

SEVENTH FRAMEWORK PROGRAMME (FP7)



Call Reference N°:

Proposal Reference N°

PROJECT TITLE :

Level [1] Collaborative Project

CONSORTIUM AGREEMENT

Date of preparation of this document: YY/MM/DD

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CONSORTIUM AGREEMENT

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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) hereinafter referred to as Rules for Participation and the European Commission 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],

BETWEEN:

- (1) [OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT],
the Coordinator
- (2) [OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT],
- (3) [OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT],

[Insert identification of other Parties ...]

hereinafter, jointly or individually, referred to as "**Parties**" or "**Party**"

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 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 for collaborative research project.

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

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1 : Definitions

1.1 Definitions

Words beginning with a capital letter shall have the 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

“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 the initial version of which is included as **[Attachment 7]** to this Agreement.

“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 earlier

“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

This Consortium Agreement shall have effect from the Effective Date

A new Party enters the Consortium upon signature of the accession document **[Attachment 2]** 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 (Article II.37. and II.38.).

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 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 promptly provide 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 take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

4.2 Termination of the participation of a Party in the Project

In the event the relevant consortium body identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement, the Coordinator will give written notice to such Party requiring that such breach be remedied within thirty (30) calendar days.

If such breach is not remedied within that period or is not capable of remedy, 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 involvement of third parties does not affect the rights and obligations of the other Parties in this Consortium Agreement.

Section 5 : Liability towards each other

5.1 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.

5.2 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.

5.3 Limitations of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damages 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 shall be limited to **[Insert: once or twice]** the Party's share of the total costs of the Project. Nevertheless, in the case of loan or bail of material and/or equipment between Parties for the performance of the Project an agreement based on the model set forth in **Attachment 6** shall be entered into between the said Parties and may be amended to contain specific conditions regarding liabilities.

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 Party's non-contractual liability.

5.4 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.

5.5 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 six (6) weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

Section 6 : Governance structure (for Small Collaborative Projects)

6.1 General structure

The General Assembly is the decision-making body of the Consortium.

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.

6.2 Members

The General Assembly shall consist of one representative of each Party (hereinafter "Member").

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 6.3.6. of this Consortium Agreement.

The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise by the General Assembly.

The Parties agree to abide by all decisions of the General Assembly .

This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Article 11.8 of this Consortium Agreement.

6.3 Operational procedures for the General Assembly

6.3.1 Representation in meetings

Any Member:

- should be present or represented at any meeting;
- may appoint a substitute or a proxy to attend and vote at any meeting; and
- shall participate in a cooperative manner in the meetings.

6.3.2 Preparation and organisation of meetings

6.3.2.1 Convening meetings

The Coordinator shall convene ordinary meetings of the General Assembly at least before the closure of each contractual reporting periods and shall also convene extraordinary meetings at any time upon written request of any Member.

6.3.2.2 Notice of a meeting

The Coordinator shall give notice in writing of a meeting to each Member as soon as possible and within at least 21 calendar days preceding an ordinary meeting and 14 calendar days preceding an extraordinary meeting.

6.3.2.3 Sending the agenda

The Coordinator shall send each Member a written original agenda within at least 14 calendar days preceding the meeting.

6.3.2.4 Adding agenda items

Any agenda item requiring a decision by the Members must be identified as such on the agenda. Any Member may add an item to the original agenda by written notification to all of the other Members within at least 7 calendar days preceding the meeting.

6.3.2.5 During a meeting of the General Assembly the Members present or represented can unanimously agree to add a new item to the original agenda.

6.3.2.6 Any decision may also be taken without a meeting by the Coordinator circulating to all Members a written document which is then signed by the defined majority of Members (see Article 6.3.3. of this Consortium Agreement).

6.3.2.7 Meetings of the General Assembly may also be held by teleconference or other telecommunication means as specified in the above mentioned notice.

6.3.2.8 Decisions will only be binding once the minutes have been accepted according to Article 6.3.5 of this Consortium Agreement.

6.3.3 Voting rules and quorum

6.3.3.1 The General Assembly shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).

6.3.3.2 Each Member shall have one vote.

6.3.3.3 Defaulting Party may not vote.

6.3.3.4 Decisions shall be taken by a majority of 75% of the votes, excluding decisions d) to g) in Article 6.3.6 and any evolution to the Consortium for which decisions shall be taken unanimously.

6.3.4 Veto rights

6.3.4.1 A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of the General Assembly may exercise a veto with respect to the corresponding decision or relevant part of the decision.

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

6.3.4.3 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.

6.3.4.4 In case of exercise of veto, the Members shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its Members.

6.3.4.5 A Member 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.

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

6.3.5 Minutes of meetings

6.3.5.1 The Coordinator shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send draft minutes to all of its Members within **[10]** calendar days of the meeting.

