FEBRUARY 2022

Model Consortium Agreement for Research, Development and Innovation Actions under Horizon Europe

# MCARD-HEU Version 1

The DIGITALEUROPE MCARD-HEU model Consortium Agreement will, we trust, provide a sound and suitable starting point for your consideration and negotiations under the guidance of your legal and professional advisors.

We could not hope to cover all the circumstances that might arise in research collaborations between consortia members drawn from academia, industry and institutes. The optional text and blanks are highlighted in yellow for your assistance.

DIGITALEUROPE would welcome any feedback and suggestions for improving the text. However, as is standard, neither DIGITALEUROPE, its members nor the drafting committee accept any liability for loss or damage which may arise from reliance upon this model and its use is undertaken entirely at the risk of the user.

**THIS CONSORTIUM AGREEMENT** is based upon Regulation (EU) No 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation and laying down its rules for the participation and dissemination (hereinafter referred to as “**the Rules**”), and the European Commission Multi-beneficiary General Model Grant Agreement and its Annexes, and is made on [Action start date / other agreed date] (hereinafter referred to as the “**Effective Date**”),

**BETWEEN:**

**[INSERT OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT],   
the “Coordinator”**

**[INSERT OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT],**

**[INSERT OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT],**

**[Insert official names of the other Parties …]**

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

relating to the research project entitled:

**[FULL NAME OF ACTION]**

in short:

**[Insert: Action acronym]**

hereinafter referred to as the “**Action**”

**BACKGROUND:**

The Parties have submitted a proposal for the Action to the Funding Authority as part of the Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement to be signed by the Parties and the Funding Authority.

**IT IS NOW AGREED AS FOLLOWS:**

## Section 1: Definitions

### 1.1 Definitions

Words beginning with a capital letter shall have the meaning defined herein, and where not defined herein they shall have the meaning defined in the Grant Agreement including its Annexes, and if not defined there, then as defined in the Rules.

### 1.2 Additional Definitions

**Accession Date** means the date of the signature of the Declaration of Accession by a Party joining the Action in accordance with the provisions of the General Agreement and this Consortium Agreement.

**Access Rights** means rights to use Results or Background under the terms and conditions laid down in the Grant Agreement and as more particularly specified under this CA.

**Action Plan** means the description of the Action and the related estimated costs as first defined in Annex 1 and Annex 2 of the GA.

**Share** means, for each Party, that Party's share of the funding from the Funding Authority for the Action as initially set out in Annex 2 to the Grant Agreement under the heading [insert name of the relevant heading], as may be changed by the Parties during the Action through an amendment of the Action Plan.

An **Affiliate** of a Party means:

1. any Legal Entity directly or indirectly Controlling, Controlled by, or under common Control with that Party, for so long as such Control lasts; and
2. any other Legal Entity that is listed in Attachment 4 to this CA as being an Affiliate of that Party, where such Legal Entity is one in which that Party (or a Legal Entity qualifying as an Affiliate of that Party under (a) directly above) has a 50% equity share or is the single largest equity shareholder.

For the above purposes, “**Control**” of any Legal Entity shall exist through the direct or indirect:

1. ownership of more than 50% of the nominal value of the issued share capital of the Legal Entity or of more than 50% of the issued share capital entitling the holders to vote for the election of directors or persons performing similar functions, or
2. right by any other means to elect or appoint directors of the Legal Entity (or persons performing similar functions) who have a majority vote.

Common Control through government does not, in itself, create Affiliate status.

Affiliated Entities as defined in Art. 2 of the Grant Agreement are the specific Affiliates to a beneficiary within the meaning of Article 187 of EU Financial Regulation 2018/104612 which participate in the Action with similar rights and obligations as the beneficiaries (obligation to implement Action tasks and right to charge costs and claim contributions) and may be Parties in this Consortium Agreement, if applicable.

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

**Background** means any and all, data, information or know-how (tangible or intangible) whatever its form or nature, including any IPRs that is/are:

1. owned by a Party or that a Party has a right to license, prior to the Effective Date; or
2. developed or acquired by a Party independently from the work in the Action even if in parallel with the performance of the Action,

but solely to the extent that such data, information, know-how and/or IPRs are used in or introduced into the Action by the Party who owns or has the right to license it.

**Sensitive Information** has the meaning given in Section 10.1 of this CA.

**Consortium** means the collaborative research grouping in relation to the Action that is constituted by the GA.

**Consortium Agreement** or **CA** means this agreement.

**Consortium Bodies** means the bodies which are constituted in accordance with Section 6 of this CA.

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

1. (where the Work or Derivative Work is Software) that the Source Code be made available as of right to any third party on request, whether royalty-free or not;
2. that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
3. that a royalty-free licence relating to the Work or Derivative Work be granted to any third party.

For the sake of clarity, terms in any licence that merely permit (but do not require any of) these things are not Controlled Licence Terms.

**Controller** means the legal entity or natural person which alone or jointly with others determines the purposes and means of processing of Personal Data.

**Declaration of Accession** means a declaration, in the form provided for in Attachment 2 to this CA, signed by a Party in order to join this Consortium Agreement.

**Defaulting Party** means a Party which the General Assembly has identified to be in substantial breach of this CA and/or the GA as specified in Section 4.2 of this CA.

**Executive Board** means the Consortium Body established in accordance with Section 6.3.2 of this CA.

**Exploitation** or **Exploit** means the use of Results in i) further research activities other than those covered by the Action, or ii) in developing, creating or marketing a product, or process, or iii) in creating and providing a service, or iv) in standardisation activities.

**Force Majeure** means any one or more events beyond the reasonable control of the relevant Party which occur after the date of signing of this CA, were not reasonably foreseeable at the time of signing of this CA, and the effects of which are not capable of being overcome without unreasonable expense and/or unreasonable loss of time to the Party concerned. Events of Force Majeure shall include (without limitation) war, civil unrest, acts of government, natural disasters, exceptional weather conditions, breakdown or general unavailability of transport facilities, accidents, fire, explosions, and general shortages of energy.

**Funding Authority** means the body awarding the grant for the Action.

**General Assembly** means the Consortium Body established in accordance with Section 6.3.1 of this CA.

**Grant Agreement** or **GA** means the written agreement with the Funding Authority for the carrying out of the Action, including any agreed amendment to such written agreement that may from time to time be in force.

**Indirect Utilisation** means that Access Rights for Exploitation granted pursuant to this CA and the GA shall include the right for a Party and its Affiliates to whom such Access Rights are granted to have a third party make, only for the account of and for the use, sale or other disposal by the Party and such Affiliates, products and/or services, provided that the substantial portion of the specifications of such products and/or services has been designed by or for such Party and such Affiliates.

**Intellectual Property Rights** or **IPR(s)** means: patents, patent applications and other statutory rights in inventions; copyrights (including without limitation copyrights in Software); registered design rights, applications for registered design rights, unregistered design rights and other statutory rights in designs; and other similar or equivalent forms of statutory protection, wherever in the world arising or available,

**Legitimate Interest** means a Party’s interest of any kind, such as but not limited to a commercial interest, that may be claimed in the cases provided for in this CA where failure to take account of its interest would result in its suffering a disproportionately high level of harm.

**Internal Research and Teaching** means any internal research, development and teaching or training activities within a Party or its Affiliates, including without limitation to:

1. create prototypes of any kind (hardware or software) for demonstration purposes only and achieve interoperability of software for research for demonstration and for education, including by means of APIs; and
2. public demonstration and promotion of such prototypes or other test environments,

but expressly excluding for the activities of: (i) manufacturing for sale, (ii) offering for sale of products (iii) commercial services such as consultancy services and (iv) contract research for third parties.

**Needed** means in respect of executing or carrying out the Action, and/or in respect of “Exploitation of Results”, technically essential and:

1. where IPRs are concerned, that those IPRs would be infringed without Access Rights being granted under the GA and this CA;
2. where Sensitive Information is concerned, only Sensitive Information which has been disclosed during the Action may be considered as technically essential, except as otherwise agreed between the Parties.

**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.

**Open Source Software** means software subject to an open source license, including licenses recognized by the Open Source Initiative (<http://www.opensource.org>).

**Personal Data** means any information relating to an identified (or identifiable) individual.

**Result(s)** shall have the meaning given to it in the Rules, meaning any tangible or intangible effect of the Action, such asdata, knowledge and information whatever their form or nature, whether or not they can be protected, which are generated in the Action as well as any rights attached to them, including Intellectual Property Rights. Results do not include the effects generated/produced by activities outside of the Action — be it before the Action starts, during its course or after it ends.

**Subcontractor** means any third party engaged by a Party to carry out any of that Party's tasks in relation to the Action.

**Software** means a software program being 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.

**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.

## Section 2: Purpose

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

## Section 3: Entry into force, duration and termination

### 3.1 Entry into force

1. An entity becomes a Party to this CA upon signature of this CA by one or more duly authorised representative(s) of such entity.
2. This CA shall have effect from the Effective Date.
3. An entity becomes a new Party to the CA upon signature of the Declaration of Accession (Attachment 2) by one or more authorised representative(s) of the new Party and the Coordinator. Such accession shall have effect from the date identified in the Declaration of Accession.

### 3.2 Duration and termination

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

However, this CA or the participation of one or more Parties to it may be terminated:

1. by a non-Defaulting Party by the Decision of the General Assembly and subject without limitation to Sections 3.3, 4.1 and 9.8.2.1 of this CA. The General Assembly shall not unreasonably withhold consent to an application by a Party to terminate its participation in this CA;
2. for a Defaulting Party subject and without limitation to Sections 3.3, 4.2 and 9.8.2.2 of this CA and
3. by the mutual written consent of all of the Parties on terms to be agreed.

All terminations are subject to and without prejudice to the necessary consent and rights of the Funding Authority pursuant to the GA.

If the GA:

* is not signed by the Funding Authority or a Party, or
* is terminated,
* or if a Party's participation in the GA is terminated,

then this CA shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Section 3.3 of this CA.

