IL MODELLO DI ACCORDO DI CONSORZIO APRE - DESCA

Lo schema implementa il Modello DESCA\(^1\) per progetti grandi o medi con la scelta dell'Opzione 1 per i diritti di accesso, ovvero privilegiando le condizioni eque e ragionevoli a quelle "royalty-free access" previste nell’Opzione 2.

Le proposte che costituiscono un aggiunta all’originale, sono in color rosso mattone, quelle che eliminano testo, articoli o frasi, sono barrate (xxx), in colore azzurro.

I testi opzionali, suggeriti in alternativa al testo principale, sono tra parentesi quadre, mentre è stata lasciata l’evidenziazione in grigio (es. the Grant Agreement and is made on YYYY-MM-DD)) prevista da DESCA, per le parti da completare secondo i dati del progetto.

Le ragioni delle modifiche sono argomentate nel documento “Griglia di Lettura”, mentre la versione “APRE – DESCA_clean” costituisce il modello “pulito” per una più facile lettura.

Si sottolinea infine, come il Gruppo di Lavoro Soci APRE abbia volutamente limitato le modifiche al testo iniziale, nell’intento di mantenerne i criteri di DESCA di semplicità e di modularità.

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CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon

[or REGULATION No 1908/2006 OF THE COUNCIL (EURATOM) of 19 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme of the European Atomic Energy Community and for the Dissemination of research results (2007-2011)]

hereinafter referred to as Rules for Participation and the EC Grant Agreement, adopted on 10 April 2007 hereinafter referred to as the Grant Agreement and Annex II adopted on 10 April 2007 hereinafter referred to as Annex II of the Grant Agreement and is made on [YYYY-MM-DD] hereinafter referred to as “Effective Date”

BETWEEN:

(1) [OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT], [Institute, Laboratory, Department] a [Legal status], with head office at [city, country, address], hereinafter referred to as "the Coordinator" or "[short title of Party]”, VAT [identification number], represented by ______, [Name, Function], duly authorised for the purposes hereof,

(2) [OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT], [Institute, Laboratory, Department] a [Legal status], with head office at [city, country, address], hereinafter referred to as "[short title of Party]", VAT [identification number], represented by ______, [Name, Function], duly authorised for the purposes hereof,

(3) [OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT], [Institute, Laboratory, Department] a [Legal status], with head office at [city, country, address], hereinafter referred to as "[short title of Party]", VAT [identification number], represented by ______, [Name, Function], duly authorised for the purposes hereof,

[Insert identification of other Parties …]

hereinafter, jointly or individually, referred to as “Parties” or “Party”

[[OFFICIAL NAME OF LINKED THIRD PARTY/ PARTIES AS IDENTIFIED IN THE GRANT AGREEMENT]] [Institute, Laboratory, Department] a [Legal status], with head office at [city, country, address], hereinafter referred to as "[short title of Party]", VAT [identification number], represented by ______, [Name, Function], duly authorised for the purposes hereof,

hereinafter, jointly or individually, referred to as “Linked third Parties” or “Linked third Party”

hereinafter [all together], jointly or individually, referred to as “Parties” or "Party"

[or optional, complete or delete as appropriate

relating to the Project entitled

[NAME OF PROJECT]
[Acronym of the Project] Consortium Agreement, version [YYYY-MM-DD]

in short

[Insert: acronym]

hereinafter referred to as “Project”

WHEREAS:
The Parties, having considerable experience in the field concerned, have submitted [or intend to submit] a Proposal for the Project to the European Commission as part of the Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration Activities under the funding scheme of “Collaborative Project”.

[or optional, complete or delete as appropriate] The Parties have entered into a [letter of intent]/<memorandum of understanding], dated [insert date], concerning the Project.

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the Grant Agreement.

The Parties agree that this Consortium Agreement supersedes all pre existing Agreements, Letters of Intend, Memorandums of Understanding, etc between some or all of the Parties.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:
Section 1: Definitions

1.1 Definitions

Words beginning with a capital letter and written in Italics in this Consortium Agreement shall have the same definition and meaning defined either herein or in the Rules for Participation or in the Grant Agreement including its Annexes without the need to replicate said terms herein.

1.2 Additional Definitions

“Average monthly pre-financing”
Average monthly pre-financing means the result of dividing the amount received by the Coordinator in accordance with the Grant Agreement Article 6, by the number of months of the Project.

“Advance payment”
Advance payment means the Average monthly pre-financing multiplied by the number of months for the upcoming reporting period, to be transferred to the Parties by the Coordinator.

"Background"
Background means (in addition to the definition given in the Grant Agreement) the Background accumulated and developed solely within the specific Project group of each Party directly involved in the execution of the work, or the Background accumulated and developed by each Party Needed to perform the Project otherwise specified and listed in [Attachment 1] hereto.

“Consortium Plan”
Consortium Plan means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the General Assembly.

“Consortium Budget”
Consortium Budget means the allocation of all the resources in cash or in kind for the activities as defined in Annex I of the Grant Agreement and in the Consortium Plan thereafter.

“Defauling Party”
Defauling Party means a Party which the General Assembly has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Article 4.2 of this Consortium Agreement.

"Effective Date”
Effective Date means either the date of signature of the Consortium Agreement by all the Parties or the Start date of the Grant Agreement whichever is the earliest.

“Legitimate interest”
Legitimate interest means Party's interests of any kind, included but not limited to commercial interest or interest to the corporate image, which breach would result in such Party's suffering great harm in the cases provided for in this Consortium Agreement.

[“Linked Third Party”
Linked Third Party means Legal entities, either public or private, represented in the Grant Agreement by a Party according to the terms of Special Clause n°10 of the Grant Agreement. The Linked Third Parties in this Consortium Agreement are:
[XXX] Linked to and represented by [XXX];
[XXX] Linked to and represented by [XXX]; etc. ]

“Needed”
Needed means for the implementation of the Project:
Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources.
For Use of own Foreground:
Access Rights are Needed if, without the grant of such Access Rights, the Use of own Foreground would be technically or legally impossible.

