

IL MODELLO DI ACCORDO DI CONSORZIO APRE - DESCA

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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**".

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¹ <http://www.desca-fp7.eu/download-desca/>

CONSORTIUM AGREEMENT

THIS *CONSORTIUM AGREEMENT* is based upon

REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the *Dissemination* of research results (2007-2013)

[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]

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 Intent, 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.~~

“Defaulting Party”

Defaulting *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.

"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 which can show that its~~ whose own work [delete as appropriate, time for performance, costs, liabilities], intellectual property rights [delete as appropriate, 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

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); and
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 whole;
- (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 a no *Party* ~~may not publish~~ 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 fulfil 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;

to create for its own end-use interacting interoperable *Software* in accordance with the Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC).

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)

[INSERT NAME OF PARTY]

Signature(s)

Name(s)

Title(s)

[Attachment 1: Background included]

Access Rights to *Background* made available to the *Parties*:

- a.
- b.
- ...

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

[Attachment 2: Background excluded]

Background excluded from *Access Rights*:

- a.
- b.
- ...

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

[Attachment 3: Accession document]

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]