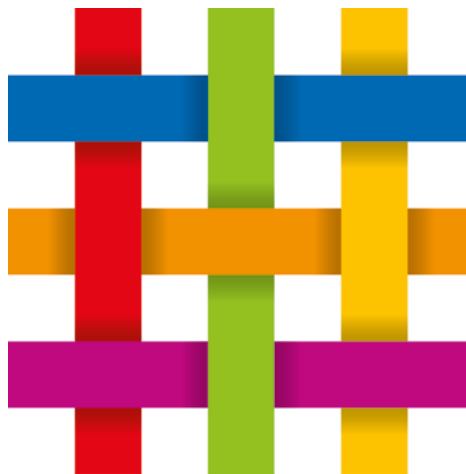


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DESCA

**Horizon 2020 Model
Consortium Agreement**
www.DESCA-2020.eu
www.DESCA-2020.eu

Version 1.42,
May 2014
March 2016

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[Change Records]

Version	Date	Changes	Author
Version 1	February 2014		DESCA
Version 1.1	May 2014	"Remarks", item 4: reference to RfP updated	DESCA
<u>Version 1.2</u>	<u>February 2016</u>	<u>Update taking into account user consultation and negotiation experience, see summary on www.desca-2020.eu</u>	<u>DESCA</u>
<u>Version 1.2</u>	<u>March 2016</u>	<u>Update correcting editing mistakes</u>	<u>DESCA</u>

REMARKS

This Consortium Agreement model is created for projects which will be governed by a ["Multi-beneficiary General Grant Agreement"](#) (MGA), under Horizon 2020, i.e. notably "Research and Innovation Actions" and "Innovation Actions". A use for other types of projects will likely require adaptations.

The new DESCA model addresses the features of Horizon 2020, which is intended to be a considerable evolution as compared to previous Framework Programmes. Following the feedback of many stakeholders, the explicit aim of the update for H2020 was to adapt where necessary and to keep the continuity of the DESCA FP7 text where possible.

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

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

The H2020 MGA contains several options which will be adapted to the individual project. DESCA 2020 is based on what we expect to be the "default setting" of MGA options.

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

The H2020 Rules for Participation, all MGAs, and the other related documents are available at: http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html#h2020-legal-basis-rfp http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html

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

The DESCA model is presented with two columns: the left side with legal text and the right side with elucidation, remarks and references to the H2020 Multi-beneficiary General Model Grant Agreement (MGA). For easier navigation, we highlight relevant key words in bold letters in the elucidations. A version without elucidations is available on the website www.desca-2020.eu.

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

1. Core text: The main body of the text.

2. Two modules for Governance Structure:

Module GOV LP for Medium and Large Projects:

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

Module GOV SP for Small Projects:

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

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

However, if the project is more complicated and has many work packages, the Module GOV LP, which includes an Executive Board, is advised.

3. Module IPR SC - special clauses for Software:

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

4. Options:

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

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

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

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

A note on Innovation Procurement: In H2020, pre-commercial procurement (PCP) or public procurement of innovative solutions (PPI) will be more frequent than in FP7. For such actions, there are specific rules in accordance with Article 51 of the Rules for Participation and the multi-beneficiary model grant agreement for PCP-or PPI Cofundation. For such this kind of Innovation Procurement projects, a Party may enter into a procurement procedure and will have to ensure that the specific rules will be taken into account. For the later tender processes a separate procurement agreement is recommended.

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

<p><u>CONSORTIUM AGREEMENT</u></p>	<p>Elucidations & Comments</p>
<p>THIS CONSORTIUM AGREEMENT is based upon REGULATION (EU) No 1290/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 laying down the rules for the participation and dissemination in “Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)” (hereinafter referred to as “the Rules for Participation”), and the European Commission Multi-beneficiary General Model Grant Agreement and its Annexes, and is made on <Project start date // other agreed date>, hereinafter referred to as the Effective Date</p> <p>BETWEEN: [OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT], the Coordinator</p> <p>[OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT],</p> <p>[OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT],</p> <p>[Insert identification of other Parties ...]</p> <p>hereinafter, jointly or individually, referred to as “Parties” or “Party”</p> <p>relating to the Action entitled</p> <p>[NAME OF PROJECT]</p> <p>in short</p> <p>[Insert: acronym]</p> <p>hereinafter referred to as “Project”</p> <p>WHEREAS: The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Funding Authority as part of the Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)</p>	<p>The specific Grant Agreement to be signed by the Parties and the Funding Authority is referred to in the text as “Grant Agreement”.</p> <p>The Multi-beneficiary General Model Grant Agreement is referred to as “MGA”.</p> <p>→</p> <p>It is recommended to insert here the Effective Date of the Consortium Agreement. For the Effective Date it is recommended to use the date when the Project starts.</p> <p>We strongly recommend having the CA<u>The CA should be</u> signed before signing the Grant Agreement. If this is not possible, the Effective Date can be retroactive and it may vary from the entry into force of the Grant Agreement. Each Party commits to this Consortium Agreement when signing the document on its own behalf (see Section 3.1 of this Consortium Agreement). Still the Effective Date is the same for all Parties that have signed the document. Consider also, if it is necessary with regard to confidentiality, obligations to have retro-activeness of the Consortium Agreement, however. <u>However</u> it is always preferable to have a separate confidentiality agreement signed for the proposal phase.</p> <p>Insert the official names of the Parties as they will be identified in the Grant Agreement and the contract preparation forms <u>in the H2020 participant portal</u>. The term Party is used in this Consortium Agreement for the sake of clarity. The corresponding term in the Grant Agreement is <u>“Beneficiary”</u>.</p> <p>The term ‘Project’<u>Project</u> is used <u>herein this Consortium Agreement</u> for the sake of clarity instead of the term “Action” used in H2020.</p> <p>Explanations to the DESCA model are</p>

<p>The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement to be signed by the Parties and the <u>EGFunding Authority</u> (hereinafter “Grant Agreement”). The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium agreement—.</p> <p>NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:</p>	<p>available at www.DESCA-2020.eu</p>
<p>Section 1: Definitions</p>	
<p>1.1 Definitions</p>	
<p>Words beginning with a capital letter shall have the meaning defined either herein or in the Rules <u>for Participation</u> or in the Grant Agreement including its Annexes.</p>	<p>Link to EC glossary of definitions will be inserted in elucidations once available.</p>
<p>1.2 Additional Definitions</p>	
<p><u>“Consortium Body”:</u> <u>Consortium Body means any management body described in the Governance Structure section of this Consortium Agreement.</u></p>	<p><u>See Art. 6.1 for a list of such Consortium Bodies.</u></p>
<p>“Consortium Plan”</p> <p>Consortium Plan means the description of the action and the related agreed budget as first defined in the Grant Agreement and which may be updated by the General Assembly.</p>	<p>Article 4.2 <u>of the</u> MGA states that the estimated budget may be adjusted by transfers of amounts between Parties or between budget categories (or both) without an amendment of the Grant Agreement.</p> <p>As minor modifications quite frequently are necessary during the project and do not have to result in changes of the Grant Agreement, this part of the Grant Agreement therefore can become outdated, but the consortium still needs to have a binding agreement on who has to perform which tasks for which budget: the Consortium Plan.</p> <p>As the project progresses and minor budget shifts become necessary, the Consortium Plan is dynamic and will be updated when needed or on a regular basis. As such it is not a formal annex to the Grant Agreement.</p> <p>The starting point for the Consortium Plan will be the description of the action as laid down in Annex 1 and the related budget in Annex 2 of the Grant Agreement.</p> <p>It is strongly advised to inform the Funding Authority of any changes accordingly in the periodic reports to the Funding Authority. If the discrepancy becomes too big and in consultation with the Funding Authority an updated version of the Grant Agreement Annexes 1 and could be generated, as an amendment to the Grant Agreement.</p> <p>The Consortium Plan is the formal outcome of the regular process of decision making inside the Consortium as laid down in this</p>

	Consortium Agreement.
<p>"Funding Authority"</p> <p>Funding Authority means the body awarding the grant for the Project.</p>	<p>In Horizon 2020, as per the MGA, the legal body awarding the grant for the Project can be the European Union or the European Atomic Energy Community (represented by the European Commission), or one of the agencies established for managing large parts of the framework programme the</p> <ul style="list-style-type: none"> - - -Research Executive Agency (REA) - - -European Research Council Executive Agency (ERCEA) - - -Innovation and Networks Executive Agency (INEA) - - -Executive Agency for Small and Medium-sized Enterprises (EASME) <p>each acting under the powers delegated by the European Commission.</p> <p>For the purposes of a Consortium Agreement, "Funding Authority" may also be used to refer to Joint Undertakings or similar bodies awarding the grant for the EU Project.</p>
<p>"Defaulting Party"</p> <p>Defaulting Party means a Party which the General Assembly has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Section 4.2 of this Consortium Agreement.</p>	<p>Default situations are covered by this agreement in the perspective of the Project and cover situations in which the Consortium has to actively make decisions with regard to a Party in breach of its contractual obligations (suspension of payments, termination of participation, reallocation of tasks).</p> <p>The task of taking needed measures with regard to the Defaulting Party shall be handled in accordance with the normal governance structure (see Section 4.2; Section 6.3.1.2; 6.3.2.3 and 6.3.3.2 of this Consortium Agreement).</p> <p>The process and consequences resulting from the breach can be found:</p> <ul style="list-style-type: none"> - - -Process: Section 4.2 - - -Liability: Section 5.2 - - -Governance Section for GOV LP: 6.2.3; 6.2.4 or for GOV SP: 6.3.3; 6.3.4 - - -Consortium Plan: Section 6.3.1.2 - - -Finances: Sections 7.1 and 7.3 - - -Access Rights: Sections 9.7.2.1.1 and 9.7.2.2 - - - and - - - Grant Agreement Article 50. <p>In the perspective of claims between two Parties of the Consortium, the concerned Parties should follow closely both these default processes covered by the Consortium Agreement and the requirements of Belgian law.</p>
<p>"Needed"</p> <p>means:</p>	<p>Parties have access rights if they are "Needed", and this provision aims to make this condition more precise and easier to work with.</p> <p>It makes access "Needed for the Project" very</p>

<p>For the implementation of the Project: Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be <u>technically or legally</u> impossible, significantly delayed, or require significant additional financial or human resources.</p> <p>For exploitation<u>Exploitation</u> of own Results: Access Rights are Needed if, without the grant of such Access Rights, the Exploitation of own Results would be technically or legally impossible.</p>	<p>open in order to make work on the Project as uncomplicated as possible.</p> <p>It is stricter regarding the access "Needed for exploitation" because Parties want to be reasonably sure that other Parties - can only claim access to their IPR if they have no other options.</p> <p>The requesting Party has to show its Need for Access Rights.</p>
<p>"Software"</p> <p>Software means sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression.</p>	<p>For Software specific provisions are needed, see Section 9.8 of this Consortium Agreement and special clauses for Software in: [Module IPR SC].</p>
<p>Section 2: Purpose</p>	
<p>The purpose of this Consortium Agreement is to specify with respect to the Project the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the Project and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.</p>	<p>Please follow the MGA principles and the Rules <u>for Participation</u>.</p>
<p>Section 3: Entry into force, duration and termination</p>	
<p>3.1 Entry into force</p>	
<p>An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.</p> <p>This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.</p> <p><u>AnA new</u> entity becomes a Party to the Consortium Agreement upon signature of the accession document (Attachment 2) by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.</p>	<p>Each Party commits to this Consortium Agreement when signing the document on its own behalf.</p> <p>Still the Effective Date is the same for all Parties that have signed the document.</p> <p>Unless the work programme specifies that there is no need for a Consortium Agreement the Beneficiaries must have a written Consortium Agreement.</p> <p>It is strongly advised that the Consortium Agreement should be signed before the Grant Agreement.</p> <p>The rules and process for accepting new parties<u>Parties</u> are laid down in: Decisions of the General Assembly (see Section 6.3.1.2) and of the Executive Board (Section 6.3.2.3).</p> <p>A model Accession document is attached to this Consortium Agreement [Attachment 2-].</p>
<p>3.2 Duration and termination</p>	

