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DESCA
MODEL CONSORTIUM
A G R E E M E N T

for
Horizon Europe

Version 1, December 2021

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[Change Records]

Version	Date	Changes
Version 1	December 2021	Initial draft for Horizon Europe

REMARKS

This Consortium Agreement model is created for projects which will be governed by a Horizon Europe Model Grant Agreement (MGA) under Horizon Europe, i.e. notably “Research and Innovation Actions” and “Innovation Actions”. A use for other types of projects will likely require adaptations.

The new DESCA model addresses the features of Horizon Europe. Following the feedback of many stakeholders, the explicit aim of the update for Horizon Europe was to adapt where necessary and to keep the continuity of the DESCA 2020 text where possible.

The model should be adapted in order to suit the specific features of each single project.

In order to facilitate coordination and collaboration, this model provides for internal arrangements between beneficiaries, governance of the project and financial issues.

In order to be as user-friendly as possible, the model and the elucidations focus on a “mainstream” project and are not intended to give all alternatives for a given situation. The wording aims to be accessible and easy to understand notably for non-lawyers.

The Horizon Europe MGA contains several options which will be adapted to the individual project. DESCA for Horizon Europe is based on what we expect to be the “default setting” of MGA options.

The Horizon Europe Regulation, all MGAs, and the other related documents are available at: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/reference-documents;programCode=HORIZON>

It is strongly advised to read the MGA and the related documents, and it is important to be aware of the fact that DESCA is supplementary to the Horizon Europe Regulation and the Grant Agreement. **Most items regulated there are NOT repeated here, but should be carefully taken into account and re-read in case of doubt.**

The DESCA model is presented with two columns: the left side with legal text and the right side with elucidation, remarks and references to the Horizon Europe Multi-beneficiary General Model Grant Agreement. This version as well as a version without elucidations is available on the website <http://www.desca-agreement.eu/>.

DESCA provides a core text, modules and several options, which can be used as follows:

1. Core text: The main body of the text.
2. Two modules for the Governance Structure:
 - Module GOV SP for Small and Medium-sized Projects:
Simple governance structure: only a General Assembly [Module GOV SP] (contained in the text).
 - Module GOV LP for Large Projects:
Complex governance structure: two governing bodies, General Assembly and Executive Board [Module GOV LP]. (contained in the Annex)

If the project comprises just a modest number of work packages, and is not very complicated, the Module GOV SP will normally be fit for purpose.

However, if the project is more complicated and requires an intermediary governance structure, the Module GOV LP, which includes an Executive Board, is advised.

3. Module IPR SC - special clauses for Software:

If your project has a strong focus on software issues, you may wish to use the software module which provides more detailed provisions regarding software (sublicensing rights, open source code software etc.) [Module IPR SC].

4. Options:

The core text contains different options in some clauses, especially in the IPR section. Any optional parts of the text are marked **yellow**; so are other items where variable numbers/data should be adapted to the project.

Option 1 in the IPR clauses reflects the preference of most stakeholders (some industry sectors as well as universities and research organisations) where fair and reasonable remuneration for having access to other partners' project results for exploitation is foreseen.

Option 2 in the IPR clauses reflects a situation preferred by some industries, where all project results are available for exploitation without any form of remuneration to the owners.

Advice: A mix of Option 1 and Option 2 can in some cases lead to inconsistencies.

A note on Innovation Procurement:

For pre-commercial procurement (PCP) or public procurement of innovative solutions (PPI) actions, there are specific rules in accordance with Article 26 of the Horizon Europe Regulation and the MGA (Annex 5). For this kind of Innovation Procurement projects, a Party may enter into a procurement procedure and will have to ensure that the specific rules will be taken into account. For the later tender processes a separate procurement agreement is recommended.

Adapting the DESCA model:

The DESCA Core Group recognises that users of the DESCA Model Consortium Agreement may wish to adapt the original DESCA text to their own needs and accordingly invites them, in the interests of transparency and integrity, to freely and clearly indicate for their actual or potential partners the adaptations which they have made.

<p>CONSORTIUM AGREEMENT</p>	<p>Elucidations & Comments December 2021: Please note that these elucidations are still subject to changes, depending on the explanations in the yet outstanding final Annotated Model Grant Agreement. References to the MGA have been implemented already. The structure in MGA Annex 5 is such that it only contains headings and text, without any numbering. Therefore, we arbitrarily decided to cite the Annex 5 provisions as follows :</p> <p>Bold black heading = "Section" <i>Heading in italics and underlined</i> = "sub-section" Further sub-units = paragraph</p>
<p>THIS CONSORTIUM AGREEMENT is based upon Regulation (EU) No 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation (2021-2027), laying down its rules for participation and dissemination (hereinafter referred to as "Horizon Europe Regulation"), and on the European Commission's General Model Grant Agreement and its Annexes, and is made on <Project start date // other agreed date>, hereinafter referred to as the Effective Date</p> <p>BETWEEN: [OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT], [Coordinator short name] with legal address ...], the Coordinator</p> <p>[OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT [Party short name], with legal address ...],</p> <p>[OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT [Party short name], with legal address ...],</p> <p>[Insert identification of other Parties ...]</p> <p>hereinafter, jointly or individually, referred to as "Parties" or "Party"</p> <p>relating to the Action entitled</p> <p>[NAME OF PROJECT]</p> <p>in short</p> <p>[Insert: acronym]</p> <p>hereinafter referred to as "Project"</p>	<p>It is recommended to insert the Effective Date of the Consortium Agreement here. For the Effective Date it is recommended to use the date when the Project starts.</p> <p>The CA should be signed before signing the Grant Agreement. If this is not possible, the Effective Date can be retroactive and it may differ from the entry into force of the Grant Agreement. Each Party commits to this Consortium Agreement when signing the document on its own behalf (see Section 3.1 of this Consortium Agreement). Still the Effective Date is the same for all Parties that have signed the document. Consider also whether confidentiality issues make it useful to agree on retro-activeness of the Consortium Agreement. However, it is always preferable to have a separate confidentiality agreement signed for the proposal phase.</p> <p>Insert the official names and the legal address of the Parties as they will be identified in the Grant Agreement and the grant preparation forms in the Horizon Europe participant portal.</p> <p>The term Party is used in this Consortium Agreement for the sake of clarity. The corresponding term in the Grant Agreement is "Beneficiary".</p> <p>If Associated Partners are participating in the implementation of the Project, it is recommended to consider whether they sign the Consortium Agreement. Associated Partners do not sign the Grant</p>

<p>WHEREAS:</p> <p>The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Granting Authority as part of Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).</p> <p>The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement to be signed by the Parties and the Granting Authority (hereinafter “Grant Agreement”).</p> <p>The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium agreement.</p> <p>NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:</p>	<p>Agreement, but certain obligations arising therefrom (Articles 11-14, 17.2 and 18-20 MGA) must be extended to Associated Partners by a contractual arrangement. Also, be aware that some aspects of the Consortium Agreement, such as the financial provisions of Section 7, do not apply to the Associated Partners and the Consortium Agreement should be adapted accordingly for their part.</p> <p>The term Project is used in this Consortium Agreement for the sake of clarity instead of the term “Action” used in the Horizon Europe documents. “Action” is only used in DESCA where needed to be consistent with direct references to the Model Grant Agreement.</p>
<p>Section 1: Definitions</p>	
<p>1.1 Definitions</p>	
<p>Words beginning with a capital letter shall have the meaning defined either herein or in the Horizon Europe Regulation or in the Grant Agreement including its Annexes.</p>	
<p>1.2 Additional Definitions</p>	
<p>“Consortium Body”:</p> <p>Consortium Body means any management body described in Section 6 (Governance Structure) of this Consortium Agreement.</p>	<p>See Section 6.1 for a list of the Consortium Bodies.</p>
<p>“Consortium Plan”</p> <p>Consortium Plan means the description of the Action and the related agreed budget as first defined in the Grant Agreement and which may be updated by the General Assembly.</p>	<p>Article 5.5 of the MGA states that the estimated budget may be adjusted by transfers of amounts between Parties or between budget categories (or both) without an amendment of the Grant Agreement.</p> <p>As minor modifications to the original description of the Action and estimated budget quite frequently are necessary during the project and do not have to result in changes of the Grant Agreement, this part of the Grant Agreement therefore can become outdated, but the consortium still needs to have a binding agreement on who has to perform which tasks for which budget: the Consortium Plan.</p> <p>As the project progresses and minor budget shifts become necessary, the Consortium Plan is dynamic and will be updated when needed or on a regular basis. As such it is not a formal annex to the Grant Agreement.</p> <p>The starting point for the Consortium Plan will be the “description of the Action” as laid down in Annex 1 and the related estimated budget in Annex 2 of the Grant Agreement. It is strongly advised to inform the Granting Authority of any changes accordingly in the</p>

	<p>periodic reports to the Granting Authority. If the discrepancy becomes too big, and in consultation with the Granting Authority, an updated version of the Grant Agreement Annex 1 could be generated, as an amendment to the Grant Agreement. The Consortium Plan is the formal outcome of the regular process of decision-making inside the Consortium as laid down in this Consortium Agreement.</p>
<p>“Granting Authority” means the body awarding the grant for the Project.</p>	<p>In Horizon Europe, as per the MGA, the legal body awarding the grant for the Project can be the European Union or the European Atomic Energy Community (represented by the European Commission), or one of the executive agencies established for managing large parts of the framework programme.</p> <p>For the purposes of a Consortium Agreement, “Granting Authority” may also be used to refer to Joint Undertakings or similar bodies awarding the grant for the EU Project.</p>
<p>“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 Section 4.2 of this Consortium Agreement.</p>	<p>Default situations are covered by this agreement not from the granting authority’s perspective but with the aim to cover situations in which the consortium has to actively make decisions with regard to a Party in breach of its contractual obligations (suspension of payments, termination of participation and reallocation of tasks).</p> <p>The task of taking needed measures with regard to the Defaulting Party shall be handled in accordance with the normal governance structure.</p> <p>The process and consequences resulting from a breach can be found:</p> <ul style="list-style-type: none"> - Process: Section 4.2 - Liability: Section 5.2 - Governance Section for GOV SP: 6.3.4; 6.3.5 or for GOV LP 6.2.4; 6.2.5: - Finances: Sections 7.1 and 7.3 - Access Rights: Sections 9.7.2.1.1 and 9.7.2.2 and - Grant Agreement Article 32. <p>With regard to claims between two Parties of the consortium, the concerned Parties should follow closely both these default processes set out by the Consortium Agreement and the requirements of Belgian law.</p>
<p>“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 technically or legally impossible, significantly delayed, or require significant additional financial or human resources.</p>	<p>According to the Horizon Europe Regulation (Article 41.6), a Party has Access Rights if they are “Needed” for implementing its own tasks/exploiting its own results. This provision aims to make this condition more precise and easier to work with. It makes access “Needed for the implementation of the Project” very open in order to make work on the Project as uncomplicated as possible.</p> <p>It is stricter regarding the access “Needed</p>

<p>For Exploitation of own Results: Access Rights are Needed if, without the grant of such Access Rights, the Exploitation of own Results would be technically or legally impossible.</p>	<p>for exploitation” because Parties want to be reasonably sure that other Parties can only claim access to their IPR if they have no other options.</p> <p>The requesting Party has to show its Need for Access Rights.</p>
<p>“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.</p>	<p>For Software specific provisions are needed, see Section 9.8 of this Consortium Agreement and special clauses for Software in: [Module IPR SC].</p>
<p>Section 2: Purpose</p>	
<p>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.</p>	
<p>Section 3: Entry into force, duration and termination</p>	
<p>3.1 Entry into force</p>	
<p>An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.</p> <p>This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.</p> <p>An entity becomes a new Party to the Consortium Agreement 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.</p>	<p>Each Party commits to this Consortium Agreement when signing the document on its own behalf.</p> <p>Still the Effective Date is the same for all Parties that have signed the document.</p> <p>The rules and the process for accepting new Parties are laid down in the Sections relating to the decisions of the General Assembly and of the Executive Board</p> <p>A model Accession document is attached to this Consortium Agreement [Attachment 2].</p>
<p>3.2 Duration and termination</p>	
<p>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.</p> <p>However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.</p> <p>If</p> <ul style="list-style-type: none"> - the Grant Agreement is not signed by the Granting Authority or a Party, or 	<p>Be aware of Article 32 MGA stipulating the termination of the Grant Agreement or of the participation of one or more Parties.</p> <p>The project either runs for the duration originally designated, or can end prematurely. Also, it is possible to either terminate the whole Project or the participation of one or more of the Parties. The initiative for the termination may come from the Granting Authority or from the consortium.</p> <p>As the terms of Grant Agreement and the Consortium Agreement are interlinked, the clause also addresses the automatic termination of the Consortium Agreement in</p>

