**EUROPE’S RAIL JOINT UNDERTAKING**

**(EU-Rail)**

**CONSORTIUM AGREEMENT**

**TEMPLATE**

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**Change Records**

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| --- | --- | --- |
| Version | Date | Changes |
| Version 1 | 10 June 2022 | Draft agreed by the Consortium Agreement Founding Members working group’s legal representatives (ADIF, Alstom, CAF, DB, Knorr-Bremse, OEBB, Siemens Trafikverket, DLR) with open items which still require a final agreement. For clarification purposes, each member’s comment and/or proposed text is highlighted when necessary: Administrador de Infraestructuras Ferroviarias (ADIF); Deutsche Bahn AG (DB); Österreichische Bundesbahnen-Holding Aktiengesellschaft (OBB); (TVK); Knorr-Bremse Systems für Schienenfahrzeuge GmbH (KB).  |
| Version 2  | 18 July 2022 | Draft upon comments received by the Governing Board private members during the ED-SIPB,Alstom, NS/ProRail, eSGR JV, FSI, SNCF, Thales |
| Version 3 | 26 August 2022 | Draft sent by EU-Rail Legal team to the FM lawyers  |
| Version 4 | 2 September 2022 | Version reviewed and agreed between the FM lawyers for submission to the ED-SIPB |
| Version 5 | 6 September 2022 | Version agreed at the ED-SIPB |
| Final version  | 23 September 2022 | Consortium Agreement template published on the EU-Rail’s web site |

**Disclaimer**

This Europe’s Rail Consortium Agreement template (hereafter the “EUR-Rail CA”) is mainly based on the DESCA model Consortium Agreement for Horizon Europe (<https://www.desca-agreement.eu/desca-model-consortium-agreement/>), adapted to the current Horizon Europe Regulation (HE) and Horizon Europe Model Grant Agreements and tailor made to the EU-RAIL programme.

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 important to be aware of the fact that this EUR-Rail CA 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 model should be adapted in order to suit the specific features of each single EU-Rail project. For this sense, **the information into brackets […..] must be inserted**.

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

The fields in [grey in square brackets] shall be filled by the Parties.

# CONSORTIUM AGREEMENT

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

**BETWEEN:**

**[OFFICIAL NAME OF THE PROJECT COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT], [Project Coordinator short name, with legal address …],** the Project Coordinator

**[OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT] [Party short name, with legal address …],**

**[OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT] [Party short name, with legal address …],**

**[Insert identification of other Parties …]**

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

relating to the Action entitled

**[NAME OF PROJECT]**

in short

**[Insert: acronym]**

hereinafter referred to as “Project”

**WHEREAS:**

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Funding Authority as part of Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).

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 Funding Authority (hereinafter “Grant Agreement”).

The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

# Section: Definitions

## 1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Horizon Europe regulation (Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination) or in the Grant Agreement including its Annexes.

## 1.2 Additional Definitions

“**Background**”

is defined in the Horizon Europe MGA article 16.1 and article 2 (10) of HE Regulation as “any data, know-how or information whatever its form or nature, tangible or intangible, including any rights such as intellectual property rights that is:

(a) held by the Parties prior to their accession to the Consortium Agreement or obtained by the beneficiaries outside the Project, and

(b) identified by the Parties in a written agreement as needed to implement the action or for exploiting its results.”

**“Consortium Body”**

means any management body described in Section 6 of this Consortium Agreement.

**“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 Flagship Project Steering Committee.

“**Project Data”**

Are Results in accordance with the provisions of Article 16.2 of the Grant Agreement. In this context “Project Data” means any figure produced directly by hardware and/or algorithm other than personal data according to Article 4 no. 1 GDPR, and including, but not limited to, all output of measurements and sensors, raw data, refined data, analyses data, geodata, evaluation data and electronical data and/or data in writing produced by the project’s activities under this Consortium Agreement

**“Provided Data”**

Means a subset of “Project Data” which are obtained by a party outside the Project and introduced into the Action during the project implementation, in accordance with Article 9.1 of this Consortium Agreement.

**“Action Share”**

Means the beneficiary’s grant amount, i.e. its share in the grant amount for the action.

**“Entity”**

Legal entity that becomes a Party to this Consortium Agreement upon signature by a duly authorised representative and therefore become a “Party”. See article 3.1.

**"Exploit/Exploitation"**

Is defined in the HE MGA, Annex 5, Article 16 as: “the use of results in further research and innovation activities other than those covered by the action concerned, including among other things, commercial exploitation such as developing, creating, manufacturing and marketing a product or process, creating and providing a service, or in standardization activities”.

**“Defaulting Party”**

means a Party which the Flagship Project Steering Committee 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.

**“Written notice” or “notification”**

By means of a letter (formal notice) or e-mail (informal notice).

**“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.

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.

**“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.

**“Strictly Confidential Information”**

means any information which has been marked as “strictly confidential”.

# Section: Purpose

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

# Section: Entry into force, duration and termination

## 3.1 Entry into force

An Entity becomes a Party to this Consortium Agreement upon signature (blue ink or certified digital signature) of this Consortium Agreement by a duly authorized representative.

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

Following the Effective Date, a new entity becomes a Party to the Consortium Agreement upon signature of the accession document (Attachment 2) by the new Party and the Project Coordinator. Such accession shall have effect from the date identified in the accession document.

