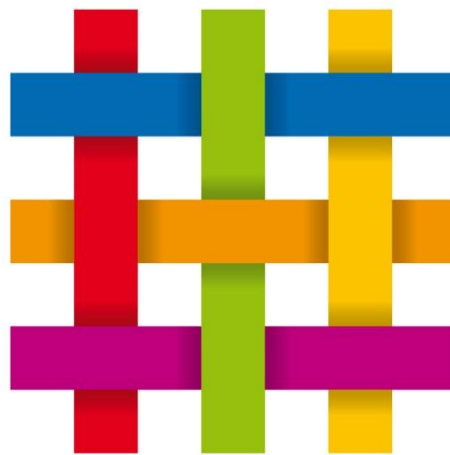


The working-group provides this model Consortium Agreement as draft without assuming any warranty or responsibility. The use of the text in total or in part takes place on the users own risk and does not release users from legal examination to cover their interests and protect their rights.



DESCA

**The Simplified FP7 Model
Consortium Agreement
www.DESCA-FP7.eu**

Version 3.0 March 2011

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Change Records

Version	Date	Changes	Author
Version 0.9	2007-01-17	Draft of the First CA Model	DESCA
Interim Version 1	2007-03-26	Reworked	DESCA
Version 1 April 2007	2007-04-22	Reworked	DESCA
Version 1 May 2007	2007-05-08	Reworked	DESCA
Version 2.0 May 2008	2008-05-15	Updated	DESCA
Version 3.0 March 2011	2011-03-04	Updated	DESCA

REMARKS

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 Grant Agreement including Annex II.

FP7 differs from FP6 and FP5 substantially, among which governance and finances. The DESCA model addresses the features of FP7 explicitly.

It is strongly advised to read all above before deciding on any alteration on the model provided.

In order to facilitate the governance of the project some recommendations and guidelines on financial management and administration have been included.

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 for both lawyers and scientists.

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

It is important to be aware of the fact that DESCA is supplementary to the Rules for Participation and the Grant Agreement. Many items regulated there are NOT repeated here, but should be carefully taken into account and re-read in case of doubt.

This Consortium Agreement model should be used only for the funding scheme “Collaborative Project”. 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 Governance Structure:

Module GOV LP for Medium and Large Projects:

Complex governance structure: two governing bodies, General Assembly and Executive Board [Module GOV LP].

Module GOV SP for Small Projects:

Simple governance structure: only a General Assembly [Module GOV SP].

If the project implies just a modest number of work packages, and is not very complicated, Module GOV SP will normally do.

However, if the project is more complicated and has many work packages, 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.

Option 1 reflects the preference of most stakeholders (some Industry sectors as well as universities and research organisations) where some form of remuneration for Using other partners' project results is foreseen.

Option 2 reflects a situation preferred by some industries, where all project results are available for Use without any form of remuneration to the originating Parties.

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

The DESCA Core Group recognizes 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.

<u>CONSORTIUM AGREEMENT</u>	Elucidation & Comments
<p>THIS CONSORTIUM AGREEMENT is based upon REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) hereinafter referred to as Rules for Participation and the European Commission Grant Agreement, adopted on 10 April 2007, Version 6 adopted on 24 January 2011, hereinafter referred to as the Grant Agreement or EC-GA and Annex II adopted on 10 April 2007, hereinafter referred to as Annex II of the EC-GA, and is made on YYYY-MM-DD, hereinafter referred to as “Effective Date”</p> <p>BETWEEN: [OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT], the Coordinator</p> <p>[OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT],</p> <p>[OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT],</p> <p>[Insert identification of other Parties ...]</p> <p>hereinafter, jointly or individually, referred to as “Parties” or “Party” relating to the Project entitled</p> <p>[NAME OF PROJECT]</p> <p>in short</p> <p>[Insert: acronym]</p> <p>hereinafter referred to as “Project”</p> <p>WHEREAS: The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the European Commission as part of the Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration Activities under the funding scheme of “Collaborative Project”. The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the EC-GA. The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium agreement and that explanations to the DESCA model are available at www.DESCA-FP7.eu.</p> <p>NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:</p>	<p>The used FP7 Grant Agreement abbreviation: [EC-GA Article], the used FP7 Grant Agreement - Annex II abbreviation: [EC-GA Article II.1.]</p> <p>Insert here the Effective Date of the Consortium Agreement.</p> <p>We strongly recommend having the CA signed before the EC-GA. If this is not possible, the effective date can be retroactive and it may vary 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 Article 3.1 of this Consortium Agreement). Still the Effective Date is the same for all Parties that have signed the document. Consider also, if it is necessary with regard to confidentiality, obligations to have 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 of the Parties as they will be identified in the Grant Agreement and the contract preparation forms.</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>
Section 1: Definitions	
1.1 Definitions	
Words beginning with a capital letter shall have the meaning defined either herein or in the Rules for Participation or in the Grant Agreement including its Annexes without the need to replicate said terms herein.	Definitions used only once in the text are included in the respective Section of the text.

	The term "Legitimate interests" is used in the same sense as in the Rules for Participation.
1.2 Additional Definitions	
<p>"Consortium Plan"</p> <p>Consortium Plan means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the General Assembly.</p>	<p>Art. 5, Core EC-GA, states that "Beneficiaries [Parties] are allowed to transfer budget between different activities and between themselves in so far as the work is carried out as foreseen in Annex I."</p> <p>As minor modifications quite frequently are necessary during the project and do not have to result in changes of Annex I, Annex I 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. 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 Work (DoW) as laid down in Annex I of the EC-GA.</p> <p>It is strongly advised to inform the European Commission of any changes accordingly in the periodic reports to the European Commission. If the discrepancy becomes too big and in consultation with the European Commission an updated version of the Annex I could be generated, as an amendment to the Grant Agreement.</p> <p>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>"Consortium Budget"</p> <p>Consortium Budget means the allocation of all the resources in cash or in kind for the activities as defined in Annex I of the Grant Agreement and in the Consortium Plan thereafter.</p>	<p>The Consortium Budget comprises the total resources needed to execute the Project. This is more than the eligible costs and the European Community financial contribution. Insight in the costs of the total resources of the Project helps to manage the Consortium in the most effective way.</p> <p>The Consortium Budget should be organised according to the tasks and deliverables as scheduled in the Consortium Plan.</p> <p>These tasks and deliverables normally will be reviewed at least every six months by the Executive Board; most tasks however will have a longer time span than these six months. In order to arrive at a practical organisation, it makes sense to partitionate the Consortium Budget in six months parts (making this a management cycle).</p> <p>An inherent part of the Consortium Budget needs to be a detailed payment scheme where, according to decisions made, the payments will be scheduled: in time, to tasks and to Parties.</p>
<p>"Defaulting Party"</p> <p>Defaulting Party means a Party which the General Assembly has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Article 4.2 of this Consortium Agreement.</p>	<p>Default situations are covered by this agreement in the perspective of the Project and 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,</p>

	<p>termination of participation, 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 (see Article 4.2; Article 6.3.1.2; 6.3.2.3 and 6.3.3.2 of this Consortium Agreement).</p> <p>The process and consequences resulting from the breach can be found:</p> <ul style="list-style-type: none"> - Process: Article 4.2 - Liability :Article 5.2 - Governance Article for GOV LP: 6.2.3; 6.2.4 or for GOV SP: 6.3.3 ; 6.3.4 - Consortium Plan : Article 6.3.1.2 - Finances: Article 7.1 and 7.3 - Access Rights: Article 9.7.2.1.1 and 9.7.2.2 and Grant Agreement Article II.21. <p>In the perspective of claims between 2 Parties of the Consortium, the concerned parties should follow closely both these default processes covered by the Consortium Agreement and the requirements of Belgian law.</p>
<p>“Needed”</p> <p>means:</p> <p>For the implementation of the Project: Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources.</p> <p>For Use of own Foreground: Access Rights are Needed if, without the grant of such Access Rights, the Use of own Foreground would be technically or legally impossible.</p>	<p>Beneficiaries have access rights if they are “Needed”, and this provision aims to make this condition more precise and easier to work with. It makes access “Needed for 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 for Use” because Participants want to be reasonably sure that other Participants 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>Organisation by Subprojects does not have any influence on the “Needed”-condition as such.</p>
<p>“Software”</p> <p>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>Specific provisions of Software see Article 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>See EC-GA Article 1.4., Article II.2.1. and Article II.2.4.c. Here only the general purpose and the general targets are given. See Rules for Participation Article 24.</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>Each Party commits to this Consortium Agreement when signing the document on its own behalf.</p>

