

BELLA SGA CONSORTIUM AGREEMENT

DATE: 1st May 2016

PARTIES:

- (1) **GEANT Limited**, a company registered in England and Wales under number 02806796 whose registered office is at City House, 126 – 130 Hills Road, Cambridge, CB2 1PQ, United Kingdom; and **GÉANT Association**, a not-for-profit organisation whose registered office is at Singel 468 D, 1017 AW Amsterdam, The Netherlands. GEANT Limited is a wholly-owned subsidiary of GÉANT Association;

(together referred to as “**GÉANT**”, subject to clause 1.3);

and

- (2) **DFN-Verein**, a not-for-profit organisation whose registered office is at Alexanderplatz 1, 10178 Berlin, Germany;
- (3) **FCT**, the Portuguese national funding agency for science, research and technology, whose registered office is at Av. D. Carlos I, 126, 1249-074 Lisbon, Portugal;
- (4) **Consortium GARR**, a not-for-profit organisation established in Italy, whose registered office is at Via dei Tizii, 6 – 00185 Rome, Italy;
- (5) **Entidad publica empresarial RED.ES**, established in Spain, whose registered office is at Plaza Manuel Gomez Moreno s/n, 28020 Madrid, Spain; and
- (6) **Groupement d’Intéret Public pour le Reseau National de telecommunications pour la Technologie l’Enseignement et la Recherche**, whose registered office is at 23-25, rue Daviel, 75013 Paris, France,

(together the “**NRENs**”).

BACKGROUND

- (A) The Parties are parties to the Grant Agreement(s) (as defined below), the purpose of which is the implementation of the Action (as defined below). The primary aim of the Action is to procure and deploy a cost-effective, high speed and sustainable service for inter-continental connectivity to Latin America.
- (B) The Commission is contributing up to €10,000,000 to the Action.
- (C) GEANT Limited is the Coordinator (as defined below) of the Action, and GÉANT, together with the NRENs, are taking part in the Action.

- (D) This Agreement sets out the terms and conditions on which the Parties agree to participate in the Action.

1. DEFINITIONS

1.1 In this Agreement the following expressions have the following meanings:

“Action”	means the actions of each of the Grant Agreement(s);
“BELLA Consortium”	means the parties to the BELLA Consortium Agreement;
“BELLA Consortium Agreement”	means the consortium agreement dated 31/03/2016 between the Parties, CLARA and four other Latin American National Research and Educational Networks;
“CLARA”	means the Cooperacion Latinoamericana de Redes Avanzadas whose registered office is at Rambla Republica de Mexico 6125, Montevideo 11400, Uruguay;
“Commission”	means the European Commission;
“Consortium”	means the consortium comprising the Parties to this Agreement;
“Consortium Bodies”	has the meaning given in clause 4.1;
“Coordinator”	means that entity which undertakes the role of “coordinator” in accordance with the Grant Agreement(s) and which as at the Effective Date is GEANT Limited;
“Effective Date”	means the date of this Agreement as set out above;
“FPA”	means the GÉANT Framework Partnership Agreement dated 23/04/2015;
“FPA Consortium Agreement”	means the Consortium Agreement dated 15/04/2015 entered into between the beneficiaries of the FPA;
“Grant Agreement(s)”	means the Specific Grant Agreement(s) resulting from proposals 731503 and 731505 submitted to DG-CONNECT on 08/04/2016, with the expected start date of 01/05/2016;
“Intellectual Property Rights”	means all industrial and intellectual property rights subsisting in any part of the world including: patents; trade and service marks; trade names; registered designs; design

rights, copyright and rights in the nature of copyright; database right; and know-how (including inventions, improvements, discoveries, designs, techniques, computer programs and other processes and information); and

“Parties” means GÉANT and the NREs, subject to clause 3.2; and

RedCLARA means the data communications network operated by CLARA.

1.2 Other expressions used in this Agreement have the meanings given in the Grant Agreement(s), except where the context requires otherwise.