<p>- the Grant Agreement is terminated, or - a Party's participation in the Grant Agreement is terminated, this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Section 3.3 of this Consortium Agreement.</p>	<p>case of rejection of the Project proposal and termination of the Grant Agreement.</p> <p>Be aware of obligations that extend beyond the duration of the Project, such as those regarding Exploitation of Results and impact evaluation. The General Assembly should discuss how to implement these obligations extending beyond the duration of the project.</p>
<p>3.3 Survival of rights and obligations</p>	
<p>The provisions relating to Access Rights, Dissemination and confidentiality, for the time period mentioned therein, as well as for liability, applicable law and settlement of disputes shall survive the expiration or termination of this Consortium Agreement.</p> <p>Termination shall not affect any rights or obligations of a Party leaving the Project 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 necessary input, deliverables and documents for the period of its participation.</p>	<p>Note that some of these clauses contain a time limit for the survival or use of the provisions whereas other clauses do not provide for a time limit.</p> <p>Be aware that termination shall not affect previous obligations of the leaving Party. Only the most important issues to remember are stated here.</p>
<p>Section 4: Responsibilities of Parties</p>	
<p>4.1 General principles</p>	<p>Specific responsibilities are detailed in other Sections of the Consortium Agreement. It is especially important to note the obligations of each Party stated in the MGA, especially in Article 7 (beneficiaries) and Article 8 (affiliated entities).</p>
<p>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.</p>	<p>One of the basic principles in most of the continental civil law systems, including Belgian law, is the principle of “good faith”, which applies both to the interpretation of contractual documents and to the execution of the contract. Due to this and other characteristics of civil law systems it has been possible to make this Consortium Agreement as short as it is, as many items do not need to be addressed as explicitly in all details as in Anglo-Saxon legal systems.</p>
<p>Each Party undertakes to notify promptly the Granting Authority and the other Parties, in accordance with the governance structure of the Project, of any significant information, fact, problem or delay likely to affect the Project.</p>	<p>Section 11.3 of this Consortium Agreement supplies the different forms of notification.</p> <p>See MGA Article 7 in combination with Article 19.3 for the obligation to inform the Granting Authority and other Parties. Be also aware of the obligation to formally notify the Granting Authority of any situation constituting or likely to lead to a conflict of interests, see MGA Article 12.</p>
<p>Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks and shall responsibly manage the access of its employees to the EU Funding & Tenders Portal.</p>	

<p>Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.</p>	
<p>4.2 Breach</p> <p>In the event that the General Assembly identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement (e.g. improper implementation of the Project), the Coordinator or, if the Coordinator is in breach of its obligations, the Party appointed by the General Assembly, will give formal notice to such Party requiring that such breach will be remedied within 30 calendar days from the date of receipt of the written notice by the Party.</p> <p>If such breach is substantial and 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.</p>	<p>In the case of a breach, the General Assembly declares the Party to be a Defaulting Party, see Section 11.3 on formal notice.</p> <p>The declaration as a Defaulting Party requires the breach to be "substantial". In case a Party is in breach of its obligations, but not in "substantial" breach, the consortium may address the issue by reallocation of tasks as part of the next Consortium Plan or by finding other solutions.</p>
<p>4.3 Involvement of third parties</p> <p>A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities or other Participants) in the Project remains 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. Such Party has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the Grant Agreement.</p>	<p>Entities which are linked to a beneficiary as so-called Affiliated Entities (Article 8 Horizon Europe MGA – formerly in H2020 referred to as Linked Third Parties) may be involved in the implementation of specific tasks within the Project only if they are foreseen in the Grant Agreement, see Article 8 MGA.</p> <p>Involving other Participants such as</p> <ul style="list-style-type: none"> - associated partners - third parties giving in-kind contributions to the Action - subcontractors - recipients of financial support to third parties: <p>is covered by MGA Article 9.</p> <p>Third party means any entity (whether Affiliated Entity or other Participant) which is not a signatory to this Consortium Agreement.</p> <p>A Party involving a third party retains sole responsibility towards the Granting Authority and other Parties.</p> <p>Parties involving third parties have to ensure that Access rights of the other Parties regarding Background and Results are not impacted.</p> <p>A Party in that case also has to ensure that the Granting Authority, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Article 25 of the MGA also towards the third parties.</p>

	Be aware – in cases where MGA Annex 3a (Declaration on joint and several liability of Affiliated Entities) has been signed by Affiliated Entities, we recommend having the Affiliated Entities sign an equivalent declaration form.
4.4 Specific responsibilities regarding data protection	
<p>Where necessary, the Parties shall cooperate in order to enable one another to fulfil legal obligations arising under applicable data protection laws (the <i>Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data</i> and relevant national data protection law applicable to said Party) within the scope of the performance and administration of the Project and of this Consortium Agreement.</p> <p>In particular, the Parties shall, where necessary, conclude a separate data processing, data sharing and/or joint controller agreement before any data processing or data sharing takes place.</p>	<p>This clause represents a minimum statement taking into account the fact that certain aspects of the Project (and contract) administration are covered by the GDPR as such, whereas other activities require the prior conclusion of additional agreements or arrangements (especially under Article 26 (Joint Controllers) and 28 (Processor) GDPR).</p> <p>See MGA Article 15 for data processing by the Granting Authority and the Beneficiaries.</p>
Section 5: Liability towards each other	Liability towards the Granting Authority is not part of this Consortium Agreement, as it is covered by the Grant Agreement.
5.1 No warranties	
<p>In respect of any information or materials (incl. Results and Background) 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.</p> <p>Therefore, the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its entities under the same control) exercising its Access Rights.</p>	<p>This basic clause sets the foundation especially for the limitation of liability with regard to outputs (covering also the Results and Background) delivered by one Party to another Party.</p> <p>In case an output is delivered, the receiving Party shall bear the liability for the use to which it is put and possible IPR infringements.</p> <p>If the Parties consider it necessary to increase the liability of the Party delivering the output, it should be stated clearly and considered very carefully, if such additional liability should be taken.</p> <p>For entities under the same control, see Section 9.5 and MGA Article 16 and its Annex 5, Section "Access rights to results and background – Access rights for entities under the same control".</p> <p>For avoidance of doubt: intentional infringement is, of course, not authorised by this clause.</p>
5.2 Limitations of contractual liability	
No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, except in case of breach of confidentiality.	The basic rule of Belgian law, and most other legislations in Europe, states that liability with regard to wilful breaches of contract cannot be limited. It may be possible to limit damage in case of gross

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 as identified in Annex 2 of the Grant Agreement.

A Party's liability shall not be limited under either of the two foregoing paragraphs to the extent such damage was caused by a willful act **or gross negligence** or to the extent that such limitation is not permitted by law.

negligence, but such limitation and its consequences should be carefully considered as such limitation might be considered as invalid regarding Belgian Law because in some cases gross negligence could be regarded as wilful by some courts.

Parties should notice that such limitation of liability covers only the limitations of contractual liability.

New Belgian legislation on unlawful clauses in B2B contracts put restrictions on clauses in contracts between undertakings that are "manifestly unbalanced" between the parties involved. So to the extent the partners in the CA are to be considered as undertakings (entities that perform economic activities in a durable way), the clauses of the CA may be considered in that light by the courts. The law of 4 April 2019 (which entered into force on December 1st, 2020) holds a list of "grey clauses" which are considered invalid unless a Party can prove that they are not unbalanced in the current circumstances. One of these "grey clauses" is an exoneration of liability for wilful act or gross negligence. This only applies to a full exoneration, and not to a limitation. So the current text of this clause capping the liability to the Party's share of the total costs, unless in the case of wilful act is still possible.

The Parties might want to **increase their liability with regard to certain cases**. This should always be considered case by case and, if so chosen, written down in the Consortium Agreement very clearly and defined. Issues to be considered in this connection might relate for instance to insurance coverage of the Parties or specific liability concerning confidential information delivered. However it should be remembered that it is always possible for the Parties to make **bilateral agreements** concerning for instance certain specific delivery of confidential information. In addition, as the basic rule is that a Party granting Access Rights may require a separate detailing agreement to be concluded, all increase of liability relating to such grant should be handled in that separate agreement.

In case you exchange material within the project, please consider the need for a **separate material transfer agreement (MTA)**. A model MTA can also be added as an attachment to the Consortium Agreement.

Confidentiality: see Section 10. In cases of breach of confidentiality, the damage will be almost always indirect.

	<p>The project share for signatories to the Grant Agreement not receiving EU funding is defined in the Grant Agreement. You may wish to verify the amount and, if the sum is very small, adapt the limit of liability on a case by case basis.</p>
<p>5.3 Damage caused to third parties</p>	
<p>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 by it or on its behalf under this Consortium Agreement or from its use of Results or Background.</p>	<p>With the Consortium Agreement the liability can only be limited between the Parties. Such limitations do not have any direct effect on a third party which is not a Party to this Consortium Agreement. This clause states that the ultimate liability remains to be borne by the Party causing the damage by its performance or by its use of Results or Background.</p> <p>Where damage to "Other participants" (MGA Articles 8 and 9) is concerned, please see elucidation on Section 4.3.</p>
<p>5.4 Force Majeure</p>	
<p>No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure.</p> <p>Each Party will notify the General Assembly of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notice, the transfer of tasks - if any - shall be decided by the General Assembly.</p>	<p>See MGA Article 35 for Force Majeure and Section 11.3 of this Consortium Agreement regarding possible forms of notification.</p>
<p>[OPTION: 5.5 Export control]</p>	
<p>No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement due to a restriction resulting from import or export laws and regulations and/or any delay of the granting or extension of the import or export license or any other governmental authorisation, provided that the Party has used its reasonable efforts to fulfil its tasks and to apply for any necessary license or authorisation properly and in time.</p> <p>Each Party will notify the General Assembly of any such restriction without undue delay. If the consequences of such restriction for the Project are not overcome within 6 weeks after such notice, the transfer of tasks - if any - shall be decided by the General Assembly.]</p>	<p>If import or export is relevant in your project, you may want to consider including this optional section regarding export control.</p> <p>See Regulation (EU) 2021/821 and especially its Annex 1 listing the dual-use items for which an authorisation for export is required.</p> <p>Dual-use items are goods, software and technology that can be used for both civilian and military applications. The purpose of the export control is to prevent the spread of weapons of mass destruction and to prevent unwanted military use of the dual-use items.</p> <p>Be aware that in addition to physical products or transfer of technology, export control also covers intangible and invisible transfer of know-how. Therefore, export may also take place over the telephone, by e-mail or in different social situations as well as making data electronically available from abroad.</p>
<p>Section 6: Governance structure</p>	
<p>[Module GOV SP]</p>	<p>This governance structure is set up for a streamlined structure suitable for smaller and medium-sized projects.</p>

	The consortium may wish to opt for the module on Large Projects for a more comprehensive governance structure containing notably an Executive Board - see [Module GOV LP] in the Annex.
6.1 General structure	
<p>The organisational structure of the consortium shall comprise the following Consortium Bodies:</p> <p>The General Assembly is the decision-making body of the consortium.</p> <p>The Coordinator is the legal entity acting as the intermediary between the Parties and the Granting Authority. 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.</p>	
6.2 Members	
<p>The General Assembly shall consist of one representative of each Party (hereinafter referred to as “Member”).</p> <p>Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.7 of this Consortium Agreement.</p> <p>The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise by the General Assembly.</p> <p>The Parties agree to abide by all decisions of the General Assembly.</p> <p>This does not prevent the Parties from exercising their veto rights, according to Section 6.3.5, or from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Section 11.8 of this Consortium Agreement.</p>	<p>The Party must ensure internally that the person acting at a meeting has the necessary authority or has obtained a mandate from the competent officer/s for the decisions to be taken. As the agenda is circulated before the meeting, with decision items marked, any necessary internal authorisation can and has to be obtained in advance in order to allow discussions on critical items at the meeting rather than trying to solve them in writing afterwards.</p> <p>If the person who attends the meeting is not authorised by his or her institution or company to make a proposed decision on behalf of that institution or company, a mechanism inside the organisation has to ensure that the information on such decision to be taken is transferred to the authorised representative for his or her institution or company beforehand for decision on how to vote.</p> <p>On the last sentence: Parties have both the possibility to veto decisions according to Section 6.3.5 if they have grounds for such veto, and to submit a dispute to resolution according to Section 11.8.</p>
6.3 Operational procedures for the General Assembly:	
6.3.1 Representation in meetings	
<p>Any Member:</p> <ul style="list-style-type: none"> - 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	
<p>6.3.2.1 Convening meetings: The chairperson shall convene ordinary meetings of the General Assembly at least once every six months and shall also convene extraordinary meetings at any time upon written request of any Member.</p>	
<p>6.3.2.2 Notice of a meeting The chairperson shall give written notice of a meeting to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.</p>	
<p>6.3.2.3 Sending the agenda: The chairperson shall prepare and send each Member an agenda no later than 14 calendar days preceding the meeting, or 7 calendar days before an extraordinary meeting.</p>	
<p>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 notice to all of the other Members no later than 7 calendar days preceding the meeting and 2 days preceding an extraordinary meeting.</p>	
<p>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.</p>	If a topic comes up that may ultimately require a decision, the good practice is to organise a new meeting or a written procedure for decision on the topic, rather than deciding it during the meeting.
<p>6.3.2.6 Meetings of the General Assembly may also be held by tele- or videoconference or other telecommunication means.</p>	<p>Hybrid forms of meetings where participants in the room are joined by participants connected remotely are also possible. If electronic voting is used in virtual or hybrid meetings, this must happen according to the same principles as if it were a physical meeting. This can be reinforced by adding wording e.g. as follows:</p> <p>Decisions may also be taken via online voting tools, provided the online vote duly observes the principles of fairness, transparency, proper documentation and confidentiality as required to ensure the same degree of reliability than a vote in a physical meeting. The Coordinator shall inform the Parties of the tool to be used for online voting in due time before the vote for each Party to make sure they have sufficient technical access and opportunity to cast their vote.</p>
6.3.2.7	