<p>This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.</p> <p>A new Party enters the Consortium upon signature of the accession document Attachment 3 by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.</p>	<p>Still the Effective Date is the same for all Parties that have signed the document.</p> <p>It is strongly advised that the Consortium Agreement should be signed before the EC-GA.</p> <p>The rules and process for accepting new parties are laid down in: Decisions of the General Assembly (see Article 6.3.1.2) and of the Executive Board (Article 6.3.2.3). A model Accession document is attached to this Consortium Agreement Attachment 3.</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 EC-GA 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 and Annex II of the (EC-GA Article II.37. and II.38.). If the Commission does not award the EC-GA or terminates the EC-GA or a Party's participation in the EC-GA, this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Art. 3.3 of this Consortium Agreement.</p>	<p>Termination may take place in case of normal end of the Project or a pre-termination during its implementation. 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 European Commission or from the Consortium. As the terms of EC-GA and the Consortium Agreement are interlinked, the clause also addresses the automatic termination of the Consortium Agreement in case of rejection of the Project proposal and termination of the EC-GA.</p>
<p>3.3 Survival of rights and obligations</p>	
<p>The provisions relating to Access Rights 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 Consortium incurred prior to the date of termination, unless otherwise agreed between the General Assembly and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.</p>	<p>Note that some of these clauses contain a time limit for the survival or use of the provisions whereas some are just general surviving clauses.</p> <p>Termination shall not affect previous obligations of the leaving Party, here only the most important issues to remember are stated.</p> <p>See Article 6.2.3 and Article 6.2.4 regarding voting rules and veto rights.</p>
<p>Section 4: Responsibilities of Parties</p>	
	<p>Specific responsibilities are detailed in other sections. It is especially important to note the obligations of each Party stated in the EC-GA Article II.3.</p>
<p>4.1 General principles</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 EC-GA 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 law systems.</p>

<p>Each Party undertakes to notify promptly, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the Project.</p>	<p>Article 11.3 of this Consortium Agreement supplies the possible forms of notification.</p>
<p>Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.</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 a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the EC-GA (e.g.: a partner producing poor quality work), the Coordinator or the party appointed by the General Assembly if the Coordinator is in breach of its obligations under this Consortium Agreement or the EC-GA will give written notice to such Party requiring that such breach be remedied within 30 calendar days. 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>Governance structure – see Consortium Bodies Section 6 (in large projects the responsible Consortium Body to identify the breach will in most cases be the Executive Board). If this happens the Executive Board shall propose to the General Assembly to declare the Party to be a Defaulting Party. 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 can address the issue by reallocation of tasks as part of the next Consortium Plan.</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) in the Project remains solely responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the EC-GA. It 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 EC-GA.</p>	<p>Third party means any entity which is not a signatory to this Consortium Agreement. Subcontracting is covered by the EC-GA Article II.7. In addition to those responsibilities, for clarity here also the general responsibility with regard to subcontractors and other third parties is stated. Parties involving third parties have to ensure that Access rights of the other Parties regarding Background and Foreground are not impacted.</p>
<p>Section 5: Liability towards each other</p>	
	<p>Liability towards the European Commission is not part of this Consortium Agreement as it is governed by the EC-GA.</p>
<p>5.1 No warranties</p>	
<p>In respect of any information or materials (incl. Foreground 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,</p> <ul style="list-style-type: none"> - 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 Affiliates) exercising its Access Rights. 	<p>This basic clause sets the base especially for the limitation of liability with regard to outputs (covering also the Foreground and Background) delivered by one Party to another Party. The essential limitation is that in case any such output is delivered, the receiving Party shall bear the liability for the use to which it is put and possible IPR infringements. 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>Please note that a supplying Party however still has to inform other Parties of any possible restriction, see EC-GA Article II.32.3.</p>

<p>5.2 Limitations of contractual liability</p>	
<p>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, provided such damage was not caused by a wilful act or by a breach of confidentiality.</p> <p>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 I of the EC-GA provided such damage was not caused by a wilful act or gross negligence.</p> <p>The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability.</p>	<p>The basic limitations of contractual liability are stated here.</p> <p>The Parties may choose what amount to set as the limitation of liability. It is usually either once or twice the project share, but if so decided by the Parties it might also be another sum.</p> <p>The basic rule of Belgian law, as well as most of the other legislations in Europe, is, that liability with regard to wilful breaches of contract cannot be limited. It may be possible to limit damage also in case of gross 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. In case there is obligatory statutory liability in the legislation, these are not overruled by such a clause. However, regarding Belgian Law someone can either be liable according to contract law or obligatory statutory law (e.g. law of torts) but not both at the same time. So if there is a contract and the act or omission which led to the damage was made in connection with the contract the Party is only liable according to the contract. The sentence that "The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability" is therefore of only clarifying nature as statutory liability does not apply when liability according to a contract applies.</p> <p>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.</p> <p>IN CASE YOU EXCHANGE MATERIAL WITHIN THE PROJECT, PLEASE CONSIDER THE NEED FOR A SEPARATE MTA AND ADD THE FOLLOWING CLAUSE TO THE CONSORTIUM AGREEMENT:</p> <p>In the case of transfer of material between Parties for the performance of the Project, an agreement based on the model of the Material Transfer Agreement provided on the DESCA website (www.DESCA-FP7.eu) shall be entered into between the said Parties and may be amended to contain specific conditions regarding liabilities.</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 Foreground 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 born by the Party causing the damage by its performance or by its use of Foreground or Background.</p>
<p>5.4 Force Majeure</p>	
<p>No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure. Each Party will notify the competent Consortium Bodies of any Force Majeure 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.</p>	<p>See EC-GA Article II.40. See Article 11.3 of this Consortium Agreement regarding possible forms of notification.</p>
<p>Section 6: Governance structure</p>	
<p>[Module GOV LP]</p>	
<p>Governance structure for Medium and Large Projects</p>	<p>Choose [Module GOV SP] for Small Projects with a simple governance structure. Main difference: [Module GOV LP] has two governing boards.</p>
<p>6.1 General structure</p>	
<p>The organisational structure of the Consortium shall comprise the following Consortium Bodies:</p> <p>General Assembly as the ultimate decision-making body of the Consortium</p> <p>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 is the legal entity acting as the intermediary between the Parties and the European Commission. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the EC-GA and this Consortium Agreement.</p> <p>The Management Support Team assists the Executive Board and the Coordinator.</p>	<p>In FP7 the Annex I is only a starting point, all further development of the Project is to the Consortium without interference of the European Commission. Therefore DESCA has to provide a full workable management structure stable enough for complicated projects but not leading to a straight jacket or dictatorship. The governance gives clear responsibilities for different Consortium Bodies and therefore avoids the abuse of power.</p> <p>If you add any other bodies such as Sub Project or Work Package Committees, take care to avoid complicating the structure. You find an example of this kind of governance structure with three levels in DESCA version 2.0 in the Archive on our webpage. In any case, the Management structure of Annex I must be reflected here.</p>
<p>6.2 General operational procedures for all Consortium Bodies</p>	
<p></p>	<p>The rules of Article 6.2 of this Consortium Agreement apply to all the Consortium Bodies: General Assembly, Executive Board, and any other bodies. Be aware they are not repeated in each section but they apply. Only specific additional rules are described in the relevant Consortium Body section.</p>
<p>6.2.1 Representation in meetings</p>	

<p>Any member of a Consortium Body (hereinafter referred to as "Member"): should be present or represented at any meeting of such Consortium Body; may appoint a substitute or a proxy to attend and vote at any meeting; and shall participate in a cooperative manner in the meetings.</p>			<p>To "participate in a cooperative manner in the meeting" means in the spirit of a collaborative project, each Party shall act in good faith and e.g. not exercise abusive or unnecessary veto rights.</p>
<p>6.2.2 Preparation and organisation of meetings</p>			
<p>6.2.2.1 Convening meetings: The chairperson of a Consortium Body shall convene meetings of that Consortium Body.</p>			
	Ordinary meeting	Extraordinary meeting	
General Assembly	At least once a year	At any time upon written request of the Executive Board or 1/3 of the Members of the General Assembly	
Executive Board	At least quarterly	At any time upon written request of any Member of the Executive Board	
<p>6.2.2.2 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.</p>			
	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: The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body a written (original) agenda no later than the minimum number of days preceding the meeting as indicated below.</p>			
General Assembly	21 calendar days, 10 calendar days for an extraordinary meeting		
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. Any Member of a Consortium Body may add an item to the original agenda by written notification to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.</p>		
General Assembly	14 calendar days, 7 calendar days for an extraordinary meeting	
Executive Board	2 working 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>6.2.2.6 Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document which is then signed by the defined majority (see Article 6.2.3.) of all Members of the Consortium Body.</p> <p>6.2.2.7 Meetings of each Consortium Body may also be held by teleconference or other telecommunication means.</p> <p>6.2.2.8 Decisions will only be binding once the relevant part of the Minutes has been accepted according to Article 6.2.5.</p>		
<p>6.2.3 Voting rules and quorum</p>		
<p>6.2.3.1 Each Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).</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 Defaulting Parties may not vote.</p> <p>Decisions shall be taken by a majority of two-thirds (2/3) of the votes.</p>		
<p>6.2.4 Veto rights</p>		
<p>6.2.4.1 A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of 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 Member may veto such a decision during the meeting only.</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 Member may veto such decision during the meeting and within 15 days after the draft minutes of the meeting are sent.</p>		<p>Legitimate interests: see use of the term in the Rules for Participation.</p> <p>A Member of a Consortium Body who is not present nor represented at a meeting cannot vote or veto any decision foreseen on the original agenda by definition!</p> <p>If a decision has been taken on an agenda point not on the original agenda all Members may veto this decision within 15 calendar days after sending of the Minutes of the meeting.</p>

