

[ACRONYM OF PROJECT] Consortium Agreement, version [X], [DATE]

# Consortium Agreement



[ACRONYM OF PROJECT]

Version [X] – [DATE]

DESCA – Model Consortium Agreement for Horizon Europe

AP Version 1

July 2022

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## Change Records

Version	Date	Changes
AP Version 1	July 2022	For Horizon Europe projects in which Associated Partners are included as Parties of the Consortium Agreement – PDF Version with alterations in comparison to DESCA HE highlighted in green.

## REMARKS

This Consortium Agreement model is created for projects which will be governed by a Horizon Europe Model Grant Agreement (MGA) under Horizon Europe, i.e. notably “Research and Innovation Actions” and “Innovation Actions”. DESCA HE Version AP is specifically designed for projects in which Associated Partners (Art. 9.1. General MGA HE) play a major role in the implementation of the project and all Beneficiaries remain responsible for the proper implementation of the tasks towards the Granting Authority. A use for other types of projects will likely require adaptations.

In comparison to regular DESCA HE, this document distinguishes between Beneficiaries, Associated Partners and the Parties of the Consortium Agreement. The AP Version includes appropriate modifications, such as: A new Section 4.2 which introduces a special clause for Associated Partners, their role, obligations and special liability; Section 7 which is dealing with financial matters of the project does not apply to Associated Partners as they do not receive any funding from the Granting Authority; Section 6.2 which reflects that, following this logic, Associated Partners are exempt from voting on financial matters in the General Assembly.

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

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

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

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

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

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

It is strongly advised to read the MGA and the related documents, and it is important to be aware of the fact that DESCA is supplementary to the Horizon Europe Regulation and the Grant Agreement. **Most**

**Kommentiert [KD1]:** AP elucidations: For cases in which a single Beneficiary is responsible for an Associated Partner an alternative contractual arrangement is advisable (e.g. bilateral agreement).

If you would like to use the DESCA AP Version for cases in which a single Beneficiary is responsible for an Associated Partner and the Consortium does not want to grant equal rights to the AP, adaptations of this CA deem necessary (e.g. participation in meetings, voting rights, access rights).

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

items regulated there are NOT repeated here, but should be carefully taken into account and re-read in case of doubt.

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

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

1. Core text: The main body of the text.
2. Two modules for the Governance Structure:

Module GOV SP for Small and Medium-sized Projects:

Simple governance structure: only a General Assembly [Module GOV SP] (contained in the text).

Module GOV LP for Large Projects:

Complex governance structure: two governing bodies, General Assembly and Executive Board [Module GOV LP]. (contained in the Annex)

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

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

3. Module IPR SC - special clauses for Software:

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

4. Options:

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

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

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

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

**A note on Innovation Procurement:**

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

**Adapting the DESCA model:**

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

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## CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon Regulation (EU) No 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation (2021-2027), laying down its rules for participation and dissemination (hereinafter referred to as “Horizon Europe Regulation”), and on the European Commission’s General Model Grant Agreement and its Annexes, and is made on [Project start date // other agreed date], hereinafter referred to as the Effective Date

### BETWEEN:

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

[OFFICIAL NAME OF THE BENEFICIARY AS IDENTIFIED IN THE GRANT AGREEMENT [Party short name], with legal address ...],

[OFFICIAL NAME OF THE BENEFICIARY AS IDENTIFIED IN THE GRANT AGREEMENT [Party short name], with legal address ...],

[Insert identification of other Beneficiaries ...]

hereinafter [, jointly or individually,] referred to as [“Beneficiaries” or “Beneficiary”]

[OFFICIAL NAME OF THE ASSOCIATED PARTNER AS IDENTIFIED IN THE GRANT AGREEMENT  
[Party short name], with legal address ...],

[Insert identification of other Associated Partners ...]

hereinafter [, jointly or individually,] referred to as [“Associated Partners” or “Associated Partner”],

hereinafter Beneficiaries and Associated Partner(s), jointly or individually, referred to as “Parties” or “Party”

relating to the Action entitled

[NAME OF PROJECT]

in short

[Insert: acronym]

hereinafter referred to as “Project”

### WHEREAS:

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

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement to be signed by the Beneficiaries and the Granting Authority (hereinafter “Grant Agreement”).