6.3.5.2 The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has objected in writing to the Coordinator with respect to the accuracy of the draft of the minutes.

6.3.5.3 The Coordinator shall send the accepted minutes to all the Members of the General Assembly, and shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

6.3.6 Decisions of the General Assembly

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.

The General Assembly shall be responsible for :

Content, finances and intellectual property rights :

- a) Proposals for changes to Annex I of the Grant Agreement to be agreed by the European Commission,
- b) Changes to the Consortium Plan (including the Consortium Budget) ,
- c) Determining information required from the Members for the purpose of article 4.1 and frequency of the submission of the information to the Coordinator,
- d) Withdrawals from [Attachment 1 (Background included)] e) Additions to [Attachment 3 (Listed Affiliated Entities)],
- f) Additions to [Attachment 5 (List of Third Parties)].

Evolution of the Consortium :

- Entry of a new Party to the Consortium and approval of the conditions of the accession of such a new Party,
- Withdrawal of a Party from the Consortium and the approval of the conditions of the withdrawal
- Declaration of a Party to be a Defaulting Party,
- Remedies to be performed by a Defaulting Party,
- Termination of a Defaulting Party's participation in the Consortium and measures relating thereto,
- Proposal to the European Commission for a change of the Coordinator,
- Suspension of all or part of the Project
- Termination of the Project and/or the Consortium Agreement.

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 and submitting information on the progress of the Project and reports and other deliverables (including financial statements and related certification) to the European Commission,
- preparing the meetings, proposing decisions and preparing the agenda of General Assembly meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings,

- transmitting promptly documents and information connected with the Project including copies of accession documents, amendments to the grant agreement, changes of contact information to the Parties, and also information such as the date of delivery of the periodic technical and management reports to the European Commission, date of receipt of the Community financial contribution,
- 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 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.

The General Assembly shall be responsible for determining the level of details regarding information requested by the Coordinator for the management of the Project and the frequency for providing such an information beyond the reporting periods set in the Grant Agreement. A reasonable frequency for such submission should not be more than twice a year and should only contain estimated data.

The Coordinator shall provide evidence of any particular European Commission request for information to a Party. In the event such a request concerns a piece of information that the Party considers as sensitive said Party may elect to directly provide the information to the European Commission and will inform the Coordinator of such communication.

Section 7 : Financial provisions

7.1 General Principles

7.1.1 Distribution of Financial Contribution

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

- the Consortium Budget as included in the Consortium Plan,
- the approval of 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.

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 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 share of the Consortium Budget will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

In any event, the General Assembly is responsible for the definition and modification of the Consortium Budget.

7.1.4 Financial Consequences of the termination of the participation of a Party

A Party leaving the Consortium pursuant to the terms of article 4.2 shall refund all advances paid to it except the amount of expended eligible costs accepted by the European Commission and shall, within the limits specified in Article 5.3 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 :
 - o the delivery of certification of financial statements according to the Grant Agreement
 - o the certification of the methodology for the calculation of costs, unless the total cost of such certification has already been paid to the beneficiary under previous grant agreements and the methodology has not changed (Grant Agreement Article II.4.4 and II.14.1) and/or
- costs related to calls for new Beneficiaries,
- costs related to updating this Agreement,
- management costs of the Coordinator,
- intellectual property protection costs,
- costs for publications,
- costs for the tasks of chairpersons,
- any other costs eligible for 100% reimbursement.

7.2.2 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 of the Community financial contribution

Payments to Parties are the exclusive tasks of the Coordinator.

In particular, the Coordinator shall :

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

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, 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 financial 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 after receipt by the Coordinator 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.

Payments to Parties will be handled according to the following two principles :

- pre-financing in respect of future work included in the Consortium Plan, which may be forwarded to Parties in separate instalments [e.g. a mechanism of every 6 Month 30 %] in conformity with the decisions of the General Assembly [and any related decisions of e.g. a Sub Project Committee].
- payments for past performance approved by the European Commission will be compared with the pre-financing given to a Party for such past performance; the difference due will be paid to the Party concerned.

The Coordinator is entitled to withhold any payment either due to a Defaulting Party
The Coordinator is entitled to recover any sum 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 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.

As long as the co-ownership agreement is not yet concluded, each of the joint owners shall be entitled to grant non-exclusive licences to third parties, without any right to sub-licence, subject to the following conditions:

- a) at least 45 days prior notice must be given to the other joint owner(s); and
- b) fair and reasonable compensation must be provided to the other joint owner(s). for the avoidance of doubt "fair and reasonable" may mean free of charge.

