services, testing tools, testbeds and tests laboratories, etc. The testbed provider has to give a comprehensible and complete description of its offered resources in order to let the potential consumers to have a clear idea of the resource characteristics.
- Accurate development / Availability of resources: The testbed provider shall do its reasonable efforts to ensure that its resources operate properly that they are reliable and secure, and of course, that they are available in the provided timetable
- Data update cycle: The testbed providers are expected to update regularly the provided data as well as to give the new releases of their resources, etc. in order to offer always updated, coherent and completely operative resources.
- Maintenance assurance: The testbed provider shall do its reasonable efforts for fixing any bug, problem or defect found in its resources by providing its reasonable efforts. If the provider is not able to repair the problem, it will warn the consumer about the deficiency.
- Audit procedure: The federation could establish an audit procedure to observe and inspect the controls, compliance, performance, etc. of the testbed provider development inside the federation. All testbed providers are requested to collaborate with the procedure and consider the recommended corrective actions when deciding on the specific activities that will be performed in order to improve its performance. One proposition for domain controller architecture is the implementation of a specified proxy services between Panlab domain offering a control channel for audit and security purposes.
- Acceptance of specific Panlab legal documents and rules as defined in specific legal documents (Chapter 4) and other related accompanying documents² (Chapter 1).

² Accompanying document to be considered as part of the legal documents have to be attached to the contracts, once they are ready and agreed among PII partners.

A testbed provider involved in the federation has the following rights:

- To join Panlab organisation and become a member of its General Assembly in accordance with its organisation rules³
- To use all services provided by Panlab Office for support of testbeds for all federation participants

3.1.3 Specification of Testbed Offering

Specification of particular testbed to be included in the federation is provided in Testbed Offering document, created separately for each testbed. Withdrawal of a testbed offering from the federation is possible any time. Testbed offering should be provided in accordance with adopted rules for technical specifications of testbeds, whereas pricing should be defined in accordance with adopted commercial rules of Panlab federation, as it will be specified in related accompanying documents (see Chapter 1).

The testbed offering is provided in accordance with rules defined in specific legal documents (Chapter 4). **Here, variable part of the specific legal documents (last instance of conflict resolution, results and testing configuration ownership, and access to the results and resources – see: 3.1.3, 4.2.3, and 4.3) can be specified in accordance with specifics of a particular testbed offering⁴.**

Offering can be open or limited by using appropriate options defined in IPR and Confidentiality rules document (see above). The same applies for representation of the offering within entire Panlab offer (e.g. provided by Teagle) and for repository / availability of the testing results. The idea here is to offer a number of options (templates) for testbed providers to choose IPR and confidentiality level for the offered testbed. Thus, we can imagine that for different testbeds also different options can be offered and also depicted in the pricing model.

3.2 Testing Contracts

3.2.1 Preamble

Intention is to use a unique testing contract or contract template, which can be further adapted and negotiated among involved testbeds and customers, for all testing projects using testbeds integrated within the Panlab federation. The idea here is to provide templates for the legal agreements on testing, avoiding again an individual negotiations for each testing project.

3.2.2 General Terms and Conditions

A customer accepts all conditions for the testing project, derived from specification of a particular testing project and in accordance with the federation rules, laid down in specific legal documents (Chapter 4) and relevant accompanying documents (Chapter 1).

On the other hand, Panlab and involved testbeds commits to provide testing service as defined in specification of the testing project.

³ The rules applying in PII projects are specified in PII Grant Agreements, Consortium Agreement, and other relevant documents and deliverables approved by the project. In the future, the organisational rules refer to Panlab Organisation rules which will be created. A guideline for future Panlab Organisation can be found at [1], as outcome of Panlab SSA project.

⁴ Offering can be open or limited by using appropriate options defined in the specific legal documents. The same applies for representation of the offering within entire Panlab offer (e.g. provided by Teagle) and for repository / availability of the testing results. The idea here is to offer a number of options (templates) for testbed providers to choose IPR level and options form the results access rights for the offered testbed. Thus, we can imagine that for different testbeds also different options can be offered and also depicted in the pricing model.

3.2.3 Specification of Testing Projects – Session Contract

A testing project should be defined in accordance with adopted rules for their technical specification and corresponding operational rules (see Chapter 1) within a so-called session contract. **Here, variable part of the specific legal documents (last instance of conflict resolution, results and testing configuration ownership, and access to the results and resources – see: 3.1.3, 4.2.3, and 4.3) can be specified in accordance with specifics of a particular testbed offering.**

Pricing for a testing project is provided by Panlab office in accordance with the overall commercial conditions for Panlab federation (e.g. also taking into account customers membership level if applicable and its requirements on result confidentiality and IPR ownership) and commercial offer of particular testbeds. Overall commercial conditions are considered within Task 1.6 and are not part of the legal specifications in PII project.

4 Specific Legal Documents

4.1 Confidentiality Rules

4.1.1 Preamble

Within the Background of PII project, federation contracts will be signed between testbeds which could join the testbeds federation and Panlab federation, and between customers and the Panlab Federation.

The Parties who will sign those contracts have to comply with the following provisions concerning the Confidentiality of the exchanged information necessary for the implementation of the purpose of the federation contract.

Therefore, the following provisions shall apply:

4.1.2 Definition

Confidential Information means testing results generated under the Federation Contract, specific information provided by tested owner in order to make a testing possible, and more generally, all information in whatever form or mode of transmission, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with the Federation contract during its implementation and which has been explicitly marked as “confidential”, or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within thirty (30) days at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

4.1.3 Use of Confidential Information

During the performance and after termination of the Federation Contract, each Party undertakes not to use Confidential Information for any purpose other than:

- In accordance with the terms of all the Panlab II legal documents and rules; and
- For the purpose of performing its obligations and as necessary for exercising rights granted by the Federation Contract.

4.1.4 Confidentiality Level

Each Party undertakes to apply for the security of Confidential Information at least the same degree of care as it applies for the security of its own Confidential Information (but not less than reasonable care) concerning their respective technologies, the commercial or financial information.

4.1.5 Cases of Disclosure

In case a Party would disclose such information for another purpose than provided in the Federation Contract, the Disclosing Party needs the prior written consent of the Disclosing Party.

The Recipient hereby undertakes:

- Not to use Confidential Information otherwise than for the purpose for which it was disclosed,
- Not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party,
- To ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis, and
- To return to the Disclosing Party on demand all Confidential Information which has been supplied or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form.

4.1.6 Exceptions to Confidentiality

No information disclosed by a Party shall be deemed to be Confidential Information if the information was publicly available at the time of disclosure or has become publicly available by no wrongful act or omission on the part of the Recipient, or is lawfully obtained by the Recipient from a third party without a breach of a confidentiality obligation or is developed by the Recipient independently from the Disclosing Party(ies)'s Confidential Information or if the information will be required or is likely to be required in order to comply with applicable laws or with a court or administrative order.