The Parties are aware that this Consortium Agreement is based upon the [DESCA model consortium agreement](#).

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

## 1 Definitions

### 1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Horizon Europe Regulation or in the Grant Agreement including its Annexes.

### 1.2 Additional Definitions

#### “Consortium Body”

Consortium Body means any management body described in Section 6 (Governance Structure) of this Consortium Agreement.

#### “Consortium Plan”

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.

#### “Granting Authority”

means the body awarding the grant for the Project.

#### “Defaulting Party”

Defaulting Party means a Party which the General Assembly has declared to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Section 4.3 of this Consortium Agreement.

#### “Needed”

means:

*For the implementation of the Project:*

Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources.

*For Exploitation of own Results:*

Access Rights are Needed if, without the grant of such Access Rights, the Exploitation of own Results would be technically or legally impossible.

#### “Software”

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.

## 2 Purpose

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.

## 3 Entry into force, duration and termination

### 3.1 Entry into force

An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

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

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

### 3.2 Duration and termination

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

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

If

- the Grant Agreement is not signed by the Granting Authority or a Beneficiary, or
- the Grant Agreement is terminated, or
- a Beneficiary's participation in the Grant Agreement is terminated,

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

**If an Associated Partner's participation in the Project is terminated, its participation in this Consortium Agreement may be terminated subject to the provisions surviving the expiration or termination under this Consortium Agreement (Section 4.2 and Section 3.3).**

### 3.3 Survival of rights and obligations

The provisions relating to Access Rights, Dissemination and confidentiality, for the time period mentioned therein, as well as for liability, applicable law and settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

**Kommentiert [KD2]:** AP elucidations: Only beneficiaries are relevant in this regard, because the Grant Agreement is signed only by them. Beneficiaries remain responsible for the implementation of the action even if an AP does leave the Consortium.

An Associated Partner should be able to terminate its participation (e.g. if the AP does not receive funding from its national funding authority) but he is subject to surviving provisions and remains liable towards the Beneficiaries e.g. to indemnify them according to Section 4.2.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.



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

## 4 Responsibilities of Parties

### 4.1 General principles

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

Each Party undertakes to notify promptly the Granting Authority and the other Parties, in accordance with the governance structure of the Project, of any significant information, fact, problem or delay likely to affect the Project.

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks and shall responsibly manage the access of its employees to the EU Funding & Tenders Portal.

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

### 4.2 Specific responsibilities for Associated Partner(s)

For the avoidance of doubt, the Associated Partner(s) do(es) not sign the Grant Agreement and do(es) not receive funding from the Granting Authority and therefore do(es) not have a right to charge costs or claim contributions from the Granting Authority. Associated Partner(s) must ensure its/their own funding for the implementation of the Project. However, certain terms and conditions of the Grant Agreement and its Annexes are applicable to the Associated Partner(s). The Coordinator will share a copy of the signed Grant Agreement and information on any amendments with the Associated Partner(s).

The Associated Partner(s) hereby commit(s) to implement the Project tasks attributed to it/them in Annex 1 of the Grant Agreement.

In addition, the Associated Partner(s) hereby commit(s) especially to the following articles of the Grant Agreement and related regulations of Annex 5:

- Proper implementation of the action (Article 11)
- Conflicts of interest (Article 12)
- Confidentiality and security (Article 13)
- Ethics and values (Article 14)
- Visibility (Article 17.2)
- Specific rules for carrying out the action (Article 18)
- Information obligations (Article 19)
- Record-keeping (Article 20)

**Kommentiert [KD3]:** AP elucidations: Associated Partners should provide assurance towards the Coordinator (e.g. letter of intent) regarding their financial capacity for the implementation of project tasks and obligations arising from the Consortium Agreement (e.g. at proposal stage).

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

**Kommentiert [KD4]:** AP elucidations: The signed Grant Agreement should be distributed to the Associated Partners as soon as it is available. However, as the CA in principle should be signed before the Grant Agreement, the GA might not be available at signature of the Consortium Agreement.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

The Associated Partner(s) support(s) the Beneficiaries regarding their exploitation, dissemination and Open Science obligations and commit(s) to contribute to the technical and continuous reporting during and after the implementation of the Project.