1.3 Unless stated expressly to the contrary references to GÉANT means both or either of GÉANT Association and GEANT Limited as they may agree between themselves, and the rights and responsibilities of GÉANT under this Agreement may be exercised by either of them.

2. PURPOSE

2.1 The purpose of this Agreement is to specify with respect to the Action the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the Action and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution. The purpose of the Action is to complete the procurement and deployment of a cost-effective, high speed and sustainable service for inter-continental connectivity to Latin America as set out in the Action.

2.2 The Specific Objectives (as set out in the BELLA Consortium Agreement) to be completed by the Action are:

2.2.1 to obtain an Indefeasible Right of Use of 40% (2000 Ghz) of one cable pair of a submarine cable system to be installed between Brazil and Europe; and

2.2.2 to deploy at least one 100Gbps link between GÉANT and RedCLARA to serve the research and education communities of both continents, and additional links as may be determined by the Steering Committee.

2.3 In order to achieve the above-mentioned purpose of common interest the Parties hereby establish through this Agreement the rules to be observed in carrying out the activities necessary for the fulfilment of the Action.

3. COMMENCEMENT AND DURATION

3.1 This Agreement takes effect on the Effective Date and (subject to earlier termination under Article 12) will continue until the expiry or termination of the last to expire or terminate of the Grant Agreement(s).

3.2 This Agreement shall take effect between all the named parties on page 1 that

have signed this Agreement up to the date on which the Grant Agreement contract(s) are signed, provided that at least three parties have done so, and those who have done so will then become the Parties. A named Party which has not signed this Agreement on or before signature of the Grant Agreement contract(s) may, with GÉANT's agreement, subsequently become a Party by signing this Agreement. GÉANT's agreement will be indicated by GÉANT's countersigning the relevant signature page.

4. GOVERNANCE

4.1 The organisational structure of the Consortium shall comprise the following Consortium Bodies:

4.1.1 the Steering Committee established by the BELLA Consortium Agreement, which shall be the ultimate decision-making body of the Consortium;

4.1.2 a Project Manager for the Action, who shall be appointed by the Steering Committee; and

4.1.3 the Coordinator, which shall act as the intermediary between the Parties and the Commission.

4.2 The Steering Committee shall coordinate the Specific Objectives to be completed by the Action and be responsible for the delivery of each Specific Objective outcome and to this end will keep the plans, and progress towards its objectives, under review. The rules and procedures for representation on and decision-making by the Steering Committee are set out in the BELLA Consortium Agreement

4.3 The Project Manager will have responsibility for the day-to-day management of the Action and the Coordinator. The Project Manager will report to the Steering Committee.

4.4 The Coordinator shall perform all tasks assigned to it as described in the Grant Agreement(s) and in this Consortium Agreement. In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations;
- keeping the address list of Parties and other contact persons updated and available;
- collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Commission;
- transmitting documents and information connected with the Project to any other Parties concerned;
- administering the financial contribution of the Commission and fulfilling the financial tasks described in Section 6.2; and
- providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

- 4.5 If one or more of the Parties is late in submission of any project deliverable, the Coordinator may nevertheless submit the other parties' project deliverables and all other documents required by the Grant Agreement(s) to the Commission in time.
- 4.6 If the Coordinator fails in its coordination tasks, the Steering Committee may propose to the Commission to change the Coordinator.
- 4.7 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium, unless explicitly stated otherwise in the Grant Agreement, or this Agreement, or by decision of the Steering Committee.
- 4.8 Decisions of the Steering Committee, Project Manager or Coordinator cannot entail costs for any Party, with the exception of the Party who has presented a specific request that implies expenditure. If not so agreed the Steering Committee will be required to discuss and propose a different sharing of the cost that will be subject to the acceptance of the involved parties.
- 4.9 The Steering Committee, Project Manager and Coordinator may not make any decision that is contrary to the terms of the Grant Agreement(s) or the Framework Partnership Agreement, and the parties are not required to abide by any such contrary decision. If a Party or member of the Steering Committee learns that any such contrary decision has been made, they shall immediately notify the Steering Committee, Project Manager and Coordinator and a Steering Committee meeting shall be convened as soon as reasonably possible to rectify the decision.
- 4.10 The Steering Committee shall decide procedures for dissemination of publications and press releases relating to the activities of the Action.
- 4.11 Should any conflict arise between this Consortium Agreement and the FPA Consortium Agreement then this Agreement shall take precedence.