<p>This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the Grant Agreement and under this Consortium Agreement.</p> <p>However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.</p> <p>If</p> <ul style="list-style-type: none"> - the Grant Agreement - is not signed by the Funding Authority or a Party, or - the Grant Agreement is terminated, <p>or if</p> <ul style="list-style-type: none"> - a Party's participation in the Grant Agreement is terminated, <p>this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Section 3.3 of this Consortium Agreement.</p>	<p>Be aware of Article 50 of the MGA stipulating for the termination of the MGA or of the participation for one or more Parties.</p> <p>Termination may take place in case of normal end of the Project or a pre-termination during its implementation. Also, it is possible to either terminate the whole Project or the participation of one or more of the Parties. The initiative for the termination may come from the Funding Authority or from the consortium.</p> <p>As the terms of Grant Agreement and the Consortium Agreement are interlinked, the clause also addresses the automatic termination of the Consortium Agreement in case of rejection of the Project proposal and termination of the Grant Agreement.</p>
<p>3.3 Survival of rights and obligations</p>	
<p>The provisions relating to Access Rights, Dissemination and Confidentialityconfidentiality, for the time period mentioned therein, as well as for Liability, Applicableliability, applicable law and Settlementsettlement of disputes shall survive the expiration or termination of this Consortium Agreement.</p> <p>Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the General Assembly and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.</p>	<p>Note that some of these clauses contain a time limit for the survival or use of the provisions whereas other clauses do not provide for a time limit.</p> <p>TerminationBe aware termination shall not affect previous obligations of the leaving Party, here only the most important issues to remember are stated.</p> <p>See Section 6.2.3 and Section 6.2.4 regarding voting rules and veto rights. [GOV-SP: 6.3.3 and 6.3.4]</p> <p>A Party which the General Assembly has declared pursuant to Section 4.2. to be a Defaulting Party may not exercise any vote or participate in any further Consortium Body decision-making following the declaration of default.</p>
<p>Section 4: Responsibilities of Parties</p>	<p>Specific responsibilities are detailed in other Sections of the Consortium Agreement. It is especially important to note the obligations of each Party stated in the MGA especially in Article 41.</p>
<p>4.1 General principles</p>	
<p>Each Party undertakes to take part in the efficient implementation of the Project, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the Grant Agreement and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Belgian law.</p>	<p>One of the basic principles in most of the continental civil law systems, including Belgian law, is the principle of “good faith”, which applies both to the interpretation of contractual documents and to the execution of the contract. Due to this and other characteristics of civil law systems it has been possible to make this Consortium Agreement</p>

	as short as it is, as many items do not need to be addressed as explicitly in all details as in Anglo-Saxon legal systems.
Each Party undertakes to notify promptly, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the Project.	Section 11.3 of this Consortium Agreement supplies the different forms of notification.
Each Party shall promptly 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.	
4.2 Breach	
<p>In the event that a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement (e.g.: improper implementation of the project), the Coordinator or, if the Coordinator is in breach of its obligations, the Party appointed by the General Assembly, will give formal notice to such Party requiring that such breach will be remedied within 30 calendar days <u>from the date of receipt of the written notice by the Party.</u></p> <p>If such breach is substantial and is not remedied within that period or is not capable of remedy, the General Assembly may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof, which may include termination of its participation.</p>	<p>Governance structure, see Consortium Bodies Section 6, the responsible Which Consortium Body (General Assembly or other) <u>is responsible</u> depends on the specific structure in each project- <u>see Section 6 (Consortium Bodies).</u></p> <p>If in the case of a breach has happened, the Consortium Body declares the Party to be a Defaulting Party, see Section 11.3 for formal notice.</p> <p>The declaration as a Defaulting Party requires the breach to be "substantial". In case a Party is in breach of its obligations, but not in "substantial" breach, the consortium can <u>may</u> address the issue by reallocation of tasks as part of the next Consortium Plan- <u>or by finding other solutions.</u></p>
4.3 Involvement of third parties	
A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the Grant Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the Grant Agreement.	<p>Third party means any entity which is not a signatory to this Consortium Agreement.</p> <p>Subcontracting is covered by the MGA Article 13.</p> <p>Parties involving third parties have to ensure that Access rights of the other Parties regarding Background and Foreground are not impacted.</p> <p>A Party in that case also has to ensure that the <u>ECFunding Authority</u>, the European Court of Auditors (ECA) and the European Anti-fraud Office (OLAF) can exercise their rights under Articles 22 and 23 of the MGA also towards the third parties.</p> <p>Affiliated entities may be involved in the implementation of the specific tasks within the project only if they are foreseen in the Grant</p>

	<p>Agreement as 'linked third parties' with specific tasks, see Article 14 MGA.</p> <p>Be aware – in cases where MGA Annex 3a (Declaration on joint and several liability) has been signed by linked third parties, we recommend having the linked third parties sign an equivalent declaration form.</p>
Section 5: Liability towards each other	<p>Liability towards the Funding Authority is not part of this Consortium Agreement as it is covered by the Grant Agreement.</p>
5.1 No warranties	
<p>In respect of any information or materials (incl. Results and Background) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.</p> <p>Therefore,</p> <ul style="list-style-type: none"> - the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and - no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliated Entities) exercising its Access Rights. 	<p>This basic clause sets the base especially for the limitation of liability with regard to outputs (covering also the Results and Background) delivered by one Party to another Party.</p> <p>In case an output is delivered, the receiving Party shall bear the liability for the use to which it is put and possible IPR infringements.</p> <p>If the Parties consider it necessary to increase the liability of the Party delivering the output, it should be stated clearly and considered very carefully, if such additional liability should be taken.</p> <p>Please note that a supplying Party however still has to inform other Parties of any possible restriction, see MGA Article 25.</p> <p>For avoidance of doubt: knowing infringement is, of course, not authorized by this clause.</p>
5.2 Limitations of contractual liability	
<p>No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act or by a breach of confidentiality.</p> <p><u>For any remaining contractual liability, a Party's aggregate liability towards the other Parties collectively shall be limited to Insert: once or twice the Party's share of the total costs of the Project as identified in Annex 2 of the Grant Agreement provided such damage was not caused by a wilful act or gross negligence.</u></p> <p>The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability.</p>	<p>The basic limitations of contractual liability are stated here. <u>The first paragraph of 5.2 refers to indirect damages, the second paragraph refers to any remaining liability (including direct damages).</u></p> <p>The Parties may choose what amount to set as the limitation of liability. It is usually either once or twice the project share, but if so decided by the Parties it might also be another sum.</p> <p>The basic rule of Belgian law, and most to the other other legislations in Europe, states that liability with regard to wilful breaches of contract cannot be limited. It may be possible to limit damage also in case of gross negligence, but such limitation and its consequences should be carefully considered as such limitation might be considered as invalid regarding Belgian Law because in some cases gross negligence could be regarded as wilful by some courts. Parties should notice that such limitation of liability covers only the limitations of contractual liability. In case there is obligatory statutory</p>

	<p>liability in the legislation, these are not overruled by such a clause. However, regarding Belgian Law someone can either be liable according to contract law or obligatory statutory law (e.g. law of torts) but not both at the same time. So if there is a contract and the act or omission which led to the damage was made in connection with the contract the Party is only liable according to the contract. The sentence stating that "The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability" is therefore of only clarifying nature as statutory liability does not apply when liability according to a contract applies.</p> <p>The Parties might want to increase their liability with regard to certain cases. This should always be considered case by case and, if so chosen, written down in the Consortium Agreement very clearly and defined. Issues to be considered in this connection might relate for instance to insurance coverage of the Parties or specific liability concerning confidential information delivered. However it should be remembered that it is always possible for the Parties to make bilateral agreements concerning for instance certain specific delivery of confidential information. In addition, as the basic rule is that a Party granting Access Rights may require a separate detailing agreement to be concluded, all increase of liability relating to such grant, should be handled in that separate agreement.</p> <p>IN CASE YOU EXCHANGE MATERIAL WITHIN THE PROJECT, PLEASE CONSIDER THE NEED FOR A SEPARATE MATERIAL TRANSFER AGREEMENT AND ADD THE FOLLOWING CLAUSE TO THE CONSORTIUM AGREEMENT:</p> <p>In the case of transfer of material between Parties for the performance of the Project, an agreement based on the model of the Material Transfer Agreement provided on the DESCAs website (www.DESCA-2020.eu, in the DESCAs archives in Attachment 7 of DESCAs version 1) shall be entered into between the said Parties and may be amended to contain specific conditions regarding liabilities.</p> <p><u>In case you exchange material within the project, please consider the need for a separate material transfer agreement.</u></p> <p>Confidentiality: see Section 10. In cases of breach of confidentiality, the damage will be almost always indirect.</p> <p><u>The project share for signatories to the Grant Agreement not receiving EU funding is defined in the Grant Agreement. You may</u></p>
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	wish to verify the amount and, if the sum is very small, adapt the limit of liability on a case by case basis.
5.3 Damage caused to third parties	
Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Consortium Agreement or from its use of Results or Background.	With the Consortium Agreement the liability can only be limited between the Parties. Such limitations do not have any direct effect on a third party which is not a Party to this Consortium Agreement. This clause states that the ultimate liability remains to be borne by the Party causing the damage by its performance or by its use of Foreground or Background. Where damage to linked "linked" third parties" (MGA Article 14) are is concerned, please see elucidation on Section 4.3.
5.4 Force Majeure	
No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure. Each Party will notify the competent Consortium Bodies of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.	See MGA Article 51 - for Force Majeure See and Section 11.3 of this Consortium Agreement regarding possible forms of notification.