“Party’s share”
Party’s share means, for each Party, that Party’s share of the estimates total cost of the Project as initially set out in the Grant Agreement, unless otherwise agreed by all Parties.

“Project group”
Project group means the Parties’ departments, institutes, laboratories or specific Project group directly involved in carrying out the Project, as described in the Grant Agreement Preparation Forms by each Party and identified as Parties in this Consortium Agreement first page.

“Project Reports”
Project Reports means the periodic reports including the final reports together with the Project deliverables, the financial statements and related certificates on financial statements if any, and all supporting documents evidencing expenditures incurred by the Parties for the purposes of the Project, that shall be delivered to the Coordinator and/or to Consortium Body/Bodies, to be submitted to the European Commission, in accordance with the Grant Agreement Annex I, Annex II Articles II.4 and if appropriate, Annex III.

[“Signatory Party”
Signatory Party means the Beneficiary in the Grant Agreement

“Software”
Software means sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression.

Section 2: Purpose
The purpose of this Consortium Agreement is to specify with respect to the Project the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the Project and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.

Section 3: Entry into force, duration and termination
3.1 Entry into force
An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

A new Party enters the Consortium upon signature of the Accession document [Attachment 3] by the new Party and the Coordinator. Such accession shall have effect from the date identified in the Accession document.
3.2 Duration and termination

This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the Grant Agreement and under this Consortium Agreement.

However, this Consortium Agreement may be terminated in accordance with the terms of this Consortium Agreement and Annex II of the Grant Agreement (Grant Agreement Article II.37. and II.38.).

3.2.1 Termination before signature of the Grant Agreement by the Coordinator.

Before signature of the Grant Agreement by the Coordinator any Party may without thereby incurring liability withdraw from and terminate this Consortium Agreement by informing the Coordinator in writing of such withdrawal and termination (which shall take effect as of the latest date of such notice) if at its sole option it decides it will not participate either in the submission of the proposal or in the carrying out of the Project.

The Parties may by written agreement terminate this Consortium Agreement forthwith; and this Consortium Agreement shall terminate if and on the date that the Parties agree not to submit a Proposal to the Commission or the Commission rejects the Proposal.

3.2.2 Termination after signature of the Grant Agreement by the Coordinator

Subject to Section 3.2.3, no Party may withdraw from this Consortium Agreement unless the Commission terminates: (a) the Grant Agreement; or (b) that Party's participation in the Grant Agreement. In either such case this Consortium Agreement shall automatically terminate in respect of such Party.

A Party shall not by any withdrawal or termination be relieved from:
any of its responsibilities under this Consortium Agreement or the Grant Agreement in respect of that part of its work on the Project which has been carried out (or which should have been carried out) up to the date of the withdrawal or termination; or
without prejudice to the provisions of Section 5, any of its obligations or liabilities arising out of such withdrawal or termination.

3.2.3 Exceptional withdrawal of a Party

If circumstances arise under which a Party wishes to terminate its participation in the Grant Agreement and this Consortium Agreement, it may make a written application to the Coordinator for it to withdraw from the Project and to terminate this Consortium Agreement with regard to itself.

A Party making such an application shall give as much notice as is practicable (but in no event less than [one / three] month's notice) to the other Parties and the Commission.

Such notice shall fully set out the relevant circumstances, including the specific grounds for which it considers that it will be prevented from fulfilling its agreed role in the Project; and the reasons for which it considers there to be no realistic alternative to its withdrawing, and shall state a specific date with effect from which the requesting Party proposes that such withdrawal and termination should be effective.

The other Parties shall not unreasonably withhold their consent to an application which has been made under the first paragraph of Section 3.2.3 in good faith, but may make their consent subject to such conditions as they may reasonably require with regard to the best interests of the Project.

Each Party recognises that the Commission has and retains complete discretion as to whether to consent to any request made to it by a Party for termination of its participation in the Grant Agreement and that it may make its consent (if any is offered) subject to specific conditions.

On receipt of any request under the second paragraph of Section 3.2.3 the Parties shall use reasonable endeavours to reach agreement on either (a) or (b) below:
reallocation of the requesting Party's work and contribution in order that the aims and objectives of the Project can still be met after the proposed withdrawal, and submitting details of it to the Commission; or the drafting of a restructured work programme and submitting it to the Commission. The Parties shall promptly submit details of any agreed resulting proposed work reallocation or agreed proposed revised work programme to the Commission for its approval.

3.3 Survival of rights and obligations

The provisions relating to Access Rights, Confidentiality, Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this Consortium Agreement as agreed in respective articles. Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the General Assembly and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

Section 4: Responsibilities of each Party Parties

4.1 General principles

Each Party undertakes to take part in the efficient implementation of the Project, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the Grant Agreement and this Consortium Agreement as may be reasonably required from it. and in a manner of good faith as prescribed by Belgian law.

Each Party undertakes to notify promptly, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the Project.

Each Party shall provide promptly all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks as foreseen in Article 6.4. Each Party shall hold harmless the Coordinator against all liability incurred by the Coordinator in the performance of its obligations, due to any failure by such Party in the execution of its obligations under this Consortium Agreement and the Grant Agreement.

Each Party shall submit to the Coordinator, no later than thirty (30) days after the end of each reporting period, the Project Reports falling on its responsibility. The layout and contents of the Project Reports shall conform to the instructions and guidance notes established by the Commission.

Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

4.2 Breach

In the event the responsible Consortium Body identifies a non-performance or default, including delay, in performance by a Party of its obligations under this Consortium Agreement or the Grant Agreement, the Coordinator will give written notice requiring that such breach be remedied within [30-45-60] calendar days. If this does not occur, the breach is not due to Force Majeure and if it is not capable of remedy or not remedied within that period, the General Assembly may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.
The Parties agree that if a Party wishes to terminate its participation in the Project, it will be considered as a request for termination as provided for in article II.36.6 of the Grant Agreement and the provisions of this Consortium Agreement regarding such termination shall apply.