4.1.7 Unauthorized Disclosure

Each Party shall promptly advise the Disclosing Party in writing of any unauthorized disclosure, misappropriation or misuse by any person of Confidential Information as soon as practicable after the Party becomes aware of such unauthorized disclosure, misappropriation or misuse.

4.1.8 Legal Disclosure

If any Party becomes aware that it will be, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure notify the Disclosing Party, and comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

4.1.9 Miscellaneous

The Parties hereto understand and agree that the Recipient does not acquire by implication or otherwise any right in or title to or licence in respect of Disclosing Information by virtue of any disclosure made pursuant to the Federation Contract other than for the purposes set out in the Session Contract and except in the case of IPR expressly granted in written by the Disclosing Party.

All the provisions mentioned above are intended to facilitate only the exchange of Confidential Information and are not intended to be, and shall not be construed to create a teaming agreement, joint venture association, partnership, or other business organisation or agency arrangement and no Party shall have the authority to bind the other without the separate prior written agreement thereof. No Party hereto has an obligation to supply information hereunder and no Party has an obligation hereunder to enter into any contract with the other Party.

4.1.10 Confidentiality and Ownership of Information Clauses

1. Ownership of any technical or business information or data, written or oral, graphic or in other tangible form, (all hereinafter called "the Information") provided by one Party to the other shall remain with the Party providing the Information.
2. The Information furnished by one Party (hereinafter referred to as "the Disclosing Party") to the other (hereinafter referred to as "the Receiving Party") shall be kept confidential, by the Receiving Party, provided that it is identified as such when disclosed and shall be used only for the purpose that is delivered and may not be used for any other purposes without the prior written consent of the Disclosing Party.
3. The Receiving Party shall restrict "the Information" to itself, or to its affiliates, directors, officers, employees or consultants who have a need to have access to the Information solely for the purposes of the Contract. Disclosure of the Information to a third party (other than affiliates and professional advisers) by the Receiving Party shall only be made with the written consent of the Disclosing Party. It shall be a pre-condition of disclosure to any third party that the third party accepts similar obligations of confidentiality to those contained in this Clause. The Receiving Party shall assure that the affiliates, directors, officers, employees, consultants and professional advisers and other persons or companies to which it makes the Information available shall comply with the terms of this Clause as if it were the Receiving Party.
4. In case of disclosure by the Receiving Party without prior written consent of the Disclosing Party, the Disclosing Party has the right to immediately terminate the Contract.

5. Each Party shall retain all right, title and interest to such Party's Information. No license under any trademark, patent or copyright, or application for same which are now or thereafter may be obtained by such Party is either granted or implied by the disclosure of the Information.
6. Information is provided "as is" with all faults. In no event shall the disclosing party be liable for the accuracy or completeness of the information.
7. Both Parties shall maintain all Information in strict confidence and shall neither use, copy or disclose, nor permit any personnel to use, copy or disclose, the Information for any purpose not specifically authorized under this Contract.
8. The Disclosing Party may at any time require that the Receiving Party return all Information together with all copies thereof and all secondary Information. Any such request shall be well documented. The Receiving Party shall be entitled, on receipt of such a request to destroy all secondary Information rather than provide it to the Disclosing Party. All the secondary Information shall be completely destroyed and a statutory declaration signed by a director or the president of the Receiving Party shall be provided confirming that the secondary Information has been completely destroyed and no copies or extracts retained.
9. The Testbed provider shall ensure that each Sub-Testbed provider engaged in relation to this Contract is bound by similar confidentiality terms to those set out herein above. The Testbed provider shall upon request provide to Testbed user a copy of each confidentiality agreement given by any Sub-Testbed provider. -> or The Panlab Office shall ensure that each Testbed provider engaged in relation to this Contract is bound by similar confidentiality terms to those set out herein above. The Panlab Office shall upon request provide to Testbed user a copy of each confidentiality agreement given by any Testbed provider.
10. The above obligations of secrecy, confidentiality, non-exploitation/abuse of Inside Information are in force also for the information, data, materials or the activities concerning the shareholders of Testbed user and the shareholders' subsidiaries as well as those of Testbed user.
11. The above Confidential Information will be handled by the Testbed provider if and to the extent of this being necessary for the execution of the present Contract.
12. The lack of observance of the above obligations constitutes an essential cause for the immediate termination of the Contract between the Panlab, the Testbed provider and/or Testbed user. The termination of this Contract does not relieve either Party of the obligations imposed upon it by this clause with respect to Information disclosed or obtained prior to such termination.
13. Each Party expressly acknowledges and agrees that damages may not be an adequate remedy for breach of this Agreement and that an aggrieved party is therefore entitled to seek the remedies of injunction, specific performance or other equitable relief, for any threatened or actual breach of this Agreement by other Party, and that no proof of special damages shall be necessary for the enforcement of this Agreement.

4.2 Regulation of IPR Issues

4.2.1 General Remarks

The purpose of this outline is not to provide a general framework for IPR agreements among testbed providers and customers but to present in coarse lines thoughts on the basic requirements for regulating IPR issues in the context of the Panlab Federated Testbed which will be used for validation in PII project.

In general, the legal arrangements concerning IPR issues among Panlab stakeholders, including Panlab Office, and users/customers could conform with the "Guide to Intellectual property Rules for FP7 projects" (available at ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf) [2]. It is on our clear understanding that the particular guide serves as an outline for resolving IPR issues inside EC Projects, yet it can be thought applicable/extendable, in some circumstances, in the Panlab Federation of Testbeds case, as well.

In addition to the general rules for IPR settlements described in the FP7 IPR guide, few special cases are outlined right below, stemming from the multi-tier structure of the Panlab legal environment. We

distinguish among following particular issues related to IPR regulation within Panlab federation of testbeds and respective Panlab organisation:

- General Obligations of testbed providers and customers – in respect to any kind of involvement of third parties in test bed offer and testing projects as well as protection of background knowledge,
- Standard clauses on confidentiality and ownership related issues, and
- Ownership on testing results and testbed configurations.

Whereas first two group of IPR related issues can be considered as standard part of agreements among testbed providers and customers, including their relation with Panlab organisation and Panlab Office, the ownership on testing results and testbed configurations can be considered differently depending on involved testbeds and customers as well as specifics of particular testing projects.