## 3.2 Duration and termination

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

However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.

If:

- the Grant Agreement is not signed by the Funding Authority or a Party, or

- 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.

## 3.3 Survival of rights and obligations

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.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Flagship Project Steering Committee and the leaving Party. This includes the obligation to provide all necessary input, deliverables and documents for the period of its participation.

# Section: Responsibilities of Parties

## 4.1 General principles

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

Each Party undertakes to notify promptly 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.

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Project Coordinator to carry out its tasks.

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

Each Party must obtain prior consent of the other work package members if it requires changes in a draft work package (task or subtask) part of the draft Grant Agreement.

## 4.2 Breach

In the event that a responsible Consortium Body 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 Project Coordinator or, if the Project Coordinator is in breach of its obligations, the Party appointed by the Flagship Project Steering Committee, 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.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Flagship Project Steering Committee 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.

## 4.3 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities 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 their Grant Agreement.

Subject to mandatory law, each Party intending to enter into a subcontract in order to fulfill a Project task shall consult the other Parties before starting the procurement process. 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.

## 4.4 Specific responsibilities regarding data protection

Where necessary, the Parties shall cooperate in order to enable one another to fulfil legal obligations arising under applicable data protection laws (the 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 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.

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.

# Liability towards each other

## 5.1 No warranties

In respect of any information or materials (incl. Results and Background) supplied by one Party to another under the Project, with the exception below 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.

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.

It is however understood that unless (i) use restrictions or limitations including the information that Background has not been checked regarding possible infringement of third party rights have been specified in Attachment 1 or (ii) the Party granting Access Rights has otherwise expressly notified in writing the Party receiving such rights that the Background has not been checked regarding possible infringement of third party rights, any Party granting Access Rights to Background shall be liable in accordance with Section 5.2 *vis-à-vis* any of the other Parties in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliated Entities) exercising its Access Rights pertaining to this Background.

## 5.2 Limitations of contractual liability

**5.2.1 General liability**

Subject to the following provisions of this Section 5.2, the general provisions of Belgian law governing liability (including both contractual and non-contractual liability) shall apply to any claim between the Parties for loss or damage caused by a Party, its employees, agents, affiliated entities and subcontractors and arising in connection with the Action.

**5.2.2 Excluded liabilities**

To the extent permissible under applicable law and provided such damage was not caused by a willful act, by gross negligence [Option: or if related to a Party’s breach of its confidentiality obligations] in no event shall any Party be liable in connection with this Consortium Agreement or the Grant Agreement for any of the following, however caused or arising, on any theory of liability, and even if such Party was informed or aware of the possibility thereof:

1. loss of profits, revenue, income, interest, savings, shelf-space, production and business opportunities;
2. lost contracts, goodwill, and anticipated savings;
3. loss of or damage to reputation or to Project Data;
4. costs of recall of products; or

any other type of indirect loss or damage (such as but not limited to damages) whose origin lack direct causal relation with the faulty act or omission and/or damages whose cause or nature were unpredictable at the conclusion of this Agreement.

**5.2.3 Financial limit on liability**

Subject to the provisions of Section 5.2., the aggregate financial limit on liability of each Party under the provisions of Section 5.2.1 to all of the other Parties collectively in respect of any and all such claims shall be the lesser of:

1. once that Party's Action Share, or
2. The sum of [XXXXX Euros], [Option: with a maximum of EUR 500.000,00].

The financial limitation of liability specified above in this Section 5.2.3 shall be doubled in the case of any breach by a Party of its obligations under (a) Section 10 (Non-disclosure of information), or (b) Section 8 (Results) of this CA. The financial limitation of liability specified above in this Section 5.2.3 shall not be applicable with regard to the Project Coordinator in case the Project Coordinator breaches its obligation to distribute the received funds of the Grant Agreement to the Party or the Europe’s Rail JU. In this case, the Project Coordinator’s liability towards each Party is limited to the received payments that are assigned to the corresponding Party.

**5.2.4 Exceeding the scope of Access Rights**

For the avoidance of doubt, the exclusions and limitations stated in Sections 5.2.2 and 5.2.3 above shall not apply in respect of any infringement of the intellectual property rights of any other Party or any Affiliated Entity of any other Party, which is the result of any activity or use of such intellectual property rights that exceeds the scope of the Access Rights granted by the Grant Agreement or this Consortium Agreement, or that is not in compliance with the associated terms and conditions upon which the Access Rights have been granted.

**5.2.5 Other exceptions**

The exclusions and limitations stated in Sections 5.2.2 and 5.2.3 above shall not apply in respect of any: fraud; death, injury to natural persons or damage to real or immovable property or rolling stock or railway infrastructure and equipment caused by the negligence or wilful act of such Party, its directors, employees, agents, associated partners, Affiliated Entities and subcontractors; wilful act,, wilful breach by a Party of any obligation accepted under the Grant Agreement and this Consortium Agreement; or otherwise in so far as mandatory applicable law overrides such exclusions and limitations.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party’s statutory liability.

## 5.3 Damage caused to third parties

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

## 5.4 Force Majeure

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.

Each Party will notify the Project Coordinator of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

## 5.5 Impact of the COVID-19 pandemic

Since the approval of the proposal, the outbreak of the Covid-19 pandemic has been introducing severe consequences, significantly affecting the activities of the Parties, including but not limited to their sub-contractors, suppliers, etc.