Section 6: Governance structure	
[Module GOV LP]	This governance structure is dedicated for Medium and Large Projects. The consortium may opt for Small Projects for a simple governance structure - see [Module GOV SP].
Governance structure for Medium and Large Projects	
6.1 General structure	
The organisational structure of the Consortium shall comprise the following Consortium Bodies: General Assembly as the ultimate decision-making body of the consortium Executive Board as the supervisory body for the execution of the Project, which shall report to and be accountable to the General Assembly 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	

Grant Agreement and this Consortium Agreement. [Option: The Management Support Team assists the Executive Board and the Coordinator.]		
6.2 General operational procedures for all Consortium Bodies		
6.2.1 Representation in meetings		
Any Party which is a member of a Consortium Body (hereinafter referred to as "Member"): - ___ should be <u>present or</u> represented at any meeting of such Consortium Body ; - ___ may appoint a substitute or a proxy to attend and vote at any meeting; and shall participate in a cooperative manner in the meetings. - ___		A Member is a Party which is in a specific consortium body. Of course, each Party acts through individual persons.
6.2.2 Preparation and organisation of meetings		
6.2.2.1 Convening meetings: The chairperson of a Consortium Body shall convene meetings of that Consortium Body.		
	Ordinary meeting	Extraordinary meeting
General Assembly	At least <u>once</u> a year	At any time upon written request of the Executive Board or 1/3 of the Members of the General Assembly
Executive Board	At least <u>quarterly</u>	At any time upon written request of any Member of the Executive Board
6.2.2.2 Notice of a meeting: The chairperson of a Consortium Body shall give notice in writing of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated below.		
	Ordinary meeting	Extraordinary meeting
General Assembly	45 calendar days	15 calendar days
Executive Board	14 calendar days	7 calendar days
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	

	days for an extraordinary meeting	
Executive Board	7 calendar days	
6.2.2.4 Adding agenda items: Any agenda item requiring a decision by the Members of a Consortium Body must be identified as such on the agenda. Any Member of a Consortium Body may add an item to the original agenda by written notification to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.		
General Assembly	14 calendar days, 7 calendar days for an extraordinary meeting	
Executive Board	2 calendar days	
6.2.2.5 During a meeting the Members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.		If a new topic comes up that may ultimately require a decision, the good practice is to organise a new meeting or a written procedure for decision on the topic, rather than deciding on it during the meeting.
<p>6.2.2.6 Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document which is then agreed by the defined majority (see Section 6.2.3.) of all Members of the Consortium Body.</p> <p>6.2.2.6 Such document shall include the deadline for responses.</p> <p>6.2.2.7 Meetings of each Consortium Body may also be held by teleconference or other telecommunication means.</p> <p>6.2.2.87 Decisions will only be binding once the relevant part of the Minutes has been accepted according to Section 6.2.5.</p> <p><u>6.2.2.8 Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document, which is then agreed by the defined majority (see Section 6.2.3) of all Members of the Consortium Body. Such document shall include the deadline for responses.</u></p> <p><u>Decisions taken without a meeting shall be considered as accepted if, within the period set out in article 6.2.4.4, no Member has sent an objection in writing to the chairperson. The decisions will be binding after the chairperson sends to all Members of the Consortium Body and to the Coordinator a written notification of this acceptance.</u></p>		
6.2.3 Voting rules and quorum		
6.2.3.1 Each Consortium Body shall not deliberate and		

<p>decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).</p> <p>If the quorum is not reached, the chairperson of the Consortium Body shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, -the chairperson shall convene an extraordinary meeting, which shall be entitled to decide even if less than the quorum of Members are present or represented.</p> <p>6.2.3.2 Each Member of a Consortium Body present or represented in the meeting shall have one vote.</p> <p>6.2.3.3 Defaulting Parties<u>A Party which the General Assembly has declared according to Section 4.2 to be a Defaulting Party</u> may not vote.</p> <p>6.2.3.4 Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast.</p>	<p>A Party which the General Assembly has declared pursuant to Section 4.2 to be a Defaulting Party may not exercise any vote or participate in any further Consortium Body decision-making following the declaration of default.</p>
<p>6.2.4 Veto rights</p>	
<p>6.2.4.1 A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of a Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.</p> <p>6.2.4.2 When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting only.</p> <p>6.2.4.3 When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 calendar days after the draft minutes of the meeting are sent. <u>A Party that is not a Member of a particular Consortium Body may veto a decision within the same number of calendar days after the draft minutes of the meeting are sent.</u></p> <p><u>6.2.4.4 When a decision has been taken without a meeting a Member may veto such decision within 15 calendar days after written notification by the chairperson of the outcome of the vote.</u></p> <p><u>6.2.4.5 In case of exercise of veto, the Members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its Members.</u></p>	<p><u>"Own work" covers the work under the responsibility of the Member. This can include tasks to be fulfilled by Linked Third Parties.</u></p>

<p><u>6.2.4.6 A Party may neither veto decisions relating to its identification to be in breach of its obligations nor to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the consortium or the consequences of them.</u></p> <p><u>6.2.4.7 A Party requesting to leave the consortium may not veto decisions relating thereto.</u></p>	<p><u>The alleged Defaulting Party may vote but may not exercise its veto right.</u></p>
<p>6.2.4.4 In case of exercise of veto, the Members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its Members.</p> <p>6.2.4.5 A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the consortium or the consequences of them.</p> <p>6.2.4.6 A Party requesting to leave the consortium may not veto decisions relating thereto.</p>	<p>The alleged Defaulting Party may vote but may not exercise its veto right.</p>
<p>6.2.5 Minutes of meetings</p>	
<p>6.2.5.1 The chairperson of a Consortium Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He/<u>she</u> shall send the draft minutes to all Members within 10 calendar days of the meeting.</p> <p>6.2.5.2 The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has sent an objection in writing to the chairperson with respect to the accuracy of the draft of the minutes.</p> <p>6.2.5.3 The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.</p>	
<p>6.3 Specific operational procedures for the Consortium Bodies</p>	
<p>6.3.1 General Assembly</p>	
<p>In addition to the rules described in Section 6.2, the following rules apply:</p>	

<p>6.3.1.1 Members</p>	
<p>6.3.1.1.1 The General Assembly shall consist of one representative of each Party (hereinafter General Assembly Member).</p> <p>6.3.1.1.2 Each General Assembly Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.1.2. of this Consortium Agreement.</p> <p>6.3.1.1.3 The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise in a meeting of the General Assembly.</p> <p>6.3.1.1.4 The Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 11.8.</p>	<p>The Party must ensure internally that the person acting at a meeting has the necessary authority or has obtained a mandate from the competent officer/s for the decisions to be taken. As the agenda is circulated before the meeting, with decision items marked, - any necessary internal authorisation can be obtained in advance.</p> <p>However if the person who attends the meeting is not authorised by his or her institution or company to make a proposed decision on behalf of that institution or company, <u>a mechanism inside the Member will organisation has to ensure that he or she duly transfers</u> the information on such decision to <u>be taken is transferred to</u> the authorised representative for his or her institution or company <u>beforehand for decision on how to vote</u>.</p>
<p>6.3.1.2 Decisions</p>	
<p>The General Assembly shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. In addition, all proposals made by the Executive Board shall also be considered and decided upon by the General Assembly.</p>	
<p>The following decisions shall be taken by the General Assembly:</p> <p>Content, finances and intellectual property rights</p> <ul style="list-style-type: none"> - Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Funding Authority - Changes to the Consortium Plan - Modifications to Attachment 1 (Background Included) - Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.23.2) - Additions to Attachment 4 (Identified Affiliated Entities) <p>Evolution of the consortium</p> <ul style="list-style-type: none"> - Entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party - Withdrawal of a Party from the consortium and the approval of the settlement on the conditions of the withdrawal - Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement 	<p>The identification of the breach is a first step in accordance with the procedure in 4.2 before declaring a Party as a Defaulting Party.</p>

<ul style="list-style-type: none"> - Declaration of a Party to be a Defaulting Party - Remedies to be performed by a Defaulting Party - Termination of a Defaulting Party's participation in the consortium and measures relating thereto - Proposal to the Funding Authority for a change of the Coordinator - Proposal to the Funding Authority for suspension of all or part of the Project - Proposal to the Funding Authority for termination of the Project and the Consortium Agreement <p>Appointments</p> <p>On the basis of the Grant Agreement, the appointment if necessary of:</p> <ul style="list-style-type: none"> - Executive Board Members 	
<p>6.3.2 Executive Board</p>	
<p>In addition to the rules in Section 6.2, the following rules shall apply:</p>	
<p>6.3.2.1 Members</p>	
<p>The Executive Board shall consist of the Coordinator and the Parties appointed by the General Assembly (hereinafter Executive Members).</p> <p>The Coordinator shall chair all meetings of the Executive Board, unless decided otherwise by a majority of two-thirds.</p>	<p>Majority as per Section 6.2.3.3</p>
<p>6.3.2.2 Minutes of meetings</p>	
<p>Minutes of Executive Board meetings, once accepted, shall be sent by the Coordinator to the General Assembly Members for information.</p>	
<p>6.3.2.3 Tasks</p>	
<p>6.3.2.3.1 The Executive Board shall prepare the meetings, propose decisions and prepare the agenda of the General Assembly according to Section 6.3.1.2.</p>	
<p>6.3.2.3.2 #The Executive Board shall seek a consensus among the Parties.</p>	
<p>6.3.2.3.3 The Executive Board shall be responsible for the proper execution and implementation of the decisions of the General Assembly.</p>	
<p>6.3.2.3.4 The Executive Board shall monitor the effective and efficient implementation of the Project.</p>	

<p>6.3.2.3.5 In addition, the Executive Board shall collect information at least every 6 months on the progress of the Project, examine that information to assess the compliance of the Project with the Consortium Plan and, if necessary, propose modifications of the Consortium Plan to the General Assembly.</p>	
<p>6.3.2.3.6 The Executive Board shall:</p> <ul style="list-style-type: none"> - agree on the Members of the Management Support Team, upon a proposal by the Coordinator - support the Coordinator in preparing meetings with the Funding Authority and in preparing related data and deliverables - prepare the content and timing of press releases and joint publications by the consortium or proposed by the Funding Authority in respect of the procedures of the Grant Agreement Article 29. 	<p>The first bullet point option is related to optional Section 6.5 which organizes<u>organises</u> the role and the tasks of the Management Support Team.</p>
<p>6.3.2.3.7 In the case of abolished tasks as a result of a decision of the General Assembly, the Executive Board shall advise the General Assembly on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.</p>	
<p>6.4 Coordinator</p>	
<p>6.4.1 The Coordinator shall be the intermediary between the Parties and the Funding Authority and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.</p> <p>6.4.2 In particular, the Coordinator shall be responsible for:</p> <ul style="list-style-type: none"> - monitoring compliance by the Parties with their obligations - keeping the address list of Members and other contact persons updated and available - collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Funding Authority - transmitting documents and information connected with the Project to any other Parties concerned - administering the financial contribution of the Funding Authority and fulfilling the financial tasks described in Section 7.3 - providing, upon request, the Parties with official copies 	<p>Specific requested documents could, for example, be related in particular to activities raising ethical and security issues or involving human embryos or human embryonic stem cells or dual-use goods or dangerous materials and substances See Chapter 4, Section 4 of the Grant Agreement (Rights and obligations of the Parties).</p> <p>The coordinator may delegate or subcontract part of the coordination tasks in accordance with <u>only within the limits of</u> Article 41.2 of the Grant Agreement.</p>