5. PARTICIPATION IN THE ACTION

- 5.1 The Parties each undertake to take part in the efficient implementation of the Action, and to cooperate, perform and fulfil, promptly and on time, all of their obligations under the Grant Agreement(s).
- 5.2 All Parties shall ensure that appropriately qualified representatives take part in all meetings of the Steering Committee or the Project Manager and all other bodies established for governance of the Action. The Parties may take part in such meetings in person or by teleconference or videoconference.

6. PAYMENTS

- 6.1 Where a Party is eligible for funding under the Grant Agreement(s) GÉANT, as Coordinator, will distribute to that Party amounts received by it from the Commission to cover eligible costs incurred by that Party in accordance with the provisions of the Grant Agreement(s). Claims will be made and payments distributed in accordance with the provisions of Schedule 1.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Parties agree that the provisions of the IPR Policy adopted by the BELLA Consortium, as it may be amended from time to time, will apply (except as set out in clause 7.2) in relation to ownership of and access to Intellectual Property Rights arising under the Action and in relation to access to pre-existing Intellectual Property Rights of the Parties.
- 7.2 The Submarine Cable system including the property of the Indefeasible Right of Use in the Submarine Cable (INT-IRU) will be the joint and undivided property of GÉANT and CLARA as agreed in the BELLA Consortium Agreement.

8. LIABILITY

- 8.1 No Party shall be liable 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 wilful act or by a breach of confidentiality.
- 8.2 Each Party's aggregate liability towards each other Party, and GÉANT's aggregate liability to each Party, shall be limited to that Party's share of the total costs of the Action as identified in the Grant Agreement(s), provided such damage was not caused by a wilful act or gross negligence.
- 8.3 The terms of this Agreement shall not be construed to amend or limit a Party's statutory liability.
- 8.4 Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of its obligations by it or on its behalf under this Agreement.
- 8.5 Each Party accepts liability for death and personal injury caused by its negligence in performance of its rights and obligations under this Agreement.

9. ANTI-BRIBERY COMPLIANCE

Each Party undertakes to each other Party that:

- 9.1 it will fully comply with, and will procure that all personnel fully comply with:
 - 9.1.1 all applicable laws and codes relating to anti-bribery and anti-corruption; and
 - 9.1.2 (in the case of each Party) any anti-bribery or ethics policies provided to the Party by GÉANT as GÉANT may update from time to time, acting reasonably; (the "Anti-Bribery Requirements");
- 9.2 it will not do, or omit to do, any act that will cause the other to be in breach of the Anti-Bribery Requirements;
- 9.3 it has in place, and shall maintain in place throughout the life of this Agreement, policies and procedures to ensure compliance with the Anti-Bribery Requirements and will enforce them where appropriate. At GÉANT's request, each Party will disclose such policies and procedures to GÉANT; and
- 9.4 it will ensure that all commercial agreements for goods and/or services entered

into by them in connection with the Action will contain appropriate ant-bribery and corruption provisions and will make it clear that no Party accepts or condones the payment of bribes of any form under any circumstances.