8.2 Transfer of Foreground

Each Party may transfer ownership of its own Foreground in all or in part following the procedures of the Grant Agreement Article II 27.2.

It may identify specific third parties it intends to transfer the ownership of its Foreground to in [Attachment 5] to this Consortium Agreement.

The other Parties hereby waive their right to object to a transfer to listed third parties according to 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 5] 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 prior notice for the transfer as foreseen in the Grant Agreement Art. 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.

8.3.2 Publication of another Party's Foreground or Background

For the avoidance of doubt, a Party shall not publish Foreground or Background of an other Party, even if such Foreground or Background is amalgamated with Party's Foreground, without the other Party's prior written approval.

8.3.3 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.

8.3.4 Use of names, logos or trademarks

Nothing in this 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 shall grant Access Rights, subject to the provisions of this Consortium Agreement and the Grant Agreement and may update the Attachment 1 during the Project.

However, A Party may decide to withdraw Background from [Attachment 1] provided that :

- (i) such Party provides the other Parties with a prior written notice to that effect,
- (ii) the Background has not yet been used by one of the Parties and/or is not planned to be used.

The Parties agree that all background not listed in [Attachment 1] shall be explicitly excluded from Access Rights.

The Parties agree, however, to negotiate in good faith additions to [Attachment 1] if a Party so request and provide such additions are needed. For the avoidance of doubt, the owner is under no obligation to agree to additions of his Background to [Attachment 1].

9.2 General Principles

Each Party shall take appropriate measures to ensure that it can grant Access Rights and fulfil the obligations under the Grant Agreement and this Consortium Agreement notwithstanding any rights of its employees, or any person it assigns or engages to perform its own Work Package for the Project.

As provided in the Grant Agreement Article II.32.3 the Parties shall specify promptly in [Attachment 1] any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Project).

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 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 with all due care and in good faith that the Access Rights are needed, notably if such requesting Party reasonably believes that without Access Rights on another Party's Background or Foreground, the performance of its own tasks for the Project or the Use of its own Foreground would be technically impossible or significantly delayed,

9.3 Access Rights for implementation

Access Rights to Foreground and Background needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis

9.4 Access Rights for Use

Access Rights to Foreground if needed for Use of a Party's own Foreground shall be granted on fair and reasonable conditions.

Use for third party research shall be subject to the prior written approval of the owner of the Foreground, such agreement will not be unreasonably withheld.

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.

A request for Access Rights may be made up to [two (2)] years after the end of the Project.

9.5 Access Rights for Affiliated Entities

Notwithstanding Article II.34.3 of the Grant Agreement, Affiliate Entities shall enjoy Access Rights where the Party requiring Access Rights for its Affiliate Entity can show that its Affiliate Entity:

- holds the right to use the Foreground owned by the Party it is affiliated to; and
- Needs Access Rights in order to Use such Foreground; and
- [is established in a Member State or an Associated Country; and]
- is listed in [Attachment 3] to this Consortium Agreement.

Such Access Rights shall be granted on fair and reasonable conditions and upon written bilateral agreement with the owner of the Information. Affiliated Entities which obtain Access Rights shall fulfil all confidentiality and other obligations accepted by the Parties under the Grant Agreement and under this Consortium Agreement as if such Affiliated Entities were Parties.

However a Party may refuse to grant Access Rights to another Party's Affiliated Entity which is listed in Attachment 3 if the Party requested to grant such Access Rights has, prior to the signature of the Consortium Agreement, raised objections stating that its Legitimate Interests would be affected by the addition of that Affiliated Entity to such list.

Notwithstanding provision in art 6.3.6 the same shall apply for an Affiliated Entity which has been added to [Attachment 3] following a decision of the General Assembly where a Party had voted against the inclusion of the Affiliated Entity in said list.

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.

In the event of any change of control of an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse unless agreed otherwise by the owning Party.
Further arrangements with Affiliated Entities may be negotiated in separate agreements.

9.6 Additional Access Rights

Any grant of Access Rights not covered by the Grant Agreement or/and 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.

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.

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 non-defaulting Party leaving voluntarily 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.

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.

9.9 Ownership and use of materials or equipment

In the event a material or equipment is developed or manufactured in the frame of the Project by two or more Parties, such Parties shall enter into a separate agreement addressing the ownership and conditions of use, maintenance, deposit, etc... of such material or equipment.

The Parties to the Consortium Agreement will be granted a right to use free of charge such material or equipment for the implementation of the Project in accordance with Annex I and the loan conditions in **[Attachment 6]** to the Consortium Agreement.