Upon signature of the present Consortium Agreement, it is still premature to assess the extent of these consequences, considering in particular the regular extra constraining decisions issued by the different governments.

Among others, one of the latter potential consequences could be linked with the time schedule enclosed within the Proposal.

All Parties agree to analyze, as soon as possible, the different impacts, if any, of the pandemic situation on their own scopes of activities and related interfaces with others, and to communicate them to the Project Coordinator for consolidation. The Project Coordinator shall then inform within the shortest delay the European Commission of the potential consequences upon request by the Parties.

## 5.6 Free Provision of equipment or material

If a Party provides equipment or material to another Party for the purpose of project implementation, these Parties will bilaterally agree on the terms and conditions of such a provision, however, it is generally considered that all provided equipment or material should be provided without financial consideration.

# Section: Governance structure

In addition to this Agreement the PM-handbook (insert Document Name, Version and date) will give further guidance for the governance structure of the project. In case of conflict this Consortium Agreement will prevail.

## 6.1 General structure

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

The Flagship Project Steering Committee as the ultimate decision-making body of the consortium chaired by the Project Coordinator. The Flagship Project Steering Committee will be set up for overall strategic and managerial decisions to address and synchronize high-level management and coordination activities of the Project, which will include technical guidance, financial, exploitation and dissemination issues.

The Project Coordinator responsible for the execution of the Project which shall report to and be accountable to the Flagship Project Steering Committee.

The Project Coordinator is the legal entity acting as the intermediary between the Parties and the Funding Authority. The Project Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

## 6.2 General operational procedures for all Consortium Bodies

### Representation in meetings

Any Party which is a member of a Consortium Body (hereinafter referred to as "Member"):

- should be present or represented at any meeting for which he/she is nominated;

- may appoint a substitute or a proxy to attend and vote at any meeting for which he/she is nominated;

and shall participate in a cooperative manner in the meetings.

### Preparation and organization of meetings

#### Convening meetings

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

|  |  |  |
| --- | --- | --- |
|  | Ordinary meeting | Extraordinary meeting |
| Flagship Project Steering Committee | At least once a quarter/year | At any time upon written request of the Project Coordinator or 1/3 of the Members of the Flagship Project Steering Committee |

#### Notice of a meeting

The chairperson of a Consortium Body shall give notice in writing of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated below.

Ordinary meetings are convened according to the schedule set out in the description of action.

|  |  |  |
| --- | --- | --- |
|  | Ordinary meeting | Extraordinary meeting |
| Flagship Project Steering Committee | 45 calendar days | 15 calendar days |

#### Sending the agenda

The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body an agenda via email no later than the minimum number of days preceding the meeting as indicated below.

|  |  |
| --- | --- |
| Flagship Project Steering Committee | 21 calendar days, 10 calendar days for an extraordinary meeting |

#### Adding agenda items:

Any agenda item requiring a decision by the Members of a Consortium Body must be identified as such on the agenda.

Any Member of a Consortium Body may add an item to the original agenda by written notice to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.

|  |  |
| --- | --- |
| Flagship Project Steering Committee | 14 calendar days, 7 calendar days for an extraordinary meeting  |

####

During a meeting the Members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda once the Minutes has been accepted.

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

Decisions will only be binding once the Minutes has been accepted according to the procedure described below.

####

Any decision may also be taken without a meeting if the Project Coordinator circulates to all Members of the Consortium Body a written document, which is then agreed by the defined below majority of all Members of the Consortium Body. Such document shall include the deadline for responses.

The decisions will be binding after the chairperson sends to all Members of the Consortium Body and to the Project Coordinator a written notification of this acceptance.

### Voting rules and quorum

Each Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum). 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. In the case of a private Founding Member[[1]](#footnote-2) or any other beneficiary consisting of more than one entity and part of this Consortium Agreement, the private Founding Member or any other beneficiary will have only one vote independently from the entities participating to the Action.

####

Each Member of a Consortium Body present or represented in the meeting shall have one vote. The vote can be delegated to another Member as per this section.

A Party which the Flagship Project Steering Committee has declared according to Section 4.2 to be a Defaulting Party may not vote.

Notwithstanding the objective to reach decisions by consensus, decisions shall be taken by a majority of two-thirds (2/3) of the votes cast, excluding abstentions.

Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast, except for accession of a new party where unanimous vote is required. For the avoidance of doubt, decisions may not unilaterally impose additional obligations on a Party which such Party does not agree to accept.

### Veto rights

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

####

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

####

When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 calendar days after the draft minutes of the meeting are sent. Party that is not a Member of a particular Consortium Body may veto a decision within the same number of calendar days after the draft minutes of the meeting are sent.

####

When a decision has been taken without a meeting a Member may veto such decision within 15 calendar days after written notification by the chairperson of the outcome of the vote.

In case of exercise of veto, the Members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its Members, within 60 days or escalate the issue at the level of the JU to facilitate the discussion.

####

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.

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

### Minutes of meetings

The chairperson of a Consortium Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He/she shall send the draft minutes to all Members within [10] calendar days of the meeting.

####

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

####

The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Project Coordinator who shall safeguard them. If requested, the Project Coordinator shall provide authenticated duplicates to Parties.