<p>or originals of documents whichthat are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.</p> <p>If one or more of the Parties is late in submission of any project deliverable, the Coordinator may nevertheless submit the other parties'Parties' project deliverables and all other documents required by the Grant Agreement to the Funding Authority in time.</p>	
<p>6.4.3 If the Coordinator fails in its coordination tasks, the General Assembly may propose to the Funding Authority to change the Coordinator.</p>	
<p>6.4.4 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement</p> <p>6.4.5 The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.</p>	<p>For example: <u>Things the Coordinator is explicitly allowed to do under the Consortium Agreement are,</u> - countersigning Annex 3 (accession form) of the Grant Agreement and Attachment 2 (accession document) of this Consortium Agreement with a new Party in response to a decision taken by the responsible Consortium Body under to Section 3.1 of this Consortium Agreement ; or - signing a Non-Disclosure Agreement with each member of the External Expert Advisory Board in accordance with Section 6.6.</p>
<p>[Option: 6.5 Management Support Team (Optional, where foreseen in Grant Agreement or otherwise decided by the consortium)]</p>	
<p>The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the Executive Board and shall assist and facilitate the work of the Executive Board and the Coordinator for executing the decisions of the General Assembly as well as the day-to-day management of the Project.]</p>	
<p>[Option: 6.6 External Expert Advisory Board (EEAB)</p>	
<p>(Optional, where foreseen in the Grant Agreement or otherwise decided by the consortium)</p> <p>An External Expert Advisory Board (EEAB) will be appointed and steered by the Executive Board. 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 will ensure that a non-disclosure agreement, which is executed between all Parties and each EEAB member. Its terms shall be not less stringent than those stipulated in this Consortium Agreement, and it shall be concluded no later than 30 calendar days after their nomination or before any confidential information will be exchanged, whichever date is earlier. The Coordinator shall</p>	

<p>write the minutes of the EEAB meetings and prepare the implementation of the EEAB's suggestions. The EEAB members shall be allowed to participate in General Assembly meetings upon invitation but have not any voting rights.]</p>	
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<p>Section 7: Financial provisions</p>	
<p>7.1 General Principles</p>	
<p>7.1.1 Distribution of Financial Contribution</p>	
<p>The financial contribution of the Funding Authority to the Project shall be distributed by the Coordinator according to:</p> <ul style="list-style-type: none"> - the Consortium Plan - the approval of reports by the Funding Authority, and - the provisions of payment in Section 7.3. <p>A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.</p>	<p>According to Article 4.2 of the Grant Agreement, Beneficiaries are allowed to transfer budget between different activities and between themselves. Consequently, in Horizon 2020 it is in the consortium's authority to implement the redistribution of tasks and budget according to the Consortium Plan. The updating of the Consortium Plan including the re-budgeting process characterises the following cycle:</p> <ul style="list-style-type: none"> - ___ decision on the Consortium Plan (Grant Agreement Annexes 1 and 2 as starting point) - ___ implementation of the Consortium Plan - ___ reporting of the implemented activities - ___ approval of reports/deliverables by the Funding Authority - ___ actualisation and re-planning for the next Consortium Plan - ___ decision on this proposed Consortium Plan by the General Assembly - ___ next management cycle of actualisation of the Consortium Plan including the re-budgeting. <p>As a consequence the description of the action in Annex 1 and the budget in Annex 2 may have to be updated following re-planning. See also elucidation to "Consortium Plan" in the definitions section.</p>
<p>7.1.2 Justifying Costs</p>	
<p>In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the Funding Authority. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Funding Authority.</p>	<p>This accounting system cannot be affected by the Funding Authority, by the consortium or one of the Parties, as is stated in the Grant Agreement. Experience shows that this is often not well understood and in consequence gives rise to certain problems. Making it part of this CA, is to ensure that the principle is maintained.</p>
<p>7.1.3 Funding Principles</p>	
<p>A Party which<u>that</u> spends less than its allocated share of the budget as set out in the Consortium Plan or – in case of</p>	<p><u>It is recommended that the consortium establishes a regular financial reporting and</u></p>

<p>reimbursement via unit costs - implements less units than foreseen in the Consortium Plan will be funded in accordance with its actual duly justified eligible costs only. A Party that spends more than its allocated share of the budget as set out in the Consortium Plan will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.</p>	<p><u>monitoring throughout the project in order to foresee deviations from the financial plan and to mitigate them if required. This monitoring would usually be performed by the management team of the project.</u></p> <p>The Grant Agreement explicitly gives a consortium the possibility to shift tasks and/or money between Parties. This is one reason for having a Consortium Plan that can be different from the actual Annex 1. [see also Section 7.1.1. and Section 1.2 for elucidation] This section makes sure that Parties will not be able to spend more than is permitted by the budget in the Consortium Plan. In case a Party spends more money, it may ask for a supplement. Such request shall be addressed to the General Assembly (see Section 6.3.1.2 [GOV LP] / 6.3.6 [GOV SP]). In cases the Consortium Plan is not deviating from Annex 1 this provision falls back to the standard provisions in the Grant Agreement, with the same effect. A Party may receive an additional contribution if at the end of the project the total eligible costs claimed allow a reallocation of unspent EU contribution among the consortium – to be decided in the General Assembly.</p>
<p><u>7.1.4 Return of excess payments; receipts</u></p>	
<p><u>7.1.4.1 In any case of a Party having received excess payments, the Party has to return the relevant amount to the Coordinator without undue delay.</u></p> <p><u>7.1.4.2 In case a Party earns any receipt that is deductible from the total funding as set out in the Consortium Plan, the deduction is only directed toward the Party earning such income. The other Parties' financial share of the budget shall not be affected by one Party's receipt. In case the relevant receipt is more than the allocated share of the Party as set out in the Consortium Plan, the Party shall reimburse the funding reduction suffered by other Parties.</u></p>	<p><u>7.1.4 deals with over- and underspending (7.1.4.1) and with receipts (7.1.4.2).</u></p> <p><u>For the treatment of receipts as per the Grant Agreement, please refer to MGA Art. 5.3.</u></p>

<u>7.1.5 Financial Consequences of the termination of the participation of a Party</u>	

7.1.4 Financial Consequences of the termination of the participation of a Party	
A Party leaving the consortium shall refund all payments it has received except the amount of contribution accepted by the Funding Authority or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Section 5.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks.	
7.2 Budgeting	
The budget set out in the Consortium Plan shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.	<p>Above all management challenges require effective and regular (re-)budgeting of all resources needed to execute the Project, taking into account that 15% of the maximum contribution will only be paid to the consortium after the end of the project.</p> <p>As a consequence of the (re-)budgeting process an updated Consortium Plan will be issued.</p> <p>The consortium may face the need to fine tune for different funding modes (eligible costs, lump sum, flat rate and scale of unit costs) within the Project. The various schemes may be imposed by the Funding Authority and/or implemented at the request of the consortium.</p> <p>As a consequence these will be reflected in the budget and the payment scheme for the related task.</p> <p>Referring to Innovation Actions that are coordinated by a for-profit organization<u>organisation</u> that thus only receives a</p>

		<p>funding rate of 70% it may be discussed in the consortium whether an additional agreement should be found on who will cover the major shares of remaining management and dissemination costs.</p>
7.3 Payments		
<p>7.3.1 Payments to Parties are the exclusive tasks of the Coordinator.</p> <p>In particular, the Coordinator shall:</p> <ul style="list-style-type: none"> - notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references - perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts - undertake to keep the Community Funding Authority's financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation. <p>With reference to Articles 21.2 and 21.3.2 of the Grant Agreement, no Party shall before the end of the Project 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.</p>		<p>After approval of the periodic reports interim payments will follow and will be calculated on the basis of the accepted eligible costs and the corresponding reimbursement rates. The amounts paid for interim payments will correspond to the accepted EU contribution. With reference to Articles 21.2 and 21.3.2 of the Grant Agreement,, the total amount of interim payments + pre-financing will be limited to 90% of each beneficiary's maximum EU contribution.</p> <p>In accordance with the Grant Agreement project end means the day when the payment of the balance is done by the Funding Authority.</p> <p>It will normally be paid within 90 days from receiving the final report.</p>
7.3.2		
<p>The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following:</p>		<p>This schedule merely details in which way the distribution of the money as given in 7.1.1. has to be performed.</p> <p><u>This should be carefully set up. Experience shows that the Parties risk financial losses if e.g. a Party receives more advance payment than it can justify towards the Funding Authority at the end of the project but refuses to reimburse the funds. Court proceedings on this issue might be lengthy and unsuccessful.</u></p> <p><u>Although the risk of Parties refusing to reimburse excess funds most often becomes apparent after the final report, the Guarantee Fund does not in general cover this risk after that. The Co-ordinator in this situation certainly must not bear the loss on its own. Thus, you may consider adding language to that effect.</u></p>
<p><u>[Option 1:]</u></p> <p>- <u>Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority in separate</u></p>	<p><u>[Option 2:]</u></p> <p><u>Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority without undue</u></p>	<p>As referred above, the Consortium Plan undergoes a cyclic update.</p> <p>As a consequence the Consortium Plan follows the reporting period to the Funding Authority.</p> <p>In order to help the consortium to react on changed circumstances swiftly and to produce</p>

<p><u>instalments as agreed below:</u></p> <table border="1" data-bbox="193 253 587 427"> <tr> <td>- <u>Xx %</u></td> <td>- <u>on receipt of Advance Payment</u></td> </tr> <tr> <td>- <u>.....</u></td> <td>- <u>.....</u></td> </tr> </table> <p>- <u>Funding for costs accepted by the Funding Authority will be paid to the Party concerned.</u></p>	- <u>Xx %</u>	- <u>on receipt of Advance Payment</u>	- <u>.....</u>	- <u>.....</u>	<p><u>delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the Funding Authority will be paid to the Party concerned.</u></p>	<p>deliveries in good time and of good quality, the Consortium Plan can foresee mechanisms to that effect. The framework for these mechanisms consists of the principles stipulated in art. 7.1.1. In all mechanisms the Coordinator executes the decisions of the consortium.</p> <p>These mechanisms should effectuate the distribution of the two kinds of payments representing the Community financial contribution: 1.the payments for future work (= Pre-financing) and 2. the payments for performed work (= Interim payments).</p> <p>In order to enhance governance, instalments can be embedded in the payment scheme: 4 models of instalments are presented here. They can be applied separately or in combination, and should be effectuated towards each Party individually. In any case partners should always receive enough contribution to be able to carry out their work as foreseen without having to do advance payments themselves.</p> <p>a. in amounts to cover the realisation of the next deliverable -not necessary covering the whole actual planning period</p> <p>b. amounts to cover the planned work for the next X months</p> <p>c. amounts to cover YY% of the actual planning period</p> <p>d. including a retention of ZZ% ; which will be paid out at acceptance of all related deliverables.</p> <p>By consequence of implementing instalments all money will be retained until payment is due governed by the Payment Schedule</p> <p>You may wish to replace “undue delay” by a fixed number of calendar days.</p>
- <u>Xx %</u>	- <u>on receipt of Advance Payment</u>					
- <u>.....</u>	- <u>.....</u>					
<p>— [Option 1:]</p> <p>— Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority in separate instalments as agreed below:</p> <table border="1" data-bbox="193 1727 587 1901"> <tr> <td>— Xx %</td> <td>— on receipt of Advance Payment</td> </tr> <tr> <td>— ..</td> <td>— ...</td> </tr> </table> <p>— Funding for costs</p>	— Xx %	— on receipt of Advance Payment	— ..	— ...	<p>[Option 2:]</p> <p>Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority without undue delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the Funding Authority will be paid to the Party concerned.</p>	
— Xx %	— on receipt of Advance Payment					
— ..	— ...					