4.2.2 General Obligations of Testbed Providers and Customers

1. Care has to be taken for the case of the customer requiring testing of services using equipment of vendors/subcontractors not participating in the Panlab federation.
 - The testbed provider shall not incorporate in the Federated Testbed or use any Information of physical entity, of which the IPR are owned by a third party unless the Panlab participant has first secured a right to do so.
 - Obligations stemming from testbed provider's contracts with third parties (firms not participating in the Federation), as well as National and EC relevant legislation are always superseding Panlab obligations to users and constitute an adequate cause for prohibiting use of specific testing facilities.
 - Protection of background¹ equipment/knowledge (confidentiality terms, dissemination of information, copyrights infringements terms, etc.) should be taken care of by individual contracts signed between testbed providers and Panlab federation.
 - The Panlab Office reserves the right to prohibit integration to the Federated environment of a Testbed that is not fulfilling any of the above requirements.
2. Regarding Testbed available resources, the Panlab customer shall:
 - not provide or make the Software or Documentation or any portions or aspects thereof (including any methods or concepts utilized or expressed therein) available to any person except to its employees
 - not use the Software or Documentation for any other purpose than permitted in this Contract
 - The Panlab Office shall agree with each Testbed owner participating in the Federation the restrictions that apply to the Federated Software/System and the accompanied Documentation.
3. The IPRs stemming from the conducted tests have to be clarified. In such cases issues arise, such as:
 - The dissemination of testing results foreground⁵ might be hindered by non disclosure agreements that the test conducting entity might have signed with its equipment vendors.

⁵ According to [2], "Foreground" means the results, including information, materials and knowledge, generated in a given FP7 project. In the Panlab context it can be extended to include Panlab user/subscriber testing results and knowledge generated by the use of the federation. "Background" is information and knowledge (including inventions, databases, etc.) held by the project participants prior to their accession to the EC grant agreement (project), as well as any intellectual property rights which are needed for carrying out the project or for using foreground.

- The foreground knowledge generated by a Panlab customer should not be disseminated by any of the Federation members to the third Parties without testing entity's written consent.
 - In the above cases care must be taken so that the Federation members do not publicize the testing foreground.
4. To the extent permitted under applicable law, the Testbed provider is licensing the software (and use of it) "as is", with no express or implied warranties of any kind, including, but not limited to, any implied warranties of merchantability, or non-infringement. Customer is granted a non-exclusive, non-transferable licence to use the relevant software only for the needs of testing, only during the contracted period of tests, for customer's own operation in the manner as set forth in the System's Specifications. The customer receives no title or ownership rights to the Software/System, and all such rights shall remain with Testbed provider or its Suppliers. Customer agrees that the Software provided to it by the Testbed provider under this Contract shall be treated as the exclusive property of the Testbed provider and as proprietary and a trade secret of the Testbed provider.

Customer shall:

- a) not provide or make the Software or Documentation or any portions or aspects thereof (including any methods or concepts utilized or expressed therein) available to any person except to its employees
- b) not make any copies of Software or parts thereof, except for archival backup process to the extent it is necessary for testing.
- c) when making permitted copies as aforesaid, transfer to the copy/copies any copyright or other marking on the Software or Documentation
- d) not use the Software or Documentation for any other purpose than permitted in this Contract
- e) not use or transfer the Software and/or Documentation outside without the written consent of the Testbed provider and after having received necessary export or re-export permits from relevant authorities.

The Panlab Office may decide on the applicability (including fees, potential time duration, etc.) of Software licensing schemes regarding "glue-logic"/software/system applied/developed by Panlab in order to integrate a particular Testbed, prior to contracting with a certain Testbed Owner.

This Clause will survive completion or termination of the Contract for any reason whatsoever.

4.2.3 Ownership on Testing Results and Testbed Configurations

While performing various kinds of test by using Panlab/PII testbed federation, including test beds owned by Panlab partners, involved testing users and experts, as well as Panlab Office, the following two types of foreground intellectual properties can be generated:

- Specification of particular testing configuration, including evaluation methods, and
- Testing results, including their evaluation.

Here, the following rules apply:

- a) Any data that can identify users must be treated according to European privacy laws.
- b) A test result module that can identify vendors and organisations must be treated according to the policy that a testbed provider has opted for. (e.g. a testbed provider has agreed that his equipment has to be referenced only by function and interface specification and not by vendor/type).
- c) Raw monitoring data and test result modules can be available for future reference in an anonymised way in order to hide vendor or Testbed provider specific information (according to policies applied by Testbed providers).

Specification for a testing configuration can be developed by (i) Customer (or multiple customers), (ii) Testbed provider (or multiple testbed providers), or (iii) Panlab Office (also by using Teagle service) as well as by joint effort of two or all three mentioned parties (i, ii, and iii).

Accordingly, the test specification can be jointly owned, if the contributions, made by such parties, to such specification form an indivisible part thereof, such that it is not possible under applicable law to separate them for the purpose of applying for, obtaining and/or owning an IPR. In this case and unless otherwise agreed between the Parties concerned, each Party who has contributed to such specification shall have the right to use such specification without the need to obtain consent from the other Parties who have contributed to such specification, and without accounting to such other Parties.

In addition to the above, royalty free licenses to use the test specification are granted to all parties involved in the test project, the customers, the involved testbed providers, and the office, for needs and the time of test execution and evaluation only.

Test results gathered during a testing project can be achieved by using the following resources:

- One or more test resources (and descriptions thereof), owned by one or more testbed providers
- The system or service under test (SUT) (and possibly a description thereof), owned by the testbed user (customer)

Accordingly, in a general case the testing results, including evaluation specification and raw monitoring data, can be owned by customer or testbed provider individually or jointly as well as by Panlab Office. The IPR ownership on the testing results is agreed for each particular testing project and options considered for this case are presented in Sub-sec. 4.3.2 “Access rights to test results”. However, test result processing/evaluation specification and raw monitoring data are always, but not exclusively, owned by the customer.

4.3 Regulation of Access Rights

The purpose of this section is to present main points to consider and general rules for access rights applicable to the Panlab federation of testbeds.

According to scope of access, it is possible to treat separately:

- Access rights to resources needed for testing activities and
- Access rights to results issued from testing activities.

4.3.1 Access Rights to Resources

- Testbed descriptions available in the testbed repository are under the control of each testbed owner and are publicly accessible via Teagle search tool. This does not preclude possibility of copyrights on testbed descriptions.
- Additional documentation on the testbed, restricted to essential information required to prepare and execute the tests is provided by the testbed owner to the customer during setup phase. It includes for example user manuals and detailed interface descriptions.
- Generally, unless Open Source is used, the source code of testbed software is not accessible to the user/customer. **An option is to provide accessibility of the user/customer to this source code if it is required for execution of a testing project.**
- Configuration of the testbed is implemented by the testbed owner according to the agreed testplan (between user/customer and testbed owner). The customer has the possibility to check that the required configuration is effective (access right to read the configuration).
- **As an option, direct configuration by the customer may be authorised by testbed owner for specific purpose (access rights to write the configuration).**
- Access to resources (hardware, software, assistance services...) by the customer is possible only for predefined resources and during predefined time slots agreed in testplan. The testbed owner has the possibility to restrict access to resources if the testbed is misused.

4.3.2 Access Rights to Test Results

As a general rule, the owner of test results is the party carrying out the test and generating the results. If a testbed provider/owner is carrying the test itself for the benefit of a customer, test results shall remain the property of the testbed provider. If the test is carried out by a customer itself and if the testbed is simply put at its disposal by a testbed provider the customer shall remain the owner of the test results that it generates. The same can apply for Panlab Office.