	<table border="1"> <thead> <tr> <th rowspan="2"></th> <th colspan="2">Item on the original agenda</th> <th colspan="2">Item added to the original agenda</th> </tr> <tr> <th>Veto during the meeting</th> <th>Veto within 15 days after the Minutes are sent</th> <th>Veto during the meeting</th> <th>Veto within 15 days after the Minutes are sent</th> </tr> </thead> <tbody> <tr> <td>Party present or represented</td> <td>1 YES</td> <td>2 NO</td> <td>3 YES</td> <td>4 YES</td> </tr> <tr> <td>Party neither present nor represented</td> <td>5 NO (Impossible)</td> <td>6 NO</td> <td>7 NO (Impossible)</td> <td>8 YES</td> </tr> </tbody> </table>		Item on the original agenda		Item added to the original agenda		Veto during the meeting	Veto within 15 days after the Minutes are sent	Veto during the meeting	Veto within 15 days after the Minutes are sent	Party present or represented	1 YES	2 NO	3 YES	4 YES	Party neither present nor represented	5 NO (Impossible)	6 NO	7 NO (Impossible)	8 YES
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Party neither present nor represented	5 NO (Impossible)	6 NO	7 NO (Impossible)	8 YES																
<p>6.2.4.4 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.</p> <p>6.2.4.5 A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.</p> <p>6.2.4.6 A Party requesting to leave the Consortium may not veto decisions relating thereto.</p>																				
<p>6.2.5 Minutes of meetings</p>																				
<p>6.2.5.1 The chairperson of a Consortium Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send the draft 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 sending, no Member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes.</p> <p>6.2.5.3 The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.</p>	<p>Formalisation of the decisions taken during a meeting means the writing of the Minutes in a way it is conform to the decisions taken during the meeting (see Article 11.3).</p> <p>Approval may only be withheld if the Minutes are not accurate; not agreeing with contents is no argument. When the drafted Minutes are not approved by the relevant Members, the Chairperson shall send a new draft to the Members. If a dispute can't be resolved (good faith), a new decision shall be made again.</p> <p>The accepted Minutes may be necessary for proof purposes regarding the content of the Consortium Plan, including (transferred) budgets, payment schemes, etc. and it therefore has to be ensured that it remains available to all Members concerned. Authorised duplicates may be needed for legal affairs.</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 Article 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 Article 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>6.3.1.1.4 The Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Article 11.8.</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. In addition, all proposals made by the Executive Board shall also be considered and decided upon by the General Assembly.</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 Annex I of the EC-GA to be agreed by the European Commission - Changes to the Consortium Plan (including the Consortium Budget) - Withdrawals from Attachment 1 (Background included) - Additions to Attachment 2 (Background excluded) - Additions to Attachment 4 (Listed Affiliated Entities) - Additions to Attachment 5 (List of Third Parties) <p>Evolution of the Consortium</p> <ul style="list-style-type: none"> - 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 - Declaration of a Party to be a Defaulting Party - Remedies to be performed by a Defaulting Party - Termination of a Defaulting Party's participation in the Consortium and measures relating thereto - Proposal to the European Commission for a change of the Coordinator - Proposal to the European Commission for suspension of all or part of the Project - Proposal to the European Commission for termination of the Project and the Consortium Agreement <p>Appointments</p> <p>On the basis of Annex I, the appointment if necessary of:</p> <ul style="list-style-type: none"> - Executive Board Members 	<p>Normally decisions will be based upon and following the proposals of the Executive board, as reflected in its proposed agenda for the General Assembly.</p> <p>Be aware that the Consortium Plan, apart of planning the work to be done, also includes the related (detailed) budgets and the connected (detailed) payment schemes (see 7.1.1).</p> <p>No separately signed document from all the Parties is necessary to implement the decisions even for the listed changes to Attachments to this Consortium Agreement. See also:</p> <ul style="list-style-type: none"> - Transfer of Foreground Article 8.2 - Background exclusions Article 9.1 - Amendments on the Consortium Agreement Article 11.4. <p>Point (g): This decision is a prerequisite to allow the coordinator to request an amendment to the EC-GA in accordance with the FP7 amendment guide. It should also be followed by an accession of the new Party to the Consortium Agreement (Attachment 3)</p>
<p>6.3.2 Executive Board</p>	
<p>In addition to the rules in Article 6.2, the following rules shall apply:</p>	<p>It should be noted that the Executive Board has in effect no decision powers: decisions are taken at the highest level (General Assembly).. This has been devised on purpose: it avoids any possibility for dictatorship and enhances the need for persuading deliberations. The power lies in the fact that the Executive Board uniquely prepares and proposes decisions to be made to the General Assembly.</p>

<p>6.3.2.1 Members</p>	
<p>The Executive Board shall consist of the Coordinator and all of the Parties as appointed by the General Assembly (hereinafter Executive Members).</p> <p>The Coordinator shall chair all meetings of the Executive Board, unless decided otherwise.</p>	<p>To be efficient, the main issues should be discussed between a small number of partners. It's very difficult to discuss and prepare decisions in a meeting with more than 8 to 10 partners. It is advised that the Work Package Leaders become Members of the Executive Board.</p> <p>In some cases, the Coordinator is not in the best position to chair the Executive Board meeting. On a case by case basis, the chairperson may be another Executive Member than the Coordinator.</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 Article 6.3.1.2.</p>	
<p>6.3.2.3.2 It shall seek a consensus among the Parties.</p>	<p>Seeking consensus is a major task of the Executive Board, gives it a central role in the performance of the Project and avoids complicated escalation procedures that would be required if potential conflicts had to be solved in procedural ways.</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 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>In order to meet its tasks the Executive Board collects all information needed to secure the progress of the Project.</p> <p>This information, combined with requests of consortium partners or the European Commission for changes of the Project Plan (including Budget Plans), must be constantly reviewed and used to arrive at revisited plans that accommodate changed circumstances and developments and fits into the parameters of deliverables and the total budget of the Project.</p> <p>Normally some rounds of deliberations and fine tuning with the Work Packages are needed to fit these constraints.</p> <p>The results are modified tasks, related budgets and payment schemes, which together will form the new Consortium Plan proposal.</p> <p>This new Consortium Plan will be proposed to the General Assembly, eventually combined with a proposal for change of Annex I to the European Commission.</p>
<p>6.3.2.3.6 The Executive Board shall:</p>	

<ul style="list-style-type: none"> - agree on the Members of the Management Support Team, upon a proposal by the Coordinator - support the Coordinator in preparing meetings with the European Commission and in preparing related data and deliverables - prepare the content and timing of press releases and joint publications by the Consortium or proposed by the European Commission in respect of the procedures of the EC-GA Article II 30.3. 	
<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 the legitimate commitments taken prior to the decisions, which cannot be cancelled.</p>	<p>The Executive Board shall update the Consortium Plan with the implementation plans from the Work Packages.</p> <p>In case of modifications of the Consortium Plan, it may happen that the decisions to be made would have severe financial effects for a Party. If such effects are the direct consequence of necessary commitments made under the actual Consortium Plan that Party is obliged to minimise the costs attached to the tasks to be abolished. The resulting commitments could be compensated by decision of the General Assembly. The compensation is not automatic but appreciated on a case by case basis. The compensation shall be based on the costs made or assignments contracted by the Parties which tasks are abolished.</p>

<h2>6.4 Coordinator</h2>	
<p>6.4.1 The Coordinator shall be the intermediary between the Parties and the European Commission and shall perform all tasks assigned to it as described in the EC-GA 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 - keeping the address list of Members and other contact persons updated and available - collecting, reviewing to verify consistency and submitting reports and other deliverables (including financial statements and related certifications) to the European Commission - transmitting documents and information connected with the Project to any other Parties concerned - administering the financial contribution of the Union and fulfilling the financial tasks described in Article 7.3 - providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims. 	<p>The Coordinator has to verify the consistency of the reports with the project tasks in annex I and transmit them to the EC</p> <p>The quality of the reports may be reviewed and checked by any Party using it and when it seems to be unsatisfactory, to be addressed with the Party concerned and eventually to be notified to the Coordinator through the breach procedure described in Article 4.2</p> <p>In case one report is missing or is decided to be of poor quality, the Coordinator is allowed to send the other reports to the EC.</p> <p>(d): this would comprise e.g. copies of accession documents, amendments to the EC-GA and changes of contact information as well as date of delivery of reports to the European Commission etc.</p>
<p>6.4.3 If the Coordinator fails in its coordination tasks, the General Assembly may propose to the European Commission 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.</p>	
<p>6.4.5 The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the EC-GA.</p>	
<h2>6.5 Management Support Team</h2>	
<p>The Management Support Team shall be proposed by the Coordinator. It</p>	