### 3.3 Survival of rights and obligations

All provisions of this CA which by nature should survive the termination of this CA (whether terminated with respect to any or all Parties as permitted at Section 3.2) shall so survive such termination. This shall include without limitation the provisions relating to Definitions (Section 1), Results (Section 8), Access Rights (Section 9) and Non-Disclosure of Sensitive Information (Section 10), for the time period mentioned therein, as well as for Liability (Section 5), Applicable law, Privacy and data protection (Section 11) and Miscellaneous (Section 12), all of this CA.

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.

## Section 4: Responsibilities of Parties

### 4.1 General principles

Each Party undertakes to take part in the efficient implementation of the Action, and to co-operate, perform and fulfil, in a timely manner, all of its obligations under the GA and this CA as may be reasonably required from it and in a manner of good faith as prescribed by Belgian law.

Each Party undertakes to notify in a timely manner, in accordance with the governance structure of the Action, any significant information, fact, problem or delay likely to affect the Action.

Each Party shall, in a timely manner, provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.

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

In the event that any of the Parties requests to withdraw its participation in the Action, the General Assembly shall decide the appropriate course of action, which may include without limitation:

1. reallocation of the requesting Party's work and contribution in order that the aims and objectives of the Action can still be met after the proposed withdrawal, and submitting details of it to the Funding Authority; or
2. the drafting of a restructured Action Plan and submitting it to the Funding Authority.

### 4.2 Breach

In the event that a responsible Consortium Body identifies a substantial breach by a Party of its obligations under this CA or the GA (e.g. the improper implementation of the Action), the Coordinator or, if the Coordinator is in substantial breach of its obligations, the Party appointed by the General Assembly, will give formal notice to such Party requiring that such substantial breach will be remedied within 30 calendar days from the date of receipt of the written notice by the Party.

If such substantial breach is not remedied within that period or is not capable of remedy, the General Assembly may decide to declare the Party to be a Defaulting Party and may decide on the consequences thereof which may include termination of its participation.

### 4.3 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties in the Action remains responsible for carrying out its relevant part of the Action and for such third party’s compliance with the provisions of this CA and of the GA. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this CA and the GA.

## Section 5: Liability towards each other

### 5.1 No warranties

In respect of any information or materials (including Results and Background) supplied by one Party to another under the Action, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore,

* the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
* no Party granting Access Rights shall be liable vis-à-vis any of the other Parties in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliates) exercising its Access Rights.

### 5.2 Limitations of liability

**5.2.1 Liability: general**

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

**5.2.2 Excluded liabilities**

To the extent permissible under applicable law and except as otherwise provided specifically below in this Section 5.2, in no event shall any Party be liable to another Party for loss or damage caused by a Party, its employees, agents and Subcontractors in connection with the Action (including this CA or the GA) for any of the following, however caused or arising, on any theory of liability, and even if such Party was informed or aware of the possibility thereof:

* loss of profits, revenue, income, Legitimate Interest, savings, shelf-space, production and business opportunities;
* lost contracts, goodwill, and anticipated savings;
* loss of or damage to reputation or to data;
* costs of recall of products; or
* any type of indirect, incidental, punitive, special or consequential loss or damage.

The foregoing exclusion shall not apply in the case of any breach by a Party of its obligations under Section 10 (Non-disclosure of Sensitive Information).

**5.2.3 Financial limit on liability**

Subject to the provisions of Sections 5.2.4 and 5.2.5 of this CA, the total aggregate liability of each Party to all of the other Parties collectively in respect of any and all claims between the Parties for loss or damage caused by a Party, its employees, agents and Subcontractors and arising in connection with the Action (including this CA or the GA) shall not exceed the greater of*:*

* twice that Party's Share, or
* the sum of five hundred thousand euros (€500,000).

The financial limitation of liability specified above in this Section 5.2.3 shall be doubled in the case of any breach by a Party of its obligations under (a) Section 10 (Non-disclosure of Sensitive Information), or (b) under Section 8 (Results) of this CA.

**5.2.4 Exceeding the scope of Access Rights**

For the avoidance of doubt, the exclusions and limitations stated in Sections 5.2.2 and 5.2.3 above shall not apply in respect of any infringement of the IPRs of any other Party or any Affiliate of any other Party, which is the result of any activity or use of such IPRs, including that which is not in compliance with the terms and conditions upon which the Access Rights have been granted.

**5.2.5 Other exceptions**

The exclusions and limitations stated in Sections 5.2.2 and 5.2.3 above shall not apply in respect of any: fraud; death, injury to natural persons or damage to real or immovable property caused by the negligence or wilful act of a Party, its directors, employees, agents and Subcontractors; wilful misconduct, gross negligence, wilful breach by a Party of any obligation accepted under the GA and this CA; or otherwise in so far as mandatory applicable law overrides such exclusions and limitations.

Where a privacy and data protection agreement is required in line with Section 11 of this CA, liability as regards the processing of Personal Data will be regulated by such agreement.

**5.3 Damage caused to third parties**

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

**5.4 Force Majeure**

No Party shall be considered to be in breach of this CA if it is prevented from fulfilling its obligations under the CA by Force Majeure.

Each Party will notify the competent Consortium Bodies in writing of any Force Majeure without undue delay, describing the Force Majeure event, its anticipated duration and use reasonable efforts to resume performance as soon as possible. If the consequences of Force Majeure for the Action are not overcome within 12 weeks after such notification, the transfer of tasks – if any – shall be decided by the competent Consortium Bodies.

## Section 6: Governance structure

### 6.1 General structure

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

**6.1.1** General Assembly as the ultimate decision-making Consortium Body.

**6.1.2** Executive Board as the supervisory Consortium Body for the implementation of the Action which shall report to and be accountable to the General Assembly.

**6.1.3** The Coordinator is the Legal Entity acting as the intermediary between the Parties and the Funding Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the GA and this CA.

### 6.2 General operational procedures for all Consortium Bodies

**6.2.1 Representation in meetings**

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

* should be represented at any meeting of that Consortium Body
* may appoint a substitute or a proxy to attend and vote at any meeting; and
* shall participate in a co-operative manner in the meetings.

The composition of the Executive Board shall consist of the following Members:

**[START OF OPTION 1]**

The representative of the Coordinator together with a representative from each of the following Parties namely [list].

**[END OF OPTION 1]**

**[START OF OPTION 2]**

The representative of the Coordinator together with no less than [x] nor more than [y] representatives of other Parties, whose minimum Share percentage is equal to or exceeds [z] % at the outset of the Action.

Only Parties with a Share equal to or greater than the share specified directly above shall be entitled to determine the number of Executive Board Members, and to vote for the appointment of the members of the Executive Board (“**Electing Parties**”).

Within one (1) month of (i) the Effective Date or (ii) an unfilled vacancy that later arises, the Coordinator shall invite the Electing Parties to nominate by written notification to the Coordinator one (1) person as Executive Board Member within two (2) weeks from the date of such invitation. The Coordinator will draw-up a list of persons nominated within aforesaid period of two (2) weeks (“**Nominees**”). If the number of Nominees is equal or lower than the maximum number of Executive Board Members and higher than the minimum number of Executive Board Members as stated above, the Nominees shall be considered appointed and the Coordinator shall inform the Parties hereof in writing without undue delay. If the Number of Nominees is higher than the maximum number of Executive Board Members stated above, the appointment shall be made out of the list of Nominees by a majority decision of the Electing Parties, in which situation each of the Electing Parties shall have one (1) vote.

**[END OF OPTION 2]**

**[START OF OPTION 3]**

The representative of the Coordinator together with a representative of each of the Parties.

**[END OF OPTION 3]**

The Parties shall use reasonable endeavours to maintain their representation in the Executive Board.

**6.2.2 Preparation and organisation of meetings**

**6.2.2.1 Convening meetings**

|  |  |  |
| --- | --- | --- |
|  | 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 General Assembly Members |
| Executive Board | At least quarterly | At any time upon written request of any Executive Board Member |

The chairperson of a Consortium Body shall convene meetings of that Consortium Body in accordance with the following:

**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 in Section 6.2.2.3 below.

**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:

|  |  |
| --- | --- |
| General Assembly | 21 calendar days, 10 calendar days for an extraordinary meeting |
| Executive Board | to accompany the notice |

**6.2.2.4 Adding agenda items**

Any Member of a Consortium Body may add an item to the original agenda provided all Members of a Consortium Body are present or represented and a majority of two thirds of the Members agree to add an agenda item.

**6.2.2.5** Meetings of each Consortium Body may also be held remotely by means of communications whereby all members can hear and speak to each other.

**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 setting out the decision being requested, which is then agreed to in writing by the number of representatives equal to the defined majority (see Section 6.2.3. below) of all Members of the Consortium Body. Such document shall include the deadline for responses, but such deadline shall be at least fifteen (15) calendar days after such document is sent in view of the provisions at Clause 6.2.4.2 and Clause 6.2.5.2 below.

**6.2.3. Voting rules and quorum**

**6.2.3.1** Each Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of the Members of that Consortium Body are present or represented (**“Quorum”**).

If the Quorum is not reached, the chairperson of the Consortium Body shall promptly convene another meeting within 15 calendar days. If in this second meeting the Quorum is not reached, then this second meeting shall be entitled to decide even if less than the Quorum of Members is present or represented.

**6.2.3.2** Each Member of a Consortium Body present or represented in the meeting shall have one vote.

**6.2.3.3** Defaulting Parties may not vote.

**6.2.3.4** Decisions in the General Assembly shall be taken by a majority of two-thirds (2/3) of the votes cast, except for accession of a new party and any change of any Party’s Share, where unanimous vote of all Members is required.

Decisions in the Executive Board shall be taken by a majority of two-thirds (2/3) of the votes cast.