One of both mentioned options, or a joint ownership on the results among involved parties, have to be specified for each individual testing project or particular parts of the test.

Test results are considered as confidential information, where the concerned owner, or owners, of test results has a right to disclose these results to its affiliates on a confidential basis.

Furthermore, each party involved in test set-up and execution (customer, testbed provider, Panlab Office) may use the tests results (including test reports if any) for its own internal needs and has a right to disclose such test results for its affiliates (on a confidential basis) for their own internal needs. Such right of use may include the possibility for the customer to interpret and process test results (in particular raw data) for its own internal needs and for the internal needs of its affiliates. Finally, the Teagle operator (Panlab Office) and testbed providers jointly own a free license of the test results (anonymised according to the policies by the test resource owners) and a free (timely limited by availability of data and duration of a testing project) license to access and further process any raw monitoring data outside the context of the original test configuration, however in compliance to the policies by the test resource owners and by respecting rights of the customers.

After clarification of the result ownership, **the parties involved can agree on access right to the test results** which should apply after end of the testing project (the agreement should be made before start of the testing project), considering the following options, which can influence commercial agreement for a considered testing project:

- All involved parties (or some of the parties) have full access rights to the results
- The parties have limited access right – as specified for particular test
- The parties have access to the results under fair conditions, as specified in PII Consortium Agreement⁶ [3].
- Only result owner has access to the test results

The concerned parties may agree on rules for **publication of test results** under conditions provided in following options:

- The results can be unlimited used for publications by all involved parties or only parties with access right
- The results can be published by any involved parties if there is agreement with test result owner, or owners, on publishing and detailed content of the publication prior the publishing.

The testing results can also be given to disposal to Panlab Office in order to store them in the **result repository**, which can be considered as a **particular case of publication**. Here, we could distinguish among two options:

- Results are made available in free repository area
- The results are available in private repository area and can be used by Panlab Office only for internal use.

⁶ “Fair conditions”, as specified in [3], can be used as guideline for their definition in future Panlab Organisation.

4.4 Termination for Breach Rules

This section covers all principles for determining a breach of contract between the participating parties. We complement the termination for breach rules with the accompanying sanctions that will be applied.

4.4.1 Participating Parties

The Panlab federation aims towards creation of an open marketplace for the dynamic composition of federated testbeds. It runs the technical infrastructure for defining a framework for federating heterogeneous testbeds. Panlab's obligations are defined in the General Terms and Conditions depicted in Chapter 3.

Panlab testbed providers offer arbitrary testing facilities and resources (hereinafter "testbed") to third parties under the regulations of the Panlab framework and within this project under PII framework in accordance with its Grant Agreement and Consortium Agreement. Panlab does not restrict in any manner a provider in defining a compensation model and supports arbitrary business models. Providers may charge rent compensation costs.

Panlab customers utilize testing service offered by providers via Panlab Office and corresponding collaboration tools (e.g. Teagle).

Within Panlab, each entity can adopt either the role of a customer, a provider, or both simultaneously.

4.4.2 Breach of Contract Rules

The following articles are derived from the United Nations Convention on Contracts for the International Sale of Goods (UN CISG) [4], which apply to Panlab/PII framework.

4.4.2.1 Obligations of the buyer – Remedies for breach of contract by the buyer

Remedies available to seller - summary - (derived from UN CISG Article 61)

1. If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may exercise the rights provided in CISG articles 62 to 65;
2. The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.
3. No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Note: Paragraph (b) was removed deliberately.

Seller's right to require performance: Payment and taking delivery (CISG Article 62)

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

Additional period of time (CISG Article 63)

1. The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.
2. Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Avoidance of the contract (CISG Article 64)

1. The seller may declare the contract avoided:
 - a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
 - b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or

- take delivery of the goods, or if he declares that he will not do so within the period so fixed;
2. However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:
 - a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or
 - b) in respect of any breach other than late performance by the buyer, within a reasonable time:
 - i. after the seller knew or ought to have known of the breach; or
 - ii. after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Specification of features of the goods (CISG Article 65)

1. If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.
2. If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

Note: CISG Chapter IV (Passing of Risk) removed due to focus on physical goods.

4.4.2.2 Provisions common to the obligations of the seller and of the buyer – Anticipatory breach and installment contracts

Suspension of performance (CISG Article 71)

1. A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:
 - a) a serious deficiency in his ability of perform or in his creditworthiness; or
 - b) his conduct in preparing to perform or in performing the contract.
2. A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Avoidance prior to date for performance (CISG Article 72)

1. If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.
2. If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.
3. The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Avoidance of instalment contracts (CISG Article 73)

1. In the case of a contract for delivery of goods by installments, if the failure of one party to perform any of his obligations in respect of any installment constitutes a fundamental breach of contract with respect to that installment, the other party may declare the contract avoided with respect to that installment.
2. If a party fails to perform any of his obligations in respect of any installment he is subject to the sanctions defined in section 4.4.3.

3. A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

4.4.2.3 Provisions common to the obligations of the seller and of the buyer – Damages

General rule for calculation of damages (CISG Article 74)

Damages for breach of contract by one party consist of the lost PII provider rent compensation costs, suffered by the other party as a consequence of the breach.

Note: Removed phrase covering compensation of profit loss.

Measurement of damages in case of avoidance and substitute transaction (CISG Article 75)

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

Note: Article 76 removed.

Duty to mitigate damages (CISG Article 77)

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

Note: Article 78 removed.

4.4.2.4 Provisions common to the obligations of the seller and of the buyer – Exemption

Failure of performance due to an impediment beyond control of the obligor (CISG Article 79)

1. A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.
2. If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:
 - a) he is exempt under the preceding paragraph; and
 - b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.
3. The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non receipt.

Note: Paragraphs 3 and 5 removed.

Failure of performance caused by obligee (CISG Article 80)

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

4.4.2.5 Provisions common to the obligations of the seller and of the buyer – Effects of avoidance

Release from contractual obligations. Restitution of whatever has been performed (Article 81)

1. Avoidance of the contract releases both parties from their obligations under it. The failing party must bear the PII rent compensation costs of the other parties.

Note: Parts of paragraph 1 removed and adapter to Panlab and entire paragraph 2 removed.

4.4.3 Sanctions

In case of any breach of contract PII may support based on the rules for conflict resolution defined in Section 4.5. Irrespective from a court's decision, Panlab reserves its exclusive right to exclude the affected parties from the Federation without any further statement.

4.5 Rules for Conflict Resolution

The activities performed under the Panlab federation can cause disputes/misunderstandings among the different partners of the federation or between customers and providers. Panlab shall regulate these situations following the rules establishes for conflict resolution. In case there is no internal resolution, the conflict will be arbitrated by the International Chamber of Commerce or judged by the competent court in Brussels⁷.