4.3 Involvement of third Parties

A Party that enters into a subcontract or otherwise involves third Parties (including but not limited to Affiliated Entities) in the Project remains solely responsible for carrying out its relevant part of the Project and for such third Party's compliance with the provisions of this Consortium Agreement and of the Grant Agreement. It has to ensure that the use of third Parties does not affect the rights and obligations of the other Parties regarding Background and Foreground. The Party shall obtain the prior approval of the Executive Board for all subcontracts of an amount equal to or higher than [20,000] €/year, except for the subcontracts already identified in the Grant Agreement Annex I.

Section 5: Liability towards each other

Each Party undertakes to perform its work at its own risk and under its sole liability and shall support all consequences in compliance with the provisions hereunder.

5.1 No warranties

In respect of any information or materials supplied by one Party to another under the Project, no warranty, or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose, nor as to the absence of any infringement of any proprietary rights of third Parties. The recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials. Nevertheless, each Party undertakes not to knowingly use any proprietary rights of a third Party for which such Party has not acquired the corresponding right of use and/or to grant licenses.

5.2 Limitations of contractual liability

No Party shall be responsible to any other Party for punitive damages, indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts.

A Party’s aggregate liability towards the other Parties collectively shall be limited to [Insert: once or twice] the Party’s share of the total costs of the Project.

The exclusions and limitations of liability stated above shall not apply in the case of damage caused by a wilful act [or gross negligence].

The terms of this Consortium Agreement shall not be construed to amend or limit any non-contractual liability.

5.3 Damage caused to third Parties

Each Party shall be solely liable for any loss, damage or injury to third Parties resulting from the performance of the said Party’s obligations under this Consortium Agreement or from its use of Foreground or Background.

5.4 Force Majeure
No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force majeure. Each Party will notify the competent Consortium Bodies of any Force majeure as soon as possible. If the consequences of Force majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

Section 6: Governance structure for Medium and Large Projects

6.1 General structure

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

(a) The General Assembly as the ultimate decision-making body of the Consortium.

(b) The Executive Board as the supervisory body for the execution of the Project which shall report to and be accountable to the General Assembly.

(c) The Sub Project Committees as management groups for Sub Projects.

   (hereinafter referred to as “Consortium Bodies” or “Consortium Body”)

(d) The Coordinator is the legal entity acting as the intermediary between the Parties and the European Commission. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

The Consortium Bodies become operational on the Effective Date.

The Management Support Team assists the Executive Board and the Coordinator. The Coordinator [with the Parties XXX and XXX] will implement the Management Support Team, reporting to the Coordinator and to the Executive Board as appropriate.

6.2 General operational procedures for all Consortium Bodies

6.2.1 Representation in meetings

Any member of a Consortium Body:
- should be present or represented at any meeting of such Consortium Body;
- may appoint a substitute or a proxy to attend and vote at any meeting;
- and shall participate in a cooperative manner in the meetings.

After having informed the chairperson of the Consortium Body in writing, each Party shall have the right to replace its representative and/or, in duly justified cases, to grant a power of attorney to another member to represent them as their proxies, with a limit of one (1) proxy per member although it shall use all reasonable endeavours to maintain the continuity of its representation.

Any expert or qualified person may be invited by the Chairperson to attend the meetings with a role of advisor providing this is in the general interest of the Project and related to the items in agenda.

The requests of participation of third Parties will have to be communicated to each Consortium Body member, as soon as possible and within the time limit set in Article 6.2.2 for the notice of a meeting.

A member may object within three days upon receipt of written notice.
6.2.2 Preparation and organisation of meetings

Convening meetings:
The chairperson of a Consortium Body shall convene meetings of that Consortium Body.

Ordinary meeting
General Assembly: At least [once] a year
Executive Board: At least [quarterly]
Sub Project Committee: At least every [2] months

Extraordinary meeting
General Assembly: At any time upon written request to the Chairperson of the Executive Board or 1/3 of the members of the General Assembly
Executive Board: At any time upon written request to the Chairperson of any member of the Executive Board
Sub Project Committee: At any time upon written request to the Chairperson of any member of the respective Sub Project

Notice of a meeting:
The chairperson of a Consortium Body shall give notice in writing of a meeting to each member of that Consortium Body as soon as possible and within the minimum number of days preceding the meeting.

Ordinary meeting
General Assembly: 45 calendar days
Executive Board: 14 calendar days
Sub Project Committee: 10 calendar days

Extraordinary meeting
General Assembly: 15 calendar days
Executive Board: 7 calendar days
Sub Project Committee: 7 calendar days

Sending the agenda:
The chairperson of a Consortium Body shall prepare and send each member of that Consortium Body a written (original) agenda within the minimum number of days preceding the meeting.

General Assembly: 21 calendar days
Executive Board: 7 calendar days
Sub Project Committee: 7 calendar days

Adding agenda items:
Any agenda item requiring a decision by the members of a Consortium Body must be identified as such on the agenda.
Any member of a Consortium Body may add an item to the original agenda by written notification to all of the other members of that Consortium Body within the minimum number of days preceding the meeting.

General Assembly: 14 calendar days
Executive Board: 2 calendar days
Sub Project Committee: 2 calendar days

During a meeting the members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.
Meetings of each Consortium Body can also be held by teleconference or other telecommunication means.

Any Decisions may also be taken without a meeting by circulating to all members of the Consortium Body a written document which is then has to be signed by the defined majority (see Article 6.2.3.) of all members, of the Consortium Body even by electronic means, in compliance with the voting rules set out in Article 6.2.3 of this Consortium Agreement.

Such procedure shall be adopted in the following exceptional cases:
- the Consortium Body cannot be convened in due time following the procedures described above;
- urgent matters require that decision must be taken without delay;
In any case, any member can object to this procedure if it can justify its interest is damaged by adopting it.

Decisions may only be executed once the relevant part of the Minutes have been accepted according to Article 6.2.5.