<p>shall be appointed by the Executive Board and shall assist and facilitate the work of the Executive Board and the Coordinator for executing the decisions of the General Assembly as well as the day-to-day management of the Project.</p>	
<p>6.6 External Expert Advisory Board (EEAB)</p>	
<p>(Optional, where foreseen in Annex I or otherwise decided by the Consortium)</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. The members of the EEAB are required to sign a non-disclosure agreement no later than 30 days after their nomination or before any confidential information will be exchanged, whichever date is earlier. The Coordinator shall write the minutes of the EEAB meetings and prepare the implementation of the EEAB's suggestions. The EEAB members shall be allowed to participate in General Assembly meetings upon invitation but have not any voting rights.</p>	<p>The Coordinator is not allowed to conclude any agreements with third parties in the name of the consortium, see Art. 11.2 (no representation). The non-disclosure agreement (NDA) must therefore be signed by all Parties and the Advisory Board Member. The Parties can also authorise the Coordinator by a signed Power of Attorney to sign the NDA with the Advisory Board Member on the Parties' behalf.</p>
<p>Section 7: Financial provisions</p>	
<p>7.1 General Principles</p>	
<p>7.1.1 Distribution of Financial Contribution</p>	
<p>The financial contribution of the Union to the Project shall be distributed by the Coordinator according to:</p> <ul style="list-style-type: none"> - the Consortium Budget as included in the Consortium Plan - the approval of reports by the European Commission, and - the provisions of payment in Article 7.3. - <p>A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.</p> <ul style="list-style-type: none"> - 	<p>According to article 5, EC-GA, Beneficiaries are allowed to transfer budget between different activities and between themselves. Consequently, in FP7 it is the Consortium authority to implement the redistribution of tasks and budget according to the Consortium Plan. The actualisation of the Consortium Plan including the re-budgeting process characterises the following cycle:</p> <ul style="list-style-type: none"> - decision on the Consortium Plan (Description of Work in Annex I as starting point) - implementation of the Consortium Plan - reporting of the implemented activities - approval of reports/deliverables by the European Commission - actualisation and re-planning for the next Consortium Plan - decision on this proposed Consortium Plan by the General Assembly next management cycle of actualisation of the Consortium Plan including the re-budgeting. <p>As a consequence the Description of Work in Annex I may have to be updated following re-planning. See also elucidation to "Consortium Plan" in the definitions section.</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 with respect to the Project towards the European Commission. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the European Commission.</p>	<p>This accounting system cannot be affected by the European Commission, Consortium or one of the Parties, as is stated in Annex II of the Grant Agreement. Experience shows that this is not really understood by many, and then often gives rise to real problems. So it is made a part of this CA , to make sure it is maintained.</p>
<p>7.1.3 Funding Principles</p>	
<p>A Party which spends less than its allocated share of the Consortium Budget will be funded in accordance with its actual duly justified eligible costs only. A Party that spends more than its allocated share of the Consortium Budget</p>	<p>The GA explicitly gives a Consortium the possibilities to shift task and/or money between Parties.</p>

<p>will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.</p>	<p>That is one (not the sole) reason to have a Consortium Budget that can be different from the actual Annex 1. [see also art.7.1.1. and art.1.2 for elucidation] This article makes sure that Parties will not be able to spend more than is permitted by the Consortium Budget, even if they expected or hoped for more. In case a Party Needs more money, it may ask for a supplement. Such request shall be addressed to the General Assembly. (see 6.3.6). In cases the Consortium Budget is not dividing from Annex I -as we see in many simple Projects- this provision falls back to the standard provisions in the GA, with the same effect.</p>
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<p>7.1.4 Financial Consequences of the termination of the participation of a Party</p>	
<p>A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by the European Commission or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Article 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. Any additional costs which are not covered by the Defaulting Party shall 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.</p>	<p>As the Consortium Budget comprises the total resources needed to execute the project, in rare cases more payments than the EC contribution can be involved. This could refer to own funds of Parties agreed to be transferred to other Parties, e.g. in order to have a fair sharing of very expensive testing rather than having it co-financed only by the Party executing the task. Where the Consortium Budget is identical to Annex I (often in simple projects) these additional costs will thus be redistributed in accordance with the respective shares of the Parties in the total costs stated therein.</p>
<p>7.2 Budgeting</p>	
<p>The Consortium Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.</p>	<p>- Above management challenges require effective and regular (re-)budgeting of all resources needed to execute the Project, taking into account that 15% of the maximum contribution will not be distributed by the Commission</p> <p>As a consequence of the (re-)budgeting process an actualised Consortium Plan will be issued.</p> <p>Within FP7 the Consortium may face the need to fine tune different funding schemes (eligible costs, lump sum, flat rate and unit of scale) within the Project. The various schemes may be imposed by the European Commission 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>7.2.1 Budgeted costs eligible for 100% reimbursement</p>	<p>This article is meant to create awareness for all cost eligible for 100% reimbursement and to offer a possible order of priority. It is optional: it will be helpful if there is a need to prioritise these costs in your project (e.g. your total cost eligible for 100% reimbursement might exceed the budget accepted by the Commission)</p>
<p>These costs shall be budgeted in the Consortium Budget in the following order of priority:</p> <p>- banking and transaction costs related to the handling of any financial</p>	<p>All costs eligible for 100% reimbursement are defined by the European Commission. In order to claim these costs and to facilitate an effective management of the</p>

<p>resources made available for the Project by the Coordinator</p> <ul style="list-style-type: none"> - costs of Parties related to calls for new Beneficiaries - costs related to updating this Agreement - management costs of the Coordinator and the Management Support Team - [costs related to the tasks of the Executive Board] - intellectual property protection costs - costs for publications - costs for the tasks of chairpersons - any other costs eligible for 100% reimbursement 	<p>Project it is strongly advised to budget all these costs specifically and fully.</p> <p>In case the European Commission does not want to cover these costs explicitly to the full amount and insists on a flat rate or lump sum, the Consortium must take care of these costs as much as possible. Re-budgeting can be effectuated in two different ways:</p> <ul style="list-style-type: none"> - through prioritising this tasks; and as a consequence reviewing the (distribution of) tasks of the whole Project - or - taking into account the limited budget for these tasks, addressing these costs according the priority as indicated in Article 7.2.1. <p>In case of GOV SP, please delete the category referring to the costs related to the tasks of Executive Board.</p> <p>Costs for protection of Foreground have to be budgeted, even if it is not predictable which Party will need that budget in the budget period.</p> <p>The 2nd and 3rd certification costs items are new in FP7 and could give rise to difficult situations as these costs are normally one-time costs for an organisation, but could be out of proportion for the budget of one project. Therefore these costs will normally be spread between a number of projects at the start of FP7 by the organisation striving for such a certification. (These costs will be eligible only during the lifetime of those projects). Even if spread among different projects, such costs can influence the relevant project budgets substantially. Therefore decisions about budgeting, a reasonable part of those cost inside a project have to be made inside the consortia concerned.</p>
<p>7.2.2 Budgeting of coordination costs</p>	
<p>Costs of coordination of research which are not allowed as management cost according to Annex II of the EC-GA (EC-GA Article II.16.5) have to be budgeted separately.</p>	<p>This article reflects fully what is laid down in the GA, but as often overlooked, is repeated here to safeguard the Consortium of surprises during execution. Cost of coordination of research is considered as RTD costs and will be funded accordingly ; however cost for the coordination of the consortium are management costs and in principle paid at 100% - as elucidated above.</p>
<p>7.3 Payments</p>	
<p>7.3.1 Payments to Parties are the exclusive tasks of the Coordinator.</p> <p>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 Community financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do 	