## 6.3 Specific operational procedures for the Consortium Bodies

###  Flagship Project Steering Committee

In addition to the rules described in Section 6.2, the following rules apply:

#### Members

The Flagship Project Steering Committee shall consist of one representative of each Party (hereinafter Flagship Project Steering Committee Member). In the case of a private Founding Member[[2]](#footnote-3) or any other beneficiary consisting of more than one entity and part of this Consortium Agreement, the private Founding Member or any other beneficiary will have only one representative in the Committee.

#####

Each Flagship Project Steering Committee Member shall be deemed to be duly authorized to deliberate, negotiate and decide on all matters listed in Section 6.3 of this Consortium Agreement.

#####

The Project Coordinator shall chair all meetings of Flagship Project Steering Committee, unless decided otherwise in a meeting of the Flagship Project Steering Committee.

#####

The Parties agree to abide by all decisions of the Flagship Project Steering Committee. This does not prevent the Parties to exercise their veto rights according to Section 6.2. or to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 12.11.

The Parties agree to abide by all decisions of the Flagship Project Steering Committee unless prevented by mandatory law to do so. This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 12.11.

#### Decisions

The Flagship Project Steering Committee shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. In addition, all proposals made by the Project Coordinator shall also be considered and decided upon by the Flagship Project Steering Committee.

The following decisions, amongst others, shall be taken by the Flagship Project Steering Committee during the annual meeting or alternatively via a written procedure:

1. Decisions on the content, finances and intellectual property rights
* Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Funding Authority
* Changes to the Consortium Plan
* Modifications to Attachment 1 (Background Included)
* Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.4)
* Additions to Attachment 4 (Identified Affiliated Entities)
1. Decisions on the possible evolution of the consortium:
* Entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party
* Withdrawal of a Party from the consortium 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 Funding Authority for a change of the Project Coordinator
* Proposal to the Funding Authority for suspension of all or part of the Project
* Proposal to the Funding Authority for termination of the Project and the Consortium Agreement

Appointments

On the basis of the Grant Agreement, the appointment, if necessary, of:

- Project Coordinator

## 6.4 Project Coordinator

###

The Project Coordinator shall be the intermediary between the Parties and the Funding Authority and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.

The Project Coordinator is:

[Company, Name]

In particular, the Project Coordinator shall be responsible for:

* monitoring compliance by the Parties with their obligations
* keeping the address list of Members and other contact persons updated and available
* collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Funding Authority
* transmitting documents and information connected with the Project to any other Parties concerned
* administering the financial contribution of the Funding Authority without delay and fulfilling the financial tasks described in Section 7.3
* providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Project Coordinator when such copies or originals are necessary for the Parties to present claims.

If one or more of the Parties is late in submission of any project deliverable, the Project Coordinator may nevertheless submit the other ’Parties’ project deliverables and all other documents required by the Grant Agreement to the Funding Authority in time.

###

If the Project Coordinator fails in its coordination tasks, the Flagship Project Steering Committee may propose to the Funding Authority to change the Project Coordinator.

###

The Project Coordinator is not 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 or empowered by the Flagship Project Steering Committee.

###

The Project Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement, PM-handbook and in the Grant Agreement.

# Section: Financial provisions

## 7.1 General Principles

### Distribution of Financial Contribution

The financial contribution of the Funding Authority to the Project shall be distributed by the Project Coordinator according to:

* the Consortium Plan
* the approval of reports by the Funding Authority, and
* the provisions of payment in Section 7.3.

A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.

### Justifying Costs

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 Funding Authority. Neither the Project Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Funding Authority.

### Return of excess payments, revenue

In any case of a Party having received excess payments, the Party has to return the relevant amount to the Project Coordinator without undue delay. In case no refund takes place within 60 days upon formal request (in accordance with clause 12.6) for return of excess payment from the Project Coordinator the Party is in substantial breach of the Consortium Agreement.

####

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.

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

A Party leaving the consortium shall refund to the Project Coordinator all payments it has received except the amount of contribution accepted by the Funding Authority or another contributor. To the extent that payments received correspond to work performed prior to the termination and in accordance with the conditions of the Grant Agreement, they shall be excluded from the refunding obligation of the leaving Party. Furthermore, 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 its and their tasks. The Flagship Project Steering Committee should agree on a procedure regarding additional costs which are not covered by the Defaulting Party or the Mutual Insurance Mechanism.

## 7.2 Budgeting

The budget set out in the Consortium Plan shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

## 7.3 Payments

### Payments to Parties are the exclusive tasks of the Project Coordinator

In particular, the Project Coordinator shall:

* notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references
* perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts
* undertake to keep the Funding Authority’s financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Project Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

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.

###

The payment schedule, which contains the transfer of payments to Parties, will be handled according to the following:

Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority without undue delay and in conformity with the provisions of the Grant Agreement.

Costs accepted by the Funding Authority will be paid to the Party concerned.

The Project Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body 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.

The Project 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 Project Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Funding Authority due to the Party deviating from any agreed condition for funding. Payments shall not be withheld longer than necessary.

# Section: Results

## 8.1 Ownership of Results

Results are owned by the Party that generates them as per Art. 16.2 of the HE MGA.

[Option: If one task or subtask of a work package is done by one Party alone, the Results belong exclusively to this Party].