6.2.3 Voting rules and quorum

Each Consortium Body shall not deliberate and decide validly unless a quorum of two-thirds (2/3) of its members are present or represented.

Each member of a Consortium Body [the General Assembly] present or represented in the meeting, shall have one vote [for each [50,000 Euro] of Party's share but each Party's will be allocated at least one vote. Each member of the Executive Board or a Sub Project Committees present or represented in the meeting shall have one vote. ]

[All the Linked Third Parties together with the Signatory Party to whom are linked and represented shall have one vote.]

Defaulting Party members may not vote.

Decisions shall be taken by a majority of two-thirds (2/3) of the votes of the members present or represented excluding the General Assembly decisions in Article 6.3.1.2 d) to f) and any evolution to the Consortium for which decisions shall be taken unanimously.

6.2.4 Veto rights

A member of the Consortium Bodies whose own work [time for performance, costs, liabilities], intellectual property rights [or other Legitimate interests] would be severely affected by a decision of the relevant Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.

When the decision is foreseen on the original agenda, a member may veto such a decision during the meeting only.

When a decision has been taken on a new item added to the agenda before or during the meeting, a member may veto such decision during the meeting and within 15 days after the Minutes of the meeting are sent.

In case of exercise of veto, the members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its members.
A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.

A Party requesting to leave the Consortium may not veto decisions relating thereto.

6.2.5 Minutes of meetings
The chairperson of a Consortium Body shall produce written Minutes of each meeting which shall be the formal record of all decisions taken. He shall send the draft to all of its members within [10] calendar days of the meeting.

The Minutes shall be considered as accepted if, within 15 calendar days from sending, no member has objected in writing to the chairperson with respect to the accuracy of the draft of the Minutes.

The accepted Minutes shall be sent to all of the members of the Consortium Body and the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

6.3 Specific operational procedures for the Consortium Bodies
6.3.1 General Assembly
In addition to the rules described in Article 6.2, the following rules apply:

6.3.1.1 Members
The General Assembly shall consist of one authorised representative of each Party (hereinafter General Assembly Member).

Each General Assembly Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 6.3.1.2 of this Consortium Agreement.

The General Assembly appointed members (1st Representative) and substitutes if any (2nd Representative) are listed in the Attachment [4], of this Consortium Agreement.

Any change will have to be notified in writing by the concerned Party to the Coordinator.

The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise in a meeting of the General Assembly.

The Parties agree to abide by all decisions of the General Assembly.
This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Article 11.8.

6.3.1.2 Decisions
The General Assembly shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. In addition, all proposals made by the Executive Board shall also be considered and decided upon by the General Assembly.

The following decisions shall be taken by the General Assembly:

Content, finances and intellectual property rights
(a) Proposals for changes to Annex I of the terms of the signed Grant Agreement to be agreed by the European Commission and/or this Consortium Agreement
(b) Changes to the Consortium Plan Annex I of the Grant Agreement (including major changes in work, termination, creation, or reallocation of tasks, and the allocation of Consortium Budget) among the Parties
(c) Withdrawals from [Attachment 1 (Background included)]
(d) Additions to [Attachment 2 (Background excluded)]
(e) Additions Changes to [Attachment 6 (Listed Affiliated Entities)]
(f) Additions Changes to [Attachment 7 (List of Third Parties)]

Evolution of the Consortium

(g) Entry of a new Party to the Consortium and approval of the settlement on the modalities and conditions of the accession of such a new Party
(h) Withdrawal of a Party from the Consortium and the approval of the settlement on the modalities and conditions of the withdrawal
(i) Declaration of a Party to be a Defaulting Party
(j) Actions to be taken against a Defaulting Party, including Corrective measures and remedies to be required from a Defaulting Party, within the limits specified in Article 5.2 of this Consortium Agreement
(k) Termination of a Defaulting Party's participation in the Consortium and measures relating thereto
(l) Proposal to the European Commission for a change of the Coordinator
(m) Suspension of all or part of the Project
(n) Termination of the Project and/or the Consortium Agreement

Appointments on the basis of Annex I, the appointment, addition or replacement if necessary of:
- Sub Project Leaders
- Executive Board Members

6.3.2 Executive Board

In addition to the rules in Article 6.2, the following rules shall apply:

6.3.2.1 Members
The Executive Board shall consist of the Coordinator and all of the Sub Project Leaders as appointed by the General Assembly (hereinafter Executive Members).

According to the Grant Agreement Annex I, a list of Executive Board members is given in Attachment [4]
Any replacement or addition shall be decided by the General Assembly.

The [Coordinator] shall chair all meetings of the Executive Board, unless decided otherwise.

6.3.2.2 Minutes of meetings
Minutes of Executive Board meetings, once accepted, shall be sent by the Coordinator to the General Assembly Members for information.

6.3.2.3 Tasks
The Executive Board shall prepare the meetings, propose decisions and prepare the agenda of the General Assembly according to Article 6.3.1.2.

It shall seek a consensus among the Parties.
The Executive Board shall be responsible for the proper execution and implementation of the decisions of the General Assembly.

The Executive Board shall monitor the effective and efficient implementation of the Project. In addition, the Executive Board shall collect information at least every 6 months on the progress of the Project, examine that information to assess the compliance of the Project with the Consortium Plan Annex I of the Grant Agreement and, if necessary, propose modifications of the Consortium Plan to the General Assembly.

The Executive Board shall:
- initiate, coordinate and have organised the Sub Project(s)
- agree on the members of the Management Support Team, upon a proposal by the Coordinator
- support the Coordinator in verifying the Project Reports, and in preparing related data and deliverables, monitoring the compliance by the Parties with their Grant Agreement obligations and in preparing meetings with the European Commission
- prepare the content and timing of press releases and joint publications by the Consortium or proposed by the European Commission in respect of the procedures of the Grant Agreement Article II 30.3
- in case of withdrawal by the Coordinator or an Executive Member prepare proposals for submission to the General Assembly, concerning the possible appointment of a new Coordinator or a new Executive Member.