Furthermore, the Associated Partner(s) hereby explicitly agree to cooperate with and grant access to bodies according to Article 25 of the Grant Agreement (the Granting Authority, the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO), the European Court of Auditors (ECA)), so that these bodies can carry out checks, reviews, audits and investigations also towards the Associated Partner(s).

Any Associated Partner from a non EU-country undertakes to comply additionally with any other obligation arising from Art. 10.1 of the Grant Agreement.

In case of termination or being declared a Defaulting Party, an Associated Partner shall, within the limits specified in section 5.2 of this Consortium Agreement, bear any reasonable and justifiable costs occurring to the other Parties for performing this Associated Partners tasks and the costs for additional efforts necessary to implement the Project.

Moreover, an Associated Partner is obliged to indemnify the other Parties for any claim of the Granting Authority against them, caused by this Associated Partner's actions or omissions during Grant Agreement preparation, Project implementation or after Project end. Regarding such claims the Associated Partner's special liability is limited to [Insert: once or twice] the [Insert: amount of its total budget as indicated in Annex 1 of the Grant Agreement / amount X € for AP1, amount Y € for AP2 (...)].

Should the Associated Partner(s) be obliged to sign a separate agreement concerning its funding for the Project, it is the responsibility of the Associated Partner to ensure such agreement is not in conflict with this Consortium Agreement.

### 4.3 Breach

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

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.

### 4.4 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities or other Participants) in the Project remains responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the Grant Agreement. Such Party has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the Grant Agreement.

### 4.5 Specific responsibilities regarding data protection

Where necessary, the Parties shall cooperate in order to enable one another to fulfil legal obligations arising under applicable data protection laws (the *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data* and relevant national data protection law applicable to said Party) within the scope of the performance and administration of the Project and of this Consortium Agreement.

**Kommentiert [KD5]:** AP elucidations: Access rights do have a specific section 9 under the DESCA whereas GA obligations regarding exploitation, dissemination, Open Science and reporting are not specifically mentioned in the DESCA – to be able to comply with all obligations of the GA, beneficiaries must be supported by APs.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

**Kommentiert [KD6]:** AP elucidations: Art. 10.1 GA also includes data protection by international participants.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

**Kommentiert [KD7]:** AP elucidations: The costs of termination must be covered by the AP as there will be no funding available from the EU Granting Authorities or the Mutual Insurance Mechanism. With regard to Defaulting Parties obligations, this indemnification clause is the same for beneficiaries as it is also included in Section 7.1.6 applicable for beneficiaries.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

**Kommentiert [KD8]:** AP elucidations: A special liability of the associated Partners needs to be agreed on, because the Granting Authority will turn to the Beneficiaries and could reduce the total grant amount in case of any improper implementation of tasks by Associated Partners (e.g. non-timely delivery or improper quality etc.). Therefore, section 4.2 includes an additional indemnification clause to cover this specific risk for Beneficiaries. This paragraph does not alter the general liability among Parties according to Section 5.2. Moreover, there is no rivalry between this clause and Section 5.3, because 5.3 refers to damages caused to third parties while this clause applies in case of contractual claims of the Granting Authority, e.g. based on improper project implementation and sanctions.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

**Kommentiert [KD9]:** AP elucidations: A limitation of this special liability is an option to be negotiated. If Annex 1 of the Grant Agreement does not indicate the total budget of each Associated Partner an amount X can be negotiated to be agreed as capping of this indemnification clause.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

In particular, the Parties shall, where necessary, conclude a separate data processing, data sharing and/or joint controller agreement before any data processing or data sharing takes place.

## 5 Liability towards each other

### 5.1 No warranties

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

Therefore,

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

### 5.2 Limitations of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, **except in case of breach of confidentiality**.

A Party's **general** aggregate liability towards the other Parties collectively shall be limited to **[Insert: once or twice]** the **Beneficiary's** share of the total costs of the Project as identified in Annex 2 of the Grant Agreement **and in case of Associated Partners to [Insert: once or twice] the [Insert: amount of its total budget as indicated in Annex 1 of the Grant Agreement / amount X € for AP 1, amount Y € AP 2 (...)]**

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

### 5.3 Damage caused to third parties

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

### 5.4 Force Majeure

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

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

**Kommentiert [KD10]:** AP elucidations: Section 5.2 covers the general liability and limitation caps among the Parties of the consortium.