so due to statutory legislation.		
7.3.2 The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following :		This schedule merely details in which way the distribution of the money as given in 7.1.1. has to be performed
OPTION 1: Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the EU-Commission in separate instalments in conformity with the decision of the General Assembly on the applicable instalment mechanism.. Funding of costs accepted by the EU-Commission will be paid to the Party concerned, taking into account the amounts already paid for the reporting period concerned.	OPTION 2: Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the EU-Commission without undue delay and in conformity with the provisions of Annex II of the EC-GA. Costs accepted by the EU-Commission will be paid to the Party concerned, taking into account the amounts already paid for the reporting period concerned.	As referred above, the Consortium Plan undergoes a cyclic update. As the Consortium Plan comprises the Project Budget, which in itself comprises the payment schedule, both the Consortium Budget and the payment schedule are subject to the same dynamics as the Consortium Plan. As a consequence the Consortium Budget follows the reporting period to the European Commission. In order to help the Consortium to react on changed circumstances swiftly and to produce deliveries in good time and of good quality, the Consortium Plan can foresee mechanisms to that effect. The framework for these mechanisms consists of the principles stipulated in art. 7.1.1. In all mechanisms the Coordinator executes the decisions of the Consortium. These mechanisms should effectuate the distribution of the two kinds of payments representing the Community financial contribution: 1. the payments for future work (= Pre-financing) and 2. the payments for performed work (= Interim payments). In order to enhance governance, it is recommended to embed instalments in the payment scheme: 4 models of instalments are presented, which can be applied separately or in combination, and should be effectuated towards each Party individually: a. in amounts to cover the realisation of the next deliverable -not necessary covering the whole actual planning period b. amounts to cover the planned work for the next X months c. amounts to cover YY% of the actual planning period d. including a retention of ZZ% ; which will be paid out at acceptance of all related deliverables. It is to the General Assembly to decide and lay down in the Consortium Plan/Budget which (combination of) instalment -if any- is used. By consequence of implementing instalments all money will be retained until payment is due governed by the Payment Schedule
The 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 EC-GA" or to a Beneficiary which has not yet signed this Consortium Agreement. The Coordinator is entitled to recover any payments already paid to a Defaulting Party.		A Beneficiary not wanting to become a Party to this Consortium Agreement is showing bad behaviour to begin with. It is in the interest of both the Consortium and the European Commission not to forward it any money. Poor quality of work or reports may be considered to be a breach.

Section 8: Foreground		
Regarding Foreground, EC-GA Article II.26. - Article II.29. shall apply with the following additions:		See EC-GA Article II.26. - Article II.29 covering: ownership, transfer, protection and Use.
8.1 Joint ownership		
<p>OPTION 1:</p> <p>Where no joint ownership agreement has yet been concluded:</p> <ul style="list-style-type: none"> - each of the joint owners shall be entitled to Use their jointly owned Foreground on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and - each of the joint owners shall be entitled to grant non-exclusive licenses to third parties, without any right to sub-license, subject to the following conditions: at least 45 days prior notice must be given to the other joint owner(s); and Fair and Reasonable compensation must be provided to the other joint owner(s). 	<p>OPTION 2:</p> <p>In case of joint ownership, each of the joint owners shall be entitled to Use the joint Foreground as it sees fit, and to grant non-exclusive licences, 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>As far as possible, joint ownership should be avoided as it might create various legal complications. Joint ownership issues should always be considered on a case-by-case basis.</p> <p>OPTION 1: Chooses the default regime of the EC-GA Article II.26 and adds a provision allowing direct Use free of charge.</p> <p>OPTION 2: Allows free use and sublicensing without informing or compensating the other owner(s).</p>
8.2 Transfer of Foreground		
<p>8.2.1 Each Party may transfer ownership of its own Foreground following the procedures of the EC-GA Article II 27.</p> <p>8.2.2 It may identify specific third parties it intends to transfer the ownership of its Foreground to in Attachment (5) to this Consortium Agreement. The other Parties hereby waive their right to object to a transfer to listed third parties according to the EC-GA Article II.27.3.</p> <p>8.2.3 The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment (5) after signature of this Agreement requires a decision of the General Assembly.</p> <p>8.2.4 The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, a Party may be subject to confidentiality obligations which prevent it from giving the full 45 days prior notice for the transfer as foreseen in the EC-GA, Article II 27.2.</p>		Disputes about conflicts of interests should be solved in the Consortium Agreement negotiation phase as soon as one Party lists a third party which is considered to be problematic by other Parties.
8.3 Dissemination		
8.3.1 Publication		
<p>8.3.1.1 Dissemination activities including but not restricted to publications and presentations shall be governed by the procedure of Article II.30.3 of the EC-GA subject to the following provisions. Prior notice of any planned publication shall be given to the other Parties concerned at least 45 days before the publication. Any objection-to the planned publication shall be made in accordance with the GA in writing to the Coordinator and to any Party concerned within 30 days after receipt of the</p>		<p>It's possible for participants to change the delays foreseen by EC-GA Article II.30.3. Reasons to extend the periods [45/30] days can be to have more time to examine intended publications and to block them in the meantime. Reasons to shorten the periods can be to make prior</p>

<p>notice. If no objection is made within the time limit stated above, the publication is permitted.</p> <p>8.3.1.2 An objection is justified if (a) the objecting Party's legitimate academic or commercial interests are compromised by the publication; or (b) the protection of the objecting Party's Foreground or Background is adversely affected.</p> <p>The objection has to include a precise request for necessary modifications.</p>	<p>notification easier, considering that e.g. presentations for conferences tend to be prepared rather close to the actual event and not months before.</p>	
<p>8.3.1.3 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 actions are performed following the discussion.</p>		
<p>8.3.2 Publication of another Party's Foreground or Background</p>		
<p>For the avoidance of doubt, a Party shall not publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the Party's Foreground, without the other Party's prior written approval. For the avoidance of doubt, the mere absence of an objection according to 8.3.1 is not considered as an approval.</p>	<p>Art. 8.3.2 is just a clarification that Art. 8.3.1 only applies to OWN Background and Foreground. Where Background and Foreground of ANOTHER Party wants to be published, as a basic rule the prior written approval of that other Party is needed. The mere absence of an objection according to 8.3.1 is therefore not considered as an approval as 8.3.1 does not apply in this case, unless decided otherwise.</p>	
<p>8.3.3 Cooperation obligations</p>		
<p>The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Foreground or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.</p>	<p>Use standard submission clauses if available. Possible alternative clause: "Nothing in the Consortium Agreement will prevent the publication for the purposes of obtaining a degree, provided that external examiners may where necessary to protect another Party's information be required to sign a non disclosure agreement, and that a Party may request that a thesis is deposited in a university library only under restricted access conditions.</p>	
<p>8.3.4 Use of names, logos or trademarks</p>		
<p>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 covered</p>		
<p>OPTION 1:</p> <p>9.1.1 The Parties shall identify in the Attachment 1 the Background to which they are ready to grant Access Rights, subject to the provisions of this Consortium Agreement and the EC-GA. Such identification may be done by e.g.</p> <ul style="list-style-type: none"> - subject matter and possibly in addition by - naming a specific department of a 	<p>OPTION 2:</p> <p>In accordance with and subject to the provisions of the EC-GA, any Party may enter in Attachment 2 any specific Background excluded from the obligation to grant Access Rights in accordance with the provisions of this Consortium Agreement. All other Background except that listed in Attachment 2</p>	<p>OPTION 1:</p> <p>Uses a positive list, so only the Background listed is subject to Access Rights of other Parties, all other Background is therefore excluded from access. Legally speaking there consequently is no need to further exclude anything not on the list, but it may in some cases be helpful for maximum transparency towards the partners to clearly state that some specific piece of background is not available to them –see 9.1.4. Another use for that clause can be to specify e.g.</p>

<p>Party</p> <p>-</p> <p>9.1.2 The owning Party may add further Background to Attachment 1 during the Project by written notice. However, only the General Assembly can permit a Party to withdraw any of its Background from Attachment 1.</p> <p>9.1.3 The Parties agree that all Background not listed in Attachment 1 shall be explicitly excluded from Access Rights. The Parties agree, however, to negotiate in good faith additions to Attachment 1 if a Party asks them to do so and those are needed. For the avoidance of doubt, the owner is under no obligation to agree to additions of his Background to Attachment 1.</p> <p>9.1.4 In addition, if a Party wishes to list specific Background as excluded, it shall identify such Background in the Attachment 2. The owning Party may withdraw any of its Background from Attachment 2 during the Project by written notice. However, only the General Assembly can permit a Party to add Background to Attachment 2.</p>	<p>shall be available for the granting of Access Rights in accordance with the provisions of this Consortium Agreement.</p>	<p>that while you have listed all the know-how of your department X in Attachment 1, you wish to exclude their patents A, B and C – but in order to avoid confusion we recommend specifying this already in Attachment 1 or at least making a reference to Attachment 2 (“we include all knowledge of Department X except the items listed in Attachment 2”).</p> <p>It is vital to be very precise on what Background is included; therefore any naming has to allow clear identification of the background. We therefore recommend stating as many details as possible, using as a possible reference the information necessary for licence agreements.</p> <p>When using a positive list, all Parties should thoroughly check whether all input they will need from other Parties is included on the list in order to prevent blockages during the Project implementation.</p> <p>OPTION 2: This option provides a negative list only (just the Background listed by the partners is explicitly excluded). Anything not listed therefore is accessible to the Partners if they need it. As stated under Option 1 above, the Attachment 2 can also be used in combination with Attachment 1 (see above)</p> <p>Context explanation: The EC-GA Article II.31 mentions both the possibility to define the Background needed for the Project AND to exclude specific Background. It thus cites both the concept of a positive list and of a negative list.</p> <p>DESCA’s OPTION 1 therefore allows both lists and clearly states that anything not listed on a positive list is excluded from Access Rights. This gives participants the legal certainty regarding the positive list.</p> <p>In order to ensure that necessary Background is not excluded by error there is an obligation to negotiate the addition of further needed Background. This obligation to negotiate forces partners to discuss the terms of further Access Rights – it does not, however, force them to agree to every request for access.</p> <p>More information can be found in the EC “Guide to Intellectual Property Rules for FP7 projects”, pages 18 ff. (http://cordis.europa.eu/fp7/find-doc_en.html)</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>9.2.2 As provided in the EC-GA Article II.32.3. Parties shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Project).</p>		<p>Possible restrictions Parties have to inform about are e.g.: a Party has already granted an exclusive licence to a third party; a Party is not owner but only has licence without right to sublicense, etc.</p> <p>The EC-GA requires the Party to inform the other Parties as soon as possible of important limitations/restrictions. The EC-GA also requires the Party to grant Access Rights to the Background only</p>