In the case of abolished tasks as a result of a decision of the General Assembly, the Executive Board shall advise the General Assembly on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

6.3.3 Sub Project Committees
In addition to the rules in Article 6.2, the following rules shall apply:

6.3.3.1 Members
A Sub Project Committee shall consist of one representative of each Party having a task within the respective Sub Project (hereinafter Sub Project Member).
A Sub Project Leader shall chair all meetings of a Sub Project Committee.

6.3.3.2 Tasks
Each Sub Project Committee shall manage the respective Sub Project, in particular with regard to:
- the timely delivery of reports and Sub Project results to the Executive Board and the Coordinator
- formulating an implementation plan for the activities within the Sub Project for the future period, which can imply proposing to the Executive Board changes to the Consortium Plan and/or Annex I of the Grant Agreement
- making proposals to the Executive Board for the admission of new Parties to the Grant Agreement and to the Consortium Agreement in order for said new Parties to participate in the Sub Project
- alerting the Executive Board and the Coordinator in case of delay in the performance of the Sub Project or in case of breach of responsibilities of any Party under said Sub Project
- analysing and documenting, at the request of the Executive Board, a presumed breach of responsibilities of a Party under the Sub Project and preparing a proposal of remedies to the Executive Board
- deciding upon any exchange of tasks and related budgets between the Parties in a Sub Project when such exchange has no impact beyond the scope of the Sub Project and its budget.

6.3.3.3 Sub Project Leader

The Sub Project Leader of each Sub Project is appointed by the General Assembly.

Any addition or replacement of the Sub Project Leader of each Sub Project is appointed by the General Assembly.

The Sub Project Leader shall have the following functions only:
- communicating any plans, deliverables, documents and information connected with the Sub Project between its members and, if relevant, to the Executive Board
- communicating any exchange of tasks and related budgets in the Sub Project between the Parties to the Executive Board
- submitting the implementation plan of the Sub Project to the Executive Board for review and proposing an update of the Consortium Plan Annex I of the Grant Agreement.
- coordinating on a day-to-day basis the progress of the technical work under the Sub Project
- following up decisions made by Consortium Bodies insofar as they affect the Sub Project
- advising the Coordinator of any discrepancy with the Consortium Plan Annex I of the Grant Agreement, including any delay in delivery.

6.4 Coordinator

The Coordinator shall be the intermediary between the Parties and the European Commission and shall perform all tasks assigned to it as described in the Grant Agreement 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 members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting information on the progress of the Project, the Project Reports and other deliverables (including financial statements and related certifications) to the European Commission
- address the Project Reports and deliverables to the European Commission, after prior validation by the Executive Board;
- transmitting documents and information connected with the Project, including copies of Accession documents and changes of contact information to and between Sub Project Leaders, as appropriate, and any other Parties concerned
- chairing and organising General Assembly and Executive Board meetings, take, distribute and obtain approval of the minutes and follow-up its decisions;
- administering the Community financial contribution and fulfilling the financial tasks described in Article 7.3
- 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.

If one or more of the Parties is late in submitting to the Coordinator their Project Reports required under the Grant Agreement, the Coordinator may proceed with submitting the other Parties' Project Reports to the European Commission.

If the Coordinator fails in its coordination tasks, the General Assembly may propose to the European Commission to change the Coordinator.
The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party.

The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.

6.5 Management Support Team

The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the Executive Board and shall assist and facilitate the work of the Executive Board and the Coordinator for executing the decisions of the General Assembly as well as the day-to-day management of the Project.

The Management Support Team shall be assisted by necessary qualified persons according to the needs of the Project, including internal and external experts recognised for their expertise in implementing the administrative, legal, and financial and IPR matters. The costs incurred for Management Support Team support will be included in the Consortium Budget as management of the Consortium activities in accordance with Grant Agreement Article II.16.5.

Section 7: Financial provisions

7.1 General Principles

7.1.1 Distribution of the Financial Contribution

The financial contribution of the European Commission to the Project shall be distributed by the Coordinator according to:

- the Consortium Budget as included in the Consortium Plan Annex I of the Grant Agreement
- the approval of Project Reports by the European Commission, and
- the provisions of payment in Article 7.3.

A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan Annex I of the Grant Agreement.

7.1.2 Justifying Costs

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the European Commission. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the European Commission.

7.1.3 Funding Principles

A Party which spends less than its allocated Party's share of the Consortium Budget will be funded in accordance with its actual duly justified eligible costs only.

A Party that spends more than its allocated Party's share of the Consortium Budget will be funded only in respect of duly justified eligible costs up to an amount not exceeding that Party's share unless let by the consolidated eligible costs claimed at the end of the Project and following the European Commission final payment.

7.1.4 Financial Consequences for a leaving Party

A Party leaving the Consortium shall refund all advances paid to it except the amount of expended eligible costs accepted by the European Commission.
Furthermore a Defaulting Party shall, within the limits specified in Article 5.2 of this Consortium Agreement, bear any additional costs occurring to the other Parties in order to perform its and their tasks.

7.2 Budgeting

All resources made available for the Project shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties and shall be budgeted.

7.2.1 Budgeted costs eligible for 100% reimbursement

These costs shall be budgeted in the Consortium Budget in the following order of priority:

- banking and transaction costs related to the handling of any financial resources made available for the Project by the Coordinator
- a reasonable costs of Parties related to
  - the delivery of certification of financial statements according to the Grant Agreement
  - the certification of the financial/administrative methodology, unless the methodology has already been used by the Beneficiary in a previous Grant Agreement and has not changed (Grant Agreement Article II.4.4 and II.14.1) and/or
  - the certification of the simplified method of calculation of a Party’s full indirect eligible costs (Grant Agreement Article II.15.2.a), if any
- costs related to calls for new Beneficiaries
- costs related to updating this Agreement
- management costs of the Coordinator and the Management Support Team
- [costs related to the tasks of the Executive Board]
- intellectual property protection costs
- costs for publications
- costs for the tasks of chairpersons
- any other costs eligible for 100% reimbursement

7.2.21 Budgeting of coordination costs

Costs of coordination of research which are not allowed as management cost according to Annex II of the Grant Agreement (Grant Agreement Article II.16.5) have to be budgeted separately.