A special liability of APs is regulated in Section 4.2 to cover claims by (all) Beneficiaries against a single AP. Such a special regulation is necessary as the Granting Authority will turn to the Beneficiaries in case of any improper implementation of tasks, non-timely delivery or improper quality etc. Moreover, in case of termination of an AP, the Beneficiaries will not receive any funding from the Granting Authority or from the Mutual Insurance Mechanism to perform AP's tasks, because the EU budget provides no funding of AP's tasks and the total grant amount of EU-funding of the action will not be increased.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

## 5.5 [OPTION : 5.5 Export control]

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement due to a restriction resulting from import or export laws and regulations and/or any delay of the granting or extension of the import or export license or any other governmental authorisation, provided that the Party has used its reasonable efforts to fulfil its tasks and to apply for any necessary license or authorisation properly and in time.

Each Party will notify the General Assembly of any such restriction without undue delay. If the consequences of such restriction for the Project are not overcome within 6 weeks after such notice, the transfer of tasks - if any - shall be decided by the General Assembly.]

## 6 Governance structure

[Module GOV SP]

### 6.1 General structure

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

The **General Assembly** is the decision-making body of the consortium.

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

### 6.2 Members

The General Assembly shall consist of one representative of each Party (hereinafter referred to as "Member").

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.7 of this Consortium Agreement.

The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise by the General Assembly.

The Parties agree to abide by all decisions of the General Assembly.

This does not prevent the Parties from exercising their veto rights, according to Section 6.3.5, or from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Section 11.8 of this Consortium Agreement.

The Associated Partner(s) is/are excluded from voting on and vetoing the following decisions of the General Assembly (6.3.7) and therefore are not counted towards any respective quorum:

- Financial changes to the Consortium Plan
- Distribution of EU contribution among the Beneficiaries
- Proposals for changes to Annex 2 of the Grant Agreement to be agreed by the Granting Authority

**Decisions related to Section 7.1.4 of this Consortium Agreement**

- [Insert further decisions in bullet points]

Regarding unanimity or majority decisions, only Members with voting rights regarding the item are taken into account (e.g. Section 6.3.2.5).

### **6.3 Operational procedures for the General Assembly:**

#### **6.3.1 Representation in meetings**

Any Member:

- should be present or represented at any meeting;
- may appoint a substitute or a proxy to attend and vote at any meeting;
- and shall participate in a cooperative manner in the meetings.

#### **6.3.2 Preparation and organisation of meetings**

##### 6.3.2.1 Convening meetings:

The chairperson shall convene ordinary meetings of the General Assembly at least once every six months and shall also convene extraordinary meetings at any time upon written request of any Member.

##### 6.3.2.2 Notice of a meeting

The chairperson shall give written notice of a meeting to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

##### 6.3.2.3 Sending the agenda:

The chairperson shall prepare and send each Member an agenda no later than 14 calendar days preceding the meeting, or 7 calendar days before an extraordinary meeting.

##### 6.3.2.4 Adding agenda items:

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

Any Member may add an item to the original agenda by written notice to all of the other Members no later than 7 calendar days preceding the meeting and 2 days preceding an extraordinary meeting.

##### 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.

##### 6.3.2.6

Meetings of the General Assembly may also be held by tele- or videoconference or other telecommunication means.

#### 6.3.2.7

Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.3.6.2.

### 6.3.3 Decisions without a meeting

Any decision may also be taken without a meeting if

- a) the Coordinator circulates to all Members of the General Assembly a suggested decision with a deadline for responses of at least 10 calendar days after receipt by a Party and
- b) the decision is agreed by 51 % of all Parties.

The Coordinator shall inform all the Members of the outcome of the vote.

A veto according to Section 6.3.5 may be submitted up to 15 calendar days after receipt of this information.

The decision will be binding after the Coordinator sends a notification to all Members. The Coordinator will keep records of the votes and make them available to the Parties on request.

### 6.3.4 Voting rules and quorum

#### 6.3.4.1

The General Assembly shall not deliberate and decide validly in meetings unless two-thirds (2/3) of its Members are present or represented (quorum).

If the quorum is not reached, the chairperson of the General Assembly shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members is present or represented.

#### 6.3.4.2

Each Member present or represented in the meeting shall have one vote. Associated Partners are excluded from certain decisions of the General Assembly according to Section 6.2.

