

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) 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],
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 of "Collaborative 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.

“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.

“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.

“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.).

3.3 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 provide promptly all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.

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 breach 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 calendar days.

If this does not occur, the General Assembly may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof.

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.

Section 5: Liability towards each other

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.

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) **General Assembly** as the ultimate decision-making body of the Consortium
- (b) **Executive Board** as the supervisory body for the execution of the Project which shall report to and be accountable to the General Assembly
- (c) **Sub Project Committees** as management groups for Sub Projects.

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 Management Support Team assists the Executive Board and the Coordinator.

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.

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 of the Executive Board or 1/3 of the members of the General Assembly

Executive Board: At any time upon written request of any member of the Executive Board

Sub Project Committee: At any time upon written request 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.

Any decision may also be taken without a meeting by circulating to all members of the Consortium Body a written document which is then signed by the defined majority (see Article 6.2.3.) of all members of the Consortium Body.

Meetings of each Consortium Body can also be held by teleconference or other telecommunication means.

Decisions may only be executed once the relevant part of the Minutes is 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 present or represented in the meeting 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.

6.2.4 Veto rights

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 a 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 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 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

- Proposals for changes to Annex I of the Grant Agreement to be agreed by the European Commission
- Changes to the Consortium Plan (including the Consortium Budget)
- Withdrawals from [Attachment 1 (Background included)]
- Additions to [Attachment 2 (Background excluded)]
- Additions to [Attachment 4 (Listed Affiliated Entities)]
- Additions to [Attachment 6 (List of Third Parties)]

Evolution of the Consortium

- 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
- Withdrawal of a Party from the Consortium and the approval of the settlement on the modalities and conditions of the withdrawal
- Declaration of a Party to be a Defaulting Party
- Corrective measures to be required from 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

Appointments on the basis of Annex I, the appointment 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).

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 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 preparing meetings with the European Commission and in preparing related data and deliverables

- 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 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.

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
- submitting the implementation plan of the Sub Project to the Executive Board for review and proposing an update of the Consortium Plan.
- 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, 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 reports and other deliverables (including financial statements and related certifications) to the European Commission
- 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
- 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.

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.

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
- 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.

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
 - o the delivery of certification of financial statements according to the Grant Agreement
 - o 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
 - o 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

7.2.2 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

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 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 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 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.

Payments to Parties will be handled according to the following two kinds of modalities:

- 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 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 Months 30 %] in conformity with the decisions of the General Assembly [and any related decisions of e.g. a Sub Project Committee].

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, each of the joint owners shall be entitled to use the joint Foreground as it sees fit, and to grant non-exclusive licenses, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

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

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 (6)] 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 (6)] 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 of another Party's Foreground or Background

For the avoidance of doubt, a Party may **not** publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the 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 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

In accordance with and subject to the provisions of the Grant Agreement, any Party may enter in [Attachment 2] any specific Background excluded from the obligation to grant Access Rights in accordance with the provisions of this Consortium Agreement. All other Background except that listed in [Attachment 2] shall be available for the granting of Access Rights in accordance with the provisions of this Consortium Agreement.

9.2 General Principles

Each Party shall implement its tasks in accordance with the Consortium Plan 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 (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, it may decide to update the Consortium Plan 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 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.

9.5 Access Rights for Affiliated Entities

Affiliated Entities have Access Rights under the conditions of the Grant Agreement Article II.34.3.

In addition, Affiliate Entities shall also enjoy Access Rights if they can show that:

- they hold a license on Foreground developed by a Party they are affiliated to; and
- they Need Access Rights in order to Use such Foreground; and
- they are established in a Member State or an Associated Country;
- [and they are listed in [Attachment 4 (Listed Affiliated Entities)] to this Consortium Agreement].

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

The Parties agree to negotiate in good faith any additional Access Rights to Foreground as might be asked for by any Party, upon adequate financial conditions to be agreed.

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 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.

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.

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:

- 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 consists of this body text and

[Attachment 1 (Background included)]

[Attachment 2 (Background excluded)]

[Attachment 3 (Accession document)]

[Attachment 4 (Listed Affiliated Entities)]

[Attachment 5 (initial list of members and other contact persons)]

[Attachment 6 (List of Third Parties to which transfer of Foreground is possible without prior notice to other Parties)]

[Attachment 7 (Agreement for the Transfer of Material)]

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 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)

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

[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: Listed Affiliated Entities]

[Attachment 5: Initial list of members 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 6: List of Third Parties]

List of Third Parties to which transfer of Foreground is possible without prior notice to the other Parties.

[Attachment 7: Agreement for the Transfer of Material]

Simple Letter Agreement for the Transfer of Materials

In response to the RECIPIENT's request for the MATERIAL [insert description] . . .The PROVIDER asks that the RECIPIENT and the RECIPIENT SCIENTIST agree to the following before the RECIPIENT receives the MATERIAL:

- The above MATERIAL is the property of the PROVIDER and is made available in the frame of the [name of the Project] project.
- THIS MATERIAL IS NOT FOR USE IN HUMAN SUBJECTS.
- The MATERIAL will be used for not-for-profit research purposes only.
- The MATERIAL will not be further distributed to others without the PROVIDER's written consent. The RECIPIENT shall refer any request for the MATERIAL to the PROVIDER. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agree to make the MATERIAL available, under a separate Simple Letter Agreement to other scientists for teaching or not-for-profit research purposes only.

- The RECIPIENT agrees to acknowledge the source of the MATERIAL in any publications reporting use of it.
- 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 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 shall be liable to the RECIPIENT when the damage is caused by the gross negligence or wilful misconduct of the PROVIDER.
- The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations.
- The MATERIAL is provided at no cost.

The PROVIDER, RECIPIENT and RECIPIENT SCIENTIST must sign both copies of this letter and return one signed copy to the PROVIDER. The PROVIDER will then send the MATERIAL.

PROVIDER 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 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 Scientist: 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 Scientist and Date