<p>accepted by the Funding Authority will be paid to the Party concerned.</p>		
<p>The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or to a Beneficiary which has not yet signed this Consortium Agreement. The Coordinator is entitled to recover any payments already paid to a Defaulting Party. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Funding Authority.</p>		<p>A Beneficiary not wanting to become a Party to this Consortium Agreement is showing bad behaviour. It is in the interest of both the consortium and the Funding Authority not to forward any money. Poor quality of work or reports may be considered to be a breach. Withholding payments when this <u>is</u> suggested by or agreed with the EU may actually occur in cases where a Partner is deemed to be financially weak.</p>

<p>Section 8: Results</p>		
<p>8.01 Ownership of Results Results are owned by the Party that generates them.</p>		<p>Internally, the Parties have to ensure that they comply with Article 26.3 of the Grant Agreement - rights of third parties (including personnel)</p>
<p>8.42 Joint ownership <u>Joint ownership is governed by Grant Agreement Article 26.2 with the following additions:</u></p>		<p>You may wish to take into consideration <u>Be aware</u> that the <u>Grant AgreementGA</u> in <u>Article 26.2 now expressly provides</u>H2020 <u>explicitly allows</u> that the joint owners may agree to apply another regime than joint ownership, <u>but only</u> once the results have been generated. <u>(Article 26.2 of MGA).</u></p>
<p>[Option 1:] Unless otherwise agreed: - each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and - each of the joint owners shall be entitled to otherwise Exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given: (a) at least 45 calendar days advance notice; and (b) Fair and Reasonable compensation.</p>	<p>[Option 2:] In case of joint ownership, each of the joint owners shall be entitled to Exploit the jointly owned Results as it sees fit, and to grant non-exclusive licences, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners. The joint owners shall agree on all protection measures and the division of related cost in advance.</p>	<p>You may find it useful to be more specific about the kind of research activities you want to cover with this first indent of option 1, but please be aware that in principle it shall only cover activities wherein no further transfer or licensing of such jointly owned IP is required (otherwise, this should be dealt with under the second indent). I.e., So, the first indent will typically comprehend the main activities of universities or research organisations: own internal research and collaborative research (with or without public funding). Such research activities of Industry or SME are, of course, also covered by this provision. Research activities on behalf of a third party may also be understood to be non-commercial, in particular if they are performed by a non-profit research organisation. The Parties should however be aware that under certain circumstances it may be appropriate to interpret certain research activities on behalf of a third party as commercial. If this aspect is expected to be relevant in the project, it may be appropriate for the Parties to define in more detail how far research on behalf of a third party shall be included in non-commercial</p>

	<p>activities which are free of sharing benefits and information obligations.</p> <p>Be aware that joint ownership only arises if relative contributions cannot be separated for protection purposes (Article 26.2 MGA), which means that it is mostly relevant in the context of patenting. Where it is about commercially valuable IP, we strongly recommend having a detailed Joint ownership agreement. This will allow beneficiaries to come to a detailed arrangement wherein they can both capture this value to its fullest extent.</p> <p>In such a context, there will in any case be a need for detailed agreements on the division of protection related cost, countries to be covered etc. which will typically be covered by a separate Joint Ownership agreement on a case by case basis. This will override the CA and allow adequate provisions for the individual case.</p> <p>In most other situations, and especially if no protection measures are considered to be useful, it will typically be more important for all parties concerned to use their own results for future projects without having to obtain the agreement of the other owners.</p> <p>If the two options don't suit you, then possibly the MGA text is a compromise (see below). Then Please consider, however, consider that for own use (not mentioned by the MGA) the national legal systems may be different.</p> <p>MGA, Article 26.2: Unless otherwise agreed: - each of the joint owners shall be entitled to Exploit their jointly owned Results on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and - each of the joint owners may grant non-exclusive licenses to third parties to exploit jointly-owned Results (without any right to sub-license), if the other joint owners are given: (a) at least 45 calendar days advance notice; and (b) Fair and Reasonable compensation.</p>
<p>8.23 Transfer of Results</p>	
<p>8.23.1 Each Party may transfer ownership of its own Results following the procedures of the Grant Agreement Article 30.</p> <p>8.23.2 It may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (3) to this Consortium Agreement. The other Parties hereby waive</p>	

<p>their right to prior notice and their right to object to a transfer to listed third parties according to the Grant Agreement Article 30.1.</p> <p>8.23.3 The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment (3) after signature of this Agreement requires a decision of the General Assembly.</p> <p>8.23.4 The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, it may be impossible under applicable EU and national laws on mergers and acquisitions for a Party to give the full 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.</p> <p>8.23.5 The obligations above apply only for as long as other Parties still have - or still may request - Access Rights to the Results.</p>	
<p>8.34 Dissemination</p>	<p>Be aware that one of the main new features of H2020 is the obligation to make all publications of results available under open access, Article 29.2 MGA, and that open access to data may be foreseen, optional clause 29.3 MGA.</p>
<p><u>8.4.1 For the avoidance of doubt, nothing in this Section 8.4 has impact on the confidentiality obligations set out in Section 10.</u></p>	<p><u>The confidentiality obligations exists regardless of the rules on dissemination. If your planned publication might contain confidential information of other parties, follow the rules in Section 10 first.</u></p>
<p>8.3.14.2 Dissemination of own Results</p>	
<p>8.3.14.2.1 During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 29.1 of the Grant Agreement subject to the following provisions. Prior notice of any planned publication shall be given to the other Parties -at least 45 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement in writing to the Coordinator and to the Party or Parties proposing the dissemination within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.</p> <p>8.3.14.2.2 An objection is justified if (a) the protection of the objecting Party's Results or Background would be adversely affected (b) the objecting Party's legitimate academic or commercial interests in relation to the Results or Background- would be</p>	<p>The MGA obligation of Article 29 on this procedure is not expressly limited in time at all. Participants need, however, a defined end of this obligation to ask their project partners before each publication. The limit can be adapted to the needs of the individual project and might span from directly after the end of the project to 4 years afterwards.</p> <p><u>To avoid doubt: "dissemination" as per its definition in the GA does not cover patent application activities.</u></p>

<p>significantly harmed.</p> <p>The objection has to include a precise request for necessary modifications.</p>	
<p>8.3.14.2.3 If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.</p> <p>The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted, provided that Confidential Information of the objecting Party has been removed from the Publication as indicated by the objecting Party.</p>	
<p>8.4.3.2 Dissemination of another Party's unpublished Results or Background</p> <p>A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published.</p>	<p>Where unpublished material from more than one beneficiary is involved, the procedure of Section 8.34.1. will normally lead to a joint publication. This Section 8.34.2. simply wishes to clearly state the principle that each beneficiary remains solely entitled to decide on first publication of its own unpublished materials (be they Background or Results).</p>
<p>8.3.34.4 Cooperation obligations</p>	
<p>The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which<u>that</u> includes their Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.</p>	
<p>8.3.4.5 Use of names, logos or trademarks</p>	
<p>Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.</p>	
<p>[Option: 8.4 Exclusive licenses</p>	<p>If exclusive licences are likely in your project, it may be useful to add the procedure suggested in the new 8.4.</p>
<p>Where a Party wishes to grant an exclusive licence to its Results and seeks the written waiver of the other Parties pursuant to Grant Agreement Article 30.2, the other Parties</p>	

<p>shall respond to the requesting Party within 45 calendar days of the request. Any Party's failure to respond (whether in the negative or the positive) to the request within such 45 calendar days shall be deemed to constitute written approval of the waiver by the non-responding Party.]</p>	
<p>Section 9: Access Rights</p>	
<p>9.1 Background included</p>	
<p>9.1.1 In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.</p> <p>Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.</p> <p>9.1.2 Any Party can propose <u>may add further own Background</u> to <u>Attachment 1 during the Project by written notice to the other Parties</u>. However, <u>approval of the General Assembly is needed should a Party wish</u> to modify <u>or withdraw</u> its Background in Attachment 1.</p>	<p>!! Beware <u>Be aware</u> – Attachment 1 is a vital document – check what your project partners are listing and (more importantly) not listing!!!</p> <p>Earlier framework programmes required the parties to define Background and to make any exclusions "specific". This was translated into the Consortium Agreements by having Background exclusion lists, mostly in addition to the list of Background Included. The MGA for H2020 now obliges the parties to "identify and agree" upon the Background for the Project. Therefore, DESCA2020 proposes to work with actively listed Background. It is the responsibility of the parties to make this 'agreement on Background'.</p> <p>It seems reasonable to expect that if parties know of a specific need for access rights to specific Background, they will be able to identify this up front (potentially with limitations). In any case, such a duty to inform is explicitly mentioned in Article 25.2 and 25.3 of the MGA) and this information needs to be shared before accession to the GA.</p> <p>The counterpart of working with a positive list is that the parties fully accept that anything not listed simply IS no Background, and that therefore, there is no reason to "exclude" it.</p> <p>That is the reason why there is no need any more to explicitly exclude background in Attachment 1 such as the background of research units not involved in the Project as was usual in FP7 Consortium Agreements.</p>
<p>9.2 General Principles</p>	<p>The MGA does not contain a clause anymore on general principles for access rights. There are only parts of this scattered throughout the MGA (such as Article 25.1 for Background and Article 30.2 for Results).</p>
<p>9.2.1 Each Party shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party property rights.</p>	<p>This clauses wants to make clear that in their scientific and technological exchanges, the parties should be cautious about potential legal limits caused by intellectual property rights (regardless of the owner thereof).</p>

	<p>If Attachment 1 is missing important Background which turns out to be needed for the implementation of the Project as planned in Annex 1 of the Grant Agreement, this becomes a problem for the whole consortium, since it is jointly responsible towards the Funding Authority for achieving the planned project results. Although it will in the first instance be up to the owner of the Background concerned to remedy the situation (they had a duty to inform the consortium about the situation of their Background), if no consensus between the parties concerned can be found it will eventually be up to the consortium decision-making bodies to find a case-by-case solution.</p> <p>As soon as the consortium becomes aware of such restrictions, it has to decide whether this has an impact on the Project, including the Exploitation as foreseen in Annex 1 and the Consortium Plan. If there is an impact, the Consortium Plan can be updated accordingly. The consortium can also keep the Consortium Plan as it is. This can mean that you are not allowed to use certain restricted Background and you have to implement the task in another way.</p>
<p>9.2.2 Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.</p> <p>9.2.3 Access Rights shall be free of any administrative transfer costs.</p> <p>9.2.4 Access Rights are granted on a non-exclusive basis.</p>	<p>See Article 25.1 MGA.</p> <p>Of course, especially when an agreement on specific conditions for Access Rights is negotiated, the parties may agree to include a right to sublicense.</p> <p>Regarding exclusive licenses see Article 30.2 MGA and elucidations on optional Section 8.4.</p>
<p>9.2.5 Results and Background shall be used only for the purposes for which Access Rights to it have been granted.</p>	
<p>9.2.6 All requests for Access Rights shall be made in writing.</p> <p>The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.</p>	<p>The Party granting the access can also request to have a written agreement.</p>
<p>9.2.7 The requesting Party must show that the Access Rights are Needed.</p>	<p>See definition of "Needed" in Definition section.</p>
<p>9.3 Access Rights for implementation</p>	
<p>Access Rights to Results and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.</p>	<p>The Parties may in their entries of thefor Attachment 1 detail access conditions for specific Background listed (e.g. upon royalties). Conditions other than royalty-free for Access to Background have to be agreed by all Parties before their accession to the MGA (Article 25.2 (b))).</p>