**6.2.4 Veto rights**

**6.2.4.1** A Party which can show that its own work, time for performance, costs, liabilities, Intellectual Property Rights, Access Rights, Share, Sensitive Information or Legitimate Interests would be adversely affected by a decision of a Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.

**6.2.4.2** A Party may veto such decision within 15 calendar days after the draft minutes of the meeting have been sent. In case of exercise of veto, the Members of the related Consortium Body shall make good faith efforts to resolve the matter which occasioned the veto in a way which minimises disruption to the Action.

**6.2.4.3** A Party may not veto decisions relating to it being in substantial breach of its obligations or to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.

**6.2.5 Minutes of meetings**

**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. The chairperson shall send the draft minutes to all Members within 10 calendar days counting from the date on which the meeting was held.

**6.2.5.2** Each Member of a Consortium Body that has attended the meeting, shall have the right to request that a factual inaccuracy be corrected. The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has sent an objection in writing to the chairperson with respect to the accuracy of the draft of the minutes. The Coordinator shall provide authenticated duplicates of the minutes to all Parties.

### 6.3 Specific operational procedures for the Consortium Bodies

**6.3.1 General Assembly**

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

**6.3.1.1 General Assembly Members**

**6.3.1.1.1** The General Assembly shall consist of one representative of each Party (hereinafter referred to as “**General Assembly Member**”).

**6.3.1.1.2** Each General Assembly Member is authorised to deliberate and decide on all matters listed in Section 6.3.1.2. of this CA.

**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.

**6.3.1.2. Decisions**

The General Assembly shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. In addition, all proposals made by the Executive Board shall also be considered and decided upon by the General Assembly.

The General Assembly can only take the following actions, all decisions to be made in accordance with the terms of the GA and this CA:

* decide upon any proposal made by the Executive Board for the allocation of the Action's budget in accordance with the GA, and review and propose budget reallocations to the Parties;
* decide upon proposals to the Parties for the review and/or amendment of the terms of the GA;
* decide upon material changes to the Action Plan;
* decide upon proposals from the Executive Board for the plan for use and the Dissemination of Results;
* decide upon proposals to the Parties for modifications or withdrawals to Attachment 1A/B (Background included/excluded, as applicable);
* decide upon any addition to Attachment 3 (List of third parties for simplified transfer according to Section 8.3.2 of this CA);
* decide upon the proposed accession of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party;
* decide upon the request for the withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal;
* decide upon identification of a substantial breach by a Party of its obligations under this CA or the GA;
* decide upon declaration, remedies and termination of a Defaulting Party;
* decide upon proposals to the Funding Authority for a change of the Coordinator if made a Defaulting Party;
* decide upon proposals to the Funding Authority for suspension or termination of all or part of the Action; and
* decide on the appointment - if necessary - of any vacancy to the Executive Board.

**6.3.2. Executive Board**

**6.3.2.1 Executive Board Members**

The Executive Board shall consist of the Coordinator and the Parties as agreed under Section 6.2.1 of this CA (hereinafter referred to as “**Executive Board Members**”). Any changes to the membership of the Executive Board shall be subject to approval by the General Assembly.

The Coordinator shall chair all meetings of the Executive Board, unless decided otherwise by a majority of two-thirds of the Executive Board Members.

**6.3.2.2 Minutes of meetings**

Minutes of Executive Board meetings shall be sent by the Coordinator to the General Assembly Members for information.

**6.3.2.3 Tasks**

**6.3.2.3.1** The chairperson of the Executive Board shall prepare the meetings, propose decisions and prepare the proposals for the General Assembly according to Section 6.3.1.2 above.

**6.3.2.3.2** When taking decisions, the Executive Board shall try to find consensus amongst the Executive Board Members.

**6.3.2.3.3** The Executive Board shall be responsible for the proper execution and implementation of the decisions of the General Assembly.

**6.3.2.3.4** The Executive Board shall monitor the effective and efficient implementation of the Action.

**6.3.2.3.5** In addition, the Executive Board shall collect information at least every 6 months on the progress of the Action, examine that information to assess the compliance of the Action with the Action Plan and, if necessary, propose modifications of the Action Plan to the General Assembly.

**6.3.2.3.6** The Executive Board can only do the following, all to be done in accordance with the terms of the GA and this CA:

* make proposals to the General Assembly for allocation of the Action's budget in accordance with the GA, review and propose budget reallocations to the Parties;
* manage the Action;
* propose to the General Assembly procedures and tools for the marking and handling of information exchanged between Parties in the performance of the Action;
* decide upon measures in the framework of controls and audit procedures
* to ensure the effective day-to-day coordination and monitoring of the progress of the technical work affecting the Action as a whole;
* decide upon the technical roadmaps with regard to the Action;
* propose to the General Assembly the plan for using and Disseminating the Results;
* make proposals to the General Assembly that the General Assembly should serve notice on a Defaulting Party and that the General Assembly decide to assign the Defaulting Party's tasks to one or more specific Legal Entity(ies) (preferably chosen from the remaining Parties);
* support the Coordinator in preparing meetings with the Funding Authority and in preparing related data and deliverables; and
* prepare and implement the content and timing of press releases and other external communications by the Consortium or proposed by the Funding Authority in respect of the procedures of Article 29 of the Grant Agreement.

In the case of abandoned or revised 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, and which cannot be cancelled.

**[START OF OPTION - where foreseen in the Grant Agreement or otherwise decided by the Consortium]**

**6.3.2.3.7 External Expert Advisory Board (EEAB)**

An External Expert Advisory Board (“**EEAB**”) will be appointed and steered by the Executive Board. Each Party shall have a right to ex post veto against any appointments of new EEAB members that materially conflicts such Party’s Legitimate Interests. Any veto objections shall be submitted in writing to the Executive Board without undue delay, but in no event later than thirty (30) days from receipt of the approved minutes, together with a motivation reasonably specifying the grounds of the conflict. The EEAB shall assist and facilitate the decisions made by the General Assembly. The Coordinator is authorised to execute with each member of the EEAB a non-disclosure agreement based on the template in Attachment 5, which terms shall be not less stringent than those stipulated in this CA, no later than 30 calendar days after their nomination or before any Sensitive Information will be exchanged, whichever date is earlier. For any deviation from the template exceeding the specific information related to the Action and the Parties, the Coordinator must consult and receive approval in writing of all Parties to this Consortium Agreement before signing it with the EEAB Member. 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 no voting rights. The above provisions and existence of any non-disclosure agreement between the Coordinator and each EEAB member do not exempt any Parties from their obligation not to disclose Sensitive Information received from another Party to any third party (including EEAB members) without the prior written consent by the Disclosing Party.

**[END OF OPTION]**

### 6.4. Coordinator

**6.4.1** The Coordinator is the Legal Entity acting as the intermediary for efficient and correct communication between the Parties and the Funding Authority and shall, in addition to its responsibilities as a Party, perform all tasks assigned to it as described in the GA and in this CA.

**6.4.2** In particular, the Coordinator shall

* monitor compliance by the Parties with their obligations;
* keep the address list of the Parties and other contact persons updated and available;
* collect, review to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Funding Authority;
* administer, prepare the minutes and provide the chair of the General Assembly and the Executive Board (in respect of providing the chair of the General Assembly and the Executive Board, solely if nothing is decided otherwise in accordance with Sections 6.3.1.1.3 and/or 6.3.2.1 of this CA, respectively), and follow-up the decisions of the General Assembly and the Executive Board;
* transmit documents and information connected with the Action to any other Parties concerned;
* administer the financial contribution of the Funding Authority and fulfilling the financial tasks described in Section 7.2 of this CA;
* verify whether the Parties identified in the GA complete the necessary formalities for accession to the GA in accordance with the GA;
* provide, 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;
* maintain details of approvals given in relation to material that is subject to Controlled Licence Terms; and
* maintain and on request circulate both during and for four years (after the period of the Action set out in Article 3 of the Grant Agreement) a brief annual synopsis of Exploitations as envisaged by Article 28.1 of the Grant Agreement as disclosed by the Parties to the Coordinator when requested by the Coordinator to the Coordinator.

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

**6.4.3** The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium.

**6.4.4** The Coordinator shall have no other functions unless otherwise agreed upon by the General Assembly.

## Section 7: Financial provisions

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

A Party leaving the Consortium (whether voluntarily or as a Defaulting Party) shall refund all payments it has received except the amount of contribution accepted by the Funding Authority. Furthermore, a Defaulting Party shall, within the limits specified in Section 5.2 of this CA, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks.

### 7.2. Payments

**7.2.1** Payments to Parties are the exclusive task of the Coordinator.

In particular, the Coordinator shall:

* notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references;
* perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts;
* keep the records and financial accounts relevant for the Funding Authority financial contribution and to inform the Funding Authority of its distribution thereof; and
* undertake to keep the Funding Authority financial contribution to the Action 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.

**7.2.2** With reference to Articles 21.2 and 21.3.2 of the Grant Agreement, no Party shall before the end of the Action receive more than its allocated share of the maximum grant amount from which the amounts retained by the Funding Authority for the Guarantee Fund and for the final payment have been deducted.

**7.2.3** The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following:

Funding of costs will be included in the Action Plan and will be paid to the Parties after receipt from the Funding Authority without undue delay and in conformity with the provisions of the GA. Costs accepted by the Funding Authority will be paid to the Party concerned.

The Coordinator is entitled to withhold any payments due to a Defaulting Party except the amount of contribution that the Funding Authority, after acceptance of reporting, decides to be provided to the Defaulting Party.

**7.2.4** The Coordinator is entitled to recover any payments already paid to a Defaulting Party, except the amount of contribution accepted by the Funding Authority after acceptance of reporting. The Coordinator is equally entitled to withhold payments to a Party when this is agreed with the Funding Authority.

**7.2.5** In case that, in accordance with the Grant Agreement, the Funding Authority takes into account any Receipts of a Party (as defined under Article 5.3.3 of the Grant Agreement) and, accordingly, reduces the grant amount of the Action, this reduction will be entirely assumed by the Party/Parties that received those Receipts.