<p>Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.3.6.2.</p>	
<p>6.3.3 Decisions without a meeting</p> <p>Any decision may also be taken without a meeting if</p> <p>a) the Coordinator circulates to all Members of the General Assembly a suggested decision with a deadline for responses of at least 10 calendar days after receipt by a Party and</p> <p>b) the decision is agreed by 51 % of all Parties.</p> <p>The Coordinator shall inform all the Members of the outcome of the vote.</p> <p>A veto according to Section 6.3.5 may be submitted up to 15 calendar days after receipt of this information.</p> <p>The decision will be binding after the Coordinator sends a notification to all Members.</p> <p>The Coordinator will keep records of the votes and make them available to the Parties on request.</p>	<p>This procedure is meant for the important decisions at the level of the MGA – within work packages it is of course possible to agree on less formal modes of coming to agreements.</p> <p>51 % of all Parties are required for a majority in order to make sure that there is a solid legitimacy of decisions while also taking into account that it is not always easy for the Coordinator to obtain replies on proposed decisions in written procedure. The aim is therefore to have a workable approach.</p> <p>Requiring a 2/3 majority of all Parties, as foreseen previously in DESCA2020, is significantly more cumbersome than the rules on decisions in a meeting: in a meeting 2/3 of the votes of 2/3 of the Parties are sufficient to take decisions, i.e. less than 50 %. Since reactions to written decisions are easier to handle than participation in meetings and in order to have a solid base for decisions, we propose that decisions without a meeting require a majority of 51 % of all Parties. This may of course be adapted to the needs of the individual project.</p> <p>Again, if you foresee electronic voting, you may wish to further detail provisions on the tools which can be used, see above on 6.3.2.6.</p>
<p>6.3.4 Voting rules and quorum</p>	
<p>6.3.4.1</p> <p>The General Assembly shall not deliberate and decide validly in meetings unless two-thirds (2/3) of its Members are present or represented (quorum).</p> <p>If the quorum is not reached, the chairperson of the General Assembly shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members is present or represented.</p> <p>6.3.4.2</p> <p>Each Member present or represented in the meeting shall have one vote.</p> <p>6.3.4.3</p>	<p>The quorum rule applies to decisions within a meeting – for decisions without a meeting see 6.3.3.</p>

<p>A Party which the General Assembly has declared according to Section 4.2 to be a Defaulting Party may not vote.</p> <p>6.3.4.4 Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast.</p>	<p>Depending on the size of the consortium it may be useful to foresee other majority requirements for decisions, e.g. a simple majority.</p>
<p>6.3.5 Veto rights</p>	
<p>6.3.5.1 A Party 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.</p>	<p>"Own work" covers the work under the responsibility of the Party. This can include tasks to be fulfilled by Affiliated Entities.</p>
<p>6.3.5.2 When the decision is foreseen on the original agenda, a Party may only veto such a decision during the meeting.</p>	
<p>6.3.5.3 When a decision has been taken on a new item added to the agenda before or during the meeting, a Party may veto such decision during the meeting or within 15 calendar days after receipt of the draft minutes of the meeting.</p>	
<p>6.3.5.4 When a decision has been taken without a meeting a Party may veto such decision within 15 calendar days after receipt of the written notice by the chairperson of the outcome of the vote.</p>	
<p>6.3.5.5 In case of exercise of veto, the Parties shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Parties.</p>	
<p>6.3.5.6 A Party may neither veto decisions relating to its identification to be in breach of its obligations nor 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.</p>	<p>The alleged Defaulting Party may vote but may not exercise its veto right.</p>

<p>6.3.5.7 A Party requesting to leave the consortium may not veto decisions relating thereto.</p>	<p>However, such decisions cannot deviate negatively for the leaving Party from the provisions under Section 9.7.2.1.2 and 9.7.2.2.</p>
<p>6.3.6 Minutes of meetings</p>	
<p>6.3.6.1 The chairperson shall produce minutes of each meeting which shall be the formal record of all decisions taken. He/she shall send draft minutes to all Members within 10 calendar days of the meeting.</p>	
<p>6.3.6.2 The minutes shall be considered as accepted if, within 15 calendar days from receipt, no Party has sent an objection to the chairperson with respect to the accuracy of the draft minutes by written notice.</p>	
<p>6.3.6.3 The chairperson shall send the accepted minutes to all the Members, and to the Coordinator, who shall retain copies of them.</p>	
<p>6.3.7 Decisions of the General Assembly</p>	
<p>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.</p> <p>The following decisions shall be taken by the General Assembly:</p> <p>Content, finances and intellectual property rights</p> <ul style="list-style-type: none"> – Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Granting Authority – Changes to the Consortium Plan – Modifications or withdrawal of Background in Attachment 1 (Background Included) – Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3.2) – Additions to Attachment 4 (Identified entities under the same control) <p>Evolution of the consortium</p>	<p>The General Assembly is the main decision-making body of the Project and as such deals with all decisions of strategic relevance. This may also cover, among many other issues, the cooperation with other initiatives through Linked Actions or similar activities.</p>

<ul style="list-style-type: none"> – Entry of a new Party to the Project and approval of the settlement on the conditions of the accession of such a new Party – Withdrawal of a Party from the Project and the approval of the settlement on the conditions of the withdrawal – Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement – 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 Granting Authority for a change of the Coordinator – Proposal to the Granting Authority for suspension of all or part of the Project – Proposal to the Granting Authority for termination of the Project and the Consortium Agreement <p>Appointments</p> <p>On the basis of the Grant Agreement, the appointment, if necessary, of:</p> <p>- External Expert Advisory Board Members</p> <p>In the case of abolished tasks as a result of a decision of the General Assembly, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration any prior legitimate commitments which cannot be cancelled.</p>	<p>The identification of the breach is a first step in accordance with the procedure in Section 4.2, before declaring a Party a Defaulting Party.</p>
<p>6.4 Coordinator</p>	
<p>6.4.1</p> <p>The Coordinator shall be the intermediary between the Parties and the Granting Authority and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.</p>	
<p>6.4.2</p> <p>In particular, the Coordinator shall be responsible for:</p> <ul style="list-style-type: none"> – monitoring compliance by the Parties with their obligations under this Consortium Agreement and the Grant Agreement – keeping the address list of Members and other contact persons updated and available – collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial 	<p>The Coordinator may delegate part of the coordination tasks only within the limits of Article 7 (b) of the Grant Agreement.</p> <p>The Annotated MGA (page 93 of the currently available pre-draft dated 30 November 2021) foresees this role of verifying consistency for the Coordinator. It</p>

<p>statements and related certification) and specific requested documents to the Granting Authority</p> <ul style="list-style-type: none"> – 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 to any other Party concerned – administering the financial contribution of the Granting Authority and fulfilling the financial tasks described in Section 7.2 – providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims. <p>If one or more of the Parties is late in submission of any Project deliverable, the Coordinator may nevertheless submit the other Parties' Project deliverables and all other documents required by the Grant Agreement to the Granting Authority in time.</p>	<p>also states that it is not the role of the Coordinator to verify the eligibility of the costs nor to request justification - each beneficiary remains solely responsible towards the EC for the costs it declares.</p> <p>Specific requested documents (3rd bullet point) could, for example, be related in particular to activities raising ethical and security issues or involving human embryos or human embryonic stem cells or dual-use goods or dangerous materials and substances. See Articles 11 to 19 of the Grant Agreement ("Rules for Carrying out the Action")</p>
<p>6.4.3</p> <p>If the Coordinator fails in its coordination tasks, the General Assembly may propose to the Granting Authority to change the Coordinator.</p>	
<p>6.4.4</p> <p>The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement.</p>	<p>Things the Coordinator is explicitly allowed to do under the Consortium Agreement are</p> <ul style="list-style-type: none"> - countersigning Attachment 2 (accession document) of this Consortium Agreement with a new Party in response to a decision taken by the General Assembly according to Section 3.1 of this Consortium Agreement; or - signing a Non-Disclosure Agreement with each member of the External Expert Advisory Board in accordance with Section 6.6.
<p>6.4.5</p> <p>The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.</p>	
<p>6.5 [Optional, where foreseen in the Grant Agreement or otherwise decided by the consortium: External Expert Advisory Board (EEAB)]</p>	

<p>(Optional, where foreseen in the Grant Agreement or otherwise decided by the consortium)</p> <p>An External Expert Advisory Board (EEAB) will be appointed and steered by the General Assembly. The EEAB shall assist and facilitate the decisions made by the General Assembly.</p> <p>The Coordinator will ensure that a non-disclosure agreement is executed between all Parties and each EEAB member.</p> <p>Its terms shall be not less stringent than those stipulated in this Consortium Agreement, and it shall be concluded no later than 30 days after their nomination or before any confidential information will be exchanged/disclosed, whichever date is earlier.</p> <p>[Optional: By way of exception to Section 6.4.4 above, the Parties hereby mandate the Coordinator to execute, in their name and on their behalf, a non-disclosure agreement (hereafter “NDA”) with each member of the EEAB, in order to protect Confidential Information disclosed by any of the Parties to any member of the EEAB. The NDA for the EEAB members is enclosed in Attachment 5. The mandate of the Coordinator comprises solely the execution of the NDA in Attachment 5.]</p> <p>The Coordinator shall write the minutes of the EEAB meetings and submit them to the General Assembly. The EEAB members shall be allowed to participate in General Assembly meetings upon invitation but have not any voting rights.]</p>	<p>DESCA does not provide an NDA model since many such models already exist. Therefore, Attachment 5 is left blank, to be filled in by the consortium during the negotiation, depending on the needs of the Project and the preferences of the Parties.</p> <p>One option for a widely used NDA model is the one provided by the IPR helpdesk available at https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/european-ip-helpdesk/europe-useful-documents_en</p>
<p>Section 7: Financial provisions</p>	<p>The DESCA Core Group will consider to introduce Options for lump sum actions and further elucidations at a later stage, when more information is available.</p>
<p>7.1 General Principles</p>	
<p>7.1.1 Distribution of Financial Contribution</p>	
<p>The financial contribution of the Granting Authority to the Project shall be distributed by the Coordinator according to:</p> <ul style="list-style-type: none"> – the Consortium Plan – the approval of reports by the Granting Authority, and – the provisions of payment in Section 7.2. 	<p>According to Article 5.5. of the Grant Agreement, Beneficiaries are allowed to transfer budget between different activities and between themselves. Consequently, in Horizon Europe it is in the consortium’s authority to implement the redistribution of tasks and budget according to the Consortium Plan.</p> <p>Above all management challenges require effective and regular (re-) budgeting of all</p>

<p>A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.</p>	<p>resources needed to execute the Project, taking into account that 15 % of the maximum contribution will only be paid to the consortium after the end of the project.</p> <p>As a consequence of the (re-) budgeting process an updated Consortium Plan will be issued.</p> <p>The consortium may face the need to fine tune for different funding modes (eligible costs, lump sum, flat rate and scale of unit costs) within the Project. The various schemes may be imposed by the Granting Authority and/or implemented at the request of the consortium. As a consequence these will be reflected in the budget and the payment scheme for the related task.</p> <p>Referring to Innovation Actions that are coordinated by a for-profit organisation that thus only receives a funding rate of 70 %, it may be discussed in the consortium whether an additional agreement should be found on who will cover remaining management and dissemination costs.</p> <p>All Parties should inform the Coordinator at signature of the consortium agreement of their current bank account data for payment and as soon as any changes to this data occurs during the project. This is also relevant with regard to the avoidance of negative interest (see elucidations to 7.1.3.).</p>
<p>7.1.2 Justifying Costs</p>	
<p>In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs (and those of its Affiliated Entities, if any) with respect to the Project towards the Granting Authority. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Granting Authority.</p>	<p>This accounting system cannot be affected by the Granting Authority, by the consortium nor one of the Parties, as is stated in the Grant Agreement. Experience shows that this is often not well understood and in consequence gives rise to certain problems. Making it part of this CA, is to ensure that the principle is maintained.</p> <p>Beneficiaries also have to justify the costs of affiliated entities as they are responsible for compliance by the affiliated entities and liable according to the MGA (4.4 Data Sheet: "Each beneficiary is liable only for its own debts (and those of its affiliated entities, if any).").</p>
<p>7.1.3 Funding Principles</p>	
<p>A Party that spends less than its allocated share of the budget as set out in the Consortium Plan or – in case of reimbursement via unit costs - implements less units than foreseen in the Consortium Plan will be funded in accordance with its units/actual duly justified eligible costs only.</p> <p>A Party that spends more than its allocated share of the budget as set out in the Consortium Plan will be funded only</p>	<p>It is recommended that the consortium establishes a regular financial reporting and monitoring throughout the project in order to foresee deviations from the financial plan and to mitigate them if required. This monitoring would usually be performed by the management team of the project.</p> <p>The Grant Agreement explicitly gives a consortium the possibility to shift tasks and/or money between Parties (Article 5.5 MGA).</p>