9.4 Access Rights for Exploitation		
[Option 1:] 9.4.1 Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable conditions. Access rights to Results for internal research activities shall be granted on a royalty-free basis.	[Option 2:] 9.4.1 Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on a royalty-free basis.	<p>Since access rights exclude the right to sublicense (Section 9.2.4 above), parties should be aware that their further "exploitation" should not require such sublicensing (even through the granting of access rights in a subsequent research project).</p> <p>Option 1: Access for exploitation for internal research is free, access for any other exploitation of own Results (including third party research) will be granted on Fair and Reasonable conditions.</p> <p>Any Party exploiting another Party's Results has to take care not to grant direct access to a third party, unless the owning Party has agreed to such granting of Access Rights.</p> <p>Possible agreements regarding access to certain Results/ Background for further research might e.g. include the following aspects: Allowing to produce research results which are available to the third party but which contain hermetically-sealed Results from the Project; using Results from the Project for in-house testing or diagnosis purposes in doing research.</p> <p>Option 2: All Access for Use of own Foreground will be granted royalty-free.</p> <p>As per Section 9.2.6, the request for Access Rights is to be in writing, the agreement on fair and reasonable conditions normally also, unless both parties don't want that formality.</p>
9.4.2 Access Rights to Background if Needed for Exploitation of a Party's own Results, including for research on behalf of a third party, shall be granted on Fair and Reasonable conditions.		
9.4.3 A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.		<u>The default time limit in the MGA (Articles 25.3 and 31.4.) is one year.</u>
9.5 Access Rights for Affiliated Entities		Be aware that the wording of the MGA also allows different approaches, e.g. to not foresee access rights for Affiliated Entities.
<p>Affiliated Entities have Access Rights under the conditions of the Grant Agreement Articles 25.4 and 31.4.</p> <p>[Optional: , if they are identified in [Attachment 4 (Identified Affiliated Entities) to this Consortium Agreement].</p>		<p>Regarding the optional addition: -an identification of affiliates can bring more certainty to the parties regarding the scope of the access rights of their consortium. Some Industry partners however tend to frequently change their company structure and it may be more realistic that they provide a global description of that structure rather than a list of the hundreds of individual entities involved.</p>

	Definition of Affiliated Entity: See Article 2.1(2) of the Rules for Participation .
<p>Such Access Rights must be requested by the Affiliated Entity from the Party that holds the Background or Results. Alternatively, the Party granting the Access Rights may individually agree with the Party requesting the Access Rights to have the Access Rights include the right to sublicense to the latter's Affiliated Entities [listed in Attachment 4]. Access Rights to Affiliated Entities shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.</p> <p>Affiliated Entities which obtain Access Rights in return fulfil all confidentiality and other obligations accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such Affiliated Entities were Parties.</p> <p>Access Rights may be refused to Affiliated Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.</p>	In contrast to FP7, the MGA in Articles 25.4 and 31.4 now contains an explicit default provision indicating that the Affiliated Entity concerned must make the request directly to the owning Party.
Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.	
<p>Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.</p> <p>Further arrangements with Affiliated Entities may be negotiated in separate agreements.</p>	
9.6 Additional Access Rights	
<p>[Option 1:]</p> <p>For the avoidance of doubt any grant of Access Rights not covered by the Grant Agreement or this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.</p>	<p>[Option 2:]</p> <p>The Parties agree to negotiate in good faith any additional Access Rights to Results as might be asked for by any Party, upon adequate financial conditions to be agreed.</p>
9.7 Access Rights for Parties entering or leaving the consortium	

9.7.1 New Parties entering the consortium	
As regards Results developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.	Any new Party must fill in Attachment 1 regarding Background – to be decided by the General Assembly together with the decision on the accession.
9.7.2 Parties leaving the consortium	
9.7.2.1 Access Rights granted to a leaving Party	
9.7.2.1.1 Defaulting Party	
Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the General Assembly to terminate its participation in the consortium.	Any consequences for sub-licences have to be covered in the licence itself.
9.7.2.1.2 Non-defaulting Party	
A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Results developed until the date of the termination of its participation. It may request Access Rights within the period of time specified in Section 9.4.3.	In case of a Party leaving voluntarily its Access Rights shall be frozen as they are at the time such Party leaves the project. The time limit for the right to request Access Rights is one year (MGA Articles 25.3 and 31.4). Any consequences for sub-licences have to be covered in the licence itself.

9.7.2.2 Access Rights to be granted by any leaving Party	
Any Party leaving the Project shall continue to grant Access Rights pursuant to the Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.	Parties leaving the Project in principle have to continue granting Access Rights in order not to hinder the progress of the Project. When deciding about a Party's request to leave the consortium, the General Assembly may, however, decide that such Access Rights will not be necessary.
9.8 Specific Provisions for Access Rights to Software	
For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software. Parties' Access Rights to Software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.	[If Software is a core element for the Project, participants may replace this Article 9.8 with the special clauses for Software [Module IPR SC]].
Section 10: Non-disclosure of information	
10.1 All information in whatever form or mode of	"Any form/mode of communication" will now also include the electronic exchange system.

<p>communication, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with the Project during its implementation and which has been explicitly marked as “confidential” at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.</p>	<p>Other than orally disclosed Confidential Information must be identified as confidential at the time it is disclosed (see MGA Article 36.1).</p>
<p>10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of 4 years after the end of the Project:</p> <ul style="list-style-type: none"> - not to use Confidential Information otherwise than for the purpose for which it was disclosed; - not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party; - to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and - to return to the Disclosing Party, <u>or destroy</u>, on demand<u>request</u> all Confidential Information which that has been supplied<u>disclosed</u> to-or-acquired-by the Recipients including all copies thereof and to delete all information stored in a machine readable form: <u>to the extent practically possible</u>. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations <u>provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained</u>. 	<p>The consent of the owner of confidential data is needed before giving it to subcontractors /affiliates even if those have a role in project.</p> <p>The source of this 4-year duration lies in the MGA, Article 36.</p> <p><u>The obligation is not to disclose confidential information to anybody (whether inside the consortium or not).</u></p>
<p>10.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or -third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.</p>	<p>Consent of the owner of the Confidential Information is needed before giving such Confidential Information to Third Parties<u>third parties</u> (e.g. subcontractors and affiliates-):</p> <p>Third parties in this context covers any entities which are not a party to the CA, including but not limited to linked third parties and subcontractors. It is <u>independent in this context</u>not relevant whether <u>the</u> third parties are involved in the project or not.</p>
<p>10.4 The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:</p> <ul style="list-style-type: none"> - the Confidential Information <u>has become or</u> becomes 	

<p>publicly available by means other than a breach of the Recipient's confidentiality obligations;</p> <ul style="list-style-type: none"> - the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential; - the Confidential Information is communicated to the Recipient without any obligation of confidenee<u>confidentiality</u> by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidenee<u>confidentiality</u> to the Disclosing Party; - the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement; - the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or - the Confidential Information was already known to the Recipient prior to disclosure; or - the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.7 hereunder. 	
<p>10.5 The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.</p>	
<p>10.6 Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.</p>	
<p>10.7 If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure</p> <ul style="list-style-type: none"> - notify the Disclosing Party, and - comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information. 	
<p>Section 11: Miscellaneous</p>	
<p>11.1 Attachments, inconsistencies and severability</p>	
<p>This Consortium Agreement consists of this core text and Attachment 1 (Background included) Attachment 2 (Accession document) Attachment 3 (List of Third Parties for simplified transfer according to Section 8.2.2)</p>	<p>Please note to delete reference to Attachment 4 if not used <u>in Section 9.5</u>.</p>

<p>Attachment 4 (Identified Affiliated Entities) In case the terms of this Consortium Agreement are in conflict with the terms of the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.</p>	
<p>Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which<u>that</u> fulfils the purpose of the original provision.</p>	
<p>11.2 No representation, partnership or agency</p>	
<p>Except as otherwise provided in Section 6.4.4, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.</p>	<p>Rights<u>Regarding the role</u> of the coordinator: see Section 6.4.</p>
<p>11.3 Notices and other communication</p>	
<p>Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator.</p> <p>Formal notices: If it is required in this Consortium Agreement (Sections 4.2, 9.7.2.1.1, and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.</p> <p>Other communication: Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.</p> <p>Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all concerned<u>Parties</u>.</p>	<p>Any communication which requires formal or written form is listed in this clause. Clear notifications and notification routes are important in view of the question of proof in dispute cases.</p> <p>Most of the issues should be decided in accordance with the governance structure chosen for the Project. This covers all technical issues and other issues in which decision making power is granted to a governing body. Only in Sections 4.2, 9.7.2.1.1 and 11.4 a formal notice is necessary. All other communication than "formal" may be taken for instance by e-mail with acknowledgement of receipt (e.g. Minutes). The updated lists of contact information shall be kept by the Coordinator (including scientific and administrative person(s)).</p>
<p>11.4 Assignment and amendments</p>	
<p>Except as set out in Section 8.23, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.</p>	<p>Note that subcontracting is not considered as an assignment as the responsibilities remain for the Party itself.</p>

<p>Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Section 6.3.1.2 (LP)/ 6.3.6 (SP) require a separate written agreement to be signed between all Parties.</p>	<p>Changes to the core text of the Consortium Agreement have to be negotiated between the Parties. All Parties should notice that some changes to this Consortium Agreement (for instance Accession of a new Party) may be taken by a decision made by the General Assembly and will not require a formal signature of each Party. Parties are protected against major contract changes through the use of veto rights (see Section 6.2.4 [GOV LP]/6.3.4 [GOV SP]).</p> <p>For small projects see [Module GOV SP] Article 6.3.6.</p>
<p>11.5 Mandatory national law</p>	
<p>Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.</p>	<p>The legislation of a Party's country may state certain statutory restrictions for the Parties, and naturally these restrictions should be respected by all Parties.</p>
<p>11.6 Language</p>	
<p>This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.</p>	
<p>11.7 Applicable law</p>	
<p>This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.</p>	<p>This Consortium Agreement has been drafted based on Belgian law. The Parties should however in all cases look into the choice of law in the Grant Agreement in order to harmonise possible conflicts.</p>
<p>11.8 Settlement of disputes</p>	
<p>The parties shall endeavour to settle their disputes amicably.</p>	<p>In case an amicable solution cannot be reached within the consortium, the following dispute resolution is recommended: 1.) Mediation, (if not successful) 2.) Binding arbitration or Courts</p> <p>DESCA suggests threetwo different providers for mediation and/or arbitration services for this model clause. There are of course more providers and the choice of the ADR-provider should be discussed within the consortium. If the consortium opts for another mediation and arbitration provider, please make sure that the ADR clause used in this consortium agreement is consistent with their specific procedures.</p>
<p>[Please choose an appropriate method of dispute resolution, possibly one of the options 1 (WIPO), 2 (bMediation) or 32 (ICC), and within these options). Within option 1, please further choose, between 1.1. and 1.2-or 2.1 and 2.2]</p>	<p>In cross-border disputes there are several issues to be considered in the context of dispute resolution: the costs of and time consumed by the process and the enforcement of the decision.</p>

[Option 1: WIPO Mediation Followed, in the Absence of a Settlement, by WIPO Expedited Arbitration or by Court Litigation]

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Brussels unless otherwise agreed upon. The language to be used in the mediation shall be English unless otherwise agreed upon.