4.5.1 Terminology

This section defines relevant terms related to the rules for conflict resolution. Some suggested terms to be defined are the following:

- Panlab internal hearing is a process authorized by Panlab federation in which two or more parties agree to let an impartial person make a proposal (not legally binding) in their dispute.
- Mediator refers to the individual or panel selected to conduct the hearing/mediation and to help Parties in dispute to reach an agreement. The mediator has no power to impose a decision on the Parties.
- Petitioner means the party initiating an action or making a complaint.
- Respondent means the party upon whom the request for hearing is made or the defending party in an action or a complaint.

4.5.2 Rules for Conflict Resolution - Detailed

The section of rules conflict resolution will detail clearly the options to resolve any conflict that could arise. There will be different procedures for conflicts resolution depending on the severity of the problem.

4.5.2.1 Panlab internal hearing:

When a dispute takes place among Panlab stakeholders, the first and simplest option is to apply for "Panlab internal resolution". This is an informal and optional process where each party has the right to present proofs and arguments as in a court of law, to Panlab internal Mediators. The partners involved in the discussion place resolution of their problem in the hands of the Panlab Mediators who will suggest a solution to solve the dispute amicably. There will be specific internal rules and Panlab forms to ask for the internal hearing.

- Panlab body to deal with the mediation: to be determined in future organisation. In PII, rules adopted in the project will apply [3].
- Composition of mediators: Three internal Panlab members except the parties expressly agree in writing in a lower number. The Panlab mediator could be the Panlab Executive Director (in PII project the coordinator), Steering Board members, or mediators jointly chosen by the partners involved in the conflict among the rest of the Panlab/PII partners.
- Resolution of mediation: The decision of the Mediators is not legally binding.

⁷ This apply for PII project. Court to be involved in future Panlab organization will be defined by founders of the organization.

4.5.2.2 Internal rules for conflict resolution

1. Time and Place

The Mediators establish the time and place for each hearing and notify each party by telephone or e-mail at least five calendar days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

If the parties cannot make a personal appearance at the hearing it will be possible to attend the hearing by audio/video conference.

In case commonly agreed, the parties can waive an oral hearing and both parties present the case entirely in writing by e-mail.

2. Electronic Recordings

Recordings of the hearing, electronic or otherwise, are not permitted unless granted by the Mediators.

3. Attendance at Hearings

Persons having a direct interest in the mediation are entitled to attend the hearings as determined by the Mediators. The Mediators shall have the power to exclude any observers and require the retirement of any witnesses from the hearing except during their testimony.

4. Postponements

The Mediators may postpone the hearing at the any party request or upon their own initiative.

5. Order of Proceeding:

This rule is to establish the order and time limit for each part to present the claim and proofs and witnesses. (To be defined by Panlab organisation or PII consortium if necessary).

The Mediators may extend/reduce the time limits and vary the procedure and conduct the mediation in a manner the Mediators consider appropriate for a fair and expeditious disposition of the proceeding.

6. Mediation in the Absence of a Party

The hearing may proceed to a decision in one party absence if, after notice, the party fails to be present or fails to obtain a postponement. In such cases, the Mediators will require the party who is present to submit evidence required to establish contentions and to merit the making of a decision.

7. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the Mediators may consider necessary to an understanding and determination of the dispute. The Mediators shall determine the admissibility, relevancy, and materiality of the evidence offered, and conformity to legal rules of evidence shall not apply.

8. Exchange of Information

At the parties request or at the discretion of the Mediators, consistent with the expedited nature of mediation, the Mediators may direct the production of documents and other information and the identification of any witnesses to be called.

The Mediators is authorized to resolve any disputes concerning the exchange of information.

9. Closing of Hearing

After the Mediators declare the hearing closed, the time limit within which the Mediators are required to make the decision will commence to run, in the absence of other agreements by the parties. If written statements or documents are to be filed or if an inspection or investigation is deemed appropriate, the hearings shall be declared closed as of the latest date set by the Mediators for the receipt of written statements or documents or following such inspection or investigation and opportunity by the parties to comment.

4.5.2.3 Forms to apply for conflicts resolution

There will be internal Panlab forms to apply for hearing for conflict resolution. The forms will be on-line accessible:

- 1) Demand to Panlab internal hearing notice: Form to ask for Panlab internal hearing. It should include the petitioner, respondent, and the description of the conflict.
- 2) Counterclaim Notice: Form to demand relief from one party expressing the reason.
- 3) Submission Agreement: Form to express agreement to the internal hearing.
- 4) Waiver of Procedure: Form to waive the internal hearing, in case the parties reach an agreement before hearing.
- 5) Information Request: Document to request a report about the hearing development and the final resolution.
- 6) Others (if needed).

When disputes or differences are not settled internally in Panlab federation, there shall be solved by one of the options, presented below in 4.5.2.4 and 4.5.2.5. **The option, which can also include both possibilities, have to be defined within testbed offering (Sub-Sec. 3.1.3).**

4.5.2.4 Arbitration in Brussels under the Rules of Arbitration of the International Chamber of Commerce

Composition of Arbitrations: Three arbitrators except the parties expressly agree in writing in a lower number. These arbitrators must be appointed under the terms of the above mentioned rules. If there are three arbitrators, the chairperson shall be of juridical education.

Resolution of arbitration: Must be final and binding upon the Parties concerned.

Interim injunctive relief: Arbitration is compatible with temporary measures from the courts of competent jurisdiction to enjoin the other Party from taking certain actions which allegedly infringe the rights of the Party bringing such claim.

4.5.2.5 Application of jurisdiction of the competent court

Applicable law: Belgian law (court place in Brussels) as it is commonly used within contracts concluded among European partners and also applies to PII project. For future Panlab organisation, the decision on the competent court will be made by Panlab founder organisations.

Interim injunctive relief: Any Party shall be free to seek interim injunctive relief or any other temporary measures before any applicable competent court or tribunal, wherever located, in order to seek to prevent or restrain any (i) infringement of its or their IPRs and/or (ii) unauthorised disclosure of Confidential Information.

4.6 Definition of liability

4.6.1 Introduction

4.6.1.1 Liability towards each other

In respect of information or materials supplied by one Party to another under PII Consortium Agreement (CA) or under PII Grant Agreement, the supplying Party shall be under no obligation or liability (other than as expressly stated in the Grant Agreement and CA), and 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, subject to the obligations expressly stated in the Grant Agreement and in the CA, the absence of any infringement of any proprietary right (including, without limitation, IPRs, trade secret rights and right over confidential information) 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 to which it, or to which any person that it directly or indirectly permits or allows to use such information or materials, puts such information and materials.

Subject to the provisions of Section 4.6.2.5 below, no Party shall have any liability in respect of the infringement of any patent or other right of any third party resulting from any other Party (or any of its Affiliates) exercising any of the Access Rights granted under the Grant Agreement or under the CA. No Party makes any representation or warranty, express or implied, other than as expressly stated in the CA.