<p>in respect of duly justified eligible costs up to an amount not exceeding that share.</p>	<p>This is one reason for having a Consortium Plan that can be different from the actual Annex 1. [see also Section 7.1.1. and Section 1.2 for elucidation] This section makes sure that Parties will not be able to spend more than is permitted by the budget in the Consortium Plan. In case a Party spends more money, it may ask for a supplement. Such request shall be addressed to the General Assembly (see Section 6.3.7 [GOV SP] / 6.3.1.2 [GOV LP]). If the Consortium Plan is not deviating from Annex 1 this provision falls back to the standard provisions in the Grant Agreement, with the same effect.</p> <p>The Consortium Plan can be adapted if the eligible costs claimed allow a reallocation of unspent EU funding among the consortium – to be decided in the General Assembly.</p> <p>The consortium should decide how to deal with potential negative interests borne by the Coordinator because of funding from the Granting Authority for example as set out in section 7.1.6.</p>
<p>7.1.4 Excess payments</p>	
<p>A Party has received excess payment</p> <p>a) if the payment received from the Coordinator exceeds the amount declared or</p> <p>b) if a Party has received payments but, within the last year of the Project, its real Project costs fall significantly behind the costs it would be entitled to according to the Consortium Plan.</p> <p>In case a Party has received excess payment, the Party has to inform the Coordinator and return the relevant amount to the Coordinator without undue delay. In case no refund takes place within 30 days upon request for return of excess payment from the Coordinator, the Party is in substantial breach of the Consortium Agreement.</p> <p>Amounts which are not refunded by a breaching Party and which are not due to the Granting Authority, shall be apportioned by the Coordinator to the remaining Parties pro rata according to their share of total costs of the Project as identified in the Consortium Budget, until recovery from the breaching Party is possible.</p>	<p>A Party which spends less than its allocated share of the budget as set out in the Consortium Plan or - in case of reimbursement via unit costs – implements less units than foreseen in the Consortium Plan will be funded in accordance with its actual duly justified eligible costs only.</p> <p>This Section is designed to provide an internal modus operandi and fair share of risks among beneficiaries whereas Article 22 MGA only refers to the liability of beneficiaries towards the Granting Authority in case of recovery by the Granting Authority. This section is designed for cases for which the Mutual Insurance Mechanism does not intervene because the amounts are not due to the Granting Authority. It is not intended to limit the use of pre-financing as a float.</p> <p>The Coordinator has no obligation to finance in advance payments from its own resources (e.g. for the final payment). The Coordinator has to demonstrate that the payments were made in accordance with the Consortium Plan.</p> <p>It is recommended that the consortium foresees a mechanism to monitor the project costs in the last year in order to be able to adapt the Consortium Plan in time. The consortium should also define what</p>

	<p>“significantly” means for option b) of this section.</p> <p>Each Party shall return the difference according to its final financial report promptly without unjustified delay to the Coordinator. It is good practice to reimburse in any case before the end of the project to allow for a redistribution of the budget.</p> <p>The Coordinator will notify the overpaid Party with a debit note setting a timeframe of an additional 30 days to pay the difference. If the payment is not made by the date specified in the debit note the overpaid Party is in breach of the contract. It may be declared a Defaulting Party by the General Assembly because this breach is considered to be substantial (according to Section 4.2.).</p> <p>In case of a breach the General Assembly decides on legal action against the Party. The Coordinator engages to take the necessary and reasonable steps to recover the amount due from the breaching Party.</p> <p>The pro rata principle should apply also in case the final grant amount was already distributed by the Coordinator. In this case, the other Parties shall, on request of the Coordinator, forward a pro rata share of the outstanding amount to the Coordinator.</p> <p>Any additional costs which are not covered by the Defaulting Party or the Mutual Insurance Mechanism shall be apportioned to the remaining Parties pro rata to their share in the total costs of the Project as identified in the Consortium Budget until recovery from the Defaulting Party is possible.</p>
<p>7.1.5 Revenue</p>	
<p>In case a Party earns any revenue that is deductible from the total funding as set out in the Consortium Plan, the deduction is only directed toward the Party earning such revenue. The other Parties’ financial share of the budget shall not be affected by one Party’s revenue. In case the relevant revenue is more than the allocated share of the Party as set out in the Consortium Plan, the Party shall reimburse the funding reduction suffered by other Parties.</p>	<p>Only for-profit legal entities can generate revenues according to Article 22.3.4 MGA.</p>
<p>7.1.6 Financial Consequences of the termination of the participation of a Party</p>	
<p>A Party leaving the consortium shall refund to the Coordinator any payments it has received except the amount of contribution accepted by the Granting Authority or another contributor.</p>	<p>As early as possible, during the drafting of the consortium agreement, the kick-off meeting or during the execution of the project: The General Assembly should agree on a procedure regarding additional costs which are not covered by the Defaulting Party or</p>

<p>In addition, a Defaulting Party shall, within the limits specified in Section 5.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform the leaving Party’s task and necessary additional efforts to fulfil them as a consequence of the Party leaving the consortium. The General Assembly should agree on a procedure regarding additional costs which are not covered by the Defaulting Party or the Mutual Insurance Mechanism.</p>	<p>the Mutual Insurance Mechanism. This refers to cases in which the Parties have to perform additional tasks with additional costs, e.g. perform an activity twice. These costs should in principle be apportioned to the remaining Parties pro rata to their share in the total costs of the Project as identified in the Consortium Budget until recovery from the Defaulting Party is possible.</p> <p>External responsibility is covered by Article 22.2 MGA for recoveries of the Granting Authority. Section 7.1.6 and its respective elucidations refers to the internal arrangement of the consortium.</p>
<p>7.2 Payments</p>	
<p>7.2.1. Payments to Parties are the exclusive task of the Coordinator. In particular, the Coordinator shall:</p> <ul style="list-style-type: none"> – 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 Granting Authority’s 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. <p>With reference to Article 22 of the Grant Agreement, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount less the amounts retained by the Granting Authority for the Mutual Insurance Mechanism and for the final payment.</p>	<p>It is the duty of each Party to provide the Coordinator with up-to-date bank details for the transfer of funding.</p> <p>After approval of the periodic reports interim payments will follow and will be calculated on the basis of the accepted eligible costs and the corresponding reimbursement rates. The amounts paid for interim payments will correspond to the accepted EU contribution. With reference to Article 22 of the Grant Agreement, the total amount of interim payments + pre-financing will be limited to 90 % of each beneficiary’s maximum EU contribution (85 % taking into account 5 % MIM contribution).</p> <p>In accordance with the Grant Agreement, project end means the day when the payment of the balance is done by the Granting Authority.</p>
<p>7.2.2. The transfer of the initial pre-financing, the additional pre-financings (if any) and interim payments to Parties will be handled in accordance with Article 22.1. and Article 7 of the Grant Agreement following this payment schedule:</p>	<p>Interim and final payments to Parties are subject to financial and technical reports being approved and Parties’ costs being accepted by the Granting Authority. The Coordinator will then distribute the payments to the Parties concerned. According to the Grant Agreement, the consortium is allowed to agree on a payment schedule with different instalments</p> <p>This schedule merely details how the distribution of the money as given in 7.1.1. has to be performed. This should be carefully set up. Experience shows that the Parties risk financial losses</p>

	<p>if e.g. a Party receives more advance payment than it can justify towards the Granting Authority at the end of the project but refuses to reimburse the funds. Court proceedings on this issue might be lengthy and unsuccessful.</p> <p>The risk of Parties refusing to reimburse excess or overpayment most often becomes apparent after the final report and the Mutual Insurance Mechanism does not cover these cases. Section 7.1.4. regulates the procedure in case of excess or overpayment.</p> <p>The risk of overpayment can be reduced by instalments of payment following a payment schedule.</p>				
<p>[Option 1:] Funding of costs included in the Consortium Plan will be paid by the Coordinator to the Parties after receipt of payments from the Granting Authority in separate instalments as agreed below:</p> <table border="1" data-bbox="240 835 991 909"> <tr> <td>Xx %</td> <td>on receipt of Pre-financing</td> </tr> <tr> <td>Xx %..</td> <td>...</td> </tr> </table> <p>Funding for costs accepted by the Granting Authority will be paid by the Coordinator to the Party concerned. [end of option 1]</p>	Xx %	on receipt of Pre-financing	Xx %..	...	<p>As referred above, the Consortium Plan undergoes a cyclic update. As a consequence the Consortium Plan follows the reporting period to the Granting Authority.</p> <p>The Consortium Plan can foresee mechanisms in order to help the consortium react to changed circumstances swiftly and to produce deliveries in good time and of good quality. The framework for these mechanisms consists of the principles stipulated in Section 7.1.1. In all mechanisms the Coordinator executes the decisions of the consortium.</p>
Xx %	on receipt of Pre-financing				
Xx %..	...				
<p>[Option 2:] Funding of costs included in the Consortium Plan will be paid by the Coordinator to the Parties after receipt of payments from the Granting Authority without undue delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the Granting Authority will be paid to the Party concerned. [end of option 2]</p>	<p>These mechanisms should effectuate the distribution of the different kinds of payments representing the Community financial contribution:</p> <ol style="list-style-type: none"> 1. the payments for future work (= Pre-financing), 2. the additional pre-financing (if any) and 3. the payments for performed work (= Interim payments). <p>Each Party's share of the prefinancing payment will be calculated in proportion to their share of the grant amount.</p> <p>In order to enhance governance, instalments can be embedded in the payment scheme: 4 models of instalments are presented here. They can be applied separately or in combination, and should be effectuated towards each Party individually. In any case partners should always receive enough contribution to be able to carry out their work as foreseen without having to advance money for the Project themselves.</p> <ol style="list-style-type: none"> a. amounts to cover the realisation of the next deliverable -not necessarily covering the whole actual planning period b. amounts to cover the planned work for the next X months 				

	<p>c. amounts to cover YY % of the actual planning period</p> <p>d. including a retention of ZZ %, which will be paid out at acceptance of all related deliverables.</p> <p>Implementing instalments means any payments will be retained until payment is due according to the Payment Schedule.</p> <p>You may wish to replace “undue delay” by a fixed number of calendar days.</p>
<p>The Coordinator is entitled to withhold any payments due to a Party identified by the General Assembly to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or to a Beneficiary which has not yet signed this Consortium Agreement.</p> <p>The Coordinator is entitled to recover any payments already paid to a Defaulting Party except the costs already claimed by the Defaulting Party and accepted by the Granting Authority. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Granting Authority.</p>	<p>A Beneficiary not signing the Consortium Agreement is not yet bound by its provisions. It is in the interest of both the consortium and the Granting Authority not to forward any money.</p> <p>Poor quality of work or reports may be considered to be a breach.</p> <p>Withholding payments when this is suggested by or agreed with the EU may actually occur in cases where a Party is deemed to be financially weak. The consortium can define additional cases in which the Coordinator is entitled to withhold payments.</p>
<p>Section 8: Results</p>	
<p>8.1 Ownership of Results Results are owned by the Party that generates them.</p>	<p>Internally, the Parties have to ensure that they comply with Article 16.4 and its Annex 5, Section “Ownership of results”, 7th sub-section of the Grant Agreement – “rights of third parties (including personnel)”.</p>
<p>8.2 Joint ownership Joint ownership is governed by Grant Agreement Article 16.4 and its Annex 5, Section Ownership of results, with the following additions:</p>	<p>Be aware that the Horizon Europe MGA explicitly allows that the joint owners may agree to apply another regime than joint ownership. (Article 16.4 and its Annex 5, Section “Ownership of results”, 6th sub-section of MGA).</p>
<p>[Option 1:] Unless otherwise agreed:</p> <ul style="list-style-type: none"> – each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research and teaching activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s). – each of the joint owners shall be entitled to otherwise Exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given: <ul style="list-style-type: none"> (a) at least 45 calendar days advance notice; and (b) fair and reasonable compensation. 	<p>Be aware that joint ownership only arises if relative contributions cannot be separated for protection purposes (Article 16.4 MGA and its Annex 5, Section “Ownership of results”), which means that it is mostly relevant in the context of patenting. Where it is about commercially valuable IP, we strongly recommend having a detailed Joint ownership agreement. This will allow beneficiaries to come to a detailed arrangement wherein they can both capture this value to its fullest extent.</p> <p>In such a context, there will in any case be a need for detailed agreements on the division of protection related costs, countries to be covered, what is meant by non-commercial research etc., which will typically be covered</p>