A Party which the General Assembly has declared according to Section 4.3 to be a Defaulting Party may not vote.

#### 6.3.4.3

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

### 6.3.5 Veto rights

#### 6.3.5.1

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

#### 6.3.5.2

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

#### 6.3.5.3

When a decision has been taken on a new item added to the agenda before or during the meeting, a Party may veto such decision during the meeting or within 15 calendar days after receipt of the draft minutes of the meeting.

#### 6.3.5.4

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

#### 6.3.5.5

In case of exercise of veto, the Parties shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Parties.

#### 6.3.5.6

A Party may neither veto decisions relating to its identification to be in breach of its obligations nor to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the consortium or the consequences of them.

#### 6.3.5.7

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

### 6.3.6 Minutes of meetings

#### 6.3.6.1

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

#### 6.3.6.2

The minutes shall be considered as accepted if, within 15 calendar days from receipt, no Party has sent an objection to the chairperson with respect to the accuracy of the draft minutes by written notice.

#### 6.3.6.3

The chairperson shall send the accepted minutes to all the Members, and to the Coordinator, who shall retain copies of them.

### 6.3.7 Decisions of the General Assembly

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.

The following decisions shall be taken by the General Assembly:

Content, finances and intellectual property rights

- Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Granting Authority
- Changes to the Consortium Plan
- Modifications or withdrawal of Background in Attachment 1 (Background Included)
- Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3.2)
- Additions to Attachment 4 (Identified entities under the same control)

Evolution of the consortium

- Entry of a new Party to the Project and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the Project and the approval of the settlement on the conditions of the withdrawal
- Proposal to the Granting Authority for a change of the Coordinator
- Proposal to the Granting Authority for suspension of all or part of the Project
- Proposal to the Granting Authority for termination of the Project and the Consortium Agreement

Breach, defaulting party status and litigation

- 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
- Steps to be taken for litigation purposes and the coverage of litigation costs in case of joint claims of the parties of the consortium against a Party (Section 4.2, Section 7.1.4)

**Kommentiert [KD11]:** AP elucidations: For better distinction and avoidance of doubt this list was restructured and a heading was added. The newly introduced decision power of the General Assembly for litigation purposes (also general DESCA HE) should cover cases in which all beneficiaries of a consortium have a common claim against a (single) Party. It is not intended for claims and proceedings among single Parties – the General Assembly has no decision power for these cases. Therefore, references to relevant sections 4.2 and 7.1.4 are provided.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

Appointments

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

- External Expert Advisory Board Members

In the case of abolished tasks as a result of a decision of the General Assembly, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration any prior legitimate commitments which cannot be cancelled.

## 6.4 Coordinator

### 6.4.1

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



#### 6.4.2

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations under this Consortium Agreement and the Grant Agreement
- keeping the address list of Members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certification) and specific requested documents to the Granting 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 to any other Party concerned
- administering the financial contribution of the Granting Authority and fulfilling the financial tasks described in Section 7.2
- providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims
- providing a copy of the Grant Agreement and its Annexes to the Associated Partners.

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

#### 6.4.3

If the Coordinator fails in its coordination tasks, the General Assembly may propose to the Granting Authority to change the Coordinator.

#### 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.

#### 6.4.5

The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.

### 6.5 [Optional, where foreseen in the Grant Agreement or otherwise decided by the consortium: External Expert Advisory Board (EEAB)]

An External Expert Advisory Board (EEAB) will be appointed and steered by the General Assembly. The EEAB shall assist and facilitate the decisions made by the General Assembly.

The Coordinator will ensure that a non-disclosure agreement is executed between all Parties and each EEAB member.

**Kommentiert [KD12]:** AP elucidations: As APs do not sign the Grant Agreement, but certain obligations apply to them via this Consortium Agreement, the Coordinator should issue a copy to the APs as soon as it was signed by all Beneficiaries.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

[ACRONYM OF PROJECT] Consortium Agreement, version [X], [DATE]

Its terms shall be not less stringent than those stipulated in this Consortium Agreement, and it shall be concluded no later than 30 days after their nomination or before any confidential information will be exchanged/disclosed, whichever date is earlier.