**7.2.6** A Party which spends less than its allocated share of the budget as set out in the Action Plan or – in case of reimbursement via unit costs - implements less units than foreseen in the Action Plan will be funded in accordance with its actual duly justified eligible costs only as decided by the Funding Authority.

**7.2.7** Where one or several Parties spend more than their allocated share, the General Assembly may propose a scheme for distributing any unspent contribution left by other Parties, being understood that benefiting Parties will be funded only in respect of duly justified eligible costs up to an amount not exceeding the amount proposed by the General Assembly and agreed by the Funding Authority.

7.2.8 "A Party having received excess payments has to return the relevant amount to the Coordinator without undue delay"

## Section 8: Results

### 8.1. Ownership of Results

Results shall be owned by the Party whose employee(s) generated such Results, or on whose behalf such Results have been generated.

### 8.2. Joint ownership

In accordance with Article 16.4 with reference to Annex 5 of the Grant Agreement, two or more Parties shall own Results jointly if:

1. they have jointly generated them; and
2. it is not possible to:
   1. establish the respective contribution of each Party; or
   2. separate them for the purpose of applying for, obtaining or maintaining their protection.

The other provisions of Article 16.4 with reference to Annex 5 of the Grant Agreement shall not apply. Instead, this Section 8.2 (which constitutes a “joint ownership agreement” for the purposes of Annex 5 of the Grant Agreement) shall apply. However, the joint owners shall nevertheless be at liberty to agree in writing something different to this Section 8.2, so long as such different agreement does not adversely affect the Access Rights or other rights of the other Parties provided under the GA or this CA.

Each joint owner shall have an equal, undivided ownership in and to a joint Result as well as in and to resulting Intellectual Property Rights in all countries, unless otherwise provided in this Section 8.2.

Each of the joint owners and their Affiliates shall be entitled to Exploit the jointly owned Result as they see fit, and shall be entitled to grant non-exclusive licences, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner(s)

Each joint owner of Intellectual Property Rights protecting such jointly owned Result shall have the right to bring an action for infringement of any such jointly owned Intellectual Property Rights only with the consent of the other joint owner(s). Such consent may only be withheld by another joint owner who demonstrates that the proposed infringement action would be prejudicial to its Legitimate Interests.

**[START OF OPTION 1]** Following generation of a joint Result, the joint owners shall enter into good faith discussions in order to agree on an appropriate course of action for filing application(s) for Intellectual Property Rights in such joint Result, including the decision as to which Party is to be entrusted with the preparation, filing and prosecution of such application(s) and in which countries of the world such application(s) for Intellectual Property Rights are to be filed. Except for any priority application(s), the filing of any application(s) for Intellectual Property Rights on joint Results shall require mutual agreement between the joint owners. Save as otherwise explicitly provided herein, all costs related to application(s) for Intellectual Property Rights in joint Results and Intellectual Property Rights resulting from such application(s) shall be shared equally between the joint owners.

In the event that one of the joint owners of an Intellectual Property Right or an application for an Intellectual Property Right on a joint Result wishes to discontinue the payment of its share of the maintenance fees or other costs in any particular country or territory (the “**Relinquishing Owner**”), the Relinquishing Owner shall promptly notify the other joint owner(s) of its decision, and the other joint owner(s) may take over the payment of such share. The Relinquishing Owner shall forthwith relinquish to the other joint owner(s) who continue such payments, its right, title to and ownership in such jointly owned Intellectual Property Right for the countries or territories concerned, subject, however, to the retention of a non-transferable, non-exclusive, royalty-free and fully paid-up license, without the right to grant sub-licences, for implementation of the Action and for Exploitation, for the lifetime of the jointly owned Intellectual Property Right in or for the countries or territories concerned in favour of, and for the use by, the Relinquishing Owner as well as such Relinquishing Owner’s Affiliates. **[END OF OPTION 1]**

**[START OF OPTION 2]** The joint owners shall agree on all protection measures and the division of related costs in advance of any such protection measures being undertaken by any of the joint owners. The joint owners shall enter into good faith discussions in order to agree on an appropriate course of action for filing application(s) for Intellectual Property Rights in such joint Result, including the decision as to which Party is to be entrusted with the preparation, filing and prosecution of such application(s) and in which countries of the world such application(s) for Intellectual Property Rights are to be filed. Unless the concerned Parties agree otherwise on a case by case basis, or explicitly provided otherwise herein, all costs related to application(s) for Intellectual Property Rights in joint Results and Intellectual Property Rights resulting from such application(s) shall be shared equally between the joint owners. **[END OF OPTION 2]**

### 8.3. Transfer of Results

**8.3.1** Each Party may transfer ownership of its own Results (including without limitation its share in Results that it owns jointly with another Party or Parties and all rights and obligations attached to such Results) to any of its Affiliates without notification to any other Party.

**8.3.2** Each Party may identify in Attachment 3 to this CA specific third party(ies). Each Party may transfer ownership of its own Results (including without limitation its share in Results that it owns jointly with another Party or Parties and all rights and obligations attaching to such Results) to any third party(ies) it identifies in Attachment 3 without notification to any other Party. The transferring Party shall, however, upon another Party’s request, inform the requesting Party of such transfer. During the implementation of the Action, any Party may add any further third party to Attachment 3 by providing written notice to the Coordinator for submission for a decision by the General Assembly within a reasonable period prior to a transfer to such further third party becoming effective.

**8.3.3** The Parties hereby agree that in the framework of a merger or an acquisition, which, for the sake of clarity, shall mean to include any assignment of ownership of any of the Parties’ Results, no notification of intended transfer of ownership need be given, due to confidentiality obligations arising from national and/or community laws or regulations, for as long as such confidentiality obligations are in effect and/or for as long as such notice is prohibited under applicable EU and/or national laws on mergers and acquisitions.

**8.3.4** Any transfer of ownership of Results made under this Section 8.3 shall be made subject to the Access Rights, the rights to obtain Access Rights and the right to Disseminate Results that are granted to the other Parties and their Affiliates in the GA and/or this CA. Therefore, each transferor shall use reasonable efforts to ensure that such transfer does not prejudice such rights of the other Parties or their Affiliates, and the transferor shall pass on its obligations regarding the transferred Results to the transferee, including the obligation to pass them on to any subsequent transferee. The obligations under this Section 8.3 apply for as long as other Parties have - or may request - Access Rights to Results, as provided in Section 9 of this CA.

**8.3.5** Each Party hereby waives any right to prior notification and to object to any transfer that is made in compliance with this Section 8.3.

### 8.4 Dissemination

**8.4.1 Dissemination of Results**

During the Action and for the period of time as stated in Section 10.2 of this CA, the Dissemination of Results by one or several Parties including but not restricted to publications of whatever form (excluding patent applications(s) and other registrations of IPRs), shall be governed by the procedure of Article 17 with reference to Annex 5 of the Grant Agreement subject to the following provisions:

Prior written notice of the final version of any planned publication shall be given to the other Parties at least forty-five (45) days before the planned publication submission date. Any objection to the planned publication shall be made in writing to all Parties within thirty (30) days after receipt of the written notice. If no objection is made within the time limit stated above, the publication is permitted.

An objection to a planned publication by a Party is justified if any of the following applies:

1. the protection of the objecting Party's Results or Background is adversely affected;
2. the proposed publication includes Sensitive Information of the objecting Party;
3. the objecting Party's Legitimate Interests would be significantly harmed.

Any and all objection(s) shall include, to the extent possible, a precise request for necessary modifications.

If an objection has been raised on one or more of the above-mentioned grounds, the objecting Party and the publishing Party 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 Sensitive Information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion. The publication must be suspended as long as the objection remains and the concerned Parties have not found a solution.

**8.4.2 Dissemination of another Party’s unpublished Results or Background**

In case a Party wishes to include in a Dissemination activity another Party's Results (which are not publicly available), Background and/or Sensitive Information, it needs to first obtain that Party's prior written approval.

The mere absence of an objection according to Section 8.4.1 of this CA is not considered as an approval.

**8.4.3 Co-operation obligations**

The Parties undertake to co-operate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Results, Background and/or Sensitive Information, subject to the confidentiality and Dissemination provisions agreed in this CA.

In accordance with Section 8.4.1 of this CA, prior to notifying any planned publication and/or any planned Dissemination activity of Results, Parties shall undertake reasonable efforts to refrain from including in such planned publication and/or such planned Dissemination activity of any other Party’s Results, Background or Sensitive Information.

**8.4.4 Use of names, logos or trademarks**

Nothing in this CA 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.

**8.5 Contributions to Standards**

Except as explicitly provided in Annex 1 (Description of the action) of the GA, or as otherwise stated in an Attachment to this CA, no Party shall have any obligation pursuant to this CA to make any contribution for incorporation of its own Result, in any European or other standard.

No Party shall have the right to contribute to a standard or allow the contribution to a standard of any Results, Background or Sensitive Information of another Party, even where such Results, Background or Sensitive Information is amalgamated with such first Party’s Result, Background, or Sensitive Information or other information, document or material. Any such contribution without such other Party’s written agreement justifies, in addition to any other available remedies, objection to the contribution by the Party concerned.

A copy of any proposed contribution of Results to a meeting of a standard setting body, for the purpose of incorporation in a standard, shall be distributed in writing to the Parties, by the Party proposing to submit the contribution, no later than 60 days prior to the date of the meeting (“**Review Period**”).

Any Party may submit a written objection, to such contribution to the Party proposing the standard’s contribution and to the Executive Board, within a period of forty-five (45) days, (hereinafter referred to as the “**Objection Period**”) after receipt of a copy of the proposed contribution on either or both of the following grounds:

1. that the objecting Party considers that the protection of the objecting Party’s Result would be adversely affected by the proposed contribution;
2. that the proposed contribution includes the Results, Background, or Sensitive Information of the objecting Party.