<p>The joint owners shall agree on all protection measures and the division of related cost in advance.</p> <p>[end of option 1]</p>	<p>by the Joint Ownership agreement on a case by case basis. This will override the CA and allow adequate provisions for the individual case.</p>
<p>Option 2:]</p> <p>In case of joint ownership, each of the joint owners shall be entitled to Exploit the joint Results 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.</p> <p>The joint owners shall agree on all protection measures and the division of related cost in advance.</p> <p>[End of Option 2]</p>	<p>In most other situations, and especially if no protection measures are considered to be useful, it will typically be more important for all Parties concerned to use their own results for future projects without having to obtain the agreement of the other owners.</p> <p>Experience has shown that the boundary of what is „non-commercial research“ and what is „other“ [i.e.: commercial] activities may be interpreted in different ways by different stakeholders. The following aspects could be addressed as elements of distinction if this topic is discussed:</p> <ul style="list-style-type: none"> - defining contract research and stating whether use of the joint result for such purpose it is included in non-commercial research activities or not - stating whether use of the joint result for royalty-bearing activities or other activities leading to monetary benefits is included or not - addressing whether use in further (funded or unfunded) cooperative research projects is included, and where the boundaries are in that case. <p>If the two options provided in the text do not suit you, then possibly taking up the historic MGA text of Horizon 2020 might be one way to compromise (see below). Please consider, however, that for own use (not mentioned by the MGA) the national legal systems may be different.</p> <p>Unless otherwise agreed:</p> <ul style="list-style-type: none"> - each joint owner shall be entitled to Exploit the jointly owned Results on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and - each joint owner may grant non-exclusive licenses to third parties to Exploit the jointly-owned Results (without any right to sub-license), if the other joint owners are given: <ul style="list-style-type: none"> (a) at least 45 calendar days advance notice; and <p>fair and reasonable compensation.</p>
<p>8.3 Transfer of Results</p>	
<p>8.3.1</p> <p>Each Party may transfer ownership of its own Results, including its share in jointly owned Results, following the procedures of the Grant Agreement Article 16.4 and its Annex 5, Section Transfer and licensing of results, sub-section “Transfer of ownership”.</p>	<p>Be aware that this could also be included in the provisions of the joint ownership agreement.</p> <p>There may be national legislation that requires Parties to offer the ownership to the other co-owner first.</p>
<p>8.3.2</p>	<p>Attachment 3 is intended solely for listing such third parties to which a transfer of results is intended.</p>

<p>Each Party may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (3) of this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to such a transfer to listed third parties according to the Grant Agreement Article 16.4 and its Annex 5, Section Transfer of licensing of results, sub-section “Transfer of ownership”, 3rd paragraph.</p>	<p>This could be Affiliated Entities as defined in the MGA, or entities under the same control as referred to in MGA Article 16 and its Annex 5, Section “Transfer and licensing of results”, sub-section “Transfer of ownership”, 3rd paragraph.</p>
<p>8.3.3 The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties under the Consortium Agreement and the Grant Agreement will not be affected by such transfer. Any addition to Attachment (3) after signature of this Consortium Agreement requires a decision of the General Assembly.</p>	
<p>8.3.4 The Parties recognise that in the framework of a merger or an acquisition of an important part of its assets, it may be impossible under applicable EU and national laws on mergers and acquisitions for a Party to give at least 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.</p>	<p>See Annotated MGA (currently available pre-draft dated 30 November 2021), Annex 5 Section “Transfer and licensing of results”, sub-section “Transfer of ownership”, 3rd paragraph.</p>
<p>8.3.5 The obligations above apply only for as long as other Parties still have - or still may request - Access Rights to the Results.</p>	
<p>8.4 Dissemination</p>	<p>Be aware that the obligations related to dissemination and open access to publication are reinforced in Horizon Europe and that FAIR management of research data is required under Article 17 MGA and its Annex 5.</p>
<p>8.4.1 For the avoidance of doubt, the confidentiality obligations set out in Section 10 apply to all dissemination activities described in this Section 8.4 as far as Confidential Information is involved.</p>	<p>The confidentiality obligations apply also to dissemination activities. If your planned publication might contain confidential information of other Parties, follow the rules in Section 10 first.</p>
<p>8.4.2 Dissemination of own (including jointly owned) Results</p>	
<p>8.4.2.1 During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 17.4 of the Grant Agreement and its Annex 5, Section Dissemination, subject to the following provisions.</p>	<p>The MGA obligation of Article 17.4 and its Annex 5, Section “Dissemination”, sub-section “Dissemination of results” on this procedure is not expressly limited in time at all. Participants need, however, a defined end of this obligation to ask their project partners before each publication. The limit can be adapted to the needs of the individual project and might span from</p>

<p>Prior notice of any planned publication shall be given to the other Parties at least 45 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement by written notice to the Coordinator and to the Party or Parties proposing the dissemination within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.</p>	<p>directly after the end of the project to 5 years afterwards.</p> <p>To avoid doubt: "dissemination" as per its definition in the MGA does not cover patent application activities.</p> <p>The Horizon Europe MGA foresees 15 days deadline but allows to diverge.</p> <p>If the consortium finds it useful, distinction between different forms of dissemination can be made with different timeframes, for example for papers, abstracts, articles, monographs, etc.</p>
<p>8.4.2.2 An objection is justified if</p> <ul style="list-style-type: none"> (a) the protection of the objecting Party's Results or Background would be adversely affected, or (b) the objecting Party's legitimate interests in relation to its Results or Background would be significantly harmed, or (c) the proposed publication includes Confidential Information of the objecting Party. <p>The objection has to include a precise request for necessary modifications.</p>	
<p>8.4.2.3 If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.</p>	
<p>8.4.2.4 The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted, provided that the objections of the objecting Party have been addressed.</p>	<p>See above 8.4: confidentiality obligations still apply!</p>
<p>8.4.3 Dissemination of another Party's unpublished Results or Background A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published.</p>	<p>Where unpublished material from more than one beneficiary is involved, the procedure of Section 8.4.2. will normally lead to a joint publication. This Section 8.4.2. simply wishes to clearly state the principle that each beneficiary remains solely entitled to decide on first publication of its own unpublished materials (be they Background or Results).</p>
<p>8.4.4 Cooperation obligations The Parties undertake to cooperate to allow the timely submission, examination, publication and defense of any dissertation or thesis for a degree that includes their Results</p>	

<p>or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.</p>	
<p>8.4.5 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.</p>	
<p>Section 9: Access Rights</p>	
<p>9.1 Background included</p>	
<p>9.1.1 In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits. Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.</p>	<p>Be aware – Attachment 1 is a vital document – check what your project partners are listing and (more importantly) not listing! Attachment 1 constitutes the agreement on Background that is mentioned in MGA Article 16.1 and its Annex 5, Section “Agreement on Background”.</p>
<p>9.1.2 Any Party may add additional Background to Attachment 1 during the Project provided they give written notice to the other Parties. However, approval of the General Assembly is needed should a Party wish to modify or withdraw its Background in Attachment 1.</p>	<p>It seems reasonable to expect that if Parties know of a specific need for Access Rights to specific Background, they will be able to identify this up front (including limitations, if any). In any case, such a duty to inform is explicitly mentioned in MGA Annex 5, Section “Access rights to results and background” and this information needs to be shared before accession to the MGA. In addition, if it becomes apparent during the Project that further Background is needed, the Parties have to make use of Section 9.1.2 and add such Background.</p>
<p>9.2 General Principles</p>	
<p>9.2.1 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.</p>	<p>This clause wants to make clear that in their scientific and technological exchanges, the Parties should be cautious about potential legal limits caused by intellectual property rights (regardless of the owner thereof). If Attachment 1 is missing important Background which turns out to be needed for the implementation of the Project as planned in Annex 1 of the Grant Agreement, this becomes a problem for the whole consortium, since it is jointly responsible towards the Granting Authority for achieving the planned project results. Although it will in the first instance be up to the owner of the Background concerned to remedy the situation (they had a duty to inform the consortium about the situation of their Background), if no consensus between the Parties concerned can be found it will eventually be up to the consortium decision-making bodies to find a case-by-case solution.</p>

	As soon as the consortium becomes aware of such restrictions, it has to decide whether this has an impact on the Project, including the Exploitation as foreseen in Annex 1 and the Consortium Plan. If there is an impact, the Consortium Plan can be updated accordingly. The consortium can also keep the Consortium Plan as it is. This can mean that you are not allowed to use certain restricted Background and you have to implement the task in another way.
9.2.2 Any Access Rights granted exclude any rights to sublicense unless expressly stated otherwise.	See Article 16.4 MGA and its Annex 5, Section “Access rights to results and background”, sub-section “Exercise of Access Rights – Waiving of Access Rights – No sub-licensing”
9.2.3 Access Rights shall be free of any administrative transfer costs.	Of course, especially when an agreement on specific conditions for Access Rights is negotiated, the Parties may agree to include a right to sublicense.
9.2.4 Access Rights are granted on a non-exclusive basis.	
9.2.5 Results and Background shall be used only for the purposes for which Access Rights to it have been granted.	
9.2.6 All requests for Access Rights shall be made in writing. 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 Party granting the access can also request to have a written agreement.
9.2.7 The requesting Party must show that the Access Rights are Needed.	See definition of “Needed” in Definition section.
9.3 Access Rights for implementation	
Access Rights to Results and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.	The Parties may in their entries for Attachment 1 detail access conditions for specific Background listed (e.g. upon royalties). Conditions other than royalty-free for Access to Background have to be agreed by all Parties before their accession to the MGA (Article 16.1. and its Annex 5, Section “Access rights to results and background”.)
9.4 Access Rights for Exploitation	
9.4.1 Access Rights to Results	
[Option 1:] Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable conditions.	Since Access Rights exclude the right to sublicense (Section 9.2.2 above), Parties should be aware that their further “exploitation” should not require such sublicensing (even through the granting of

<p>Access rights to Results for internal research and for teaching activities shall be granted on a royalty-free basis. [end of option 1]</p>	<p>Access Rights in a subsequent research project). Option 1: Access for exploitation for internal research and for teaching is free, access for any other exploitation of own Results (including third party research) will be granted on Fair and Reasonable conditions.</p> <p>Any Party exploiting another Party's Results has to take care not to grant direct access to a third party, unless the owning Party has agreed to such granting of Access Rights.</p> <p>Possible agreements regarding access to certain Results/ Background for further research might e.g. include the following aspects: Allowing to produce research results which are available to the third party but which contain hermetically-sealed Results from the Project; using Results from the Project for in-house testing or diagnostics purposes in doing research.</p> <p>Option 2: All Access for Use of own Results will be granted royalty-free.</p> <p>As per Section 9.2.6, the request for Access Rights is to be in writing, the agreement on fair and reasonable conditions normally also, unless both parties don't want that formality.</p>
<p>[Option 2:] Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on a royalty-free basis. [end of option 2]</p>	
<p>9.4.2 Access Rights to Background if Needed for Exploitation of a Party's own Results, shall be granted on Fair and Reasonable conditions.</p>	<p>Exploitation can be any activity outside of implementation of the Action, including research on behalf of a third party (see Article 16 and its Annex 5).</p>
<p>9.4.3 A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.</p>	<p>This is the default time limit in the MGA Annex 5, Section "Access rights to results and background". Parties are free to negotiate a different term, depending on e.g. the nature of the project or the Technology Readiness Level of the results.</p>
<p>9.5 Access Rights for entities under the same control</p>	<p>Be aware that the wording of the MGA also allows different approaches, e.g. to not foresee Access Rights for entities under the same control. Please note: The term "Affiliated Entities" has a new, broader meaning in Horizon Europe, see the definition in the MGA Article 2. What used to be "Affiliated Entities" under the Horizon 2020 terminology are now "Entities under the same control".</p>
<p>Entities under the same control have Access Rights under the conditions of the Grant Agreement Article 16.4 and its Annex 5, Section "Access rights to results and background", sub-section "Access rights for entities under the same control" [Optional:; if they are identified in Attachment 4 (Identified entities under the same control) to this Consortium Agreement].</p>	<p>Regarding the optional addition: an identification of the relevant entities under the same control can bring more certainty to the Parties regarding the scope of the Access Rights of their consortium. Some Industry partners however tend to frequently change their company structure and it may be more realistic that they provide a global description</p>

<p>Such Access Rights must be requested by the entity under the same control from the Party that holds the Background or Results. Alternatively, the Party granting the Access Rights may individually agree with the Party requesting the Access Rights to have the Access Rights include the right to sublicense to the latter's entity under the same control [listed in Attachment 4]. Access Rights to an entity under the same control shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.</p> <p>Entities under the same control which obtain Access Rights in return fulfil all confidentiality obligations accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such entities were Parties.</p> <p>Access Rights may be refused to entities under the same control if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.</p> <p>Access Rights granted to any entity under the same control are subject to the continuation of the Access Rights of the Party with whom it is under the same control, and shall automatically terminate upon termination of the Access Rights granted to such Party.</p> <p>Upon cessation of the status as an entity under the same control, any Access Rights granted to such former entity under the same control shall lapse.</p> <p>Further arrangements with entities under the same control may be negotiated in separate agreements.</p>	<p>of that structure rather than a list of the hundreds of individual entities involved.</p> <p>Definition of entities under the same control: See MGA Article 16 and its Annex 5, Section "Access rights to results and background – Access rights for entities under the same control".</p> <p>The entity under the same control must make the request directly to the owning Party.</p>
<p>9.6 Additional Access Rights</p>	
<p>[Option 1:]</p> <p>For the avoidance of doubt any grant of Access Rights not covered by the Grant Agreement or 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.</p>	<p>Parties can choose between option 1 and option 2. Option 1 leaves it up the discretion of the Parties whether they grant Access Rights that are not included in the Consortium Agreement, for instance Access Rights to results that are not needed by the requesting Party. In this case, the owning Party is free to refuse such request. Under option 2, the Parties commit themselves to discuss such additional Access Rights in good faith, so they cannot refuse a request at their own discretion without having a reasonable discussion on the request.</p>
<p>[Option 2:]</p> <p>The Parties agree to negotiate in good faith any additional Access Rights to Results as might be asked for by any Party, upon adequate financial conditions to be agreed.</p>	

9.7 Access Rights for Parties entering or leaving the consortium	
9.7.1 New Parties entering the consortium As regards Results developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.	Any new Party must fill in Attachment 1 regarding Background – to be decided by the General Assembly together with the decision on the accession.
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.	Any consequences for sub-licenses have to be covered by the license itself.
9.7.2.1.2 Non-defaulting Party A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Results developed until the date of the termination of its participation. It may request Access Rights within the period of time specified in Section 9.4.3.	In case of a Party leaving voluntarily its Access Rights shall be frozen as they are at the time such Party leaves the project. Any consequences for sub-licenses have to be covered in the license itself.
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.	Parties leaving the Project in principle have to continue granting Access Rights in order not to hinder the progress of the Project. When deciding about a Party's request to leave the consortium, the General Assembly may, however, decide that such Access Rights will not be necessary.
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.	[If Software is a core element for the Project, participants may replace this Section 9.8 with the special clauses for Software [Module IPR SC]].