10. CONFIDENTIALITY

10.1 Each Party hereby undertakes to the other Parties that it shall procure that its employees, agents and sub-contractors shall:

10.1.1 keep confidential all information of a confidential nature (whether written or oral) concerning this Agreement and the business affairs of another Party that it shall have obtained or received as a result of the discussions leading up to or entering into or performance of this agreement (the "Information");

10.1.2 not without the prior written consent of the relevant other Party disclose the Information either in whole or in part to any other person save those of its employees, agents and sub-contractors involved in the implementation or evaluation of the activities of the Action who have a need to know the same for the performance of their duties; and

10.1.3 use the Information solely in connection with the implementation of the activities of the Action and not otherwise for its own benefit or the benefit of any third party.

10.2 These provisions above shall not apply to the whole or any part of the Information to the extent that it can be shown by the receiving Party to be:

10.2.1 known to the receiving Party prior to the date of this Agreement and not obtained directly or indirectly from any other party; or

10.2.2 obtained from a third party who lawfully possesses such Information which has not been obtained in breach of a duty of confidence owed to any party by any person; or

10.2.3 in the public domain in the form in which it is possessed by any other party other than as a result of a breach of a duty of confidence owed to such other party by any person; or

10.2.4 required to be disclosed by legal process, law or regulatory authority.

10.3 Each Party hereby undertakes to the other Parties to make all relevant employees, agents and sub-contractors aware of the confidentiality of the Information and provisions of this clause and without prejudice to the generality of the foregoing to ensure compliance by such employees, agents and sub-contractors with the provisions of this clause

11. ACCEPTABLE USE POLICY

11.1 Each Party shall at all times comply with the Acceptable Use Policy adopted by the BELLA Consortium for use of BELLA connectivity between GÉANT and RedCLARA as published by the BELLA Consortium from time to time.

12. TERMINATION

12.1 This Agreement will terminate automatically on termination for whatever reason of the last to terminate of the Grant Agreement(s).

- 12.2 GÉANT may terminate this Agreement in relation to any Party without compensation at any time by written notice to the Party:
- 12.2.1 if the Party has breached this Agreement and the breach is incapable of remedy; or
 - 12.2.2 if an event of force majeure (as defined in Article 17.1) prevents the performance of GÉANT's or the relevant Party's obligations under this Agreement to a material extent for a period of 6 months or more; or
 - 12.2.3 if the Party goes into liquidation (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction); or sells or disposes of the whole or major part of its undertaking; or assigns this Agreement without GÉANT's consent; or makes any arrangement for the benefit of creditors; or ceases or threatens to cease to carry on business; or is unable to pay its debts as they fall due; or if a receiver, administrative receiver or receiver and manager or judicial manager or administrator or like person is appointed over the whole or any part of its assets.
- 12.3 Except as otherwise provided in this clause, termination of this Agreement will be without prejudice to any claims or remedies that a party may have accrued against any other up to the date of termination.

13. RELATIONSHIP BETWEEN THE PARTIES

Nothing in the Agreement shall create, imply or evidence any partnership between the Parties or the relationship between them of principal and agent.

14. ASSIGNMENT

No rights or obligations of the Parties arising from this Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.

15. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions. Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims shall be settled by the courts of Brussels, Belgium. This Agreement is drawn up in English and all documents and notices and meetings for its application or extension or amendment will be in English.

16. WHOLE AGREEMENT

The Grant Agreement(s), the BELLA Consortium Agreement and this Agreement, including their schedules, constitute the entire agreement between the Parties in relation to their subject matter and supersede all prior agreements, arrangements and understandings between the Parties. In the event of any conflict between the provisions of the Grant Agreement(s) and

those of this Agreement, the provisions of the Grant Agreement(s) shall take precedence.

17. FORCE MAJEURE

- 17.1 For the purposes of this Agreement "force majeure" shall mean any of the following: Act of God, outbreak of hostilities, riot, civil disturbance, student disorder, acts of terrorism, the act of any government or authority (including refusal or revocation of any licence or consent), fire, explosion, flood, fog or bad weather, power failure, breakdown of plant, machinery or vehicles, theft, malicious damage, strike, lockout or industrial action of any kind, and any cause or circumstance whatsoever beyond the affected Party's reasonable control.
- 17.2 If the performance by any Party of any of their respective obligations under this Agreement, shall be prevented by force majeure, then that party shall be excused from performance of that obligation for the duration of the force majeure.

