

CO-PRODUCTION AND ARTWORK COMMISSIONING CONTRACT

between :

x [name],[address], hereinafter referred to as “Artist “
[Must be a person; in case of several artists, one of them is the contractor]

and

y [project full partner name], whose headquarters are located at [address], hereinafter referred to as “ICT R&D Project Partner”

and

z [producer full partner name], whose headquarters are located at [address], hereinafter referred to as “Producer”

and v [VERTIGO full partner name], whose headquarters are located at [address], hereinafter referred to as “VERTIGO Partner”,

hereinafter collectively referred to as “Parties” or individually as “Party”.

Preamble and definitions

“VERTIGO” designates the Coordination and Support Action project of Grant Agreement N° 732112 supported by the European Commission under its H2020 Program. Together with the VERTIGO Partner, the parties involved in the implementation of VERTIGO are the following and are hereinafter collectively referred as “Members of the VERTIGO Consortium” [remove the VERTIGO Partner in the following list]:

- INSTITUT DE RECHERCHE ET COORDINATION ACOUSTIQUE/MUSIQUE (IRCAM), established 1 place Igor Stravinsky – F-75004 Paris, France
- ARTSHARE INVESTIGACAO TECNOLOGIA EARTE LDA, established in RUA QUINTA VELHA 249, ESTARREJA AVEIRO 3860 249, Portugal
- FRAUNHOFER GESELLSCHAFT ZUR FOERDERUNG DER ANGEWANDTEN FORSCHUNG E.V. (FHG), established in HANSASTRASSE 27C, MUNCHEN 80686, Germany
- INOVAMAI - SERVICOS DE CONSULTADORIA EM INOVACAO TECNOLOGICA S.A. (INOVA+) SA, 9144/971216, established in RUA DR AFONSO CORDEIRO 567, MATOSINHOS 4450-309, Portugal
- ASSOCIATION CULTURE TECH., established in 20 RUE PORTAIL BOQUIER, AVIGNON 84000, France
- ECOLE POLYTECHNIQUE FEDERALE DE LAUSANNE (EPFL), 414110, established in BATIMENT CE 3316 STATION 1, LAUSANNE 1015, Switzerland
- LIBELIUM COMUNICACIONES DISTRIBUIDAS SOCIEDAD LIMITADA (LIBELIUM) SL, Z42864, established in INSTALACIONES CEEI - CALLE MARIA DE LUNA 11 NAVE 5, ZARAGOZA 50018, Spain

One of the main goals of VERTIGO is to support collaborations of artists with research and development (“R&D”) projects in the field of Information and communication technologies (“ICT”), in particular in the framework of a program of artistic residencies. This program sets a collaboration framework of artists with partners of an ICT R&D project, aiming at producing an innovative artwork, based on the ICT R&D project technology. [optional The hosting and organization of the residency is under the responsibility of a producer.]

“The ICT R&D Project” designates an R&D project in the field of ICT, supported by [Funding agency] (“ICT R&D Project Funding Body”) under [grant agreement reference], in which the ICT R&D Project Partner participates.

The other parties involved in the project are :

- Name, address
- Name address

All the parties involved in the ICT R&D Project are hereinafter collectively referred to as “Members of the ICT R&D Project Consortium”

The Parties together with all the Members of the VERTIGO Consortium and all the Members of the ICT R&D Project Consortium are hereinafter referred to individually as “Extended Party” and collectively as “Extended Parties”.

The ICT R&D Project Partner guarantees that it has been mandated by the other Members of the ICT R&D Project Consortium in order to represent them in the current contract and that it has been granted all necessary rights to do so.

VERTIGO has published on [date] a call for artistic residencies (Call) with a selection of ICT R&D projects, including the ICT R&D Project, which has expressed interest in participating in the VERTIGO residencies program, on the basis of technological elements, hereinafter designated as “ICT Technology”, described in Exhibit 1.

The Artist and the Producer have presented a joint application to the Call and have been selected by the international jury set up by VERTIGO.

Article 1 - Object

The object of the contract is to define the conditions of the residency ("Residency") of the Artist with the ICT R&D Project, with the support of the Producer, in the framework of VERTIGO.