<p>Section 10: Non-disclosure of information</p>	<p>The MGA for Horizon Europe uses a different terminology than the one for H2020, based on “sensitive information”. For the purposes of DESCA we still consider the established terminology to be more appropriate.</p>
<p>10.1 All information in whatever form or mode of communication, 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” at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.</p>	<p>“Any form/mode of communication” will now also include the electronic exchange system.</p>
<p>10.2 The Recipients hereby undertake in addition and without prejudice to any commitment on non-disclosure under the Grant Agreement, for a period of 5 years after the end of the Project:</p> <ul style="list-style-type: none"> – not to use Confidential Information otherwise than for the purpose for which it was disclosed; – not to disclose Confidential Information 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, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in a machine-readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient complies with the confidentiality obligations herein contained with respect to such copy. 	<p>The consent of the owner of confidential data is needed before giving it to subcontractors/affiliates even if those have a role in project. No disassembling, reverse assembling, reverse engineering is permitted unless allowed by the owner.</p> <p>The source of this 5-year duration lies in the MGA, Data sheet.</p> <p>The obligation is not to disclose confidential information to anybody (whether inside the consortium or not).</p>
<p>10.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.</p>	<p>Consent of the owner of the Confidential Information is needed before giving such Confidential Information to third parties (e.g. subcontractors and affiliated entities).</p> <p>Third parties in this context covers any entities which are not a party to the CA, including but not limited to affiliated entities and subcontractors. It is not relevant whether the third parties are involved in the project or not.</p>

<p>10.4 The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:</p> <ul style="list-style-type: none"> – the Confidential Information has become or 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 confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality 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; – the Confidential Information was already known to the Recipient prior to disclosure, or – the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.7 hereunder. 	
<p>10.5 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</p>	
<p>10.6 Each Recipient shall promptly inform the relevant Disclosing Party by written notice of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.</p>	
<p>10.7 If any Recipient 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</p> <ul style="list-style-type: none"> – notify the Disclosing Party, and 	<p>Such disclosure is only to the extent it is required.</p>

<p>– comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.</p>	
<p>Section 11: Miscellaneous</p>	
<p>11.1 Attachments, inconsistencies and severability</p>	
<p>This Consortium Agreement consists of this core text and Attachment 1 (Background included) Attachment 2 (Accession document) Attachment 3 (List of third parties for simplified transfer according to Section 8.3.2) Attachment 4 (Identified entities under the same control) Attachment 5 (NDA for External Expert Advisory Board agreed under Section 6)</p> <p>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.</p> <p>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 that fulfils the purpose of the original provision.</p>	<p>Please note to delete reference to Attachment 4 if not used in Section 9.5.</p> <p>The Consortium Agreement must not include any provisions contrary to the Grant Agreement (MGA Article 7).</p>
<p>11.2 No representation, partnership or agency</p>	
<p>Except as otherwise provided in Section 6.4.4, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium. 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.</p>	<p>Regarding the role of the Coordinator: see Section 6.4.</p>
<p>11.3 Formal and written notices</p>	
<p>Any notice to be given under this Consortium Agreement shall be addressed to the recipients as listed in the most current address list kept by the Coordinator.</p>	<p>Any communication which requires formal or written form is listed in this clause. Clear notifications and notification routes are important in view of the question of proof in dispute cases.</p> <p>Most of the issues should be decided in</p>

<p>Any change of persons or contact details shall be immediately communicated to the Coordinator by written notice. The address list shall be accessible to all Parties.</p> <p>Formal notices: If it is required in this Consortium Agreement (Sections 4.2, 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 with acknowledgement of receipt.</p> <p>Written notice: Where written notice is required by this Consortium Agreement, this is fulfilled also by other means of communication such as e-mail with acknowledgement of receipt.</p>	<p>accordance with the governance structure chosen for the Project. This covers all technical issues and other issues in which decision making power is granted to a governing body. Only in Sections 4.2, 9.7.2.1.1 and 11.4 a formal notice is necessary.</p> <p>All other communication than “formal” may be done for instance by e-mail.</p> <p>The updated lists of contact information shall be kept by the Coordinator (including scientific and administrative person(s)).</p>
<p>11.4 Assignment and amendments</p>	
<p>Except as set out in Section 8.3, 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.</p> <p>Amendments and modifications to the text of this Consortium Agreement not explicitly listed in 6.3.7 (SP)/ Section 6.3.1.2 (LP) require a separate written agreement to be signed between all Parties.</p>	<p>Note that subcontracting is not considered as an assignment as the responsibilities remain for the Party itself.</p> <p>Changes to the core text of the Consortium Agreement have to be negotiated between the Parties.</p> <p>All Parties should notice that some changes to this Consortium Agreement (for instance Accession of a new Party) may be taken by a decision made by the General Assembly and will not require a formal signature of each Party. Parties are protected against major contract changes through the use of veto rights (see 6.3.5 [GOV SP] / Section 6.2.4 [GOV LP]).</p>
<p>11.5 Mandatory national law</p>	
<p>Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.</p>	<p>The legislation of a Party’s country may state certain statutory restrictions for the Parties, and naturally these restrictions should be respected by all Parties.</p>
<p>11.6 Language</p>	
<p>This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.</p>	
<p>11.7 Applicable law</p>	

<p>This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.</p>	<p>This Consortium Agreement has been drafted based on Belgian law. The Parties should however in all cases look into the choice of law in the Grant Agreement in order to harmonise possible conflicts.</p>
<p>11.8 Settlement of disputes</p>	
<p>The Parties shall endeavour to settle their disputes amicably.</p>	<p>In case an amicable solution cannot be reached within the consortium, the following dispute resolution mechanisms are recommended:</p> <ol style="list-style-type: none"> 1.) Mediation combined with binding arbitration or court litigation, 2.) Binding arbitration 3.) Court litigation <p>DESCA suggests two different providers for mediation and/or arbitration services for this model clause. There are of course more providers and the choice of the ADR-provider should be discussed within the consortium. If the consortium opts for another mediation and arbitration provider, please make sure that the ADR clause used in this Consortium Agreement is consistent with their specific procedures.</p>
<p>[Please choose an appropriate method of dispute resolution, possibly one of the options 1 (WIPO), 2 (ICC), 3 (Courts). Within option 1, please further choose, between 1.1. and 1.2.]</p> <p>[Option 1: WIPO Mediation Followed, in the Absence of a Settlement, by WIPO Expedited Arbitration or by Court Litigation]</p> <p>Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Brussels unless otherwise agreed upon. The language to be used in the mediation shall be English unless otherwise agreed upon.</p> <p>[Please choose one of the following options.]</p> <p>[Option 1.1. WIPO Mediation Followed, in the Absence of a Settlement, by WIPO Expedited Arbitration]</p> <p>If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 calendar days of the commencement of the mediation, it</p>	<p>In cross-border disputes there are several issues to be considered in the context of dispute resolution: the costs of and time consumed by the process and the enforcement of the decision. It is up to the consortium to choose from the options proposed here or negotiate other alternatives.</p> <p>Disputes arising in related contracts concluded at the preparatory stage of a research collaboration (e.g. letters of intent, non-disclosure agreements, options), during a collaboration (e.g. the consortium agreement, sub-contracts, material transfer agreements) and after a collaboration (e.g. licensing agreements, purchase contracts) may require consistent dispute resolution clauses.</p> <p>In some cases, consortium partners will opt for mediation, followed by court litigation instead of arbitration. This is why DESCA proposes option 1.2. and 2.2 that refer the conflict to the courts instead of arbitration should the mediation fail.</p> <p>For more information about the WIPO Arbitration and Mediation Center, visit http://www.wipo.int/amc/en/ For more information about the ICC Arbitration, visit http://www.iccwbo.org/products-and-services/arbitration-and-adr/</p>

shall, upon the filing of a Request for Arbitration by either Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of 60 calendar days, either Party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be Brussels unless otherwise agreed upon. The language to be used in the arbitral proceedings shall be English unless otherwise agreed upon.

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 in any applicable competent court.

[Option 1.2. WIPO Mediation Followed, in the Absence of a Settlement, by Court Litigation]

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 calendar days of the commencement of the mediation, the courts of Brussels shall have exclusive jurisdiction.

[Option 2: ICC Arbitration]

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 in any applicable competent court.

<p>[Option 3: Settlement by Court Litigation]</p> <p>All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled by the courts of Brussels.</p>	<p>Further information on the Belgian court system can be found here: https://www.tribunaux-rechtbanken.be/nl (in Dutch/French/German) or https://justitie.belgium.be/nl/rechterlijke_orde (in Dutch and French)</p>
	<p>In case you have project partners who wish to emphasise anti-corruption, the prevention of risks of corruption and influence peddling, you may wish to add provisions as the following:</p> <p>11.9 A Party shall not, directly or via a third party, propose to any person, or accept from any person any offer, promise, donation, gift and/or benefit of any kind which would be linked to misuse of such person’s real or supposed influence to obtain, for itself or for others, a distinction, a job, a contract or any other favourable decision, if such an action is contrary to</p> <ul style="list-style-type: none"> - the laws and regulations applicable in the country in which the person or Party concerned is registered or in which the person concerned holds citizenship, or any other standards applicable in the field of ethics and anti-corruption, including with regard to the subject of this Consortium Agreement; - applicable laws and international conventions on ethics and anti-corruption, in particular those which derive from the OECD anti-corruption Convention of 1997, the United Nations Convention Against Corruption, or the legislation of the European Union, as regularly amended, including all implementing regulations of such legislation. <p>The Parties shall make their best effort to inform each other immediately of all circumstances, events and transactions which contravene or are likely to contravene the provisions of this Section.</p> <p>The Parties shall make their best efforts to ensure that any third party involved in the Project shall comply with stipulations substantially similar to these provisions.</p>
<p>Section 12: Signatures</p>	
<p>AS WITNESS: The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives</p>	<p>It is too impractical for all Parties to sign the same document at the same time.</p> <p>A traditional hand-written procedure for the</p>

in separate signature pages the day and year first above written.

[INSERT NAME OF PARTY]

Signature(s)

Name(s)

Title(s)

Date

[It is recommended to insert a new page for each signature.]

[INSERT NAME OF PARTY]

Signature(s)

Name(s)

Title(s)

Date

[INSERT NAME OF PARTY]

Signature(s)

Name(s)

Title(s)

Date

signatures:

Each Party signs a **separate signature page** as many times as there are Parties (it is also possible to sign only 1 or 2 originals as only one fully signed copy is necessary according to Belgian Law). The Coordinator gathers all originals and then delivers the whole package consisting of the text and all signatures (original or copies) to all Parties.