The proposed contribution shall not be made until the expiry of the Objection Period. Any objection accompanied by evidence indicating, prime facie, that the objection is justifiable, is hereinafter referred to as a “**Justifiable Objection**”. In the absence of any Justifiable Objection on either or both of the above grounds within the above-mentioned period, it is deemed that the Parties agree to the proposed contribution. Following the end of the above-mentioned period, the Executive Board shall inform the Parties whether or not any objection has been receivedand whether such objection(s) is/are Justifiable Objections.

In the event that a Justifiable Objection is raised on either or both of the above defined grounds within the Objection Period, the Party proposing the publication and the Party objecting shall seek in good faith to agree a solution on a timely basis whereby the Justifiable Objection is resolved. No such standard contribution shall be made in respect of which any Justifiable Objection remains unresolved.

## Section 9: Access Rights

**[START OF OPTION 1]**

### 9.1. Background included: “Positive List”

**9.1.1** Each Party identifies in Attachment 1A references to its Background to which it is willing to grant Access Rights for the implementation of the Action or Exploitation of any Result. In addition, each Party may, during the term of the Action, add into Attachment “1A” a reference to any of its Background not yet so listed.

**9.1.2** Notwithstanding anything else in this CA, there shall be no obligation to grant, and no right to be granted, Access Rights to any Background that is not listed in Attachment 1A to this CA (“**Unlisted Background**“). Each Party agrees not to use, in the implementation of the Action, any Unlisted Background, if such use would result in such Unlisted Background being Needed by any other Party for implementation of the Action or Exploitation of Results. However, if a Party uses Unlisted Background held by it in a manner that such Unlisted Background becomes Needed by any other Party for the implementation of the Action or Exploitation of any Results, then such Unlisted Background shall be deemed included in Attachment 1A.

**[START OF SUB-OPTION]**

**9.1.3** Regarding such Unlisted Background referred to in the last sentence of Section 9.1.2, the following shall apply:

(a) In deviation to Section 9.1.2 of this CA, if such Unlisted Background includes all or part of a commercially available product of a Party or of a third party, the terms and provisions governing the access to and use of such commercially available product shall be the prevailing terms.

(b) In deviation to Section 9.1.2 of this CA, if the terms under the GA and/or this CA regarding Access Rights to such Unlisted Background are in conflict with the terms of a pre-existing agreement between the owning Party and a Party or a third party, the terms and provisions of the pre-existing agreement shall be the prevailing terms.

(c) Notwithstanding Section 9.1.2 of this CA, if for such Unlisted Background the grant of Access Rights under the GA and/or this CA would require any form of consent of or compensation to a Party or a third party, such Unlisted Background is deemed to remain not listed in Attachment 1A.

(d) Notwithstanding Section 9.1.2 of this CA, if such Unlisted Background is or at any time becomes licensed by the owner as essential to a standard adopted by a standard setting body, the terms and provisions governing the access to such Unlisted Background via the standard shall be the prevailing terms.

**[END OF SUB-OPTION]**

**[END OF OPTION 1]**

**[START OF OPTION 2]**

### 9.1. Background excluded: “Negative List”

**9.1.1** Each Party identifies in itemised form in Attachment 1B its Background which is excluded from the grant of Access Rights for the implementation of the Action or Exploitation of any Results. In addition, each Party may, during the term of the Action, make additions to or amend Attachment 1B solely with the approval of the General Assembly, but may make deletions in said Attachment 1B on its own motion.

**9.1.2** Notwithstanding anything else in this CA, there shall be no obligation to grant, and no right to be granted, Access Rights to any Background that is listed as excluded in Attachment 1B to this CA (“**Listed Background**“). Each Party agrees not to use, in the implementation of the Action, any Listed Background, if such use would result in such Listed Background being Needed by any other Party for implementation of the Action or Exploitation of Results. However, if a Party uses its Listed Backgroundin a manner that such Listed Background becomes Needed by any other Party for the implementation of the Action or Exploitation of any Results, then such Listed Background shall be deemed removed from Attachment 1B and shall not be excluded from obligations to grant Access Rights in accordance with the GA and this CA.

**[START OF SUB-OPTION]**

**9.1.3** Notwithstanding anything else in this CA, the following shall apply:

1. If Background includes all or part of a commercially available product of a Party or of a third party, the terms and provisions governing the access to and use of such commercially available product shall be the prevailing terms.
2. If the terms under the GA and/or this CA regarding Access Rights to Background are in conflict with the terms of a pre-existing agreement between the owning Party and a Party or a third party, the terms and provisions of the pre-existing agreement shall be the prevailing terms.
3. If for any Background the grant of Access Rights under the GA and/or this CA would require any form of consent of or compensation to a Party or a third party, such Background is deemed to be listed in Attachment 1B as excluded.
4. If Background is or at any time becomes licensed by the owner as essential to a standard adopted by a standard setting body, the terms and provisions governing the access to such Background via the standard shall be the prevailing terms.

**[END OF SUB-OPTION]**

**[END OF OPTION 2]**

### 9.2. General Principles

**9.2.1** Subject to Section 9.1 of this CA and as provided in Article 16 (Intellectual Property Rights (IPR) – Background and Results – Access Rights and Rights of Use) of the Grant Agreement, Parties shall use reasonable efforts to inform each other before signature of the GA of any limitation affecting the granting of Access Rights to their Background. Parties also shall inform each other as soon as possible of any other restriction which might substantially affect the granting of Access Rights to their Background. If the General Assembly considers that the restrictions mentioned in Section 9.1 of this CA have such significant impact, and such restrictions are not foreseen in the Action Plan, it may decide to update the Action Plan accordingly.

**9.2.2** For the sake of clarity, any Access Rights granted under this CA expressly exclude any rights to grant sub-licences, unless expressly stated otherwise in this CA or agreed in writing between the Parties concerned.

**9.2.3** Save in exceptional circumstances, the granting of Access Rights shall be free of any administrative transfer costs. Any and all Access Rights granted under this CA shall be granted on a non-exclusive, non-transferable and worldwide basis, if not otherwise agreed in writing by the Parties concerned.

**9.2.4** Any requests for receiving Access Rights to be granted under this CA shall be made within **[START OF OPTION 1]** sixty (60) months **[START OF OPTION 2]** thirty-six (36) **months** after the period of the Action set out in Article 4 of the Grant Agreement.

**9.2.5** Results and/or Background shall be used by the non-owning Party only for the purposes for which Access Rights to such Results and/or such Background have been granted and are subject to the conditions set forth in this CA.

**9.2.6** As far as not deemed granted by means of this CA in Section 9.4.1, all requests for Access Rights for Exploitation shall be made in writing.

**9.2.7** 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.

**9.2.8 Have Made Rights**

Any and all Access Rights for Exploitation granted pursuant to this CA include the right of Indirect Utilisation.

**9.2.9 Employee’s Rights**

In addition to the obligations pursuant to the GA, each Party shall, to the fullest extent it can lawfully do so, ensure that it can grant Access Rights and fulfil the obligations under the GA and this CA notwithstanding any rights of its employees or Subcontractors in Results so created.

### 9.3 Access Rights for implementation

Access Rights to Results and Background Neededby a Party for the implementation of its own tasks underthe Action are hereby requested (in accordance with the requirements of the GA), and shall be deemed granted, as of the date of the GA entering into force, on a royalty-free basis to and by all Parties, and shall either terminate automatically upon completion of the Action or upon termination of a Party’s participation in accordance with Section 9 9.2 of this CA.

### 9.4 Access Rights for Exploitation

**[START OF OPTION 1]**

**9.4.1 Access Rights to all Results royalty-free**

Access Rights to Results **[START OF SUB-OPTION]** if Needed for Exploitation of a Party's own Results **[END OF SUB-OPTION]** are hereby requested and deemed granted on a royalty-free basis, to and by all Parties, as of the date of the Result arising, for the lifetime of the relevant Result.

**[END OF OPTION 1]**

**[START OF OPTION 2]**

**9.4.1 Access Rights to all Results for Internal Research and Teaching royalty-free; but other Access Rights to Results on Fair and Reasonable Conditions**

Access Rights to Results for Internal Research and Teaching are hereby requested, and shall be deemed granted, as of the date of the Result arising, on a royalty-free basis to and by all Parties.

Access Rights **to Results if Needed for Exploitation** [**START OF SUB-OPTION]** of a Party's own Results **[END OF SUB-OPTION], other than for Internal Research and Teaching** shall be granted on Fair and ReasonableConditions subject to the following:

1. The Party requiring the grant of such Access Rights (the “**Requesting Party**”) shall make a written request to the Party (the “**Granting Party**”) from which it requires the Access Rights.
2. The written request shall identify the Results concerned.
3. Any such Access Rights shall only be granted upon the signature of a written agreement between the Granting Party and the Requesting Party.

**[END OF OPTION 2]**

**[START OF OPTION]** Fair and Reasonable Conditions to the potential benefit of the Requesting Party refer to the fact that such Party and the Granting Party have collaborated in the Action to their mutual benefit. **[END OF OPTION]**

**[START OF OPTION]** Parties of an Action shall be offered conditions which are preferable to those offered to external third parties. **[END OF OPTION]**

**9.4.2** Access Rights to Background, if Needed for Exploitation of **[START OF OPTION]** a Party’s own **[END OF OPTION]** Results, as demonstrated to the satisfaction of the Party owning or controlling such Background shall be granted on Fair and Reasonable Conditions to be negotiated in good faith between the concerned Parties, and subject to the limitations or conditions indicated in Attachment 1 related to the concerned Background, if any. If such Background includes all or part of a commercially available product and/or service of a Party or of a third party, the terms and provisions governing the access to and use of such commercially available product and/or service shall be the prevailing terms.