The goal of the Residency is twofold:

- The production of an original artwork ("Artwork"), based on the ICT Technology, to be designed by the Artist and produced as part of the Residency, following the artistic project ("Artistic Project") presented in Exhibit 2.
- To be the framework of a collaboration between the Artist and the ICT R&D Project, in order to elaborate new and innovative ideas about the ICT Technology.

The execution of the Residency shall follow the workplan ("Workplan") described in Exhibit 3. The Workplan shall include at least two deadlines of delivery associated to a meeting between all the Parties, one at mid-term and the second at the end. Any change on the workplan shall be jointly agreed in advance in written and traceable form by all the Parties.

The mid-term deadline shall include a review involving all Parties and the production of a short video presenting the done work for the VERTIGO public dissemination

The final outcome of the Residency will include the delivery of the following elements:

- The Artwork ready for public exposure in cultural venues [*only here for Category 1*], which may be in the form of sketches or prototypes but preferably in the form of achieved works [*only here for Category 2*], in the form of an achieved work and its fully functional technical setup;
- A confidential report presenting the work done, the process followed for the execution of the residency in reference to its workplan, its outcomes, [and a financial annex presenting the incurred expenses by each Party in reference to the budget defined in Article 4]. The diffusion of the report will be restricted to the Parties, the VERTIGO partners, the ICT R&D Project partners and the ICT R&D Project Funding Body;
- [*If relevant depending on the nature of the Artwork*] A technical documentation of the Artwork describing the setup necessary for implementing it;
- Public materials in English language presenting the main outcomes of the Residency: a video of 2 to 5 minutes and a 4 pages document at A4 format.

Article 2 – Scope and limits of the contract

The present contract does not create a joint-venture company and under no circumstances be considered as a holding between the parties. The responsibility of each Party is strictly limited to the conditions mentioned in this contract, particularly the conditions of take by each Party to any other third party.

Article 3 – Period of execution and termination

The starting date of the contract is: [*normally September 1st 2017, unless delayed start agreed by the Parties*].

The contract will end upon one of the following conditions :

- after delivery of all elements specified in Article 1 and final payment by the VERTIGO Partner [and *possibly* the Producer]. The foreseen date of completion is [XXX, should not be later than March 2020]
- in case of termination initiated by the VERTIGO Partner in the conditions specified in Article 7. In this case, no other payment will be due by the VERTIGO Partner to the Artist and all Parties give up any pursuit exercised against one or several other Parties for a direct or indirect damage incurred by the partial or total non-fulfillment of the measures of the present contract.

Article 4 – Budget, funding and payments

The total budget of the residency is: [*consolidated budget in euros*].
Its details are indicated in Exhibit 4.

It includes:

1. An amount of [max 15.000€ for Type 1 and max 30.000 for Type 2] to be paid by the VERTIGO Partner to the Artist as a global fee in counterpart of a commission for designing and producing the Artwork and a license granted by the Artist to the other Parties in order them to exploit elements of the Artwork as described in Article 5. This amount will be paid to the Artist upon the condition that he/she provides the VERTIGO Partner with completed French forms 5000 and 5003 which apply for an exemption of the withholding tax on royalties collected from French sources, the Artist being a resident of [*specify country*]

here] for tax purposes. Without these documents, the VERTIGO Partner will apply a deduction of the amount to be paid to the French tax administration (indicative rate as of December 2017 : 33%).

May the Artist have specific expenses for his/her participation in the Residency, including for travel, subsistence, purchase and delivery of goods and payment of third parties, and participation in VERTIGO public events presenting the work, he/she will cover them on his/her own.

This amount will be paid to the Artist in 3 parts: An advance payment of 20% i.e. [XXX] at the signature of the current contract, 40% i.e. [YYY] after validation of the Residency mid-term assessment by the VERTIGO Partner and the remaining 40%, i.e. [ZZZ] after the final assessment by the VERTIGO Partner.