7.3 Payments

Payments to Parties are the exclusive tasks of the Coordinator.

In particular, the Coordinator shall:
- notify the Party concerned promptly of the date and composition of the amount transferred to the Parties respective its bank account, as listed in Attachment [9], giving the relevant references
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts
- undertake to keep the Community contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public body or is not entitled to do so due to statutory legislation.

All payments shall be made without [undue delay] [30 days] by the Coordinator after receipt of funds from the European Commission in accordance with the accepted decisions of the General Assembly on the Consortium Budget, which includes the payment schedule. Banking and
transaction costs incurred in connection with such transfer will be charged to the *Party* concerned.

Payments to *Parties* will be handled according to the following two kinds of modalities principles:
- payments for past performance approved by the European *Commission* will be compared with the *Advance payment* given to a *Party* for such past performance; the difference will be balanced directly with the *Party* concerned
- financing *Advance payment* in respect of future work included in the *Consortium Plan Annex* I of the *Grant Agreement*, which may be forwarded to *Parties* in separate instalments for each upcoming reporting period [e.g. a mechanism of every 6 Months 30 %] in conformity with the decisions of the General Assembly [and any related decisions of e.g. a Sub Project Committee].

The Executive Board may decide, taking into regard the progression of work and at the motivate request of the concerned *Party*, a new *Advance payment* when a *Party* provide reasonable evidence that, without the new Advance payment the performance of its own work for the *Project* either would be technically impossible or significantly delayed.

The *Coordinator* is entitled to withhold any advances either due to a *Defaulting Party* or to a *Beneficiary* not being a *Party*.

The *Coordinator* is entitled to recover any advances already paid to a *Defaulting Party*.

### Section 8: Foreground

Regarding *Foreground*, *Grant Agreement* Article II.26 - Article II.29 shall apply with the following additions:

8.1 Joint ownership

*OP1*

In case of joint ownership of *Foreground* each of the joint owners shall be entitled to use the joint *Foreground* as it sees fit, and to grant non-exclusive licenses to third *Parties*, without any right to sub-license, subject to the following conditions:

- at least 45 days prior notice must be given to the other joint owner(s);
- fair and reasonable compensation must be provided to the other joint owner(s).

In case of joint ownership of *Foreground*, each of the joint owners shall be entitled to use their jointly owned *Foreground* free of charge, and without requiring the prior consent of the other joint owner(s) for their own direct use only.

*Parties*’ shares of ownership shall be proportional to the intellectual contribution invested in generating that specific *Foreground*. If the joint owners do not reach an agreement on the respective shares in a reasonable period of time such as [one year], the shares of each *Party* shall be considered as equal.

The joint owners shall agree on all protection measures and the division of related cost in a joint ownership agreement negotiated in advance.

Moreover, such agreement shall establish, the appropriate course of action in order to file applications for patent protection or other protection, including the decision on the *Party* to be entrusted with the preparation, filing and prosecution of such applications, and the countries or territories where such applications are to be filed.

8.2 Transfer of *Foreground*
Each Party may transfer ownership of its own Foreground following the procedures of the Grant Agreement Article II 27.

It may identify specific third Parties it intends to transfer Foreground to in [Attachment (7)] to this Consortium Agreement. The other Parties hereby waive their right to object to a transfer to listed third Parties according to the Grant Agreement Article II.27.3.

The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to [Attachment (7)] after signature of this Agreement requires a decision of the General Assembly.

The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, a Party may be subject to confidentiality obligations which prevent it from giving the full 45 days prior notice foreseen in Grant Agreement Article II 27.2.

8.3 Dissemination

8.3.1 Publication

Dissemination activities including but not restricted to publications and presentations shall be governed by Article II.30 of the Grant Agreement.

The Party objecting a publication has to show that its Legitimate interests will suffer disproportionately great harm and shall include a request for necessary modifications.

8.3.2 Publication procedure

The Parties agree the following procedure. A copy of any proposed publication in connection with or relating to the Project shall be sent to the Coordinator and to the concerned Party(ies) at the earliest time possible. Any of the Parties may object in writing to the publication within 30 days from the receipt of a copy of the proposed publication on any of the following grounds:

(i) the objecting Party’s IPR on the Foreground is adversely affected by the proposed publication;
(ii) the proposed publication includes Confidential Information of the objecting Party or of the Consortium as a hole;
(iii) the publication of such information contrasts the commercial interests of the objecting Party.

The publication shall not take place before the time limit of 30 days established above. In the absence of any objection within this period, it is deemed that the Parties agree to the publication. Following the end of this period, the Coordinator shall inform the Parties whether or not any objection has been received.

In the event that an objection is raised on any of the above defined grounds and within the above period of 30 days, the Party proposing the publication and the Party objecting shall seek in

(i) to agree a solution on a timely basis whereby the protection of the objecting Party’s Foreground will not be adversely affected by the proposed publication. In this case, in order to enable the filing of a patent application on objecting Party’s Foreground contained in the proposed publication, Parties may agree a delay no longer than [xxx months] from the first sending of the proposed publication to the Co-ordinator
(ii) to agree a solution on a timely basis whereby the objecting Party’s Confidential Information is excluded.
(iii) in cases where the proposed publication contains material or information which seem commercially sensitive, Parties agree to work constructively to ensure that the interesting content can be published as early as possible.

8.3.23 Publication of another Party’s Foreground or Background

For the avoidance of doubt, no Party shall have the right to publish or allow the publishing of any data which includes Foreground, or Background or Confidential Information of another Party, even if such Foreground or Background where such data is amalgamated with the Party's Foreground, Background or other information, document or material, without the other Party's prior written approval.

Where publications relate to jointly-developed results, each Party involved must give its consent to publish and such consent not to be unreasonably delayed.