### 9.5 Access Rights to and by Affiliates

**[START OF OPTION 1]**

**9.5.1** **Direct Right of Access Rights to Affiliates**

Each Party hereby grants Access Rights to Results and Background to any Affiliate of any other Party as if such Affiliate was a Party to this CA, and subject to the condition that such Affiliate undertakes to fulfil all confidentiality and other obligations towards the Funding Authority and the other Parties accepted by the Parties under the GA or this CA as if such Affiliate was a Party. Access Rights granted to any Affiliate are subject to the continuation of the Access Rights of the Party of which it is an Affiliate, and shall automatically terminate upon termination of the Access Rights granted to such Party. Further, if an Affiliate 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. The provisions governing the granting of Access Rights to the Parties as set out in Sections 9.3 and 9.4 of this CA shall also apply to Affiliates.

**[END OF OPTION 1]**

**[START OF OPTION 2]**

**9.5.1 Sub-Licensing to Affiliates**

(a) **Sub-Licensing to Affiliates**

When granting any Access Rights to Results and Background under this CA, each licensing Party hereby grants to the licensed Party a right to sublicense the Access Rights granted to that licensed Party by or pursuant to this CA to licensed Party’s Affiliates.

In sub-licensing any Access Rights to its Affiliates, each Party shall ensure that its Affiliates are bound by the relevant and applicable rights and obligations provided under or pursuant to this CA, including without limitation appropriate undertakings as to confidentiality.

Access Rights granted to any Affiliate are subject to the conditions attached to the Party granting such sub-licence and subject to 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 subject to Section 9.5.2.

[START OF SUB-OPTION] The benefit of having the right to grant Access Rights to Affiliates as provided for in this Article 9.5.1, will be taken into account when determining the Fair and ReasonableConditions under which the Access Rights for Exploitation are granted in accordance with Section 9.4.1 and Section 9.4.2 above. [END OF SUB-OPTION]

**[END OF OPTION 2]**

For the avoidance of doubt, this Section 9.5 of this CA is intended to confer a benefit on Affiliates the Parties by affording them the opportunity to obtain Access Rights, but it shall not oblige any Affiliate of any Party to accept the granting of any Access Rights.

**9.5.2 Cessation of Affiliates**

(a) **Rights granted to Affiliates**

Upon any Legal Entity ceasing to be an Affiliate of a Party, any Access Rights granted to such Legal Entity shall lapse. In case such former Affiliate had been granted Access Rights to any Results and/or Background pursuant to the GA and this CA; and the Results and/or Background were incorporated into the products, processes or services of such former Affiliate prior to cessation of their affiliation, the following shall apply:

With respect to such Results and/or Background and at the request of such former Affiliate, the licensing Party shall grant a non-exclusive licence to such former Affiliate under such Results and/or Background for use in such former Affiliate's products, processes and services on Fair and Reasonable Conditions, provided that no Legitimate Interest of the licencing Party opposes the grant of such licences and the former Affiliate abides to confidentiality obligations in terms not less stringent than those of Section 10 below.

If a Legal Entity which used to be an Affiliate fails in any material respect to comply with the undertaking given by it as specified within this CA, 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 immediately terminate.

(b) **Rights granted by Affiliates**

Upon any Legal Entity ceasing to be an Affiliates of a Party, the licenses or user rights previously granted by such Legal Entity to any Party and/or its Affiliates under or in respect of Background, or Results shall continue in full force and effect.

### 9.6 Additional Access Rights

For the avoidance of doubt, any grant of Access Rights not covered by the GA or this CA shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be negotiated and ultimately agreed between the owning and a receiving Party(ies).

### 9.7 Access Rights to third parties

Subject to obligations in relation to Sensitive Information but notwithstanding anything else in this CA, each Party may enter into a technical co-operation or licensing arrangement with a third party in respect of its own Results even if there are minor amounts of Results owned by another Party, unavoidably incorporated into or amalgamated with such own Result. In such circumstances, and upon request of the Party entering the co-operation or arrangement, the other Party shall grant non-exclusive rights to permit such co-operation or arrangement against terms and conditions to be agreed, provided such grant does not adversely affect a Legitimate Interest of the other Party.

### 9.8 Access Rights for Parties entering or leaving the Consortium

**9.8.1 New Parties entering the Consortium**

Access Rights to Results generated before the Accession Date of the new Party shall be granted to said new Party as if such Results were Background and under the terms and conditions associated to Background as set forth under Sections 9.3 and 9.4.2 of this CA.

As regards to Results generated by any Party after the Accession Date of a new Party, said new Party will be granted Access Rights to such Results as of the Accession Date by said new Party under the same terms and condition as any other Party to this CA.

The new Party is hereby deemed a third party in respect of any Sensitive Information disclosed by a Party with respect to whom this CA has been terminated for any reasons other than any breach of such Party’s obligations under this CA, at an effective date prior to the Accession Date of said new Party, unless otherwise provided in writing by the Party with respect to whom this CA has been terminated.

**9.8.2 Parties leaving the Consortium**

**9.8.2.1 Access Rights granted to a leaving Non-Defaulting Party**

A withdrawing Party shall continue to grant Access Rights pursuant to the GA and this CA in respect of its Background and Results existing at the time of such termination as stated in this CA.

Notwithstanding anything to the contrary in this CA, a leaving Party is entitled to request Access Rights for Exploitation of its Results under the terms set forth in this CA up to one year following termination of such leaving Party’s participation in the Action.

**9.8.2.2 Access Rights granted to a leaving Defaulting Party**

Any and all 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.

A Defaulting Party shall continue to grant Access Rights pursuant to the GA and this CA in respect of its Background; and Results existing at the time of such termination as prescribed in this CA.

A Defaulting Party shall immediately return at its own cost any and all other Party’s materials, equipment, and any other element being in its possession, if requested by a Party (including without limitation Confidential Information capable of being returned).

### 9.9 Specific provisions on Software

**9.9.1 Specific Provisions for Access Rights to Software**

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 of this CA are also applicable to Software. In the event of a contradiction between the terms of Sections 9.1-9.8 inclusive, and this Section 9.9, the provisions of the Sections 9.1-9.8 inclusive will prevail.

Subject to the Section 9. 93 below, in the event that:

1. any Software, which is Background, has been used or introduced under an open source licence, or
2. any Software, which is a Results, has been made available, on agreement of the owning Party, under an open source licence,

then, in respect of such Background or Results, the terms of the Open Source Software licence will prevail over the terms of this Section 9.9.

**9.9.2** Parties’ Access Rights to Software do not include any right to receive

1. Source Code, or
2. Object Code ported to a certain hardware platform, or
3. 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.

**9.9.3** The intended introduction of material (including, but not limited to Software) under Controlled Licence Terms in the Action requires the unanimous approval of the Parties to this CA to implement such introduction into the Action Plan.

**9.9.4** No Access Rights to any Background or Results shall include the right to sub-license such Background or Results upon Controlled Licence Terms (and accordingly none of them shall be sub-licensed upon Controlled Licence Terms) unless agreed expressly in writing by the Party granting the Access Rights.

**9.9.5 Access Rights to Software**

1) Access Rights to Software which is a Result shall comprise:

1. Access to the Object Code; and
2. where normal use of such an Object Code requires an API, Access to the Object Code and such an API; and
3. if (a) is not available, and if a Party can show that the execution of its tasks under the Action or the Exploitation of its own Results is technically impossible without Access to the Source Code, Access to the Source Code to the extent Needed.

2) Access Rights to Software which is Background shall only be provided to the Object Code of such Software, unless otherwise agreed between the Parties concerned.

**9.9.6 Software licence and sub-licensing rights**

**9.9.6.1 Results - Rights of a Party (Object Code)**

Where a Party has Access Rights for Exploitation to Object Code and/or APIs which is Results, such Access Rights shall, in addition to the Access Rights for Exploitation foreseen in Section 9.4 of this CA, as far as Needed for the Exploitation of **[START OF OPTION]** the Party’s own **[END OF OPTION]** Results, comprise the right:

1. to make an unlimited number of copies of Object Code and APIs; and
2. to distribute, make available, communicate to the public, market, sell and offer for sale (including using services of a third party) such Object Code and APIs alone or as part of or in connection with products, processes or services of the Party having the Access Rights; and
3. to use the Object Code and API in research and development, and to create or market any product, process or service, and to use them to create or provide any service.

provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights for the Exploitation of Object Code and APIs for **[START OF OPTION]** the Party’s own **[END OF OPTION]** Results.

**9.9.6.2 Results - Rights to grant sub-licences to end-users (Object Code)**

Access Rights to Object Code shall, as far as Needed for the Exploitation of **[START OF OPTION]** a Party’s own **[END OF OPTION]** Results, comprise the right to grant to end-user customers buying/using the product/services, a sub-licence to the extent as necessary for the normal use of the relevant product or service to use the Object Code or APIs 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 Needed:

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

**9.9.6.3 Background (Object Code)**

Where a Party has Access Rights to BackgroundObject Code which is Needed for Exploitation of **[START OF OPTION]** such Party’s own **[END OF OPTION]** Results as provided under Section 9.4 of this CA, the Access Rights exclude the right to sub-license to third parties (other than Affiliates). Such sub-licensing rights may, however, be negotiated between the concerned Parties.

**9.9.6.4 Results - Rights of a Party (Source Code)**

Where a Party has Access Rights to Results Source Code which is Needed for Exploitation of **[START OF OPTION]** such Party’s own **[END OF OPTION]** Results, such Access Rights shall comprise a worldwide right to perform, to make or have made copies, to modify or have modified, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service. Such rights on the Source Code, however, exclude the right to grant a sub-licence to any third parties other than Affiliates.

**9.9.6.5 Results – Rights to grant sub-licences to end-users (Source Code)**

Access Rights to Source Code under this Section 9.10 for the Exploitation of **[START OF OPTION]** a Party’s own **[END OF OPTION]** Results shall include the right to sub-license such Source Code to end-users solely for purpose of error correction, maintenance and/or support of the Software.