18. WAIVERS

No concession or waiver allowed by any Party to any other in respect of any breach of this Agreement will restrict that Party from exercising any of its rights nor restrict that Party's rights to take any subsequent action. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

19. NOTICES


- 19.1 All notices served on any Party by the other will be in the English language.
- 19.2 Any notice to be given under this Agreement shall be in writing and shall be deemed to have been served when personally delivered, when transmitted by telefax, electronic or digital transmission method provided that such transmission is confirmed by a receipt or successful transmission report and confirmed by mail to the addresses stated at the beginning of this Agreement.

20. SEVERABILITY

Notwithstanding that any provision of this Agreement or any right arising under it proves to be illegal or unenforceable, the remaining provisions of and rights under this Agreement will remain in full force and effect. If any part of this Agreement is declared illegal or unenforceable by a court of competent jurisdiction, the parties will negotiate an amendment which, as far as legally feasible, maintains the economic balance between the Parties.

BELLA SGA CONSORTIUM AGREEMENT

SIGNED for and on behalf of **GEANT LIMITED**

Signature: 


Name: STEVE COTTER

Position: CEO

Date of signature: 1 AUG 2016

BELLA SGA CONSORTIUM AGREEMENT

SIGNED for and on behalf of **GÉANT Association**

Signature: 

Name: *STEVE COTTER*

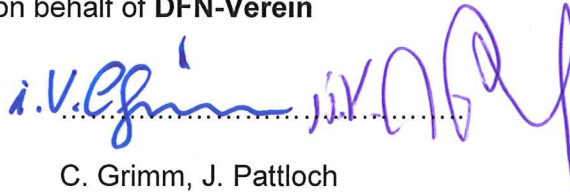
Position: *CEO*

Date of signature: *1 AUG 2016*

BELLA SGA CONSORTIUM AGREEMENT

SIGNED for and on behalf of **DFN-Verein**

Signature:

A handwritten signature in blue ink, appearing to read 'i.v. Grimm', followed by a large, stylized flourish or second signature.

Name:

C. Grimm, J. Pattloch

Position:

Executive Directors

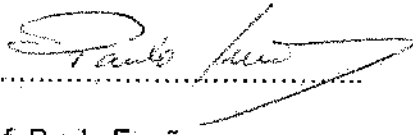
Date of signature:

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BELLA SGA CONSORTIUM AGREEMENT

SIGNED for and on behalf of FCT

Signature:



Name:

Prof. Paulo Ferrão

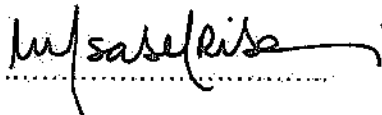
Position:

President of the Board of Directors

Date of signature:

29-07-2016

Signature:



Name:

Profª. Isabel Ribeiro

Position:

Member of the Board of Directors

Date of signature:

29-07-2016

BELLA SGA CONSORTIUM AGREEMENT

SIGNED for and on behalf of **Consortium GARR**

Signature:



Name:

Federico RUGGIERI

Position:

DIRECTOR

Date of signature:

Rome, 25 October 2016



BELLA SGA CONSORTIUM AGREEMENT

SIGNED for and on behalf of **Entidad publica empresarial RED.ES**

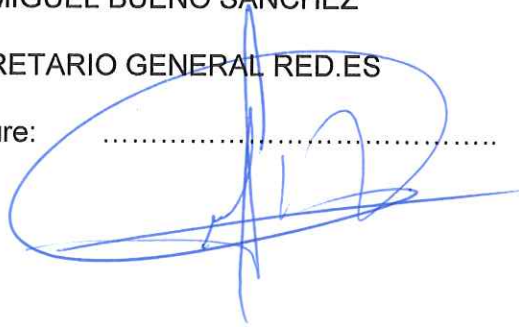
Signature:

29 JUL. 2016

Name: JOSE MIGUEL BUENO SANCHEZ

Position. SECRETARIO GENERAL RED.ES

Date of signature:

A handwritten signature in blue ink, consisting of a large, stylized 'J' followed by 'MBS' and a horizontal line extending to the right.