If the consortium chooses electronic signatures using e.g. Adobe Sign, DocuSign or similar electronic signature technology, an alternative wording could be for example:

The Parties agree that this Consortium Agreement is executed by electronic signatures **[incorporating a digital certificate for independent identity validation]**, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

Attachment 1: Background included												
<p>According to the Grant Agreement (Article 16.1) Background is defined as “data, know-how or information (...) that is (...) needed to implement the Action or exploit the results”. Because of this need, Access Rights have to be granted in principle, but Parties must identify and agree amongst them on the Background for the Project. This is the purpose of this attachment.</p>			<p>Be aware – Attachment 1 is a vital document – check what your project partners are listing and (more importantly) not listing!</p> <p>Attachment 1 constitutes the agreement on Background that is mentioned in MGA Article 16.1 and its Annex 5, Section “Agreement on Background”.</p>									
<p>PARTY 1</p> <p>As to [NAME OF THE PARTY], it is agreed between the Parties that, to the best of their knowledge (please choose),</p> <p>Option 1: The following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:</p> <table border="1"> <thead> <tr> <th>Describe Background</th> <th>Specific restrictions and/or conditions for implementation (Article 16.4 Grant Agreement and its Annex 5, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the Action”)</th> <th>Specific restrictions and/or conditions for Exploitation (Article 16.4 Grant Agreement and its Annex 5, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>			Describe Background	Specific restrictions and/or conditions for implementation (Article 16.4 Grant Agreement and its Annex 5, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the Action”)	Specific restrictions and/or conditions for Exploitation (Article 16.4 Grant Agreement and its Annex 5, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”)							<p>It seems reasonable to expect that if Parties know of a specific need for Access Rights to specific Background, they will be able to identify this up front (including limitations, if any). In any case, such a duty to inform is explicitly mentioned in MGA Article 16.1 and its Annex 5, Section “Agreement on Background” and Section “Access rights to results and background”, sub-sections on “Access rights to background and results for implementing the acting”, and on “Access rights for exploiting the results”) and this information needs to be shared before accession to the Grant Agreement.</p> <p>In addition, if it becomes apparent during the project that further Background is needed, the Parties have to make use of Section 9.1.2 of this Consortium Agreement and add the Background.</p>
Describe Background	Specific restrictions and/or conditions for implementation (Article 16.4 Grant Agreement and its Annex 5, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the Action”)	Specific restrictions and/or conditions for Exploitation (Article 16.4 Grant Agreement and its Annex 5, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”)										
<p>Option 2: No data, know-how or information of [NAME OF THE PARTY] is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights</p>												

<p>to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).</p> <p>This represents the status at the time of signature of this Consortium Agreement.</p>	
<p>Same for PARTY 2, PARTY 3, etc</p>	

<p>Attachment 2: Accession document</p> <p>ACCESSION</p> <p>of a new Party to</p> <p>[Acronym of the Project] Consortium Agreement, version [..., YYYY-MM-DD]</p> <p>[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE Grant Agreement]</p> <p>hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].</p> <p>[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE Grant Agreement]</p> <p>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].</p> <p>This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.</p> <p>[Date and Place]</p> <p>[INSERT NAME OF THE NEW PARTY] Signature(s) Name(s) Title(s)</p> <p>[Date and Place]</p> <p>[INSERT NAME OF THE COORDINATOR] Signature(s) Name(s) Title(s)</p>	
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Attachment 3: List of third parties for simplified transfer according to Section 8.3.2.	
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[Option: Attachment 4: Identified entities under the same control according to Section 9.5]

Be aware that the wording of the MGA also allows different approaches, e.g. to not foresee Access Rights for entities under the same control. Please note: The term “Affiliated Entities” has a new, broader meaning in Horizon Europe, see the definition in the Horizon Europe Grant Agreement Article 2. What used to be “Affiliated Entities” under the Horizon 2020 terminology is now “Entities under the same control”.

<p>[Option: Attachment 5: NDA for External Expert Advisory Board agreed under Section 6]</p>	<p>Option only applicable if Option 6.5/6.6 (External Expert Advisory Board) is chosen. Please insert the agreed NDA text here.</p>
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<p>[Option: Module GOV LP] Governance structure for Medium and Large Projects</p>	<p>This governance structure is dedicated for large projects requiring an Executive Board as intermediary governance structure. If this is appropriate for the structure of your project, please replace the current Section 6 [module GOV SP] in the text above with this module.</p>						
<p>6.1 General structure</p>							
<p>The organisational structure of the consortium shall comprise the following Consortium Bodies:</p> <p>The General Assembly as the ultimate decision-making body of the consortium</p> <p>The Executive Board as the supervisory body for the execution of the Project, which shall report to and be accountable to the General Assembly</p> <p>The Coordinator as the legal entity acting as the intermediary between the Parties and the Granting Authority. 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.</p>							
<p>6.2 General operational procedures for all Consortium Bodies</p>							
<p>6.2.1 Representation in meetings</p>							
<p>Any Party which is appointed to take part in a Consortium Body shall designate one representative (hereinafter referred to as "Member").</p> <p>Any Member:</p> <ul style="list-style-type: none"> - should be present or represented at any meeting; - may appoint a substitute or a proxy to attend and vote at any meeting; <p>and shall participate in a cooperative manner in the meetings.</p>							
<p>6.2.2 Preparation and organisation of meetings</p>							
<p>6.2.2.1 Convening meetings:</p>							
<p>The chairperson of a Consortium Body shall convene meetings of that Consortium Body.</p>							
<table border="1"> <tr> <td></td> <td>Ordinary meeting</td> <td>Extraordinary meeting</td> </tr> <tr> <td>General Assembly</td> <td>At least once a year</td> <td>At any time upon request of the Executive Board or</td> </tr> </table>		Ordinary meeting	Extraordinary meeting	General Assembly	At least once a year	At any time upon request of the Executive Board or	
	Ordinary meeting	Extraordinary meeting					
General Assembly	At least once a year	At any time upon request of the Executive Board or					

		1/3 of the Members of the General Assembly											
Executive Board	At least quarterly	At any time upon request of any Member of the Executive Board											
<p>6.2.2.2 Notice of a meeting</p> <p>The chairperson of a Consortium Body shall give written notice of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated below.</p> <table border="1"> <thead> <tr> <th></th> <th>Ordinary meeting</th> <th>Extraordinary meeting</th> </tr> </thead> <tbody> <tr> <td>General Assembly</td> <td>45 calendar days</td> <td>15 calendar days</td> </tr> <tr> <td>Executive Board</td> <td>14 calendar days</td> <td>7 calendar days</td> </tr> </tbody> </table>						Ordinary meeting	Extraordinary meeting	General Assembly	45 calendar days	15 calendar days	Executive Board	14 calendar days	7 calendar days
	Ordinary meeting	Extraordinary meeting											
General Assembly	45 calendar days	15 calendar days											
Executive Board	14 calendar days	7 calendar days											
<p>6.2.2.3 Sending the agenda</p> <p>The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body an agenda no later than the minimum number of days preceding the meeting as indicated below.</p> <table border="1"> <tbody> <tr> <td>General Assembly</td> <td>21 calendar days, 10 calendar days for an extraordinary meeting</td> </tr> <tr> <td>Executive Board</td> <td>7 calendar days</td> </tr> </tbody> </table>					General Assembly	21 calendar days, 10 calendar days for an extraordinary meeting	Executive Board	7 calendar days					
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Executive Board	7 calendar days												
<p>6.2.2.4 Adding agenda items:</p> <p>Any agenda item requiring a decision by the Members of a Consortium Body must be identified as such on the agenda.</p> <p>Any Member of a Consortium Body may add an item to the original agenda by written notice to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.</p> <table border="1"> <tbody> <tr> <td>General Assembly</td> <td>14 calendar days, 7 calendar days for an extraordinary meeting</td> </tr> <tr> <td>Executive Board</td> <td>2 calendar days</td> </tr> </tbody> </table>					General Assembly	14 calendar days, 7 calendar days for an extraordinary meeting	Executive Board	2 calendar days					
General Assembly	14 calendar days, 7 calendar days for an extraordinary meeting												
Executive Board	2 calendar days												
<p>6.2.2.5 During a meeting the Members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.</p>			<p>If a new topic comes up that may ultimately require a decision, it is good practice to organise a new meeting or a written procedure for decision on the topic, rather than deciding on it during the meeting.</p>										

<p>6.2.2.6 Meetings of each Consortium Body may also be held by tele- or videoconference, or other telecommunication means.</p>	<p>Hybrid forms of meetings where participants in the room are joined by participants connected remotely are also possible. If electronic voting is used in virtual or hybrid meetings, this must happen according to the same principles as if it were a physical meeting. This can be reinforced by adding wording e.g. as follows:</p> <p>Decisions may also be taken via online voting tools, provided the online vote duly observes the principles of fairness, transparency, proper documentation and confidentiality as required to ensure the same degree of reliability than a vote in a physical meeting. The Coordinator shall inform the Parties of the tool to be used for online voting in due time before the vote for each Party to make sure they have sufficient technical access and opportunity to cast their vote.</p>
<p>6.2.2.7 Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.2.5.2.</p>	
<p>6.2.2.8 Decisions without a meeting</p>	
<p>Any decision may also be taken without a meeting if</p> <p>a) the Coordinator circulates to all Members of the General Assembly a suggested decision with a deadline for responses of at least 10 calendar days after receipt by a Party and</p> <p>b) the decision is agreed by 51 % of all Parties.</p> <p>The Coordinator shall inform all the Parties of the outcome of the vote. A veto according to Section 6.2.5 may be submitted up to 15 calendar days after receipt of this information. The decision will be binding after the Coordinator sends a notification to all Members. The Coordinator will keep records of the votes and make them available to the Parties on request.</p>	<p>This procedure is meant for the important decisions at the level of the General Assembly – within work packages it is of course possible to agree on less formal modes of coming to agreements.</p> <p>51 % of all Parties are required for a majority in order to make sure that there is a solid legitimacy of decisions while also taking into account that it is not always easy for the Coordinator to obtain replies on proposed decisions in written procedure. The aim is therefore to have a workable approach. Requiring a 2/3 majority of all Parties, as foreseen previously in DESCA2020, is significantly more cumbersome than the rules on decisions in a meeting: in a meeting 2/3 of the votes of 2/3 of the Parties are sufficient to take decisions, i.e. less than 50 %. Since reactions to written decisions are easier to handle than participation in meetings and in order to have a solid base for decisions, we propose that decisions without a meeting require a majority of 51 % of all Parties. This may of course be adapted to the needs of the individual project.</p> <p>Again, if you foresee electronic voting, you may wish to further detail provisions on the tools which can be used, see above on 6.2.2.6.</p>

<p>6.2.3 Voting rules and quorum</p> <p>6.2.3.1 Each Consortium Body shall not deliberate and decide validly in meetings unless two-thirds (2/3) of its Members are present or represented (quorum).</p> <p>If the quorum is not reached, the chairperson of the Consortium Body shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members is present or represented.</p> <p>6.2.3.2 Each Member of a Consortium Body present or represented in the meeting shall have one vote.</p> <p>6.2.3.3 A Party which the General Assembly has declared according to Section 4.2 to be a Defaulting Party may not vote.</p> <p>6.2.3.4 Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast.</p>	<p>Depending on the size of the consortium it may be useful to foresee other majority requirements for decisions, e.g. a simple majority.</p>
<p>6.2.4 Veto rights</p> <p>6.2.4.1 A Party 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.</p> <p>6.2.4.2 When the decision is foreseen on the original agenda, a Party may only veto such a decision during the meeting.</p> <p>6.2.4.3 When a decision has been taken on a new item added to the agenda before or during the meeting, a Party may veto such decision during the meeting or within 15 calendar days after receipt of the draft minutes of the meeting. A Party that is not appointed to participate to a particular Consortium Body may veto a decision within the same number of calendar days after receipt of the draft minutes of the meeting.</p> <p>6.2.4.4 When a decision has been taken without a meeting a Party may veto such decision within 15 calendar days after written notice by the chairperson of the outcome of the vote.</p>	<p>"Own work" covers the work under the responsibility of the Member. This can include tasks to be fulfilled by Affiliated Entities.</p>

<p>6.2.4.5 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 the Parties.</p> <p>6.2.4.6 A Party may neither veto decisions relating to its identification to be in breach of its obligations nor 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.</p> <p>6.2.4.7 A Party requesting to leave the consortium may not veto decisions relating thereto.</p>	<p>The alleged Defaulting Party may vote but may not exercise its veto right.</p>
<p>6.2.5 Minutes of meetings</p>	
<p>6.2.5.1 The chairperson of a Consortium Body shall produce minutes of each meeting which shall be the formal record of all decisions taken. He/she shall send the draft minutes to all Members within 10 calendar days of the meeting.</p> <p>6.2.5.2 The minutes shall be considered as accepted if, within 15 calendar days from receipt, no Member has sent an objection by written notice to the chairperson with respect to the accuracy of the draft of the minutes by written notice.</p> <p>6.2.5.3 The chairperson shall send the accepted minutes to all the Parties and to the Coordinator, who shall retain copies of them.</p>	<p>To allow also for the use of a repository for project documentation rather than sending the documents.</p>
<p>6.3 Specific operational procedures for the Consortium Bodies</p>	
<p>6.3.1 General Assembly</p>	
<p>In addition to the rules described in Section 6.2, the following rules apply:</p>	
<p>6.3.1.1 Members</p>	
<p>6.3.1.1.1 The General Assembly shall consist of one representative of each Party (hereinafter General Assembly Member).</p> <p>6.3.1.1.2 Each General Assembly Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.1.2. of this Consortium Agreement.</p> <p>6.3.1.1.3 The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise in a meeting of the General Assembly.</p>	<p>The Party must ensure internally that the person acting at a meeting has the necessary authority or has obtained a mandate from the competent officer/s for the decisions to be taken. As the agenda is circulated before the meeting, with decision items marked, any necessary internal authorisation can be obtained in advance in order to allow discussions on critical items at the meeting rather than trying to solve them in writing afterwards.</p> <p>If the person who attends the meeting is not authorised by his or her institution or company to make a proposed decision on behalf of that institution or company,</p>