<p>9.2.3 If the General Assembly considers that the restrictions have such impact, which is not foreseen in the Consortium Plan, it may decide to update the Consortium Plan accordingly.</p>	<p>“provided the Beneficiary concerned is entitled to grant them”.</p> <p>As soon as a Party informs of such restriction, the Consortium has to decide whether this has an impact on the Project, including the Use as foreseen in Annex I 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.</p> <p>If you choose the Special Clauses for Software [Module IPR SC] in Article 9.8, please delete the marked text.</p>
<p>9.2.4 Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise. Access Rights shall be free of any administrative transfer costs. Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties according to the EC-GA Article II.32.7.</p>	<p>Sublicensing rights may be agreed in separate agreements regarding specific Access Rights.</p> <p>Sublicensing is not included in any rights; however Parties may between them decide to permit sublicensing, which shall normally be executed by separate contract on commercial conditions.</p> <p>See exclusive licences according to EC-GA Article II.32.7.and II.32.8.</p>
<p>9.2.5 Foreground and Background shall be used only for the purposes for which Access Rights to it have been granted.</p>	
<p>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.</p>	<p>See EC-GA Articles II.32.1 and II.32.2. As explained in 11.3, e-mail is sufficient for the request. We recommend granting Access Rights in written form, but it is also possible to waive this procedure for the granting of Access Rights for the purpose of project execution.</p>
<p>9.2.7 The requesting Party must show that the Access Rights are Needed.</p>	<p>See definition of “Needed” in Definition Section</p>
<p>9.3 Access Rights for implementation</p>	
<p>Access Rights to Foreground and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.</p>	<p>The Parties may in their entries of the Attachment 1 (positive list) 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 EC-GA (see Art. II 33)</p>
<p>9.4 Access Rights for Use</p>	
<p>OPTION 1:</p> <p>9.4.1 Access Rights to Foreground if Needed for Use of a Party's own Foreground including for third-party research shall be granted on Fair and Reasonable conditions.</p> <p>Access rights for internal research activities shall be granted on a royalty-free basis.</p>	<p>OPTION 2:</p> <p>9.4.1 Access Rights to Foreground if Needed for Use of a Party's own Foreground shall be granted on a royalty-free basis.</p> <p>OPTION 1: Access for Use for internal research is free, access for any other Use of own Foreground (including third party research) will be granted on Fair and Reasonable conditions.</p> <p>Any Party Using another Party's Foreground 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 Foreground/ Background for further research might e.g. include the following aspects: Allowing to produce research results which are available to the</p>

		<p>third party but which contain hermetically-sealed Foreground from the Project; using Foreground from the Project for in-house testing or diagnosis purposes in doing research.</p> <p>It is possible to add the following provision to OPTION 1 in order to give more details on procedure: “The Parties’ obligations to act in good faith implies: In the case of research in collaboration with and/or for a third party where the third party needs Access Rights to confidential Foreground from the Project of another Party, the researching Party shall in a traceable form (before starting or committing to start the research) inform the third party of such need, and shall use reasonable endeavours to inform the owner of that Foreground of such need in a traceable form. If the owner has been so informed, he shall</p> <ul style="list-style-type: none"> - not unreasonably delay his decision on whether or not to refuse to grant the needed third party Access Rights and - not unreasonably refuse to grant such rights on Fair and Reasonable terms but may, in good faith, so refuse on the grounds of business interest. <p>However, if despite such reasonable efforts on behalf of the researching Party, the owner has not been so informed, the researching Party may carry out the research without prejudice to the owner’s rights to enforce its rights in any way it deems fit against such third party.”</p> <p>OPTION 2: All Access for Use of own Foreground will be granted royalty-free.</p>
<p>9.4.2 Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on Fair and Reasonable conditions.</p>		<p>The EC-GA foresees in Article II.34.1. access to Background for use either on Fair and Reasonable conditions or royalty-free. Choosing royalty-free access therefore is a possibility, but is considered by DESCA to be very rarely an option beneficial to participants. Furthermore there remain concerns regarding violation of competition law and, as soon as there is one public funded Party, state aid provisions.</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 Art. 9.7.2.1.2, after the termination of the requesting Party’s participation in the Project.</p>		<p>The EC-GA in Art. II.34.4 sets a deadline of one year, which should be a good solution for most projects. Longer or shorter periods are legally possible, however, and may be useful in specific cases. One aspect to take into consideration is that during such period granting exclusive licences requires the consent of all partners; after such period every partner is free to do so.</p>
<p>9.5 Access Rights for Affiliated Entities</p>		
<p>OPTION 1: Affiliated Entities have Access Rights under the conditions of the EC-GA Article II.34.3.</p>	<p>OPTION 2: Affiliated Entities have Access Rights under the conditions of the EC-GA Article II.34.3. In addition, Affiliate Entities shall also enjoy Access Rights if they can show that:</p>	<p>OPTION 1: The EC-GA Article II.34.3. provides that Affiliates have Access Rights under the same conditions as beneficiaries. As the access rights of beneficiaries require that access is needed to use own Foreground, this only applies if ownership of Foreground was (partially) transferred to an Affiliated Entity established in a Member State or Associated Country.</p>

	<p>they hold a licence on Foreground developed by a Party they are affiliated to; and they Need Access Rights in order to Use such Foreground; and they are established in a Member State or an Associated Country; and they are listed in [Attachment 4 (Listed Affiliated Entities)] to this Consortium Agreement.</p>	<p>If option 1 is chosen, Attachment 4 shall be deleted.</p> <p>OPTION 2: Besides the EC-GA access, affiliates which hold a licence on Foreground and fulfil the other conditions listed also have Access Rights.</p> <p>As some Parties hesitate to list their affiliates, it is optional to use such list.[Attachment 4 (Listed Affiliated Entities)]</p>
<p>Such Access Rights to Affiliated Entities shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.</p> <p>Affiliated Entities which obtain Access Rights in return grant Access Rights to all Parties and fulfil all confidentiality and other obligations accepted by the Parties under the EC-GA or this Consortium Agreement as if such Affiliated Entities were Parties.</p> <p>Access Rights may be refused to Affiliate Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Foreground.</p>		<p>Fair and Reasonable conditions apply for Access Rights between the Parties for Use, if OPTION 1 in Article 9.4 is chosen.</p> <p>DESCA provides Fair and Reasonable conditions for Affiliate Access even if OPTION 2 in Article 9.4 is chosen and access between Parties for Use is royalty-free. Affiliates remain third Parties to the Project and we therefore consider it to be unbalanced to grant them royalty-free access. Legally it is however possible to replace “Fair and Reasonable” with “royalty-free”.</p> <p>Regarding the bilateral agreement between the owning Party and the Affiliate, some aspects to consider:</p> <ul style="list-style-type: none"> - detailed consequences of termination of Access Rights of the Affiliate (see below) regarding e.g. knowledge amalgamated etc. - Possible wording regarding non-compliance of affiliates: “If an Affiliated Entity fails in any material respect to comply with the undertaking given by it as above, and fails to rectify the non-compliance after being given a reasonable opportunity to do so, all Access Rights granted to it based upon that undertaking shall terminate.”
<p>Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.</p>		
<p>Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse. Further arrangements with Affiliated Entities may be negotiated in separate agreements.</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 EC-GA 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</p>	<p>OPTION 2:</p> <p>The Parties agree to negotiate in good faith any additional Access Rights to Foreground as might be asked for by any Party, upon adequate financial conditions to be agreed.</p>	<p>Additional Access Rights might be to Foreground or Background not needed for the Project or to sideground (IPR acquired in parallel for the Project).</p> <p>The main difference between the options is that OPTION 2 foresees an obligation to enter into negotiations regarding such Access Rights, whereas OPTION 1 leaves this to the decision of the</p>

between the owning and receiving Parties.		Parties.
9.7 Access Rights for Parties entering or leaving the Consortium		
9.7.1 New Parties entering the Consortium		
All Foreground developed before the accession of the new Party shall be considered to be Background with regard to said new Party.		
9.7.2 Parties leaving the Consortium		
9.7.2.1 Access Rights granted to a leaving Party		
9.7.2.1.1 Defaulting Party		
Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the General Assembly to terminate its participation in the Consortium.		Any consequences for sub-licences have to be covered in the licence 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 Foreground developed until the date of the termination of its participation. It may request Access Rights within the period of time specified in Art. 9.4.2.		In case of a Party leaving voluntarily its Access Rights shall be frozen as they are at the time such Party leaves the project. The time limit for the right to request Access Rights is one year (EC-GA Article II.34.4.) Any consequences for sub-licences have to be covered in the licence 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 EC-GA 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 replace this Article 9.8 with the Special Clauses for Software [Module IPR SC].
Section 10: Non-disclosure of information		
10.1 All information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the		