**9.9.6.6 Background (Source Code)**

Where a Party has Access Rights to Background Source Code which is Needed for Exploitation of **[START OF OPTION]** such Party’s own **[END OF OPTION]** Results, such Access Rights exclude the right to sub-license to any third parties (other than Affiliates).

**9.9.6.7 Specific formalities**

Each sub-licence granted according to the provisions of Section 9.10.6 of this CA shall be made by a written agreement specifying and protecting the proprietary rights of the concerned Party or Parties.

## Section 10: Non-disclosure of Sensitive Information

**[START OF OPTION 1]**

### 10.1 Scope

All information in whatever form or mode of communication, which is disclosed by a Party (the “**Disclosing Party**”) to any other Party (the “**Recipient**”) in connection with the Action during its implementation and which has been explicitly marked as “confidential” or "secret" at the time of disclosure, or when disclosed orally has been identified as sensitive at the time of disclosure and has been confirmed and designated in writing within 30 calendar days from oral disclosure at the latest as Sensitive Information by the Disclosing Party, is “**Sensitive Information**”.

**[END OF OPTION 1]**

**[START OF OPTION 2]**

**10.1** All information in whatever form or mode of communication, which is disclosed by a Party (the “**Disclosing Party**”) to any other Party (the “**Recipient**”) in connection with the Action during its implementation is “**Sensitive Information**”.

**[END OF OPTION 2]**

### 10.2 Obligations

The Recipient hereby undertakes, for a period of five (5) years after the final payment has been received from the Coordinator:

1. not to use Sensitive Information otherwise than for the purpose for which it was disclosed;
2. not to disclose Sensitive Information to any third party other than its Affiliates and Subcontractors without the prior written consent by the Disclosing Party, wherein the Recipient must ensure that an arrangement is in place prior to such disclosure that subjects the Affiliates and/or Subcontractors to provisions at least as strict as provided in this Section 10;
3. to apply for the security of Sensitive Information at least the same degree of care as it applies for the security of its own Sensitive Information (but in any case, shall apply not less than reasonable care); and
4. to ensure that internal distribution of Sensitive Information by a Recipient, its Affiliates and Subcontractors shall take place on a need-to-know basis;
5. to return to the Disclosing Party, or destroy, on request all Sensitive Information that has been disclosed to the Recipient including all copies thereof, and to delete all such Sensitive Information stored in a machine-readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Sensitive Information because of compliance with applicable laws and regulations, for the proof of on-going obligations or to the extent the Sensitive Information is archived (such as by Recipient’s automated back-up archiving practices), provided that the Recipient complies with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

### 10.3 Exceptions

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

1. the Sensitive Information has become publicly available by means other than a breach of the Recipient’s confidentiality obligations;
2. the Disclosing Party has informed the Recipient that the Sensitive Information is no longer confidential;
3. the Sensitive Information has been communicated to the Recipient without any obligation of confidence by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
4. the Sensitive Information was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
5. the Sensitive Information was already known to the Recipient prior to disclosure without any obligation of confidence to the Disclosing Party or
6. the Recipient is required to disclose the Sensitive Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provisions of Section 10.5 hereunder.

### 10.4 Notification

Each Recipient shall promptly advise the Disclosing Party in writing of any unauthorised disclosure, misappropriation or misuse of Sensitive Information after it becomes aware thereof.

### 10.5 Compliance with laws and orders

If any Recipient becomes aware that it will be required, or is likely to be required, to disclose Sensitive 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 (i) notify the Disclosing Party, and (ii) comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the Sensitive Information.

**[START OF OPTION]**

### 10.6 Residual Information

Provided that the Recipient and its Affiliates do not disclose such Residual Information (as defined below) and, without implying or granting any license under any patent and copyright of the Disclosing Party and its Affiliates, the Recipient and its Affiliates shall not be in breach of their obligations under this Section 10 in the event of any use of any idea, concept, know-how or technique contained in the Disclosing Party's Sensitive Information retained in the unaided memories of any employee of the Recipient and its Affiliates who has had legitimate access to the Sensitive Information (“**Residual Information**”).

### 10.7 Inherent Disclosure

The inherent disclosure of Residual Information by the use, distribution or marketing of any hardware or software product or service into which Residual Information has been incorporated, by the Recipient or by any of its Affiliates, shall not constitute a breach of the Recipient 's or its Affiliates’ obligation of non-disclosure relating to such Sensitive Information.

**[END OF OPTION]**

## Section 11: Privacy and data protection

**11.1** This section governs the processing and use of Personal Data collected and processed during the actual performance of the Action. For the purpose of this Section 11, capitalised terms not defined in this CA shall have the meaning ascribed to them in Regulation (EU) 2016/679 (GDPR), where they appear as lower-case terms. In the performance under this CA and the performance of the Action, Parties shall comply with their respective obligations under applicable data protection laws such as the GDPR.

**11.2** Where, during or in connection with the CA, Personal Data may be or are intended to be processed, Parties apply appropriate privacy safeguarding measures (e.g. pseudonymization) limiting the disclosure of Personal Data. Moreover, the Parties involved shall enter into an appropriate Privacy and Data Protection Agreement prior to any such data processing. Where a Party detects that Processing activities require a contractual agreement in addition to this Section 11., such Party shall notify the Parties it reasonably deems may be affected thereby without undue delay, and such affected Parties shall undertake to enter into good faith negotiations to establish such agreement without undue delay and before sharing any Personal Data.

**11.3** Where Parties transfer Personal Data to each other and Parties are acting as Controller over the same set of Personal Data, Parties shall Process the Personal Data only within countries member of the European Economic Area, unless:

1. Parties have entered into the appropriate EU Standard Contractual Clauses;
2. Parties have implemented Binding Corporate Rules that have received European approval and that cover all Personal Data that Parties will receive in their capacity of Controller;
3. the countries where Parties will Process such Personal Data have received a binding adequacy decision by the European Commission; or
4. another validly executed transfer mechanism applies to the transfer of Personal Data to such countries that have not received a binding adequacy decision by the European Commission.

When acting as Controller over the same set of Personal Data, each Party shall:

1. be solely responsible for collecting and further processing the abovementioned set of Personal Data in accordance with applicable data protection laws, in particular for justifying any transmission of such Personal Data to the other Party (including providing required notices and obtaining required consents) and its decisions concerning the processing of the Personal Data; and
2. not do anything which may cause the other Party to violate any applicable data protection law.

## Section 12: Miscellaneous

### 12.1 Attachments, inconsistencies and severability

This CA consists of this core text and:

* Attachment 1 (Background included (1A) (if any) and Background excluded (1B) (if any))
* Attachment 2 (Declaration of Accession)
* Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3.2 of this CA)
* Attachment 4 (Identified Affiliates)

In case the terms of this CA are in conflict with the mandatory terms of the GA, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this CA, the latter shall prevail.

Should any provision of this CA become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this CA. 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.

### 12.2 No representation, partnership or agency

No Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium. Nothing in this CA shall be deemed to constitute a joint venture, agency, partnership, Legitimate Interest grouping or any other kind of formal business grouping or entity between the Parties.

### 12.3 Notices and other communication

Any notice to be given under this CA shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator. The Coordinator will make the updated address list available to all Parties.

1. **Formal notices:**

If it is required in this CA 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.

1. **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.

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.

### 12.4 Assignment and amendments

Except as set out in Section 8.3 of this CA, no rights or obligations of the Parties arising from this CA may be assigned or transferred, in whole or in part, to any third party, other than to Affiliates, without the other Parties’ prior formal approval. Amendments and modifications to the text of this CA require a separate written agreement to be signed by all Parties.

### 12.5 Mandatory national law

Nothing in this CA shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

### 12.6 Language

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

### 12.7 Applicable law

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

### 12.8 Settlement of disputes

**12.8.1** The Parties shall reasonably endeavour to settle their disputes amicably. If, however, no settlement of any dispute under this CA has been possible to achieve, after the Parties’ reasonable endeavours to settle such dispute(s) amicably, the provisions of Section 12.8.2 of this CA shall be applicable to any such dispute’s settlement. The Parties concerned may instead elect unanimously to seek to resolve by mediation any dispute under this CA.

**[START OF OPTION 1 – COURTS OF BRUSSELS]**

**12.8.2 Court of Brussels**

All disputes directly arising under this CA (other than disputes relating to the infringement and/or validity of IPR which shall be the exclusive jurisdiction of the competent court), which cannot be settled amicably, shall be subject to the jurisdiction of the competent court in Brussels, Belgium, to be handled in the English language.

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

**[END OF OPTION 1]**

**[START OF OPTION 2 – ICC ARBITRATION]**

**12.8.2 ICC Arbitration**

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

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

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

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

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

**[END OF OPTION 2]**

## Section 13: Signatures

**AS WITNESS:**

The Parties have caused this CA to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written. The signature of a Party via a scanned or digitized image of a handwritten signature (e.g. scan in PDF format) or an electronic signature (e.g. via AdobeSign), shall have the same force and effect as an original handwritten signature for the purposes of validity, enforceability and admissibility. Each Party receives a fully signed copy of this CA. Delivery of the fully signed copy via e-mail or via an electronic signature system shall have the same force and legal effect as delivery of an original hard copy of the CA.