[Please choose one of the following options.]

[Option 1.1. WIPO Mediation Followed, in the Absence of a Settlement, by WIPO Expedited Arbitration]

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 calendar days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of 60 calendar days, either Party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be Brussels unless otherwise agreed upon. The language to be used in the arbitral proceedings shall be English unless otherwise agreed upon.

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

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

~~[Option 2: Mediation by bMediation Followed, in the absence of a settlement, by CEPANI Arbitration or by the courts of Brussels]~~

~~Should a dispute arise between the Parties concerning the validity, the interpretation and/or the implementation of this Consortium Agreement, they will try to solve it through~~

Disputes arising in related contracts concluded at the preparatory stage of a research collaboration (e.g. letters of intent, non-disclosure agreements, options), during a collaboration (e.g. the consortium agreement, sub-contracts, material transfer agreements) and after a collaboration (e.g. licensing agreements, purchase contracts) may require consistent dispute resolution clauses.

In some cases, consortium partners will opt for mediation, followed by court litigation instead of arbitration. This is why DESCA proposes option 1.2. and 2.2 that refer the conflict to the courts instead of arbitration should the mediation fail.

For more information about the WIPO Arbitration and Mediation Center, visit <http://www.wipo.int/amc/en/>

For more information about the ICC Arbitration, visit

<http://www.iccwbo.org/products-and-services/arbitration-and-adr/>

~~For more information about bMediation, visit <http://www.bmediation.eu/>~~

~~For more information about the CEPANI, visit <http://www.cepani.be/en/>~~

<p>mediation, according to the rules of bMediation, Brussels. The Parties undertake not to put an end to the mediation before the introductory statement made by each Party in joint session.</p> <p>Should the mediation fail to bring about a full agreement between the Parties putting an end to the dispute,</p> <p>[Please choose one of the following options.]</p> <p>Option 2.1 said dispute will be finally settled by arbitration, according to the rules of the Belgian Centre for Arbitration and Mediation (in short: CEPANI).</p> <p>Option 2.2 sole competent courts will be the courts of Brussels.</p> <p>[Option 3]Option 2: ICC Arbitration]</p> <p>All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.</p> <p>The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties.</p> <p>The award of the arbitration will be final and binding upon the Parties.</p>	
<p>Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.</p>	

<p>Section 12: Signatures</p>	
<p>AS WITNESS: The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.</p>	<p>It is too impractical for all Parties to sign the same document at the same time.</p> <p>The procedure proposed for the signatures is widely used: Each Party signs a separate signature page as many times as there are Parties (it is also possible to sign only 1 or 2 originals as only one fully signed copy is necessary according to Belgian Law). The Coordinator gathers all originals and then delivers the whole package consisting of the text and all signatures (original or copies) to all Parties.</p>
<p>[INSERT NAME OF PARTY] Signature(s) Name(s) Title(s)</p>	

Date	
[INSERT NAME OF PARTY] Signature(s) Name(s) Title(s) Date	
[INSERT NAME OF PARTY] Signature(s) Name(s) Title(s) Date	

<p>[Attachment 1: Background included]</p> <p>According to the Grant Agreement (Article 24) Background is defined as “data, know-how or information (...) that is needed to implement the action or exploit the results”. Because of this need, Access Rights have to be granted in principle, but partiesParties must identify and agree amongst them on the Background for the project. This is the purpose of this attachment.</p> <p>PARTY 1</p> <p>As to [NAME OF THE PARTY], it is agreed between the partiesParties that, to the best of their knowledge (<i>please choose</i>),</p>	<p>!! BewareBe aware – Attachment 1 is a vital document – check what your project partners are listing and (more importantly) not listing!!</p> <p>Earlier framework programmes required the parties to define Background and to make any exclusions "specific". This was translated into the Consortium Agreements by having Background exclusion lists, mostly in addition to the list of Background Included. The new MGA for H2020 obliges the parties to “identify and agree” upon the Background for the Project. Therefore, DESCA2020 proposes to work with actively listed Background. It is the responsibility of the parties to make this ‘agreement on Background’.</p>									
<p>Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:</p>	<p>It seems reasonable to expect that if parties know of a specific need for access rights to specific Background, they will be able to identify this up front (potentially with limitations). In any case, such a duty to inform is explicitly mentioned in Article 25.2 and 25.3 of the MGA) and this information needs to be shared before accession to the GA.</p>									
<table border="1"> <thead> <tr> <th data-bbox="180 891 459 981">Describe Background</th> <th data-bbox="459 891 727 1149">Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)</th> <th data-bbox="727 891 1002 1149">Specific limitations and/or conditions for exploitationExploitation (Article 25.3 Grant Agreement)</th> </tr> </thead> <tbody> <tr> <td data-bbox="180 981 459 1149">...</td> <td data-bbox="459 981 727 1149">...</td> <td data-bbox="727 981 1002 1149">..</td> </tr> <tr> <td data-bbox="180 1149 459 1272">..</td> <td data-bbox="459 1149 727 1272">...</td> <td data-bbox="727 1149 1002 1272">..</td> </tr> </tbody> </table>	Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for exploitationExploitation (Article 25.3 Grant Agreement)	<p>The counterpart of working with a positive list is that the parties fully accept that anything not listed simply IS no Background, and that therefore, there is no reason to “exclude” it.</p>
Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for exploitationExploitation (Article 25.3 Grant Agreement)								
...								
..								
<p>Option 2: No data, know-how or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitationExploitation of that other Party’s Results (Article 25.3 Grant Agreement).</p>	<p>That is the reason why there is no need any more to explicitly exclude background in Attachment 1 such as the background of research units not involved in the Project as was usual in FP7 Consortium Agreements.</p> <p>The annotated MGA also allows for negative list. You may wish to refer to the FP7 DESCA if you prefer this approach.</p>									
<p>This represents the status at the time of signature of this Consortium Agreement.</p> <p>PARTY 2.</p> <p>As to [NAME OF THE PARTY], it is agreed between the partiesParties that, to the best of their knowledge (<i>please choose</i>)</p>										
<p>Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:</p>										

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for exploitation <u>Exploitation</u> (Article 25.3 Grant Agreement)
...
..
<p>Option 2: No data, know-how or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation<u>Exploitation</u> of that other Party's Results (Article 25.3 Grant Agreement).</p>		
<p>This represents the status at the time of signature of this Consortium Agreement.</p> <p>Etc.</p>		

[Attachment 2: Accession document]	
<p>ACCESSION</p> <p>of a new Party to</p> <p>[Acronym of the Project] Consortium Agreement, version [..., YYYY-MM-DD]</p> <p>[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE Grant Agreement]</p> <p>hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].</p> <p>[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE Grant Agreement]</p> <p>hereby certifies that the consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the consortium starting [date].</p> <p>This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.</p> <p>[Date and Place]</p> <p>[INSERT NAME OF THE NEW PARTY] Signature(s) Name(s) Title(s)</p> <p>[Date and Place]</p> <p>[INSERT NAME OF THE COORDINATOR] Signature(s) Name(s) Title(s)</p>	

[Attachment 3: List of Third Parties for simplified transfer according to Section 8.23.2.]	
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[Option: Attachment 4: Identified Affiliated Entities according to Section 9.5]

[Module GOV SP]	
Governance structure for Small Collaborative Projects	Choose [Module GOV SP] for Small Projects with a simple governance structure: only one governance board (General Assembly). Main difference: [Module GOV LP] has two governance boards (General Assembly and Executive Board)
6.1 General structure	
<p>The General Assembly is the decision-making body of the consortium.</p> <p>The Coordinator is the legal entity acting as the intermediary between the Parties and the Funding Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.</p> <p>[Option: The Management Support Team assists the General Assembly and the Coordinator.]</p>	
6.2 Members	
<p>The General Assembly shall consist of one representative of each Party (hereinafter referred to as “Member”).</p> <p>Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.6 of this Consortium Agreement.</p> <p>The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise by the General Assembly.</p> <p>The Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Section 11.8 of this Consortium Agreement.</p>	<p>A Member is a Party which is in a specific Consortium Body. Of course, each Party acts through individual persons.</p>
6.3 Operational procedures for the General Assembly	
6.3.1 Representation in meetings	
<p>Any Member:</p> <ul style="list-style-type: none"> - should be present or represented at any meeting; - may appoint a substitute or a proxy to attend and vote at any meeting; - and shall participate in a cooperative manner in the meetings. 	<p><u>If the person who attends the meeting is not authorised by his or her institution or company to make a proposed decision on behalf of that institution or company, a mechanism inside the organisation has to ensure that the information on such decision to be taken is transferred to the authorised representative for his or her institution or company beforehand for decision on how to vote.</u></p>
6.3.2 Preparation and organisation of meetings	
6.3.2.1 Convening meetings: The chairperson shall convene ordinary meetings of the	

<p>General Assembly at least once every six months and shall also convene extraordinary meetings at any time upon written request of any Member.</p> <p>6.3.2.2 Notice of a meeting: The chairperson shall give notice in writing of a meeting to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.</p> <p>6.3.2.3 Sending the agenda: The chairperson shall <u>prepare and</u> send each Member a written <u>(original)</u> agenda no later than 14 calendar days preceding the meeting, or 7 calendar days before an extraordinary meeting.</p> <p>6.3.2.4 Adding agenda items: Any agenda item requiring a decision by the Members must be identified as such on the agenda. Any Member may add an item to the original agenda by written notification to all of the other Members no later than 7 calendar days preceding the meeting.</p> <p>6.3.2.5 During a meeting of the General Assembly the Members present or represented can unanimously agree to add a new item to the original agenda.</p>	<p>If a topic comes up that may ultimately require a decision, the good practice is to organise a new meeting or a written procedure for decision on the topic, rather than deciding it during the meeting.</p>
<p>6.3.2.6 Any decision may also be taken without a meeting if the chairperson circulates to all Members a written document which is then signed by the defined majority of Members (see Section 6.3.3 of this Consortium Agreement).</p> <p>6.3.2.6 Such document shall include the deadline for responses.</p> <p>6.3.2.7 Meetings of the General Assembly may also be held by teleconference or other telecommunication means.</p> <p>6.3.2.87 Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.3.5 of this Consortium Agreement.</p> <p><u>6.3.2.8 Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document, which is then agreed by the defined majority (see Section 6.3.3) of all Members of the Consortium Body. Such document shall include the deadline for responses.</u></p> <p><u>Decisions taken without a meeting shall be considered as accepted if, within the period set out in article 6.3.4.4, no Member has sent an objection in writing to the chairperson. The decisions will be binding after the chairperson sends to all Members of the Consortium Body and to the Coordinator a written notification of this acceptance.</u></p>	