<p>latest as confidential information by the Disclosing Party, is “Confidential Information”.</p>	
<p>10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the EC-GA, 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 to any third party without the prior written consent by the Disclosing Party; - to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and - to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only. <p>10.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.</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 becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations; - the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential; - the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party; - the disclosure or communication of the Confidential Information is foreseen by provisions of the EC-GA; - the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or - the Confidential Information was already known to the Recipient prior to disclosure 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 Art. 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 Party shall promptly advise the other Party in writing 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 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.</p> <p>10.8 The confidentiality obligations under this Consortium Agreement and the EC-GA shall not prevent the communication of Confidential Information to the European Commission.</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 (Background excluded) Attachment 3 (Accession document) Attachment 4 (Listed Affiliated Entities) Attachment 5 (List of Third Parties to which transfer of Foreground is possible without prior notice to other Parties)</p> <p>In case the terms of this Consortium Agreement are in conflict with the terms of the EC-GA, 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>Insert here the total list of Attachments.</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 which fulfils the purpose of the original provision.</p>	
<p>11.2 No representation, partnership or agency</p>	
<p>The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.</p>	
<p>11.3 Notices and other communication</p>	
<p>Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator .</p> <p>Formal notices: If it is required in this Consortium Agreement (Article. 9.7.2.1.1 and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.</p> <p>Other communication: Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.</p> <p>Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all concerned.</p>	<p>The communication channels which require formal or written form are gathered in this clause. Clear notifications and notification routes are important in the point of view of the question of proof in dispute cases.</p> <p>Most of the issues should be decided in 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 Articles 9.7.2.1.1 (Cessation of Access Rights) and 11.4 (Assignments) a formal notice is necessary. All other communication than “formal” may be taken for instance by e-mail with acknowledgement of receipt (e.g. Minutes).</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>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>Note that subcontracting is not considered as an assignment as the responsibilities remain for the Party itself.</p>
<p>Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Article 6.3.1.2 (LP)/ 6.3.6 (SP) require a separate agreement between all 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. Protection for the Parties against major contractual changes lies with use of their veto rights.</p>

	<p>Changes to the main text of the Consortium Agreement have to be negotiated between the Parties.</p> <p>For small projects see [Module GOV SP] Article 6.3.6.</p>
11.5 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.	The legislation of a Party may state certain statutory restrictions for the Parties, and naturally these restrictions should be respected by all Parties.
11.6 Language	
This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.	
11.7 Applicable law	
This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.	This Consortium Agreement has been drafted based on Belgian law. The application of Belgian law has been commonly used in previous framework programmes. As the EC-GA may also be under Luxemburg law, the Parties should however in all cases look into the choice of law in the Grant Agreement in order to harmonise possible conflicts.
11.8 Settlement of disputes	
<p>[Please choose between the options 1 and 2 and within these options between 1.1.and 1.2 or 2.1 and 2.2]</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 days of the commencement of the mediation, it 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 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.</p> <p>(Option 1.2. WIPO Mediation Followed, in the Absence of a Settlement, by Court Litigation</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.</p> <p>As suggested by many stakeholders in the DESCA online-survey 2010, we decided to introduce a new step approach for the settlement of disputes for DESCA version 3.0:</p> <ol style="list-style-type: none"> 1) Attempt to settle dispute within the consortium (if not successful) 2) Mediation, (if not successful) 3) Binding arbitration <u>or</u> Courts <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>DESCA suggests two different providers for mediation and 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>In some cases, consortium partners will opt for mediation, followed by court litigation instead of</p>

<p>If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 days of the commencement of the mediation, the courts of Brussels shall have exclusive jurisdiction.</p> <p>Option 2: Mediation by bMediation Followed, in the absence of a settlement, by CEPANI Arbitration or by the courts of Brussels</p> <p>Should a dispute arise between the Parties concerning the validity, the interpretation and/or the implementation of this Consortium Agreement, they will try to solve it through mediation, according to the rules of bMediation, Brussels. The Parties undertake not to put an end to the mediation before the introductory statement made by each party in joint session.</p> <p>Should the mediation fail to bring about a full agreement between the Parties putting an end to the dispute,</p> <p>[Please choose one of the following options.]</p> <p>Option 2.1 said dispute will be finally settled by arbitration, according to the rules of the Belgian Centre for Arbitration and Mediation (in short: CEPANI).</p> <p>Option 2.2 sole competent courts will be the courts of Brussels.</p>	<p>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 bMediation, visit http://www.bmediation.eu/ For more information about the CEPANI, visit http://www.cepani.be/en/</p>
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<p>Section 12: Signatures</p>	
<p>AS WITNESS: The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.</p>	<p>It is too impractical for all Parties to sign the same document at the same time.</p> <p>The procedure proposed for the signatures is widely used: 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.</p>
<p>[INSERT NAME OF PARTY] Signature(s) Name(s) Title(s)</p>	
<p>[INSERT NAME OF PARTY] Signature(s) Name(s) Title(s)</p>	
<p>[INSERT NAME OF PARTY] Signature(s) Name(s) Title(s)</p>	

<p>[Attachment 1: Background included]</p>	
<p>Access Rights to Background made available to the Parties: a. b. ... This represents the status at the time of signature of this Consortium Agreement.</p>	
<p>[Attachment 2: Background excluded]</p>	
<p>Background excluded from Access Rights: a. b. ... This represents the status at the time of signature of this Consortium Agreement.</p>	
<p>[Attachment 3: Accession document]</p>	
<p style="text-align: center;">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 EC-GA]</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 EC-GA]</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>	
<p>[Attachment 4: Listed Affiliated Entities]</p>	
	<p>If you have used option 1 in Art. 9.5, Attachment 4 shall be deleted</p>

[Attachment 5: List of Third Parties]

List of Third Parties to which transfer of Foreground is possible with prior notice to the other Parties and for which the other Parties have waived their right to object.

<p>[Module GOV SP]</p>	
<p>Governance structure for Small Collaborative Projects</p>	<p>Choose [Module GOV SP] for Small Projects with a simple governance structure: only one governance board (General Assembly). Main difference: [Module GOV LP] has two governance boards (General Assembly and Executive Board)</p>
<p>6.1 General structure</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 European Commission. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the EC-GA and this Consortium Agreement.</p> <p>The Management Support Team assists the General Assembly and the Coordinator.</p>	
<p>6.2 Members</p>	
<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 Article 6.3.6 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. This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Article 11.8 of this Consortium Agreement.</p>	
<p>6.3 Operational procedures for the General Assembly</p>	
<p>6.3.1 Representation in meetings</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; - and shall participate in a cooperative manner in the meetings. 	