<p>6.3.1.1.4 The Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties from exercising their veto rights, according to Section 6.2.4.1, or from submitting a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 11.8.</p>	<p>a mechanism inside the organisation has to ensure that the information on such decision to be taken is transferred to the authorised representative for his or her institution or company beforehand for decision on how to vote.</p> <p>On 6.3.1.1.4: Parties have both the possibility to veto decisions according to Section 6.2.4.1 if they have grounds for such veto, and to submit a dispute to resolution according to Section 11.8.</p>
<p>6.3.1.2 Decisions</p> <p>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.</p> <p>In addition, all proposals made by the Executive Board shall also be considered and decided upon by the General Assembly.</p>	<p>The General Assembly is the main decision making body of the project and as such deals with all decisions of strategic relevance. This may also cover, among many other issues, the cooperation with other initiatives through Linked Actions or similar activities.</p>
<p>The following decisions shall be taken by the General Assembly:</p> <p>Content, finances and intellectual property rights</p> <ul style="list-style-type: none"> – Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Granting Authority – Changes to the Consortium Plan – Modifications or withdrawal of Background in Attachment 1 (Background Included) – Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3.2) – Additions to Attachment 4 (Identified entities under the same control) <p>Evolution of the consortium</p> <ul style="list-style-type: none"> – Entry of a new Party to the Project and approval of the settlement on the conditions of the accession of such a new Party – Withdrawal of a Party from the Project and the approval of the settlement on the conditions of the withdrawal – Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement – 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 Project and measures relating thereto 	<p>The identification of the breach is a first step in accordance with the procedure in 4.2 before declaring a Party as a Defaulting Party.</p>

<ul style="list-style-type: none"> – Proposal to the Granting Authority for a change of the Coordinator – Proposal to the Granting Authority for suspension of all or part of the Project – Proposal to the Granting Authority for termination of the Project and the Consortium Agreement <p>Appointments</p> <p>On the basis of the Grant Agreement, the appointment if necessary of:</p> <ul style="list-style-type: none"> - Executive Board Members - External Expert Advisory Board Members 	
<p>6.3.2 Executive Board</p>	
<p>In addition to the rules in Section 6.2, the following rules shall apply:</p>	
<p>6.3.2.1 Members</p>	
<p>The Executive Board shall consist of the Coordinator and the representatives of the Parties appointed to it by the General Assembly.</p> <p>The Coordinator shall chair all meetings of the Executive Board, unless decided otherwise by a majority of two-thirds.</p>	
<p>6.3.2.2 Minutes of meetings</p>	
<p>Minutes of Executive Board meetings, once accepted, shall be sent by the Coordinator to the General Assembly Members for information.</p>	
<p>6.3.2.3 Tasks</p>	
<p>6.3.2.3.1 The Executive Board shall prepare the meetings, propose decisions and prepare the agenda of the General Assembly according to Section 6.3.1.2.</p>	
<p>6.3.2.3.2 The Executive Board shall seek a consensus among the Parties.</p>	
<p>6.3.2.3.3 The Executive Board shall be responsible for the proper execution and implementation of the decisions of the General Assembly.</p>	
<p>6.3.2.3.4 The Executive Board shall monitor the effective and efficient implementation of the Project.</p>	
<p>6.3.2.3.5</p>	

<p>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.</p>	
<p>6.3.2.3.6 The Executive Board shall:</p> <ul style="list-style-type: none"> – support the Coordinator in preparing meetings with the Granting Authority 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 Granting Authority in respect of the procedures of the Grant Agreement Article 17 and Annex 5 Section “Communication, Dissemination, Open Science and Visibility” and of Section 8 of this Consortium Agreement . 	<p>This of course needs to be adapted to your project management structure. Dissemination activities might also be fully steered by a dedicated WP without any involvement of the Executive Board.</p>
<p>6.3.2.3.7 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 any prior legitimate commitments which cannot be cancelled.</p>	
<p>6.4 Coordinator</p>	
<p>6.4.1 The Coordinator shall be the intermediary between the Parties and the Granting Authority and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.</p>	
<p>6.4.2 In particular, the Coordinator shall be responsible for:</p> <ul style="list-style-type: none"> – monitoring compliance by the Parties with their obligations under this Consortium Agreement and the Grant Agreement – keeping the address list of Members and other contact persons updated and available – collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Granting Authority – transmitting documents and information connected with the Project to any other Parties concerned 	<p>The Annotated MGA (page 93 of the currently available pre-draft dated 30 November 2021) foresees this role of verifying consistency for the Coordinator. It also states that it is not the role of the Coordinator to verify the eligibility of the costs nor to request justification - each beneficiary remains solely responsible towards the EC for the cost it declares. The Coordinator may delegate part of the coordination tasks only within the limits of Article 7 (b) of the Grant Agreement.</p>

<ul style="list-style-type: none"> – administering the financial contribution of the Granting Authority and fulfilling the financial tasks described in Section 7.2 – providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims. <p>If one or more of the Parties is late in submission of any Project deliverable, the Coordinator may nevertheless submit the other 'Parties' Project deliverables and all other documents required by the Grant Agreement to the Granting Authority in time.</p>	<p>Specific requested documents (3rd bullet point) could, for example, be related in particular to activities raising ethical and security issues or involving human embryos or human embryonic stem cells or dual-use goods or dangerous materials and substances. See Articles 11 to 19 of the Grant Agreement ("Rules for Carrying out the Action")</p>
<p>6.4.3 If the Coordinator fails in its coordination tasks, the General Assembly may propose to the Granting Authority to change the Coordinator.</p>	
<p>6.4.4 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement.</p>	<p>Things the Coordinator is explicitly allowed to do under the Consortium Agreement are,</p> <ul style="list-style-type: none"> - countersigning Attachment 2 (accession document) of this Consortium Agreement with a new Party in response to a decision taken by the responsible Consortium Body according to Section 3.1 of this Consortium Agreement; or - signing a Non-Disclosure Agreement with each member of the External Expert Advisory Board in accordance with Section 6.5.
<p>6.4.5 The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.</p>	
<p>6.5 [Optional, where foreseen in the Grant Agreement or otherwise decided by the consortium: External Expert Advisory Board (EEAB)]</p> <p>An External Expert Advisory Board (EEAB) will be appointed and steered by the Executive Board. The EEAB shall assist and facilitate the decisions made by the General Assembly.</p> <p>The Coordinator will ensure that a non-disclosure agreement is executed between all Parties and each EEAB member.</p> <p>[Optional: By way of exception to Section 6.4.4 above, the Parties mandate the Coordinator to execute, in their name and on their behalf, a non-disclosure agreement (hereafter "NDA") with each member of the EEAB, in order to protect Confidential Information disclosed by any of the Parties to any member of the EEAB, either directly or through the</p>	<p>DESCA does not provide an NDA model since many such models already exist. Therefore, Attachment 5 is left blank, to be filled in by the consortium during the negotiation, depending on the needs of the project and the preferences of the Parties.</p> <p>One option for a widely used NDA model is the one provided by the IPR helpdesk available at https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/european-ip-helpdesk/europe-useful-documents_en</p>

Coordinator in the case where the concerned Party gave to the Coordinator its prior written approval for such disclosure. The NDA for the EEAB members is enclosed in Attachment 5. The mandate of the Coordinator comprises solely the execution of the NDA in Attachment 5.]

Its terms shall be not less stringent than those stipulated in this Consortium Agreement, and it shall be concluded no later than 30 calendar days after their nomination or before any confidential information will be exchanged/disclosed, whichever date is earlier. The Coordinator shall write the minutes of the EEAB meetings and submit them to the General Assembly. The EEAB members shall be allowed to participate in General Assembly meetings upon invitation but have not any voting rights.]

[Option: MODULE IPR SC] - Specific Software provisions	
9 Section: Access Rights	
9.8 Specific provisions for Access Rights to Software	These provisions propose specific rules for Access Rights to software, but of the course the Parties are free to make changes to these provisions or add their own.
9.8.1 Definitions relating to Software	
<p>“Application Programming Interface” or “API”</p> <p>means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.</p> <p>"Controlled License Terms" means terms in any license that require that the use, copying, modification and/or distribution of Software or another work (“Work”) and/or of any work that is a modified version of or is a derivative work of such Work (in each case, “Derivative Work”) be subject, in whole or in part, to one or more of the following:</p> <p>a) (where the Work or Derivative Work is Software) that the Source Code or other formats preferred for modification be made available as of right to any third party on request, whether royalty-free or not;</p> <p>b) that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;</p> <p>c) that a royalty-free license relating to the Work or Derivative Work be granted to any third party.</p> <p>For the avoidance of doubt, any Software license that merely permits (–but does not require any of the things mentioned in (a) to (c) is not under Controlled License Terms.</p>	<p>“Controlled License Terms” refers to Open Source Software (OSS), i.e. software that is allowed to be used and distributed as described by the definition given in http://www.opensource.org . As such OSS is commonly used in Horizon Europe projects and its use may have an impact on the conditions under which software generated in the Action has to be made available, specific provisions may need to be included in the consortium agreement.</p>

<p>“Object Code” means Software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for linking procedures and functions to other software.</p> <p>“Software Documentation” means Software information, being technical information used, or useful in, or relating to the design, development, use or maintenance of any version of a Software programme.</p> <p>“Source Code” means Software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.</p>	
<p>9.8.2 General principles</p>	
<p>For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software as far as not modified by this Section 9.8.</p> <p>Parties’ Access Rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.</p> <p>The introduction of Software under Controlled License Terms in the Project requires the prior approval of the General Assembly to implement such introduction into the Consortium Plan.</p> <p>[Option] In case of an [approved] introduction of Software under Controlled License Terms’ in the Project, the Controlled License Terms shall prevail over any conflicting provisions of this Consortium Agreement for affected original and derivative Background and Results.</p>	<p>In case software is introduced into the project under Controlled License Terms, there could be a potential conflict between the terms of that OSS and the rules on Access Rights in the CA. Hence the proposed option to be added.</p> <p>[approved] is in brackets because depending on the context it is to be inserted or deleted: it is to be part of the sentence if the preceding sentence at the end of current 9.8.2 remains in the text. If the preceding</p>

	sentence is deleted, then “approved” has to be deleted too.
9.8.3 Access to Software	
<p>Access Rights to Software that is Results shall comprise:</p> <ul style="list-style-type: none"> • Access Rights to the Object Code; and, • where normal use of such an Object Code requires an API, Access Rights to the Object Code and such an API; and, • if a Party can show that the execution of its tasks under the Project or the Exploitation of its own Results is technically or legally impossible without Access Rights to the Source Code, Access Rights to the Source Code to the extent necessary. <p>Background shall only be provided in Object Code unless otherwise agreed between the Parties concerned.</p>	
9.8.4 Software license and sublicensing rights	
9.8.4.1 Object Code	
<p><i>9.8.4.1.1 Results - Rights of a Party</i></p> <p>Where a Party has Access Rights to Object Code and/or API that is Results for Exploitation, such Access shall, in addition to the Access for Exploitation foreseen in Section 9.4, as far as Needed for the Exploitation of the Party’s own Results, comprise the right:</p> <p>to make an agreed number of copies of Object Code and API; and</p> <p>to distribute, make available, market, sell and offer for sale such Object Code and API alone or as part of or in connection with products or services of the Party having the Access Rights;</p> <p>provided however that any product, process or service has been developed by the Party having the Access Rights in accordance</p>	<p>"Alone or": Some users considered “alone” to be too far-reaching, which is why it is an option.</p>

<p>with its rights to exploit Object Code and API for its own Results.</p> <p>If it is intended to use the services of a third party for the purposes of this Section 9.8.4.1.1, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.</p>	
<p><i>9.8.4.1.2 Results - Rights to grant sublicenses to end-users</i></p> <p>In addition, Access Rights to Object Code shall, as far as Needed for the Exploitation of the Party's own Results, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code alone or as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:</p> <ul style="list-style-type: none"> – to maintain such product/service; – to create for its own end-use interacting interoperable Software in accordance with the Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs 	
<p><i>9.8.4.1.3 Background</i></p> <p>For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.</p>	

9.8.4.2 Source Code	
<p>9.8.4.2.1 Results - Rights of a Party Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code that is Results for Exploitation, Access Rights to such Source Code, as far as Needed for the Exploitation of the Party's own Results, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service.</p> <p>If it is intended to use the services of a third party for the purposes of this Section 9.8.4.2.1, the Parties shall agree on the terms thereof, with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.</p>	
<p>9.8.4.2.2 Results – Rights to grant sublicenses to end-users</p> <p>In addition, Access Rights, as far as Needed for the Exploitation of the Party's own Results, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.</p> <p>Further sublicensing of Source Code is explicitly excluded.</p>	
<p>9.8.4.2.3 Background</p> <p>For the avoidance of doubt, where a Party has Access Rights to Source Code that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.</p>	
9.8.5 Specific formalities	
<p>Each sublicense granted according to the provisions of Section 9.8.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.</p>	