4.6.1.2 Liability towards third parties

Subject to such other undertakings and warranties as are provided for in the CA and the Grant Agreement, each Party shall be solely liable for any loss, damage or injury to third parties resulting from the carrying out by it or on its behalf of its parts of the Project and/or from its Use of Foreground and/or Background.

4.6.1.3 Liability for Subcontractors

- Each Party shall be fully liable for the performance of any part of its share of the Project, or other Grant Agreement obligation, in respect of which it enters into any contract with a Subcontractor.
- Each Party engaging any Subcontractor shall be solely responsible for all obligations incurred in relation to that Subcontractor. The other Parties shall have no obligation whatsoever to any such Subcontractor, save to the extent that they separately agree any such obligation in writing.

4.6.2 Claims between the Parties

The following provisions of this Section 4.6.2, excluding and limiting liability, shall apply not only to the Parties, but also to those of their Affiliates which properly participate as Subcontractors in the Project, each of which is an intended beneficiary of this Section 4.6.2.

4.6.2.1 Liability: general

Subject to the following provisions of this Section 4.6.2, the general provisions of Belgian law governing liability (including both contractual and non-contractual liability) shall apply to any claim between the Parties for loss or damage caused by a Party, its employees, agents and Subcontractors and arising in connection with the Project.

4.6.2.2 Excluded liabilities

To the extent permissible under applicable law and except as otherwise provided specifically below in this Section 4.6.2, in no event shall any Party be liable in connection with the CA or the Grant

Agreement for any of the following, however caused or arising, on any theory of liability, and even if such Party was informed or aware of the possibility thereof:

- a) loss of profits, revenue, income, interest, savings, shelf-space, production and business opportunities;
- b) lost contracts, goodwill, and anticipated savings;
- c) loss of or damage to reputation or to data;
- d) costs of recall of products; or
- e) any type of indirect, incidental, punitive, special or consequential loss or damage.

4.6.2.3 Financial limit on liability

Subject to the provisions of Sections 4.6.2.4 and 4.6.2.5 below, the aggregate liability of each Party under the provisions of Section 4.6.2.1 to all of the other Parties collectively in respect of any and all such claims shall not exceed the greater of:

- a) twice that Party's Project Share, or
- b) the sum of five hundred thousand euro (€500,000)
- c) The financial limitation of liability specified in Section 4.6.2.3 shall be doubled in the case of any breach by a Party of its obligations under:
 - i. Section 4.1 (Confidentiality), or
 - ii. Section 4.1.10 (Confidentiality and Ownership of Information Clauses).

4.6.2.4 Exceeding the scope of Access Rights

For the avoidance of doubt, the exclusions and limitations stated in Sections 4.6.2.2 and 4.6.2.3 above shall not apply in respect of any activity involving the use of anything protected by the IPRs of any other Party or any Affiliate of any other Party, to the extent that such activity or use is not within the scope of the Access Rights granted by the Grant Agreement or the CA, or not in compliance with the associated terms and conditions.

4.6.2.5 Exceptions

The exclusions and limitations stated in Sections 4.6.2.2 and 4.6.2.3 above shall not apply in respect of any:

- a) fraud
- b) death, injury to natural persons or damage to real or immovable property caused by the negligence or wilful act of such Party, its directors, employees, agents and Subcontractors; or
- c) wilful breach by a Party of any obligation accepted under the Grant Agreement and the CA

4.6.3 Force Majeure

Notwithstanding any provision on Force Majeure in the Grant Agreement, no failure in the performance of the CA can be imputed or assumed to a Party, to the extent that such failure is due to Force Majeure.

Each affected Party will notify the other Parties in writing of any event of Force Majeure as soon as possible. The Parties shall discuss in good faith the possibilities of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably possible. If such Force Majeure event is not overcome within 6 weeks after such notification, the transfer of tasks shall be carried out.

5 Conclusions

In order to define a set of legal documents, which is necessary to ensure a smooth operation of Panlab testbed federation, Panlab Charter and Requirements on Articles of Associations documents, referring Panlab Organisation as described in Panlab SSA project, were reviewed and approved by PII project consortium. Panlab legal documents are defined to establish appropriate legal rules, ensuring interconnection of the testbeds and realisation of various testing projects, where main intention is establishment and implementation of all legal rules in accordance within simple procedures, creating an easy way to deal with all necessary legal agreements.

Federation contracts, created by PII consortium, ensure a simple and clear legal procedure for joining the Panlab federation, as Panlab testbed provider providing testing facilities, and using testing services provided by Panlab, as Panlab customer. This is ensured by application of two types of the federation contracts; Interconnection and Testing contracts. An interconnection contract is signed by Panlab and testbed provider, in order to ensure its legal inclusion within the Federation and enable provision of particular testing services (testing offerings) within overall Panlab service offer. On the other hand, the testing contracts are used to ensure usage of Panlab testing services by the customers and their participation in particular testing projects.

Besides federation contracts, the following specific legal documents are drafted, in order to provide detailed legal base for operation of the Panlab federation:

- Confidentiality rules,
- IPR issues,
- Regulation of access rights,
- Termination for breach rules,
- Conflict resolution, and
- Liability definition.

The main part of the specific legal documents is defined as fixed legal text applying for all Panlab testbed providers and customers. For several issues, which can be separately considered for particular testing offers and projects, so-called optional text within specific legal documents is provided. Thus, testbed providers can choose last instance of the conflict resolution while specifying a particular testbed offer and several options are available in definition of ownership on testing results and testbed configurations as well as definition of access rights to the test results to be used for negotiations on particular testing projects, as specified in the test bed offer.

Even the drafted Panlab legal document provide all necessary legal rules for establishment and usage of the Panlab Federation, they cannot be used separately from other documents and rules for Panlab, which are created within the project. Thus, the legal documents are directly related to Panlab rules on technical specifications of testbeds and testing projects, operational Panlab rules, and commercial conditions for using and offering Panlab services, which are considered in other PII deliverables.

All legal documents drafted in this deliverable may be updated and possibly improved during the life of PII and then constitute an annex to PII Consortium Agreement. Final documents have to be validated within PII project, as follows:

- Operational update and validation should be carried out within technical PII work packages and by Panlab Office, which will be created within PII project as a logical entity, in order to include operational feedback, and proof if all necessary legal aspects of interconnected testing are covered in this deliverable.
- Legal validation should be carried out by representatives of PII participants' legal department, where this updated deliverable will be adopted as an extension of PII Consortium Agreement. With this, it will be confirmed that all PII partners agree on the specified legal rules.

The final document, after update and validation, will be submitted as a part of overall Panlab framework at the end of PII project.