[Optional: By way of exception to Section 6.4.4 above, the Parties hereby mandate the Coordinator to execute, in their name and on their behalf, a non-disclosure agreement (hereafter "NDA") with each member of the EEAB, in order to protect Confidential Information disclosed by any of the Parties to any member of the EEAB. The NDA for the EEAB members is enclosed in Attachment 5. The mandate of the Coordinator comprises solely the execution of the NDA in Attachment 5.]

The Coordinator shall write the minutes of the EEAB meetings and submit them to the General Assembly. The EEAB members shall be allowed to participate in General Assembly meetings upon invitation but have not any voting rights.]

## 7 Financial provisions

Section 7 of the Consortium Agreement does not apply to Associated Partners.

### 7.1 General Principles

#### 7.1.1 Distribution of Financial Contribution

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

- the Consortium Plan
- the approval of reports by the Granting Authority, and
- the provisions of payment in Section 7.2.

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

#### 7.1.2 Justifying Costs

In accordance with its own usual accounting and management principles and practices, each **Beneficiary** shall be solely responsible for justifying its costs (and those of its Affiliated Entities, if any) with respect to the Project towards the Granting Authority. Neither the Coordinator nor any of the other **Beneficiaries** shall be in any way liable or responsible for such justification of costs towards the Granting Authority.

#### 7.1.3 Funding Principles

A **Beneficiary** that spends less than its allocated share of the budget as set out in the Consortium Plan or – in case of reimbursement via unit costs - implements less units than foreseen in the Consortium Plan will be funded in accordance with its units/actual duly justified eligible costs only.

A **Beneficiary** 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.

#### 7.1.4 Excess payments

A **Beneficiary** has received excess payment

- a) if the payment received from the Coordinator exceeds the amount declared or

- b) if a **Beneficiary** has received payments but, within the last year of the Project, its real Project costs fall significantly behind the costs it would be entitled to according to the Consortium Plan.

In case a **Beneficiary** has received excess payment, the **Beneficiary** has to inform the Coordinator and return the relevant amount to the Coordinator without undue delay. In case no refund takes place within 30 days upon request for return of excess payment from the Coordinator, the **Beneficiary** is in substantial breach of the Consortium Agreement.

Amounts which are not refunded by a breaching **Beneficiary** and which are not due to the Granting Authority, shall be apportioned by the Coordinator to the remaining **Beneficiaries** pro rata according to their share of total costs of the Project as identified in the Consortium Budget, until recovery from the breaching **Beneficiary** is possible. The General Assembly decides on any legal actions to be taken against the breaching **Beneficiary** according to Section [Module GOV SP 6.3.7 / Module GOV LP 6.3.1.2].

### 7.1.5 Revenue

In case a **Beneficiary** earns any revenue that is deductible from the total funding as set out in the Consortium Plan, the deduction is only directed toward the **Beneficiary** earning such revenue. The other **Beneficiaries'** financial share of the budget shall not be affected by one **Beneficiary's** revenue. In case the relevant revenue is more than the allocated share of the **Beneficiary** as set out in the Consortium Plan, the **Beneficiary** shall reimburse the funding reduction suffered by other **Beneficiaries**.

### 7.1.6 Financial Consequences of the termination of the participation of a **Beneficiary**

A **Beneficiary** leaving the consortium shall refund to the Coordinator any payments it has received except the amount of contribution accepted by the Granting Authority or another contributor.

In addition, a **Beneficiary** declared to be 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 **Beneficiaries** in order to perform the leaving **Beneficiary's** task and necessary additional efforts to fulfil them as a consequence of the **Beneficiary** leaving the consortium. The General Assembly should agree on a procedure regarding additional costs which are not covered by the Defaulting Party or the Mutual Insurance Mechanism.

## 7.2 Payments

### 7.2.1 Payments to **Beneficiaries** are the exclusive task of the Coordinator

In particular, the Coordinator shall:

notify the **Beneficiary** concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references

perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts

undertake to keep the Granting Authority's financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

With reference to Article 22 of the Grant Agreement, no **Beneficiary** shall before the end of the Project receive more than its allocated share of the maximum grant amount less the amounts retained by the Granting Authority for the Mutual Insurance Mechanism and for the final payment.