## 8.2 Joint ownership of Results

Joint ownership is governed by Grant Agreement Article 16.4 and its Annex 5, Section Ownership of results, with the following additions:

[Option 1:]

Unless otherwise agreed:

1. each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and
2. 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:

(a) at least 45 calendar days advance notice (by reliable notification in accordance with clause 12.6) and have not objected within [x] days; and

(b) Fair and Reasonable compensation.

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

[End of Option 1]

[Option 2:]

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.

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

[End of Option 2]

## 8.3 [Option: Specific Provision on Project Data

Project Data (as defined to in section 1.2) is owned by the Party who generated that output in the course of the Action. If several Parties generated Project Data together, the respective Project Data shall be jointly owned by those Parties.

Access Rights to the use of Project Data are defined in Annex 5 of the Grant Agreement, Section “Access rights to results and background”. In this respect, the Parties shall not use Project Data of another Party until such a time the above is agreed.]

## 8.4 Transfer of Results

###

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”.

###

It may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (3) to this Consortium Agreement. By signing this Consortium Agreement, the Parties agree that there are no objections to such transfer to the third parties listed in Attachment (3) hereto and hereby waive their right to prior notice and their right to object to 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.

###

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 Flagship Project Steering Committee.

###

The Parties recognize 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.

###

The obligations above apply only for as long as other Parties still have - or still may request - Access Rights to the Results.

## 8.5 Dissemination

For the avoidance of doubt, nothing in this Section 8.5 has impact on the confidentiality obligations set out in Section 10.

### Dissemination of own Results

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.

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 in writing to the Project 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.

An objection is justified if:

(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 the Results or Background would be significantly harmed, or

(c) the proposed publication includes Confidential Information or Strictly Confidential Information (as defined in section 1.2) of the objecting Party.

The objection has to include a precise request for necessary modifications.

####

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.

####

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 since the submission of the objection the publication is permitted, provided that the objected information of the objecting Party has been removed from the Publication as indicated by the objecting Party.

In the case the objected information has been removed within a shorter period of time it should be published earlier.

#### 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.

#### 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 or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

#### Use of names, logos or trademarks

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

# Section: Access Rights

## 9.1 Background included

###

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.

###

Any Party may add additional Background to Attachment 1 during the Project by written notice to the other Parties. However, approval of the Flagship Project Steering Committee is needed should a Party wish to modify or withdraw its Background in Attachment 1 and in accordance with Article 16.1 of the HE MGA. The Party introducing Background not already listed in Attachment 1 is obligated to update Attachment 1.

Each Party shall retain full and complete ownership of the provided Background.

Each Party shall retain full and complete ownership of the Data obtained by that Party prior to or outside the scope of the Project and introduced into the Action, i.e. made available for use to another Party (“"**Provided Data**”"), irrespective of whether the Provided Data has been introduced as Background according to this Section 9.1 or not. The Parties shall not use Provided Data of another Party unless the Party owning the Provided Data has granted appropriate Access Rights.

## 9.2 General Principles

Each Party shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party Intellectual Property Rights.

###

Access Rights are granted either expressly in this Consortium Agreement or by conclusion of a separate license agreement between the Party or Parties owning the Background or Results at issue and the Party legitimately requesting Access Rights in their regard. Any Access Rights granted exclude any rights to sublicense unless expressly stated otherwise.

###

Access Rights shall be free of any administrative transfer costs.

###

Access Rights are granted on a non-exclusive basis.

###

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

###

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 requesting Party must show that the Access Rights are Needed.

## 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.

## 9.4 Access Rights for Exploitation

### Access Rights to Results

Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable to be separately agreed between the Parties concerned.

Access rights to Results for internal research activities shall be granted on a royalty-free basis.

###

Access Rights to Background if Needed for Exploitation of a Party’s own Results, shall be granted by the owning Party to the receiving Party subject to Fair and Reasonable conditions to be separately agreed between the Parties concerned.

###

A request for Access Rights may be made up to [[twelve] [twenty-four] months] after the end of the Project or, in the case of Section 9.7., after the termination of the requesting Party’s participation in the Project.

## 9.5 Access Rights for entities under the same control

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”. [Option: if they are identified in Attachment 4 (Identified entities under the same control) to this Consortium Agreement].

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 [Option: 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.

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.

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.

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.

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.

Further arrangements with entities under the same control may be negotiated in separate agreements.

## 9.6 Additional Access Rights

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.

## 9.7 Access Rights for Parties entering or leaving the consortium

### 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 as provided for in article 16.1 and Annex 5 of the HE MGA.

### Parties leaving the consortium

#### Access Rights granted to a leaving Party

##### 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 Flagship Project Steering Committee to terminate its participation in the consortium.

##### 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.

#### Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

## 9.8 Specific Provisions for Access Rights to Software

### Definitions relating to Software

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

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

1. (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;
2. that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
3. that a royalty-free license relating to the Work or Derivative Work be granted to any third party.

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

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

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

“Source Code” means Software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.

### General principles

For the avoidance of doubt, the general provisions for Access Rights provided for in Section **Error! Reference source not found.** are applicable also to Software as far as not modified by this Section.

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

The introduction of Software under Controlled License Terms in the Project requires the prior approval of the Flagship Project Steering Committee to implement such introduction into the Consortium Plan.

[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].

### Access to Software

Access Rights to Software that is Results shall comprise:

* 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.

Background shall only be provided in Object Code unless otherwise agreed between the Parties concerned.