[INSERT NAME OF PARTY]

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

Date

[INSERT NAME OF PARTY]

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

Date

[INSERT NAME OF PARTY]

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

Date

**Attachment 1A: Background included [Retain or Delete as per Section 9.1 of this CA, dependent on Option selected]**

|  |  |  |
| --- | --- | --- |
| **It is agreed between the Parties that, the following Background is introduced by [NAME OF THE PARTY], at the time of this CA** | | |
| **Describe Background included** | **Specific limitations and/or conditions for implementation (Article 25.2 of the Grant Agreement) (if any)** | **Specific limitations and/or conditions for Exploitation (Article 25.3 of the Grant Agreement) (if any)** |
| **…** | **…** | **…** |
| **…** | **…** | **…** |

|  |  |  |
| --- | --- | --- |
| **It is agreed between the Parties that, the following Background is introduced by [NAME OF THE PARTY], at the time of this CA** | | |
| **Describe Background included** | **Specific limitations and/or conditions for implementation (Article 25.2 of the Grant Agreement) (if any)** | **Specific limitations and/or conditions for Exploitation (Article 25.3 of the Grant Agreement) (if any)** |
| **…** | **…** | **…** |
| **…** | **…** | **…** |

**Attachment 1B: Background excluded [Retain or Delete as per Section 9.1 Option selected]**

|  |
| --- |
| **It is agreed between the Parties that, the following Background is excluded by [NAME OF THE PARTY] at the time of this CA** |
| **Describe Background excluded (if any)** |
| **…** |
| **…** |

|  |
| --- |
| **It is agreed between the Parties that, the following Background is excluded by [NAME OF THE PARTY], at the time of this CA** |
| **Describe Background excluded (if any)** |
| **…** |
| **…** |

**Attachment 2: Declaration of Accession**

DECLARATION OF ACCESSION

of a new Party to

[Acronym of the Action]

GA No [INSERT NUMBER] Dated [INSERT DATE]

CA, dated [INSERT DATE]

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

Hereby consents to become a Party to the CA identified above and accepts all the rights and obligations of a Party starting [date] the Accession Date.

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE Grant Agreement]

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

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

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

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

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

**Attachment 3: List of Third Parties for simplified transfer according to Section 8.3.2. of this CA**

**Attachment 4: List of any additional Affiliate pursuant to Article 1’s definition of Affiliate**

**Attachment 5: Template for Non-Disclosure Agreement**

This NON-DISCLOSURE AGREEMENT (“NDA”) is for the [Acronym of the Action] Consortium’s External Advisory Group and it is entered into by and between

[The Coordinator], a corporation validly organized and existing under the laws of [Country], having its principal place of [Address] (“Coordinator”),

on behalf of the members of [Acronym of the Action] Consortium (each “[Acronym of the Action] Member”, together “[Acronym of the Action] Members”);

and;

**[XXX],** a corporation validly organized and existing under the laws of [XXX], having its principal place of business at [XXX] (“EEAB Member”)

hereinafter referred individually to as “Party” or together as “Parties” respectively

**WHEREAS:**

1. [Acronym of the Action] Members have elected to institute a special External Expert Advisory Board (EEAB).
2. For the purpose of participation of the EEAB Member in the [Acronym of the Action] External Advisory Group (hereinafter "Purpose"), [Acronym of the Action] Member(s) may, in conjunction with the Purpose disclose to the EEAB Member Confidential Information which the [Acronym of the Action] Member regards as confidential and the EEAB Member is willing to undertake to restrict the use and further disclosure of such Confidential Information.

**NOW THEREFORE IT IS HEREBY AGREED:**

1. “Confidential Information” shall mean any proprietary information received by the EEAB Member from a [Acronym of the Action] Member whether orally, in writing, or in electronic or any other form.
2. The EEAB Member hereby undertakes from the date of signature and until [six years] after the end of [Acronym of the Action] to
   1. keep strictly confidential all Confidential Information received by it hereunder with the same degree of care as is used with respect to the EEAB Member’s own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care, and neither disclose Confidential Information received by it hereunder to third parties nor use it for any purpose other than the above-mentioned Purpose without the prior written permission of the disclosing Party.

The EEAB Member shall not, except as and to the extent required to enable it to carry out the Purpose, make any copies or reproduce the disclosed Confidential Information except copies of electronically exchanged Confidential Information made as a matter of routine information technology backup (cf. Section 6 below). Such copies or reproductions shall be subject to the terms of this NDA. The EEAB Member shall take such steps as are reasonably necessary to restrict access to and protect the confidentiality of such copies or reproductions of the NDA.

1. The foregoing obligations shall not apply to any Confidential Information which
2. is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of the EEAB Member; or
3. was known to the EEAB Member prior to disclosure hereunder without any obligation of confidentiality to the disclosing Party, as proven by the written records of the EEAB Member; or
4. is disclosed to the EEAB Member by a third party who, to EEAB Member’s best knowledge, is in lawful possession thereof and under no obligation of confidentiality to the disclosing Party or any other third party; or
5. was developed by the EEAB Member completely independently of any disclosure of Confidential Information hereunder as proven by the written records of the EEAB Member.

The EEAB Member may disclose Confidential Information received hereunder if the EEAB Member is required to do so by any final ruling of a governmental or regulatory authority or court or by mandatory law, provided that written notice of such ruling is given without undue delay to the disclosing Party so as to give the disclosing Party an opportunity to seek a protective order or equivalent or to obtain a written assurance from the competent judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under the applicable law or regulation, and provided further that the EEAB Member uses reasonable efforts to obtain assurance that the Confidential Information will be treated confidentially. Confidential Information which is disclosed in such a manner must be marked "Confidential".

1. The EEAB Member shall not make any publicity on, press release of or any reference to this NDA, to the [Acronym of the Action] Members or Confidential Information received hereunder:
2. This Confidentiality Undertaking shall come into force upon signature by the EEAB Member and the Coordinator.
3. The disclosing Party may at its discretion request at any time in writing from the EEAB Member that the EEAB Member either return or destroy all Confidential Information received from such disclosing Party and stored electronically and/or on record-bearing media as well as any copies thereof. The EEAB Member shall confirm in writing such destruction or return the Confidential Information as well as any copies thereof to the disclosing Party within fourteen (14) days after receipt of the disclosing Party´s request.

The provisions of Article 6 para. 1 hereof shall not apply to copies of electronically exchanged Confidential Information made as a matter of routine information technology backup and to Confidential Information or copies thereof which must be stored by the EEAB Member according to provisions of mandatory law, provided that such Confidential Information or copies thereof shall be subject to an indefinite confidentiality obligation according to the terms and conditions set forth herein.

1. No license to the EEAB Member, under any trademark, patent, copyright or any other intellectual property right is either granted or implied by the conveying of Confidential Information to the EEAB Member. None of the Confidential Information disclosed shall constitute any representation, warranty, assurance, guarantee or other inducement to the EEAB Member of any kind, and, in particular, with respect to the non-infringement of trademarks, patents, copyrights or any other intellectual property rights, or other rights of third parties.
2. This NDA may not be modified or amended except by written amendments duly executed by the Parties. This requirement of written form can only be waived in writing.
3. This NDA shall be construed and interpreted in accordance with the laws of Belgium, excluding its rules for choice of law.
4. [Option 1 Arbitration] All disputes arising out of or in connection with this NDA, including any question regarding its existence, validity or termination, shall, unless amicably settled between the concerned Parties, be finally settled by arbitration. The arbitrator(s) are to be appointed by the International Chamber of Commerce and the rules of the said Institute are to be followed in the arbitration. The arbitration proceedings shall be conducted in English. The award shall be final and binding on the concerned Parties hereto and enforceable in any court of competent jurisdiction.

The arbitration shall be held in Brussels, Belgium.

Each Party shall be entitled to seek necessary and appropriate injunctive relief or any other temporary measures from the courts of competent jurisdiction to enjoin the other Party from taking certain actions which may infringe on the rights of the Party bringing such claim, provided that any proceedings and decisions as to the merits of the dispute, including permanent injunctions, are exclusively governed and resolved by arbitration in accordance with the first paragraph of this Article 10.

[Option 2 Courts]

All disputes directly arising under this NDA, which cannot be settled amicably, shall be subject to the jurisdiction of the competent court in Brussels, Belgium.

The foregoing shall be without prejudice to the right of any [Acronym of the Action] Member to seek injunctive relief or other non-monetary relief before any court in any place where any unauthorised use of its Confidential Information occurs or threatens to occur.

This NDA may be executed in any number of counterparts by either handwritten signatures, including the exchange of scanned representations of handwritten signatures, or e-signatures. By using e-signature to sign this NDA the Parties acknowledge that execution in this manner creates binding contracts between the Parties.

[*Signature page will follow.*]

FOR MORE INFORMATION, PLEASE CONTACT:

* Martina Piazza

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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world’s largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world’s best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

Accenture, Airbus, Amazon, AMD, Apple, Arçelik, Assent, Atos, Autodesk, Bayer, Bidao, Bosch, Bose, Bristol-Myers Squibb, Brother, Canon, Cisco, Dassault Systèmes, DATEV, Dell, Eli Lilly and Company, Epson, Ericsson, ESET, EY, Facebook, Fujitsu, GlaxoSmithKline, Global Knowledge, Google, Graphcore, Hewlett Packard Enterprise, Hitachi, HP Inc., HSBC, Huawei, Intel, Johnson & Johnson, Johnson Controls International, JVC Kenwood Group, Konica Minolta, Kry, Kyocera, Lenovo, Lexmark, LG Electronics, Mastercard, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, MSD Europe Inc., NEC, Nemetschek, NetApp, Nokia, Nvidia Ltd., Oki, OPPO, Oracle, Palo Alto Networks, Panasonic Europe, Philips, Pioneer, Qualcomm, Red Hat, ResMed, Ricoh, Roche, Rockwell Automation, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Siemens Healthineers, Sky CP, Sony, Sopra Steria, Swatch Group, Technicolor, Texas Instruments, TikTok, Toshiba, TP Vision, UnitedHealth Group, Visa, Vivo, VMware, Waymo, Workday, Xerox, Xiaomi, Zoom.

National Trade Associations

Austria: IOÖ

Belgium: AGORIA

Croatia: Croatian

Chamber of Economy

Cyprus: CITEA

Denmark: DI Digital, IT

BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, SECIMAVI, numeum

Germany: bitkom, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: Infobalt

Luxembourg: APSI

Moldova: ATIC

Netherlands: NLdigital, FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS

Slovakia: ITAS

Slovenia: ICT Association of Slovenia at CCIS

Spain: AMETIC

Sweden: TechSverige,

Teknikföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform,

ECID

United Kingdom: techUK