<p>6.3.3 Voting rules and quorum</p>	
<p>6.3.3.1 The General Assembly shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).</p> <p><u>If the quorum is not reached, the chairperson of the General Assembly shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members are present or represented.</u></p> <p>6.3.3.2 Each Member <u>present or represented in the meeting</u> shall have one vote.</p> <p>6.3.3.3 <u>A Party which the General Assembly has declared according to Section 4.2 to be a</u> Defaulting Parties<u>Party</u> may not vote.</p> <p>6.3.3.4 Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast.</p>	<p>A Party which the General Assembly has declared pursuant to Section 4.2 to be a Defaulting Party may not exercise any vote or participate in any General Assembly decision-making following the declaration of default.</p>
<p>6.3.4 Veto rights</p>	
<p>6.3.4.1 A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of the General Assembly may exercise a veto with respect to the corresponding decision or relevant part of the decision.</p> <p>6.3.4.2 When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting only.</p> <p>6.3.4.3 When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 <u>calendar</u> days after the draft minutes of the meeting are sent.</p> <p>6.3.4.4<u>6.3.4.4 When a decision has been taken without a meeting a Member may veto such decision within 15 calendar days after written notification by the chairperson of the outcome of the vote. .</u></p> <p><u>6.3.4.5</u> In case of exercise of veto, the Members shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Members.</p> <p>6.3.4.56<u>6.3.4.5</u> A Party may not<u>neither</u> veto decisions relating <u>to its identification to be in breach of its obligations nor</u> to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in</p>	<p><u>"Own work" covers the work under the responsibility of the Member. This can include tasks to be fulfilled by Linked Third Parties.</u></p> <p>The alleged Defaulting Party may vote but may not exercise its veto right.</p>

<p>the consortium or the consequences of them.</p> <p>6.3.4.67 A Party requesting to leave the consortium may not veto decisions relating thereto.</p>	
<p>6.3.5 Minutes of meetings</p>	
<p>6.3.5.1 The chairperson shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He/<u>she</u> shall send draft minutes to all Members within 10 calendar days of the meeting.</p> <p>6.3.5.2 The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has sent an objection in writing to the chairperson with respect to the accuracy of the draft of the minutes.</p> <p>6.3.5.3 The chairperson shall send the accepted minutes to all the Members of the General Assembly, and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.</p>	
<p>6.3.6 Decisions of the General Assembly</p>	
<p>The General Assembly shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein.</p>	
<p>The following decisions shall be taken by the General Assembly:</p> <p>Content, finances and intellectual property rights</p> <ul style="list-style-type: none"> - Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Funding Authority - Changes to the Consortium Plan - Modifications to Attachment 1 (Background Included) - Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.23.2) - Additions to Attachment 4 (Identified Affiliated Entities) <p>Evolution of the consortium</p> <ul style="list-style-type: none"> - Entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party - Withdrawal of a Party from the consortium and the approval of the settlement on the conditions of the withdrawal - Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement - Declaration of a Party to be a Defaulting Party - Remedies to be performed by a Defaulting Party - Termination of a Defaulting Party's participation in the consortium and measures relating thereto 	<p>The identification of the breach is a first step in accordance with the procedure in Section 4.2, before declaring a Party as a Defaulting Party.</p>

<ul style="list-style-type: none"> - Proposal to the Funding Authority for a change of the Coordinator - Proposal to the Funding Authority for suspension of all or part of the Project - Proposal to the Funding Authority for termination of the Project and the Consortium Agreement <p>Appointments</p> <p>[Option: Agree on the Members of the Management Support Team, upon a proposal by the Coordinator.]</p>	<p>This option is related to optional Section 6.5 which organizes the role and the tasks of the Management Support Team.</p>
<p>In the case of abolished tasks as a result of a decision of the General Assembly, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.</p>	
<p>6.4 Coordinator</p>	
<p>6.4.1 The Coordinator shall be the intermediary between the Parties and the Funding Authority and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.</p> <p>6.4.2 In particular, the Coordinator shall be responsible for:</p> <ul style="list-style-type: none"> - monitoring compliance by the Parties with their obligations - keeping the address list of Members and other contact persons updated and available - collecting, reviewing <u>to verify consistency</u> and submitting information on the progress of the Project and reports and other deliverables (including financial statements and related certification) <u>and specific requested documents</u> to the Funding Authority - preparing the meetings, proposing decisions and preparing the agenda of General Assembly meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings - transmitting promptly documents and information connected with the Project, <u>to any other Party concerned</u>, - administering the financial contribution of the Funding Authority and fulfilling the financial tasks described in Section 7.3 - providing, upon request, the Parties with official copies or originals of documents which<u>that</u> are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims. <p>If one or more of the Parties is late in submission of any project deliverable, the Coordinator may nevertheless submit the other parties' project deliverables and all other documents required by the Grant Agreement to the Funding Authority in time.</p>	<p>Specific requested documents could, for example, be related in particular to activities raising ethical and security issues or involving human embryos or human embryonic stem cells or dual-use goods or dangerous materials and substances. See Chapter 4, Section 4 (rights and obligations of the Parties) of the Grant Agreement.</p> <p>The coordinator may delegate or subcontract part of the coordination tasks in accordance with only within the limits of Article 41.2 of the Grant Agreement.</p>

<p>6.4.3 If the Coordinator fails in its coordination tasks, the General Assembly may propose to the Funding Authority to change the Coordinator.</p>	
<p>6.4.4 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement.</p> <p>6.4.5 The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.</p>	<p>For example: <u>Things the Coordinator is explicitly allowed to do under the Consortium Agreement are,</u> - countersigning Annex 3 (accession form) of the Grant Agreement and Attachment 2 (accession document) of this Consortium Agreement with a new Party in response to a decision taken by the responsible Consortium Body under to Section 3.1 of this Consortium Agreement ; or - signing a Non-Disclosure Agreement with each member of the External Expert Advisory Board in accordance with Section 6.6.</p>
<p>[Option: 6.5 Management Support Team</p> <p>(Optional, where foreseen in Grant Agreement or otherwise decided by the consortium)</p>	
<p>The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the General Assembly and shall assist and facilitate the work of the General Assembly.</p> <p>The Management Support Team shall provide assistance to the Coordinator for executing the decisions of the General Assembly. It shall be responsible for the day-to-day management of the Project.]</p>	
<p>[Option: 6.6 External Expert Advisory Board (EEAB)</p> <p>(Optional, where foreseen in Grant Agreement or otherwise decided by the consortium)</p>	
<p>An External Expert Advisory Board (EEAB) will be appointed and steered by the Executive Board. The EEAB shall assist and facilitate the decisions made by the General Assembly. The Coordinator is authorised to execute with each member of the EEAB will ensure that a non-disclosure agreement, which is executed between all Parties and each EEAB member. Its terms shall be not less stringent than those stipulated in this Consortium Agreement, and it shall be concluded no later than 30 days after their nomination or before any confidential information will be exchanged, whichever date is earlier. The Coordinator shall write the minutes of the EEAB meetings and prepare the implementation of the EEAB's suggestions. The EEAB members shall be allowed to participate in General Assembly meetings upon invitation but have not any voting rights.]</p>	

[MODULE IPR SC]	
Specific Software provisions	
9.8 Specific provisions for Access Rights to Software	
9.8.1 Definitions relating to Software	
<p>“Application Programming Interface” means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.</p> <p>“Controlled Licence Terms” means terms in any licence that require that the use, copying, modification and/or distribution of Software or another work (“Work”) and/or of any work that is a modified version of or is a derivative work of such Work (in each case, “Derivative Work”) be subject, in whole or in part, to one or more of the following:</p> <ul style="list-style-type: none"> a) (where the Work or Derivative Work is Software) that the Source Code or other formats preferred for modification be made available as of right to any third party on request, whether royalty-free or not; b) that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party; c) that a royalty-free licence relating to the Work or Derivative Work be granted to any third party. <p>For the avoidance of doubt, any Software licence that merely permits (but does not require any of) the things mentioned in (a) to (c) is not a Controlled Licence (and so is an Uncontrolled Licence).</p> <p>–“Object Code” means software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for linking procedures and functions to other software.</p> <p>“Software Documentation” means software information, being technical information used, or useful in, or relating to the design, development, use or maintenance of any version of a software programme.</p> <p>“Source Code” means software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.</p>	
9.8.2. General principles	

<p>For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software as far as not modified by this Section 9.8.</p> <p>Parties' Access Rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.</p>	
<p>The intended introduction of Intellectual Property (including, but not limited to Software) under Controlled Licence Terms in the Project requires the approval of the General Assembly to implement such introduction into the Consortium Plan.</p>	
<p>9.8.3. Access to Software</p>	
<p>Access Rights to Software whichthat is Results shall comprise: Access to the Object Code; and, where normal use of such an Object Code requires an Application Programming Interface (hereafter API), Access to the Object Code and such an API; and, if a Party can show that the execution of its tasks under the Project or the Exploitation of its own Results is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary.</p> <p>Background shall only be provided in Object Code unless otherwise agreed between the Parties concerned.</p>	
<p>9.8.4. Software licence and sublicensing rights</p>	
<p>9.8.4.1 Object Code</p>	
<p>9.8.4.1.1 Results - Rights of a Party</p>	
<p>Where a Party has Access Rights to Object Code and/or API whichthat is Results for Exploitation, such Access shall, in addition to the Access for Exploitation foreseen in Section 9.4, as far as Needed for the Exploitation of the Party's own Results, comprise the right:</p> <p>to make an unlimited number of copies of Object Code and API; and to distribute, make available, market, sell and offer for sale such Object Code and API alone or as part of or in connection with products or services of the Party having the Access Rights;</p> <p>provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to exploit Object Code and API for its own Results.</p> <p>If it is intended to use the services of a third party for the purposes of this Section 9.8.4.1.1, the Parties concerned shall</p>	<p>"Alone or": Some users considered "alone" to be too far-reaching, which is why it is now an option.</p>

<p>agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.</p>	
<p>9.8.4.1.2 Results - Rights to grant sublicenses to end-users</p>	
<p>In addition, Access Rights to Object Code shall, as far as Needed for the Exploitation of the Party's own Results, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code alone or as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:</p> <ul style="list-style-type: none"> - to maintain such product/service; - to create for its own end-use interacting interoperable software in accordance with the Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs <p>_____</p>	
<p>9.8.4.1.3 Background</p>	
<p>For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API whichthat is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.</p>	
<p>9.8.4.2 Source Code</p>	
<p>9.8.4.2.1 Results - Rights of a Party</p>	
<p>Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code whichthat is Results for Exploitation, Access Rights to such Source Code, as far as Needed for the Exploitation of the Party's own Results, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service. If it is intended to use the services of a third party for the purposes of this Section 9.8.4.2.1, the Parties shall agree on the terms thereof, with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.</p>	
<p>9.8.4.2.2 Results – Rights to grant sublicenses to end-users</p>	
<p>In addition, Access Rights, as far as Needed for the Exploitation of the Party's own Results, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.</p>	

Further sublicensing of Source Code is explicitly excluded.	
9.8.4.2.3 Background	
For the avoidance of doubt, where a Party has Access Rights to Source Code which <u>that</u> is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.	
9.8.5 Specific formalities	
Each sublicense granted according to the provisions of Section 9.8.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.	