### Software license and sublicensing rights

#### Object Code

##### Results - Rights of a Party

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 **Error! Reference source not found.**, as far as Needed for the Exploitation of the Party’s own Results, comprise the right:

* to make an agreed number of copies of Object Code and API; and
* to distribute, make available, market, sell and offer for sale such Object Code and API [Option: alone or] as part of or in connection with products or services of the Party having the Access Rights;

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

If it is intended to use the services of a third party for the purposes of this Section, 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.

##### Results - Rights to grant sublicenses to end-users

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 [Option: alone or] as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:

* to maintain such product/service;
* to create for its own end-use interacting interoperable Software in accordance with the Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs.

##### Background

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.

#### Source Code

##### Results - Rights of a Party

Where, in accordance with Section 9.8, 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.

If it is intended to use the services of a third party for the purposes of this Section, 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 **Error! Reference source not found.** of this Consortium Agreement.

##### Results – Rights to grant sublicenses to end-users

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.

Further sublicensing of Source Code is explicitly excluded.

##### Background

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.

### Specific formalities

Each sublicense granted according to the provisions of Section 9 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.

# Section: Non-disclosure of information

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”. Irrespective of whether Data have been marked or designated in writing as “confidential” as outlined above, they are always “Confidential Information” (except as Data marked as “strictly confidential” which are specifically addressed in last bullet).

The Recipients hereby undertake in addition and without prejudice to any commitment on non-disclosure under the Grant Agreement, for a period of [4/5] years after the end of the Project:

* Not to use Confidential Information otherwise than for the purpose for which it was disclosed;
* not to disclose Confidential Information 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;
* to apply for the security of Confidential Information at least the same degree of care as it applies for the security of its own Confidential Information but in any case, shall apply not less than reasonable care;
* 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 comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.
* The same obligations apply to Strictly Confidential Information. In addition to all the provisions applicable to Confidential Information, as long as otherwise agreed in writing by the Disclosing Party and the Recipients, Strictly Confidential Information shall be kept confidential for an indefinite period of time after the end of the Project.

The recipients shall be responsible for the fulfilment of the above obligations on the part of their employees, and for requiring any third parties involved in the Project to commit to the confidentiality obligations 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.

The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

* the Confidential Information 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 hereunder.

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

Each Party shall promptly advise the other Party by written notice of any unauthorized disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorized disclosure, misappropriation or misuse.

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

* notify the Disclosing Party, and
* comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.

In accordance with article 4.4, to the extent personal data is being processed, the Parties ensure that this will be carried out in full compliance with the General Data Protection Regulation (GDPR) and agree to undertake the measures necessary to achieve such compliance.

# Section: Compliance

Each Party declares, guarantees and ensures that, in carrying out the activities of this Consortium Agreement, including the activities related to it, will:

1. conform its conduct to the principles of loyalty, correctness, integrity and transparency;
2. operate in full compliance with all applicable laws, rules and regulations and will not engage in any conduct that may constitute crime, by way of example and not limited to, the crimes of fraud, corporate crimes, tax crimes, money laundering, self-laundering, embezzlement, extortion, malfeasance, corruption crimes, trafficking in illicit influences and other criminal offenses related to crimes against the public administration and property;
3. observe and ensure compliance, subject to adequate information, by its employees, agents, consultants, representatives and subcontractors employed for the purposes of this Consortium Agreement for the entire duration of the Consortium Agreement, with all “Applicable Laws”;
4. For purposes of this Article, the term "Applicable Laws" means anti-corruption laws applicable to each Party with reference to its jurisdiction and all other laws, regulations, rules, orders, decrees or other directives carrying the force of law applicable to any activities engaged in by any Partner or any of its Affiliated Companies in connection with this Agreement, in each case as the same may be amended from time to time.

In particular and in accordance with those regulations, each Party undertakes to refrain, during the activities related to this Consortium Agreement:

1. from offering, promising, giving, directly or indirectly, including through a third party, money or other utilities, benefits, advantages, unduly, to a Public Official, for itself or for others, or to any third party
2. from soliciting or accepting, directly or indirectly, also through a third party, money or other benefits, advantages, not due, for itself or for others, from a Public Official or from any other third party.

In connec­tion with the activities of the Parties related to this Agreement, the Parties hereby confirm that they comply with Applicable Laws as defined in Section 11 (d)) above. Therefore, the Parties make the following repre­sen­t­ations and warranties as of the date of this Consortium Agreement and for the duration of this Consortium Agreement in connection with their activities related to this Consortium Agreement

In connection with the activities of the Parties related to this Consortium Agreement, the Parties represent, warrant and covenant that:

* Each Party hereby undertakes that, at the date of the entering into force of the Consortium Agreement, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Project and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.
* The Parties agree that, at all times in connection with and throughout the course of the Consortium Agreement and thereafter, they will comply with Part I of the ICC Rules on Combating Corruption 2011, which is hereby incorporated by reference into the Consortium Agreement, and that can be downloaded on the following link: [ICC Rules on Combating Corruption - ICC - International Chamber of Commerce (iccwbo.org)](https://iccwbo.org/publication/icc-rules-on-combating-corruption/#:~:text=The%20ICC%20Rules%20on%20Combating%20Corruption%20constitute%20the,of%20self-regulation%20by%20business%20against%20the%20background%20)
* Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of this Consortium Agreement, shall have the authority to determine the contractual consequences of any alleged non-compliance with this ICC Anti-corruption Clause.
* If a Party during the term of this Consortium Agreement, is convicted of an act of corruption such as defined by any relevant Anticorruption Laws, it shall be declared a Defaulting Party and the Consortium Agreement shall terminate with respect of such Party with immediate effect upon written notice.