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] [30]** days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of **[15] [10]** years after the end of the Project :

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;

-
- not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
-
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
-
- to return to the Disclosing Party on demand all Confidential Information which has been supplied to 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 consists of this body text and :

[Attachment 1] : (Background included)

[Attachment 2] : (accession document)

[Attachment 3] : (Listed Affiliated Entities)

[Attachment 4] : (initial list of Members and other contact persons)]

[Attachment 5] : (List of Third Parties to which transfer of Foreground is possible without prior notice to other Parties)

[Attachment 6] : (Agreement for the loan of material/equipment)

[Attachment 7] : Initial Consortium Plan

In case the terms of this Consortium Agreement are in conflict with the terms of the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the Attachments and the core 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 in [Attachment 4].

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. The change of the contact persons list does not require the signature of an amendment of the Consortium Agreement by all Parties hereto.

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 6.3.6 require a separate agreement between all Parties.

11.5 Mandatory national law

The Parties recognize that at the time of signature of this Consortium Agreement, nothing in this Consortium Agreement requires a Party to breach any mandatory national law under which the Party is operating. To the extent any future mandatory law forbids or restricts any of the activities contemplated hereunder, the Parties agree to inform each other and discuss about the consequences thereof.

11.6 Language

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

11.7 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the laws of [insert law of country stated in Grant Agreement].

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 .

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)

[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)

[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)

[INSERT NAME OF PARTY]

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

[Attachment 1] : Background included

Access Rights to Background made available to the Parties:

Name of the Party	
Owner	
Nature	
Registration / protection	
Description / Title	
Access conditions for carrying out the project / Limitations	

Name of the Party	
Owner	
Nature	
Registration / protection	
Description / Title	
Access conditions for carrying out the project / Limitations	

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

[Attachment 2] : 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 3] : Listed Affiliated Entities

[Attachment 4] : Initial list of Parties and other contact persons

Recipients for Notices

Recipients for Notices in Accordance with Section 11 of this *Consortium Agreement*.

<Party >,
Member of the General Assembly:
Mrs X
Position
Tel. +
Fax +
E-mail:
00000 City, Country,

<Party >,
Member of the General Assembly:
Mr X
Position
Tel. +
Fax +
E-mail:
00000 City, Country,
...

[Attachment 5] : List of Third Parties

[Attachment 6]: Agreement for the loan of material or equipment

Simple Letter Agreement for the Loan of Materials or equipment

In response to the RECIPIENT Party s request dated [_____] for the MATERIAL or EQUIPMENT [insert description] . . .(the “MATERIAL”) The PROVIDER Party asks that the RECIPIENT Party agree to the following before delivering the MATERIAL to the RECIPIENT Party :

- The MATERIAL is and always remains the property of the PROVIDER Party and is made available in the frame of the [name of the Project] project for the sole performance of the RECIPIENT Party 's tasks.
- THIS MATERIAL IS NOT FOR USE IN HUMAN SUBJECTS.
- The MATERIAL shall always remain in the RECIPIENT Party’s premises [_____] for the duration of the loan and will not be further provided to others without the PROVIDER Party’s written consent.
- The RECIPIENT Party shall refer any request for the MATERIAL to the PROVIDER Party .
- Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties.
- THE PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.
- Unless prohibited by law, RECIPIENT assumes all liability for claims for damage of the Material which is in its custody and for claims for damage against it by third parties which may arise from the use, storage or disposal of the MATERIAL except that, to the extent permitted by law, the PROVIDER Party shall be liable to the RECIPIENT Party when the damage is caused by the gross negligence or wilful misconduct of the PROVIDER Party .
- The RECIPIENT Party agrees to use the MATERIAL in compliance with all applicable statutes and regulations.
- The MATERIAL is provided at no cost.
- (Need to address (transportation costs, export authorization, risk transfer INCOTERMS) duration of the custody)

The PROVIDER Party, RECIPIENT Party must both sign 2 copies of this letter and each keeps one signed copy for their record

The PROVIDER Party will then send the MATERIAL.

PROVIDER Party INFORMATION and AUTHORISED SIGNATURE

Provider Scientist:
Provider Organisation:
Address:
Name of Authorised Official:
Title of Authorised Official:

Certification of Authorised Official: This Simple Letter Agreement ___has / ___has not [check one] been modified. If modified, the modifications are attached.

Signature of Authorised Official and Date ...

RECIPIENT Party INFORMATION and AUTHORISED SIGNATURE

Provider Scientist:
Provider Organisation:
Address:
Name of Authorised Official:
Title of Authorised Official:
Signature of Authorised Official:
Date:

Certification of Recipient: I have read and understood the conditions outlined in this Agreement and I agree to abide by them in the receipt and use of the MATERIAL.

Signature of Recipient... and Date ...

[Attachment 7] : Initial Consortium Plan