### 7.2.2

The transfer of the initial pre-financing, the additional pre-financings (if any) and interim payments to Beneficiaries will be handled in accordance with Article 22.1. and Article 7 of the Grant Agreement following this payment schedule:

#### [Option 1:]

Funding of costs included in the Consortium Plan will be paid by the Coordinator to the **Beneficiaries** after receipt of payments from the Granting Authority in separate instalments as agreed below:

Xx %	on receipt of Pre-financing
Xx %..	...

Funding for costs accepted by the Granting Authority will be paid by the Coordinator to the **Beneficiary** concerned.

#### [end of option 1]

#### [Option 2:]

Funding of costs included in the Consortium Plan will be paid by the Coordinator to the **Beneficiaries** after receipt of payments from the Granting Authority without undue delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the Granting Authority will be paid to the **Beneficiary** concerned.

#### [end of option 2]

The Coordinator is entitled to withhold any payments due to a **Beneficiary** identified by the General Assembly to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or to a **Beneficiary** which has not yet signed this Consortium Agreement.

The Coordinator is entitled to recover any payments already paid to a **Beneficiary** declared as a Defaulting Party except the costs already claimed by the Defaulting Party and accepted by the Granting Authority. The Coordinator is equally entitled to withhold payments to a Beneficiary when this is suggested by or agreed with the Granting Authority.

## 8 Results

### 8.1 Ownership of Results

Results are owned by the Party that generates them.

**Kommentiert [KD13]:** AP elucidations: Associated Partners which have a major role in the Project and sign the CA should in principle have the same rights regarding IPR and access rights as Beneficiaries (exceptions possible e.g. section 9.5 - entities under the same control).

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

## 8.2 Joint ownership

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

### [Option 1:]

Unless otherwise agreed:

- each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research and teaching activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s).
- each of the joint owners shall be entitled to otherwise Exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given: (a) at least 45 calendar days advance notice; and (b) fair and reasonable compensation.

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

### [end of option 1]

### [Option 2:]

In case of joint ownership, each of the joint owners shall be entitled to Exploit the joint Results as it sees fit, and to grant non-exclusive licenses, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

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

### [End of Option 2]

## 8.3 Transfer of Results

### 8.3.1

Each Party may transfer ownership of its own Results, including its share in jointly owned Results, following the procedures of the Grant Agreement Article 16.4 and its Annex 5, Section Transfer and licensing of results, sub-section "Transfer of ownership".

### 8.3.2

Each Party may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (3) of this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to such a transfer to listed third parties according to the Grant Agreement Article 16.4 and its Annex 5, Section Transfer of licensing of results, sub-section "Transfer of ownership", 3rd paragraph.

### 8.3.3

The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties under the Consortium Agreement and the Grant

Agreement will not be affected by such transfer. Any addition to Attachment (3) after signature of this Consortium Agreement requires a decision of the General Assembly.

#### 8.3.4

The Parties recognise that in the framework of a merger or an acquisition of an important part of its assets, it may be impossible under applicable EU and national laws on mergers and acquisitions for a Party to give at least 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.

#### 8.3.5

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

### 8.4 Dissemination

#### 8.4.1

For the avoidance of doubt, the confidentiality obligations set out in Section 10 apply to all dissemination activities described in this Section 8.4 as far as Confidential Information is involved.

#### 8.4.2 Dissemination of own (including jointly owned) Results

##### 8.4.2.1

During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 17.4 of the Grant Agreement and its Annex 5, Section Dissemination, subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties at least 45 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement by written notice to the Coordinator and to the Party or Parties proposing the dissemination within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

##### 8.4.2.2

An objection is justified if

- a) the protection of the objecting Party's Results or Background would be adversely affected, or
- b) the objecting Party's legitimate interests in relation to its Results or Background would be significantly harmed, or
- c) the proposed publication includes Confidential Information of the objecting Party.

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

##### 8.4.2.3

If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by

protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

#### 8.4.2.4

The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted, provided that the objections of the objecting Party have been addressed.

#### 8.4.3 Dissemination of another Party's unpublished Results or Background

A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published.

#### 8.4.4 Cooperation obligations

The Parties undertake to cooperate to allow the timely submission, examination, publication and defense of any dissertation or thesis for a degree that includes their Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

#### 8.4.5 Use of names, logos or trademarks

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

## 9 Access Rights

### 9.1 Background included

#### 9.1.1

In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.

Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.