<p>6.3.2 Preparation and organisation of meetings</p>	
<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 notice in writing 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 send each Member a written original 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 notification to all of the other Members no later than 7 calendar days preceding the 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>	
<p>6.3.2.6 Any decision may also be taken without a meeting if the chairperson circulates to all Members a written document which is then signed by the defined majority of Members (see Article 6.3.3 of this Consortium Agreement).</p> <p>6.3.2.7 Meetings of the General Assembly may also be held by teleconference or other telecommunication means.</p> <p>6.3.2.8 Decisions will only be binding once the relevant part of the minutes has been accepted according to Article 6.3.5 of this Consortium Agreement.</p>	
<p>6.3.3 Voting rules and quorum</p>	
<p>6.3.3.1 The General Assembly shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).</p> <p>6.3.3.2 Each Member shall have one vote.</p> <p>6.3.3.3 Defaulting Parties may not vote.</p> <p>6.3.3.4 Decisions shall be taken by a majority of two-thirds (2/3) of the votes.</p>	
<p>6.3.4 Veto rights</p>	
<p>6.3.4.1 A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of the General Assembly may exercise a veto with respect to the corresponding decision or relevant part of the decision.</p> <p>6.3.4.2 When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting only.</p> <p>6.3.4.3 When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 days after the draft minutes of the meeting are sent.</p> <p>6.3.4.4 In case of exercise of veto, the Members shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Members.</p>	<p>Legitimate interests: see use of the term in the Rules for Participation.</p> <p>A Member of a Consortium Body who is not present nor represented at a meeting cannot vote or veto any decision foreseen on the original agenda by definition!</p> <p>If a decision has been taken on an agenda point not on the original agenda all Members may veto this decision within 15 calendar</p>

<p>6.3.4.5 A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.</p> <p>6.3.4.6 A Party requesting to leave the Consortium may not veto decisions relating thereto.</p>	<p>days after sending of the Minutes of the meeting.</p>
<p>6.3.5 Minutes of meetings</p>	
<p>6.3.5.1 The chairperson shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send draft minutes to all Members within 10 calendar days of the meeting.</p> <p>6.3.5.2 The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes.</p> <p>6.3.5.3 The chairperson shall send the accepted minutes to all the Members of the General Assembly, and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.</p>	<p>Formalisation of the decisions taken during a meeting means the writing of the Minutes in a way it is conform to the decisions taken during the meeting (see Article 11.3). Approval may only be withheld if the Minutes are not accurate; not agreeing with contents is no argument. When the drafted Minutes are not approved by the relevant Members, the Chairperson shall send a new draft to the Members. If a dispute can't be resolved (good faith), a new decision shall be made again.</p> <p>The accepted Minutes may be necessary for proof purposes regarding the content of the Consortium Plan, including (transferred) budgets, payment schemes, etc. and it therefore has to be ensured that it remains available to all Members concerned. Authorised duplicates may be needed for legal affairs.</p>
<p>6.3.6 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 Annex I of the EC-GA to be agreed by the European Commission - Changes to the Consortium Plan (including the Consortium Budget) - Withdrawals from Attachment 1 (Background included) - Additions to Attachment 2 (Background excluded) - Additions to Attachment 4 (Listed Affiliated Entities) - Additions to Attachment 5 (List of Third Parties) <p>Evolution of the Consortium</p> <ul style="list-style-type: none"> - 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 - Declaration of a Party to be a Defaulting Party - Remedies to be performed by a Defaulting Party - Termination of a Defaulting Party's participation in the Consortium and measures relating thereto - Proposal to the European Commission for a change of the Coordinator - Proposal to the European Commission for suspension of all or part of the Project - Proposal to the European Commission for termination of the Project and the Consortium Agreement 	<p>Be aware that the Consortium Plan - apart of planning the work to be done - also includes the related (detailed) budgets and the connected (detailed) payment schemes (see 7.1).</p> <p>No separately signed document from all the Parties is necessary to implement the decisions even for the listed changes to Attachments to this Consortium Agreement. See also :</p> <ul style="list-style-type: none"> - Transfer of Foreground Article 8.2 - Background exclusions Article. 9.1 - Amendments on the Consortium Agreement Article 11.4. <p>Point (g): This decision is a prerequisite to allow the coordinator to request an amendment to the EC-GA in accordance with the FP7 amendment guide. It should also be followed by an accession of the new Party to the Consortium Agreement (Attachment 3)</p>

<p>Appointments</p> <p>Agree on the Members of the Management Support Team, upon a proposal by the Coordinator.</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 the legitimate commitments taken prior to the decisions, 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 European Commission and shall perform all tasks assigned to it as described in the EC-GA 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 - keeping the address list of Members and other contact persons updated and available - collecting, reviewing and submitting information on the progress of the Project and reports and other deliverables (including financial statements and related certification) to the European Commission - preparing the meetings, proposing decisions and preparing the agenda of General Assembly meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings - transmitting promptly documents and information connected with the Project, - administering the financial contribution of the Union and fulfilling the financial tasks described in Article 7.3 - providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims. 	<p>The Coordinator has to verify the consistency of the reports with the project tasks in annex I and transmit them to the EC. The quality of the reports may be reviewed by the subproject-committee and checked by any Party using it and when it seems to be unsatisfactory, to be addressed with the Party concerned and eventually to be notified to the Coordinator through the breach procedure described in Article 4.2</p> <p>In case one report is missing or is decided to be of poor quality, the Coordinator is allowed to send the other reports to the EC.</p> <p>(d): this would comprise e.g. copies of accession documents, amendments to the EC-GA and changes of contact information as well as date of delivery of reports to the European Commission etc.</p>
<p>6.4.3 If the Coordinator fails in its coordination tasks, the General Assembly may propose to the European Commission 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.</p> <p>6.4.5 The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the EC-GA.</p>	
<p>6.5 Management Support Team</p>	
<p>The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the General Assembly and shall assist and facilitate the work of the General Assembly.</p> <p>The Management Support Team shall provide assistance to the Coordinator for executing the decisions of the General Assembly. It shall be responsible for the day-to-day management of the Project.</p>	
<p>6.6 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. The members of the EEAB are required to sign a non-disclosure agreement no later than 30 days after their nomination or before any confidential information will be exchanged, whichever date is earlier. The Coordinator shall write the minutes of the EEAB meetings and prepare the implementation of the EEAB's suggestions. The EEAB members</p>	<p>The Coordinator is not allowed to conclude any agreements with third parties in the name of the consortium, see Art. 11.2 (no representation). The non-disclosure agreement (NDA) must therefore be signed by all Parties and the Advisory Board Member. The Parties can also authorise the</p>

shall be allowed to participate in General Assembly meetings upon invitation but have not any voting rights.	Coordinator by a signed Power of Attorney to sign the NDA with the Advisory Board Member on the Parties' behalf.
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<p>[MODULE IPR SC]</p>	
<p>Specific Software provisions</p>	<p>Replace Article 9.8 with the following clause in case Software is a core element in your Project: In addition make changes: 9.2</p>
<p>9.8 Specific provisions for Access Rights to Software</p>	
<p>9.8.1 Definitions relating to Software</p>	
<p>“Application Programming Interface” means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.</p> <p>"Controlled Licence Terms" means terms in any licence 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>(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; that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party; that a royalty-free licence relating to the Work or Derivative Work be granted to any third party.</p> <p>For the avoidance of doubt, any Software licence that merely permits (but does not require any of) the things mentioned in (a) to (c) is not a Controlled Licence (and so is an Uncontrolled Licence).</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>Examples of Controlled Licences include (without limitation) the GNU General Public Licence (GPL), the GNU Lesser/Library GPL (LGPL), the Mozilla Public Licence (MPL), and the Common Public Licence (CPL).</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 Article 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>[OPTION possible to be inserted at the end of 9.8.2. in case of the use of OPTION 2 in Article 9.4: Access Rights to software for Use shall only be granted upon bilateral agreement between the Parties concerned on Fair and Reasonable conditions.] As Access Rights to Software contain, to a certain extent, sublicensing rights, Fair and Reasonable conditions may appear to be appropriate even if OPTION 2 in 9.4 was chosen and Access Rights for Use are</p>

	therefore royalty-free.
The intended introduction of Intellectual Property (including, but not limited to Software) under Controlled Licence Terms in the Project requires the approval of the General Assembly to implement such introduction into the Consortium Plan.	If open source software is used in the Project by doing part of the work with the help of such software, this can have serious impact on the possible use of the results and therefore has to be agreed between the Parties.
9.8.3. Access to Software	
<p>Access Rights to Software which is Foreground shall comprise: Access to the Object Code; and, where normal use of such an Object Code requires an Application Programming Interface (hereafter API), Access to the Object Code and such an API; and, if a Party can show that the execution of its tasks under the Project or the Use of its own Foreground is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary.</p> <p>Background shall only be provided in Object Code unless otherwise agreed between the Parties concerned.</p>	
9.8.4. Software licence and sublicensing rights	
9.8.4.1 Object Code	
9.8.4.1.1 Foreground - Rights of a Party	
<p>Where a Party has Access Rights to Object Code and/or API which is Foreground for Use, such Access shall, in addition to the access for Use foreseen in Article 9.4, as far as Needed for the Use of the Party's own Foreground, comprise the right:</p> <p>to make an unlimited number of copies of Object Code and API; and to distribute, make available, market, sell and offer for sale such Object Code and API alone or part of or in connection with products or services of the Party having the Access Rights;</p> <p>provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to use Object Code and API for its own Foreground.</p> <p>If it is intended to use the services of a third party for the purposes of this Article 9.8.4.1.1, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Article 9.2 of this Consortium Agreement.</p>	
9.8.4.1.2 Foreground - Rights to grant sublicenses to end-users	
<p>In addition, Access Rights to Object Code shall, as far as Needed for the Use of the Party's own Foreground, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code alone or as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:</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 Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC). 	Considering that there are some sublicensing rights included in the software access provisions, parties who have decided in Article 8.4 to choose royalty-free access to Foreground for use may still consider it adequate to foresee for compensation here.
9.8.4.1.3 Background	

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