# Miscellaneous

## 12.1 Export Control

The Parties agree to abide by all relevant export control regulations when exchanging equipment and technical information. All activities of the Parties shall be carried out in accordance with their respective applicable laws, rules, and regulations pertaining to export control and the control of classified information. Decisions on export licenses are taken at the national level in accordance with national export licenses requirements.

Prior to exchanging export-controlled equipment of technical data, the disclosing Party shall notify the receiving Party sufficiently in advance to give the receiving Party sufficient time to establish a technology control plan or to reject receipt of the controlled items. The Parties are, in doing so, obliged – where necessary – to support each other.

If any necessary export permit is not granted, each Party will notify the Project Coordinator without undue delay. The Project Coordinator will inform the chairperson about the denial of export permit. The chairperson will convene extraordinary meetings of the Flagship Project Steering Committee. The Flagship Project Steering Committee will decide in the contractual foreseen procedures how to go on with the Project.

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. In any case a Party is involved in any restrictions, delays or extensions of the import or related issues it should notify the event to other Parties. If the consequences of the restrictions affect for the Project and they are not overcome within 6 weeks after such notification, a transfer of tasks - if any - shall be decided by the Flagship Project Steering Committee.

## 12.2 Competition law and State aid

The Parties are aware about the applicable EU competition law, in particular Article 101 TFEU, as well as the corresponding national provisions and will comply with those in the application and implementation of the present agreement and as referred in Attachment 5.

## 12.3 Public procurement

The Project is carried out within the framework of legal, judicial and official requirements. Insofar as a tender procedure or other competition for the award of services, supplies or construction services takes place after completion of this Project, the procurement law principles of Competition, transparency and equal treatment within the meaning of the EU directives on public procurement are complied with. From the cooperation in this Project, the Parties do not have any claims, advantages, or disadvantages in the implementation of such a proper tender procedure. Without affecting the regulations in Sections 8 and 9 the Parties agree that each Party may use the work results and Project Data obtained within the framework of this Project for the preparation of a contract notice or procurement documents or an application or an offer and grant each other the necessary rights of use. Unless expressly granted, this does not grant any further rights of use. Business or trade secrets remain unaffected by this. If a Party participates in such a procedure as a candidate or bidder, this Party will not incur any remuneration or other claims in the proceedings as a result of the cooperation in this Project, unless this contract stipulates otherwise. The Parties shall take appropriate measures to ensure, as far as possible, that competition is not distorted and that the Parties do not suffer any advantages or disadvantages as a result of the Project in a subsequent tender procedure.

## 12.4 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and

Attachment 1 (Background included)

Attachment 2 (Accession document)

[Option: Attachment 3 (List of Third Parties for simplified transfer according to Section 8.4)]

[Option: Attachment 4 (Identified entities under the same control according to Section 9.5)]

[Option: Attachment 5 (Antitrust Statement)]

In case the terms of this Consortium Agreement are in conflict with the terms of the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.

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

## 12.5 No representation, partnership or agency

Except as otherwise provided in Section 6, 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 legal entity between the Parties.

## 12.6 Notices and other communication

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Project Coordinator.

Any change of persons or contact details shall be immediately communicated to the Project Coordinator by written notice. The address list shall be accessible to all Parties.

Formal notices:

If it is required in this Consortium Agreement (Sections 4.2, 7.1., 8.2, 9.7., and 12.6) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorized representative of a Party and shall either be served personally or sent by mail with recorded delivery.

Other communication:

Other communication between the Parties may also be affected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

Any change of persons or contact details shall be notified immediately by the respective Party to the Project Coordinator. The address list shall be accessible to all Parties.

## 12.7 Assignment and amendments

Except as set out in Section 8.4, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties’ prior formal approval. Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Section 6.3. require a separate written agreement to be signed between all Parties.

## 12.8 Mandatory national law

Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating and fulfilling the requirements of such mandatory statutory law shall never make a Party liable in any way towards the other Parties or other legal entities.

## 12.9 Language

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

## 12.10 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.

## 12.11 Settlement of disputes

The parties shall endeavor to settle their disputes amicably.

[Please insert one of the following options.]

[Option 1]

Settlement by Court Litigation

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be settled by the courts of Brussels.

[End of Option 1]

[Option 2 ICC Arbitration]

If all the parties concerned agree*,* disputes directly arising under this Consortium Agreement (other than disputes relating to the infringement and/or validity of IPR which shall be the exclusive jurisdiction of the competent court), which cannot be settled amicably, shall be settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules of arbitration.

The foregoing shall be without prejudice to the right of any Part to seek injunctive relief or other non-monetary relief before any court in any place where any unauthorised use of its Intellectual Property Rights, trade secrets or Confidential Information occurs or threatens to occur.

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

The language to be used in the arbitration shall be English if not otherwise agreed upon by the conflicting Parties.

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

[End of Option 2].

# Section Signatures

**AS WITNESS:**

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorized representatives 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

Attachment 1: Background included

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.