2. [Optional] An amount of [TTT] funded by the Producer in order to cover its own expenses
3. [Optional] An amount of [TTT] funded by the ICT R&D Project in order to cover its own expenses

Article 5 – Intellectual Property and Exploitation

The copyright in the Artwork is and shall remain the property of the Artist as fixed in French Intellectual Property Law (Code de la propriété intellectuelle). The Artist certifies that he/she is the sole author of the Artwork, that this is an original work that does not copy other preexisting works. The Artist certifies that he/she has not already accepted nor will accept during the execution of the current contract any other agreement with a similar subject.

The Artist grants all the other Extended Parties a non-exclusive right to publicly present the Artwork and its related public documentation through their dissemination channels. These rights-of-use are granted for the legal duration of the author's rights or related rights or their rights holders, as governed by both French or foreign law, current or future, including possible extensions to this duration. These rights are applicable worldwide. The Artist certifies that he/she is the owner of the rights which he/she grants to the other Parties. The Artist guarantees to the Extended Parties the full use, clear of all claims, liens and encumbrances, of the rights granted in the current contract, and guarantees the Parties against any fraud, claim or eviction or counterfeit litigation.

The ICT R&D Project Partner grants the other Extended Parties a non-exclusive right, applicable worldwide, to use the elements of the ICT R&D Project Technology necessary for the Residency execution, until the end of the current contract. It grants them a non-exclusive right applicable worldwide to use the elements of the ICT R&D Project Technology necessary for the operation of the Artwork at least three years after the end of the current contract. The ICT R&D Project Partner guarantees to the other Parties its full ownership of the rights necessary for these purposes.

Any Extended Party presenting publicly the Artwork will take in charge without soliciting the other Parties the statements and the payment of author's rights and performers' rights fees to Royalties Collecting and Distributing Societies.

The Parties grant any Extended Party rights to carry out, or cause to be carried out, shootings and/or audiovisual recordings during the work periods, of all staff involved in the Residency.

The Parties authorize the concerned Extended Party to grant the right to reproduce, to use and to broadcast to the producer of the video recording.

They authorize the concerned Extended Party, on free basis, non-exclusive and for an unlimited time, the rights to use these pictures and/or video recordings in the following conditions:

- Promotional purposes;
- For information and advertising purposes in television or radio channels broadcasting for short sequences
- The promotional and advertising activities, and the non-commercial exploitations in which artists and technicians could appear will not be subject to any additional remuneration.

Any commercial use of these pictures and recordings must be object of a separate contract.

Article 6 – Publicity and Compulsory Credits

All Parties and their mandated third parties shall include, if possible, on each publication or communication (print and/or multimedia) related to the public presentation of the Artwork, the following mention:

“Work designed by [Artist name] with the support of the VERTIGO project as part of the STARTS program of the European Commission, based on technological elements from the [ICT R&D Project name], with the support of [Producer name]” and include the logos of VERTIGO, STARTS, European Commission, and if they exist the logos of the ICT R&D Project and of the Producer.

Article 7 - Rights and Obligations of the VERTIGO Partner

[Case 1 : VERTIGO Partner directly in charge of monitoring the residency execution :

The VERTIGO Partner will monitor the execution of the Residency, acknowledge receipt and validate the content of the planned deliverables and manage the related payments to the Artist with a maximum delay of 45 days after validation.

In case of any problem encountered in the execution of the Residency which prevents the execution of the planned workplan and its updates jointly agreed by all Parties, it may ask in written form the other Parties to take corrective actions within a maximum delay of two months; after this delay, based on his appreciation of the progress made, it may decide, in agreement with the relevant decisions bodies of VERTIGO, to terminate the current contract with no delay.]

[Case 2 : EPFL mandated by the VERTIGO Partner for monitoring the Residency execution

The VERTIGO Partner will mandate a member of VERTIGO, Mr/Mrs XXX of EPFL ("Mandated VERTIGO Partner" to monitor the execution of the Residency, acknowledge receipt and validate the content of the planned deliverables. The VERTIGO Partner will manage the related payments to the Artist with a maximum delay of 45 days after validation by the Mandated VERTIGO Partner.