References

- [1] <http://www.panlab.net/>
- [2] Guide to Intellectual property Rules for FP7 projects”, available at ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf
- [3] PII Consortium Agreement
- [4] United Nations Convention on Contracts for the International Sale of Goods, available at <http://web.law-and-business.de/cisg7/index2.php?lang=2>

Annex A Review of Panlab Documents (Eurescom - completed)

A.1 Panlab Charter Document

A.1.1 Purpose of the Charter

Panlab Charter defines basic principles and purpose of Panlab organisation, which implements concept of Pan-European Laboratory – European Testbed Federation. The Charter has to be signed and accepted by all organizations and individuals aiming to become members of the Pan-European Laboratory (further named as Panlab - Panlab federation) and respective Panlab organization (existing as a legal entity) which performs the federation principles.

The Panlab members can be organized in Panlab General Assembly or within any other corresponding organizational structure which includes all Panlab members and is the highest decision making body in the Panlab organization. The Charter can be changed if 2/3 of the General Assembly members, including also GA members which are not represented at the meeting where a decision is made, agree or during establishment phase of the Panlab organisation by consensus of its founders.

A.1.2 Background Information

The Pan-European Laboratory was introduced by CELTIC as a concept to enable the trial and evaluation of service concepts, technologies, system solutions and business models to the point where the risks associated with the launching of these as commercial products will be minimised. The Panlab , Specific Support Action project under EC Framework Programme 6 (IST-2005-034305) aims at delivering a set of long-living and well-functioning guidelines, principles and rules enabling the implementation of the Pan-European Laboratory. The Future Internet Research and Experimentation (FIRE) activity aims at addressing the emerging expectations which are being placed on the Internet by providing a research environment for investigating and experimentally validating highly innovative and revolutionary ideas by; (i) experimentally-driven long term research on new paradigms and networking approaches for the future Internet as well as (ii) building a sustainable, dynamic, large scale experimentation facility by gradually federating existing and new testbeds for emerging or future Internet technologies.

The Panlab Charter endorses the federation testing principle, primary scoped within CELTIC Initiative and further elaborated in Panlab project and FIRE Expert Group, within Panlab organisation

A.1.3 Panlab Charter

Commitment

Panlab members are committed to comply with the concept and principles defined in the Panlab Charter. The members are part of the Panlab organisation with all corresponding rights and responsibilities and can use or offer testing services within Panlab testbed federation. Panlab membership can be obtained by an organisation (company, public body, association, etc.), a project with possibly limited live time, or an individual.

Panlab Concept

Panlab - the Pan-European Laboratory - is based on the concept of federation of distributed test laboratories and testbeds that are interconnected and provide access to required platforms, networks and services for broad interoperability, prototyping, and any other kind of testing. Panlab concept is being introduced to enable the trial and evaluation of service concepts, technologies, system solutions and business models. Panlab is not a static organisation, but rather dynamic and adaptive. It will be extended, adjusted and improved by any new available platform, service and system that can be offered by the connected laboratories or new laboratories joining the federation.

Panlab organisation assures the visibility of the virtual network of laboratories, which means that the testing sites and testbeds become known and accessible for the potential customers. The Partners, that are determining which of their own testing sites, testbeds, resources etc. will be included in the Federation, decide also on the extent/level that these resources will be accessible through the

Federated Environment. Furthermore, withdrawing, replacing, renewing, changing of access type/level of testing resources and facilities originally included in the Panlab Federation remain at the owners' discretion. It is not restricted to the existing test activities, but seeks also insight to the future testing facilities presenting mechanisms for linking these together. Panlab will provide a web service maintained orderly by an entity, authorised by the Panlab organisation.

Panlab also validates the needs and requirements for offering concurrent design services. In concurrent design several virtually connected parties from many sites or organisations may jointly work on a common project. This is aided by facilitating a central service consisting of joint libraries for software, system, architecture, pattern and form design, open source software components, version management systems, software build trees, software license leasing, repositories, storage, messaging, discussion fora, messaging of both instant and pervasive kind, and others. All these would be offered in a secure way with the necessary authentication and authorisation means, as specified in corresponding legal documents (e.g. Consortium Agreement of PII project) of Panlab organisation.

Definition

Panlab, as a federation of testbeds, is an interconnection of two or more independent testbeds for the creation of a richer environment for testing and experimentation, and for the increased multilateral benefits of the users of the individual testbeds. In a federation, testbeds are normally, but not necessarily, geographically dispersed and owned by different organisations. They would however be considered as being part of resource that can be used by Panlab activities, in so far as they are operated in a common management framework under a common management authority to the extent/level that each Partner has decided to commit its testing resource prior to the inclusion to the Federation. The operation and management of federated testbeds over multiple networks and multiple administrative domains is difficult and requires professional support from both industry and organisations with experience in operating large networks as well as from organisations providing necessary support services for collaboration, set-up of testing configurations, and maintenance and supervision of the entire testing processes carried out within the federation. The operation and management of each of the testing resources assigned to the Federation remain to its original owner who determines the extent/level of operating and managing the resource through the Federated environment.

Fundamental Panlab Principles

In particular the following principles are adopted as fundamental for an efficient testbed federation that provides added value to European research on future networks and services:

Openness: Federation implies openness at all levels, including provision, implementation and use. Concerning provision, the federation must be open for any testbed of the European testbeds ecosystem. There are many related issues which make the implementation of openness a challenge. These include Intellectual Property Rights (IPR), how to exchange results and what may be shared, the standardisation of interfaces, common procedures, and usage policies. The implementation could be done through Open Source tools and open hardware design details which will enable easy replication, interfacing and inter-operation among various testbed components and, consequently, would increase the overall effectiveness and impact of the federation. Use will be open to any relevant European and worldwide initiative under fair access terms and in accordance with IPR related rules, adopted by testbed providers and users.

Excellence: The federation principle aims for “best of breed” and must assure excellence of the capabilities of the federation from various aspects. These aspects include, among others; (i) degree of innovation, (ii) measurable quality or compliance to essential standards, (iii) diversity, and (iv) scale or geographic coverage. Criteria must be developed that allow a transparent evaluation of excellence, and also the re-classification of a testbed as a commodity and thus its removal from the federation.

Efficient Management: Managing federated testbeds is complex, but necessary for achieving scale, diversity, cost-efficiency, and to improve the sustainability and quality of the individual testbeds and the federation as a whole. The traditional network management objectives apply for the management of federated testbeds as well. In order to provide an efficient and cost-effective management of the federated testbeds, a dedicated entity responsible for Panlab operation, including handling of all organisational issues, might be put in place. The operation and management of each of the testing

resources assigned to the Federation remain to its original owner who determines the extent/level of operating and managing the resource through the Federated environment.