PARTY 1

As to [NAME OF THE PARTY], it is agreed between the Parties that, to the best of their knowledge, [insert the relevant option here].

[Option 1]

the following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

|  |  |  |
| --- | --- | --- |
| **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”)** |
|  |  |  |
|  |  |  |

[End of Option 1]

[Option 2]

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 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”).

[End of Option 2]

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

[Same for PARTY 2, PARTY 3, etc]

Attachment 2: Accession document

ACCESSION

**of a new Party to**

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

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE Grant Agreement]

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

[OFFICIAL NAME OF THE Project Coordinator AS IDENTIFIED IN THE Grant Agreement]

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

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE Project Coordinator]

Signature(s)

Name(s)

Title(s)

# [Option: Attachment 3: List of Third Parties for simplified transfer according to Section 8.4.]

[Option: Attachment 4: Identified entities under the same control according to Section 9.5]

[Option: Attachment 5: Antitrust Statement

While some activities among competitors are both legal and beneficial to the industry, group activities of competitors are inherently suspect under the antitrust/ competition laws of the countries in which our companies do business. Agreements between or among competitors need not be formal to raise questions under EU or international antitrust laws. They may include any kind of understanding, formal or informal, secretive or public, under which each of the participants can reasonably expect that another will follow a particular course of action or conduct. Each of the participants in this project is responsible for seeing that topics which may give an appearance of an agreement that would violate the antitrust laws are not discussed. It is the responsibility of each participant in the first instance to avoid raising improper subjects for discussion, notably such as those identified below.

 It is the sole purpose of any meeting of this project to provide a forum for expression of various points of view which must be strictly limited on topics

1. that are strictly related to the purpose or the execution of the project,
2. that need to be discussed among the participants of the project,
3. that are duly mentioned in the agenda of this meeting (unless a deviating decision is duly taken, and formalized in a protocol, by the respective Consortium Body) and,
4. that are extensively described in the minutes of the meeting.

Under no circumstances shall this meeting be used as a means for competing companies to reach any understanding, expressed or implied, which restricts or tends to restrict competition, or in any way impairs or tends to impair the ability of members to exercise independent business judgment regarding matters affecting competition.

As a general rule, participants may not exchange any information about any business secret of their respective companies. In particular, participants must avoid any agreement or exchange of information on topics on the following non-exhaustive list:

1. Prices, including calculation methodologies, surcharges, fees, rebates, conditions, freight rates, marketing terms, and pricing policies in general;
2. any kind of market allocation, such as the allocation of territories, routes, product markets, customers, suppliers, and tenders;
3. production planning; marketing or investment plans; capacities; levels of production or sales; customer base; customer relationships; margins; costs in general; product development; specific R&D projects;
4. standards setting (when its purpose is to limit the availability and selection of products, limit competition, restrict entry into an industry, inhibit innovation or inhibit the ability of competitors to compete);
5. codes of ethics administered in a way that could inhibit or restrict competition;
6. group boycotts;
7. validity of patents;
8. ongoing litigations.

**General Antitrust-Guidance amongst competitors**

|  |  |
| --- | --- |
| **GO** | **STOP** |
| Exchange of **publicly available information**. | No meeting without specific Agenda. |
| No information/agreement on **current/planned pricing data**, **discounts**, **rebates** and other **terms and conditions of sale or procurement (unless public)- including conditions of grant/credit**. |
| Giving/ showing **general corporate presentations** as well as general presentations of the company, departments and teams. | No information/agreement on **current/planned individual employee salary** or **benefits**. |
| No information/agreement on **current/planned bids** or **negotiations** with specific customers. |
| No information/agreement on **current/planned individual costs of input**, **supplies** and **facilities**. |
| No exchange of **current or planned individual product margin information**. |
| No information about **suppliers**, **customers**, **competitors,** **their creditworthiness**. |
| Discussion of **general topics** of various kinds. Share of information on **overall capacity** in the market as well as publishing projections concerning general and specific publicly available market trends.Where in **a joint project** with competitors the **assessment of confidential cost or price information** is required: Provide confidential information exclusively to a **neutral third party** (this may be a customer or a group of customers) for assessment under the condition that the third party takes appropriate measures to avoid that confidential information of one project party is disclosed to another party (including when sharing the results of the assessment with the parties).  | No exchange of any **customer** **(OEM, OES, IAM)** **projects** worldwide or any pre-development projects. |
| No exchange of **customer contracts**. |
| No exchange about **cost**, **capacity**, **inventory** and **sales profits**. |
| No exchange about **limitation of production** (neither with respect to the type of product nor with respect to the quantity of the products). |
| No exchange of information related to **internal** **organization**, **individuals**, **R&D specifics**, etc. |
| No exchange of **any other competitively sensitive (market relevant)** information such as for example capacities, distribution policies, or sales territories. |
|  | No **allocation of customers, territories or markets**. No **Boycotting** of other businesses. |

]

1. Private Founding Member as defined in Article 2 of the Council Regulation (EU) No 2021/2085 of 19 November 2021 establishing the Joint Undertakings under Horizon Europe (Single Basic Act). [↑](#footnote-ref-2)
2. Private Founding Member as defined in Article 2 of the Council Regulation (EU) No 2021/2085 of 19 November 2021 establishing the Joint Undertakings under Horizon Europe (Single Basic Act). [↑](#footnote-ref-3)