In case of any problem encountered in the execution of the Residency which prevents the execution of the planned workplan and its updates jointly agreed by all Parties, the VERTIGO Partner may ask in written form the other Parties to take corrective actions within a maximum delay of two months; after this delay, based on his appreciation of the progress made, it may decide, in agreement with the relevant decisions bodies of VERTIGO, to terminate the current contract with no delay.]

Article 8 - Rights and Obligations of the Artist

All Parties acknowledge that the Artist will remain the sole author of the Artwork and shall keep all freedom of decision and choice for its design.

The Artist will be the main Party in charge of the execution of the Workplan, with the assistance of the ICT R&D Project and the Producer. He/she undertakes to make his/her best efforts to assure the success of the Residency. He/she also commits in contributing to its public communication through the dissemination channels of the other Parties.

Article 9 - Rights and Obligations of the ICT R&D Project Partner

The ICT R&D Project Partner will provide the Artist with the elements of the ICT Technology in the forms and at deadlines conformant to the workplan and will assist him/her in documenting the ICT Technology. It will also provide the Artist with the foreseen hosting infrastructure and resources. It undertakes to make its best efforts to assure the success of the Residency.

The ICT R&D Project Partner will coordinate the exchanges between the Parties and the other participants of the ICT R&D Project, including the organization of the participation of the Artist in the ICT R&D Project innovation and dissemination activities.

[Optional] Article 10 - Rights and Obligations of the Producer

The Producer will be in charge of the overall coordination of the Artwork production process and of the allocation of relevant means and staff. It will provide the Artist with all relevant conditions of hosting and technical infrastructure necessary for the production of the Artwork. It undertakes to make its best efforts to assure the success of the Residency.

The Producer will have the full power of decision on the expenses of the budget it manages.

The Producer will keep separate accounts of expenses and receipts concerning the Artwork production. It will control the accounting of the sums to pay as reported in the attached budget. All of the documents, accounting vouchers and other supporting documents related to the Residency have to be kept available for the VERTIGO Partner who will have access upon request.

Article 11 - Liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a willful act or by a breach of confidentiality.

Article 12 – Disclosure of Information

All information in whatever form or mode of communication, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with the current contract during its implementation and which has been explicitly marked as “confidential” at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of 4 years after the end of the Project:

- 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 to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations.

The Recipients shall be responsible for the fulfillment of the above obligations on the part of their employees or third parties involved in the contract and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the contract and/or after the termination of the contractual relationship with the employee or third party.

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

- the Confidential Information becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
- the Confidential Information was already known to the Recipient prior to disclosure or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order

Article 12 - Insurances

All Parties shall take out adequate insurance to all risks for the equipments they will bring respectively into the execution of the Residency and for the staff they have respectively hired, including for travels.

Article 13 – Force Majeure

This Agreement will be revoked as of right and without compensation of any kind in all cases of force majeure recognized by the law and case law (natural disaster, strike, national mourning, riots, terrorism acts, war, epidemic, etc).

Article 14 –Attribution of Jurisdiction

In case of any dispute, execution, or termination of this contract, the partners agree to submit to the Tribunaux de Paris, but only after all amicable ways (such as conciliation or arbitration) have been exhausted.

Article 15 –Governing Law

This Agreement is governed by French law.

Done in XXX, in Y original copies

Exhibit 1: ICT R&D Project Technology description

[To be completed from Call for residencies]

Exhibit 2. The Artistic Project

Exhibit 3: Workplan of the Residency

[The workplan shall be an updated version of the one submitted by the Artist in the Call, discussed and agreed by all Parties.

It should include at least :

- *a decomposition into tasks associated to periods of work, with their objectives and expected delivery, place of execution, participants and their respective roles; the inclusion in this workplan of*
- *the description of the technical approach, including the hardware and software elements to be integrated and/or developed for producing the Artwork, and roles of the Parties in bringing/developing these elements;*
- *the means of communication between partners, including the implementation of self-reporting methods and the definition of decision-making rules;*
- *the two deadlines and their deliveries mentioned in Article 1]*

Exhibit 4: Budget

[Shall be taken from the application and shall include the detail of funding and expenses by each Party]