Governance: Interconnecting different testbeds belonging to different administrative domains means granting access to remote resources that are owned by different stakeholders. This has the consequence that a legal framework must be in place that govern these relations and which must include among others: handling of IPR, definition of confidentiality and trust, process for resolution of conflicts and handling of the misuse of rights or neglecting obligations. In order to lay the foundation for establishing a long-term sustainable testbed federation, a legal entity might prove necessary. This legal entity must manage the different relations, possibly manifested as contracts, between the stakeholders that interconnect their resources in the scope of the federation.

A.2 Requirements on Articles of Association

Preface

Intention of this document is to specify requirements on Articles of Association, which will be necessary for creation of a Panlab organisation as a legal entity. Therefore, this document does not include exact definitions of particular articles, which are expected to be finally defined by founders of the future Panlab organisation.

Please, note that creation of a legal entity for implementation of the Panlab organisation is considered within PII consortium as an optional solution, in which case the requirements should apply.

1) Name, Seat, and Structure

Registration information – to be updated by Panlab founders:

- Legal form of Panlab organisation
- Legal name
- Seat of the organisation

Basic structure of Panlab organisation:

- It is recommended that Panlab organisation has a General Assembly and an Executive Director.

2) Purpose and Objectives of Panlab Organisation

Panlab - the Pan-European Laboratory - is based on the concept of federation of distributed test laboratories and testbeds that are interconnected and provide access to required platforms, networks and services for broad interoperability, prototyping, and any other kind of testing. Panlab concept is being introduced to enable the trial and evaluation of service concepts, technologies, system solutions and business models. Panlab is not a static organisation, but rather dynamic and adaptive. It will be extended, adjusted and improved by any new available platform, service and system that can be offered by the connected laboratories or new laboratories joining the federation, in accordance with fundamental Panlab principles (as defined in the Panlab Charter document).

Panlab organisation assures the visibility of the virtual network of laboratories, which means that the testing sites and testbeds become known and accessible for the potential customers. It is not restricted to the existing test activities, but seeks also insight to the future testing facilities presenting mechanisms for linking these together. Panlab will exist as a web service maintained orderly by an entity, authorised by the Panlab organisation.

3) Founders/Stakeholders/Shareholders

Panlab founders as well as Panlab members who will join the founders – are all Panlab stakeholders – are preferably the providers of the testing services within the Panlab testbed federation, but also the potential users/customers of the testing services provided by the federation. All Panlab stakeholders must be members of the Panlab organisation, obtaining the highest possible membership level, and must demonstrate a strong interest and involvement to actively support and further develop various activities within Panlab organisation.

Panlab stakeholders are strongly committed to comply with the concept and principles defined in the Panlab Charter and to take leadership in realisation of Panlab concept and fundamental principles, defined in the Charter.

4) Shared Capital, Initial Contribution, Liability

Details on capital and initial contribution will be provided by Panlab founders and members and should include:

- Definition of capital of the Panlab organisation
- Commitment to provide necessary capital for particular time-period (e.g. through guaranteed membership)
- Rules for withdrawal of Panlab founders from the organisation and respective financial conditions and requirements

It is recommended that capital, assets, etc. belonging to Panlab organisation will be held by Panlab Office, wholly controlled by the organisation.

Panlab founders and members have to decide on their individual liability in respect to Panlab organisation and Panlab Office, either up to a fixed amount or up to initial contribution for a certain time-period (e.g. two years individual contribution).

5) General Assembly

Panlab General Assembly (GA) is the highest decision making body in the Panlab organisation and will be established by Panlab founders. GA members will be all Panlab members (obtaining Panlab membership and contributing corresponding membership fees), where rights and responsibilities of individuals GA members can be defined in accordance with their membership level. Public authorities from European, national, and regional can also be part of the GA under the same conditions as other members, or under particular conditions as observer members.

The GA will make decisions in accordance with simple or qualified majority, depending on the decision to be made. Weighted votes in accordance with obtained membership level of individual GA members can be introduced as well. The GA will be led by a Panlab chairperson and vice-chairs and other representatives if appropriate (all voluntary positions), which are elected by the GA for a particular time-period and under agreed further conditions (e.g. withdrawal, re-election, etc.).

The main responsibilities of the GA are:

- Steering of activities carried-out by Panlab Office
- Appointment of a Panlab Executive Director, and further executive officers if necessary (fully or partly professional positions), for a particular time-period
- Approval of business and membership models
- Definition of overall Panlab strategy
- Further development of Panlab executive structure in accordance with development of Panlab organisation (e.g. introduction of a Steering and/or Executive Board in case that GA becomes too large, etc.)

Panlab GA has regular meetings (e.g. annual meetings) and will be coordinated by the Panlab chairperson and the Panlab secretariat, which will be provided by the Panlab Office. Extraordinary GA meetings can be organised if a particular part of GA members agrees on it. Also, GA can meet and make decisions by using various means of correspondence (e.g. e-mail, audio conferences, etc.). Panlab chairperson and secretariat are responsible for creating the meeting agenda and minutes within agreed time-scales. Quorum rules for particular decisions have to be defined as well.

If the number of members is large (e.g. larger than 10), a Mediation Board is being elected by the GA. This body consists of number of members and has to mediate in the case of conflicts between partners (e.g., in case of contract breaches etc.).

6) Membership and Business Models

Panlab membership model should offer several membership levels, which differ in membership fees and corresponding rights within Panlab organisation and its GA as well as in conditions for using testing and other facilities provided by Panlab Office and testbed federation (see description of Panlab organisation).

The Business model for Panlab will be initially created by Panlab founders and updated by all Panlab members (GA). Possible incomes of the Panlab organisation, as mentioned in description of Panlab organisation are: Membership fees, Initial contributions of Panlab founders, Sponsorship and funding, and Testing fees.

7) Panlab Office

Panlab Office is established by Panlab founders and is a legal entity (or organised in any other form) wholly controlled by Panlab organisation, represented by the Executive Director, who is in charge of the Office. The main responsibilities of the Panlab Office are:

- Operation of Panlab testbed federation
- Technical and business development of Panlab federation
- Marketing and public relations representing the Panlab organisation

8) Executive Director

Panlab Executive Director is the highest executive officer on Panlab organisation and is head of Panlab Office. He should also be responsible for representation of Panlab and its federated testbed concept. The Executive Director reports to Panlab chairperson(s), and with it to GA, or to any other body (e.g. Steering Board) authorised by the GA. He is authorised to make decisions in accordance with rules established by Panlab founders and GA.

9) Fiscal Year/Annual Accounts/Allocation of funds

The Executive Director is responsible for accounts and allocation of funds within the Panlab organisation and provides respective period reports to GA or another authorised body in defined time-periods.

10) Dissolution and Liquidation

The following issues should be considered in case of dissolution or liquidation of Panlab organisation:

- Conditions for dissolution by Panlab founders and Panlab GA (e.g. necessary majority in GA)
- Dissolution and liquidation in case of court order, bankruptcy, etc.
- Responsibilities of the Executive Director and Panlab Office in the case of dissolution or liquidation

11) Publication

Formal registration publication of Panlab Organisation is required.