8.3.34 Cooperation obligations

The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Foreground or Background. However, confidentiality and publication clauses have to be respected.

8.3.45 Use of names, logos or trademarks

Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

Section 9: Access Rights

9.1 Background covered

The Parties shall identify in the [Attachment 1] the Background to which they are ready to grant Access Rights, subject to the provisions of this Consortium Agreement and the Grant Agreement. Such identification may be done by e.g.
- naming a specific department of a Party
- and/or by subject matter.

The owning Party may add further Background to [Attachment 1] during the Project by written notice. However, only the General Assembly can permit a Party to withdraw any of its Background from [Attachment 1].

The Parties agree that all Background not listed in [Attachment 1] shall be explicitly excluded from Access Rights. They agree, however, to negotiate in good faith additions to [Attachment 1] if a Party asks them to do so and those are Needed. For the avoidance of doubt, the owner is under no obligation to agree to additions of his Background to [Attachment 1].

In addition, if a Party wishes to exclude specific Background, it shall list such Background in the [Attachment 2]. The owning Party may withdraw any of its Background from [Attachment 2] during the Project by written notice. However, only the General Assembly can permit a Party to add Background to [Attachment 2].
9.2 General Principles

Each Party shall implement its tasks in accordance with the Consortium Plan Annex I of the Grant Agreement and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third Party property rights.

As provided in the Grant Agreement Article II.32.3. Parties shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights even if due to a third Party cause during the Project (e.g. the use of open source code Software in the Project).

If the General Assembly considers that the restrictions have such impact, which is not foreseen in the Consortium Plan Annex I of the Grant Agreement, it may decide to update the Consortium Plan Annex I accordingly.

Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.

Access Rights shall be free of any administrative transfer costs.

Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties according to the Grant Agreement Article II.32.7.

Foreground and Background shall be used only for the purposes for which Access Rights to it have been granted.

All Access Rights shall be granted upon written request.

The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

The requesting Party must show that the Access Rights are Needed.

9.3 Access Rights for implementation

Access Rights to Foreground and Background Needed for the execution of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed in [Attachment 1].

9.4 Access Rights for Use

Access Rights to Foreground if Needed for Use of a Party's own Foreground including for third-Party research shall be granted on Fair and reasonable conditions.

A third Party shall not be granted direct Access to Foreground generated by other Parties unless those Parties explicitly agree to it.

Access Rights for internal research activities shall be granted on a royalty-free basis.

Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on Fair and reasonable conditions unless otherwise agreed upon bilateral agreement between the Parties concerned.

9.5 Access Rights for Affiliated Entities

Affiliated Entities have Access Rights under the conditions of the Grant Agreement Article II.34.3.
Such Access Rights to Affiliated Entities shall be granted on Fair and reasonable conditions and upon written bilateral agreement.

Affiliated Entities which obtain Access Rights in return grant Access Rights to all Parties and fulfill all confidentiality and other obligations accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliate Entities if such granting is contrary to the Legitimate interests of the Party which owns the Background or the Foreground.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

9.6 Additional Access Rights

For the avoidance of doubt any grant of Access Rights not covered by this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties. The owner is therefore not bound to licensing.

9.7 Access Rights for Parties entering or leaving the Consortium

9.7.1 New Parties entering the Consortium

All Foreground developed before the accession of the new Party shall be considered to be Background with regard to said new Party. The new Party joint the Consortium shall identify by written notice in the [Attachment 1] the Background to which they are ready to grant Access Rights under the conditions of Article 9.1.

9.7.2 Parties leaving the Consortium

9.7.2.1 Access Rights granted to a leaving Party

9.7.2.1.1 Defaulting Party

Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the General Assembly to terminate its participation in the Consortium.

9.7.2.1.2 Non-defaulting Party

A Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Foreground developed until the date of the termination of its participation. The time limit for its right to request these Access Rights shall start on the same date.

9.7.2.2 Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.
Any Party leaving the Project not allowing to grant the Access Rights to which is bound shall be deemed as Defaulting Party and therefore liable to a refund within the limits specified in Article 5.2 of this Consortium Agreement.

9.8 Specific Provisions for Access Rights to Software

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software. Parties’ Access Rights to Software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

[MODULE IPR SC]

Specific Software provisions

Replace Article 9.8 with the following clause in case Software is a core element in your Project. In addition make changes: 9.2

9.8 Specific provisions for Access Rights to Software

9.8.1 Definitions relating to Software

“Application Programming Interface” means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.

“Controlled License Terms” means terms in any license that require that the use, copying, modification and/or distribution of Software or another work (“Work”) and/or of any work that is a modified version of or is a derivative work of such Work (in each case, “Derivative Work”) be subject, in whole or in part, to one or more of the following:

(a) (where the Work or Derivative Work is Software) that the Source Code or other formats preferred for modification be made available as of right to any third party on request, whether royalty-free or not;
(b) that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
(c) that a royalty-free license relating to the Work or Derivative Work be granted to any third party.

For the avoidance of doubt, any Software license that merely permits (but does not require any of) the things mentioned in (a) to (c) is not a Controlled License (and so is an Uncontrolled License).

“Object Code” means Software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for linking procedures and functions to other Software.

“Software Documentation” means Software information, being technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a Software programme.

“Source Code” means Software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.
9.8.2. General principles
For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software as far as not modified by this Article 9.8.

Parties’ Access Rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

The intended introduction of Intellectual Property (including, but not limited to Software) under Controlled License Terms in the Project requires the approval of the General Assembly to implement such introduction into the Consortium Plan Annex I of the Grant Agreement.

9.8.3. Access to Software
Access Rights to Software which is Background or Foreground shall comprise:
- Access to the Object Code; and,
- where normal use of such an Object Code requires an Application Programming Interface (hereafter API), Access to the Object Code and such an API; and,
- if a Party can show that the execution of its tasks under the Project or the Use of its own Foreground is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary.