BELLA SGA CONSORTIUM AGREEMENT

SIGNED for and on behalf of **Groupement d'Interet Public pour le Reseau National de telecommunications pour la Technologie l'Enseignement et la Recherche**

Signature:

.....


Name:

 DONATH.....

Position:

.....

Date of signature:

 24th November 2016.....

Patrick DONATH
Directeur du GIP RENATER
23/25, rue Daviel
75013 PARIS
Tél. : 01 53 94 20 30 - Fax : 01 53 94 20 31

SCHEDULE I

Reimbursement of Parties' Eligible Costs

1. Party Banking Arrangements

Each Party must have a bank account which can make payments to GÉANT and which can receive payments from GÉANT. This may be an existing bank account or a new one. The DG-CONNECT Project operates in euro and payments from GÉANT will also be in euro. If possible the Party's bank account needs to be set up ideally as a euro account so that it can receive euro and make payments in euro. Each Party may need to discuss with its bank if/how it can do this.

If a Party's bank account cannot accept payments in euro then GÉANT will pay the euro equivalent into the Party's Bank Account but the Party will bear the costs of currency exchanges.

2. Eligible Costs

Eligible costs are defined as those set out in the approved project budget. This will include the personnel element as stated in the budget and agreed with the Parties, as well as eligible travel costs for the agreed number of representatives per Party attending designated project meetings, training courses, conferences and workshops as follows:

a) Travel expenses

Travel costs claimed for EC funding by each Party can be based on individual Party's own travel rules but will still be subject to the eligibility criteria for EC funding determined by the EC standard terms and conditions. All travel costs must be approved by the Project Manager prior to booking.

b) Accommodation and subsistence costs

Real costs for accommodation, meals, local travel and sundry expenses at the place of the meeting or event may be claimed, providing they do not exceed the amount agreed with the Project Manager for the meeting/event in question. Any claims exceeding the agreed amount must be approved by the Steering Committee.

c) Receipts

All Parties must retain all boarding passes and receipts obtained for travel, accommodation, meals, local travel and sundry expenses for the purposes of audits which may from time to time be carried out.

In the event that any claim is rejected by the EC or auditors, the Partner will be liable for the corresponding costs.

3. Reporting Costs

a) All claims must be made by each Party on behalf of the individuals claiming. GÉANT will not be able to pay individuals' expense claims.

b) All claims should be made by each Party using the claim form provided by GÉANT.

- c) Each Party should ensure that the details of their bank account (as described in 1 above) are correctly provided to GEANT.
- d) Claims should be made in euros. Partners with accounting established in a currency other than the euro must convert the costs recorded in their accounts into euro, at the average of the daily exchange rates published in the C series of the *Official Journal of the European Union*, calculated over the corresponding reporting period.

If no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, they must be converted at the average of the monthly accounting rates published on the Commission's website calculated over the corresponding reporting period.

Partners with accounting established in euro must convert costs incurred in another currency into euro according to their usual accounting practices.

For travel the exchange rate needs to be based on the rate at the date of the invoice / ticket which in some case may not be the date of travel.

- e) Once the Party has completed its draft claim form please email a completed copy of the expenses claim form to gn.finance@geant.org. All original receipts and travel documents must be retained by the Party.

Should a Party require any assistance or have any queries about the project financial arrangements or specific queries with making a claim, please email gn.finance@geant.org.

GEANT Limited's full postal address is:

GEANT Limited
City House
126-130 Hills Road
Cambridge CB2 1PQ
United Kingdom
Tel: +44 (0)1223 371300