[OPTION possible to be inserted at the end of 9.8.2. in case of the use of OPTION 2 in Article 9.4: Access Rights to Software for Use shall only be granted upon bilateral agreement between the Parties concerned on Fair and reasonable conditions.]

9.8.4. Software license and sublicensing rights
9.8.4.1 Object Code
9.8.4.1.1 Foreground - Rights of a Party
Where a Party has Access Rights to Object Code and/or API which is Foreground for Use, such Access shall, in addition to the access for Use foreseen in Article 9.4, as far as Needed for the Use of the Party’s own Foreground, comprise the right:

- to make an unlimited number of copies of Object Code and API; and
- to distribute, make available, market, sell and offer for sale such Object Code and API alone or part of or in connection with products or services of the Party having the Access Rights;

provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to use Object Code and API for its own Foreground.

If it is intended to use the services of a third party for the purposes of this Article 9.8.4.1.1, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Article 9.2 of this Consortium Agreement.

If Software is developed using Foreground or Background owned by another Party, the developing Party shall specify that such Software has been developed on the basis of the Foreground or Background owned by that other Party.

9.8.4.1.2 Foreground - Rights to grant sublicenses to end-users
In addition, Access Rights to Object Code shall, as far as Needed for the Use of the Party's own Foreground, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code alone or as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:
- to maintain such product/service;

9.8.4.1.3 Background
For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API which is Background for Use, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.4.2 Source Code
9.8.4.2.1 Foreground - Rights of a Party
Where, in accordance with Article 9.8.3, a Party has Access Rights to Source Code which is Foreground for Use, Access Rights to such Source Code, as far as Needed for the Use of the Party's own Foreground, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service.
If it is intended to use the services of a third party for the purposes of this Article 9.8.4.2.1, the Parties shall agree on the terms thereof, with due observance of the interests of the Party granting the Access Rights as set out in Article 9.2 of this Consortium Agreement.

9.8.4.2.2 Foreground – Rights to grant sublicenses to end-users
In addition, Access Rights, as far as Needed for the Use of the Party's own Foreground, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.
Further sublicensing of Source Code is explicitly excluded.

9.8.4.2.3 Background
For the avoidance of doubt, where a Party has Access Rights to Source Code which is Background for Use, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.5 Specific formalities
Each sublicense granted according to the provisions of Article 9.8.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.

Section 10: Non-disclosure of information
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 Project 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 15 days 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 5 years after the end of the Project Grant Agreement:
- 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. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only.

The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.

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 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.

The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.

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

If any Party becomes aware that it will be required, 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.

The confidentiality obligations under this Consortium Agreement and the Grant Agreement shall not prevent the communication of Confidential Information to the European Commission.

Section 11: Miscellaneous
11.1 Attachments, inconsistencies and severability

This Consortium Agreement, the annexes, the Grant Agreement, and when such exists, addendum and any complementary agreement(s), shall constitute the entire agreement among the Parties in respect of the Project, and supersede all previous negotiations, commitments and documents concerning the Project including any memorandum of understanding among the Parties (whether or not with others) which relate to the Project or its proposal to the European Commission.

This Consortium Agreement consists of this body text and

[Attachment 1 (Background included)]
[Attachment 2 (Background excluded)]
[Attachment 3 (Accession document)]
[Attachment 4 (List of members and Executive members)]
[Attachment 5 (initial List of members and other contact persons recipients of notices)]
[Attachment 6 (Listed Affiliated Entities)]
[Attachment 7 (List of Third Parties to which transfer of Foreground is possible without prior notice to other Parties)]
[Attachment 8 (Agreement for the Transfer of Material)]
[Attachment 9 (Parties’ bank account)]

In case this Consortium Agreement is in conflict with the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the appendices and the body text of this Consortium Agreement, the latter shall prevail.

Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

11.2 No representation, partnership or agency

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

11.3 Notices and other communication

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator based on the initial list of members and other contact persons recipient of notices in [Attachment 5].

Formal notices:
If it is required in this Consortium Agreement (Article. 9.7.2.1.1 and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

Other communication:
Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt (e.g. Minutes).

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all concerned.
11.4 Assignment and amendments
No rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third Party without the other Parties’ prior formal approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Article 6.3.1.2 require a separate agreement between all Parties.

11.5 Mandatory statutory law
Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

11.6 Language
This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings and processes relative thereto.

11.7 Applicable law
This Consortium Agreement and all clauses in the Grant Agreement affecting the rights and obligations between the Parties shall be construed in accordance with and governed by the laws of [Belgium].

11.8 Settlement of disputes
All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties.

The award of the arbitration will be final and binding upon the Parties.

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief or to enforce an arbitration award in any applicable competent court of law.

Section 12: Signatures
AS WITNESS:
The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in [Insert the form of signing: separate signature pages or counterparts or accession forms] the day and year first above written.

[INSERT NAME OF PARTY]
Signature(s)
Name(s)
Title(s)

[INSERT NAME OF PARTY]
Signature(s)
Name(s)
Title(s)
[Acronym of the Project] Consortium Agreement, version [YYYY-MM-DD]

[INSERT NAME OF PARTY]
Signature(s)
Name(s)
Title(s)
Access Rights to Background made available to the Parties:

a.
b.

This represents the status at the time of signature of this Consortium Agreement.

Background excluded from Access Rights:

a.
b.

This represents the status at the time of signature of this Consortium Agreement.

ACCESSION

of a new Party to

[Acronym of the Project] Consortium Agreement, version [...] YYYY-MM-DD

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE GRANT AGREEMENT]

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT]

hereby certifies that the Consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the Consortium starting [date].

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)
Name(s)
Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

Signature(s)
Name(s)
Title(s)
[Attachment 4: List of members and Executive members]

[Attachment 5: Initial List of members and other contact persons recipients of notices]

[Attachment 6: Listed Affiliated Entities]

[Attachment 7: List of Third Parties]
List of Third Parties to which transfer of Foreground is possible without prior notice to the other Parties.

[Attachment 8: Agreement for the Transfer of Material]

[Attachment 9: Parties’ bank account]