#### 9.1.2

Any Party may add additional Background to Attachment 1 during the Project provided they give written notice to the other Parties. However, approval of the General Assembly is needed should a Party wish to modify or withdraw its Background in Attachment 1.

### 9.2 General Principles

#### 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.

#### 9.2.2

Any Access Rights granted exclude any rights to sublicense unless expressly stated otherwise.

#### 9.2.3

Access Rights shall be free of any administrative transfer costs.

#### 9.2.4

Access Rights are granted on a non-exclusive basis.

#### 9.2.5

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

#### 9.2.6

All requests for Access Rights shall be made in writing. The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

#### 9.2.7

The requesting Party must show that the Access Rights are Needed.

### 9.3 Access Rights for implementation

Access Rights to Results and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.

### 9.4 Access Rights for Exploitation

#### 9.4.1 Access Rights to Results

##### [Option 1:]

Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable conditions.

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

##### [end of option 1]

##### [Option 2:]

Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on a royalty-free basis.

##### [end of option 2]



#### 9.4.2

Access Rights to Background if Needed for Exploitation of a Party's own Results, shall be granted on Fair and Reasonable conditions.

#### 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.

### 9.5 Access Rights for entities under the same control

Entities under the same control have Access Rights under the conditions of the Grant Agreement Article 16.4 and its Annex 5, Section "Access rights to results and background", sub-section "Access rights for entities under the same control" [Optional: if they are identified in Attachment 4 (Identified entities under the same control) to this Consortium Agreement].

Such Access Rights must be requested by the entity under the same control from the Party that holds the Background or Results. Alternatively, the Party granting the Access Rights may individually agree with the [Beneficiary / Party] requesting the Access Rights to have the Access Rights include the right to sublicense to the latter's entity under the same control [listed in Attachment 4]. Access Rights to an entity under the same control shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.

Entities under the same control which obtain Access Rights in return fulfil all confidentiality obligations accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such entities were Parties.

Access Rights may be refused to entities under the same control if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.

Access Rights granted to any entity under the same control are subject to the continuation of the Access Rights of the [Beneficiary / Party] with whom it is under the same control, and shall automatically terminate upon termination of the Access Rights granted to such [Beneficiary / Party].

Upon cessation of the status as an entity under the same control, any Access Rights granted to such former entity under the same control shall lapse.

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

### 9.6 Additional Access Rights

#### [Option 1:]

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.

#### [Option 2:]

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.

**Kommentiert [KD14]:** AP elucidations: The term "entities under the same control" is used to the end that all three options of the GA definition are covered. By definition of the GA, all entities under the same control must be established in a EU member state or associated country.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

## 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.

### 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.

##### 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.

#### 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.

## 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.

## 10 Non-disclosure of information

### 10.1

All information in whatever form or mode of communication, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its implementation and which has been explicitly marked as "confidential" at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information".

## 10.2

The Recipient hereby undertakes in addition and without prejudice to any commitment on non-disclosure under the Grant Agreement, for a period of 5 years after the final payment of the Granting Authority (the Coordinator notifies the Associated Partner(s) about the date of the final payment):

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in a machine-readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient complies with the confidentiality obligations herein contained with respect to such copy.

## 10.3

The Recipient shall be responsible for the fulfilment of the above obligations on the part of its 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.

## 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:

- the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
- the Confidential Information was already known to the Recipient prior to disclosure, or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.7 hereunder.

## 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

## 10.6

Each Recipient shall promptly inform the relevant Disclosing Party by written notice of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

## 10.7

If any Recipient becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order or **in the case of an Associated Partner - with a reporting requirement from its national funding authority,** it shall, to the extent it is lawfully able to do so, prior to any such disclosure

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

## 11 Miscellaneous

### 11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and:

- Attachment 1 (Background included)
- Attachment 2 (Accession document)
- Attachment 3 (List of third parties for simplified transfer according to Section 8.3.2)
- **Attachment 4 (Identified entities under the same control )**
- **Attachment 5 (NDA for External Expert Advisory Board agreed under Section 6)**

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

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

### 11.2 No representation, partnership or agency

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.

### 11.3 Formal and written notices

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

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

Formal notices:

If it is required in this Consortium Agreement (Sections 4.3, 9.7.2.1.1, and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery with acknowledgement of receipt.

Written notice:

Where written notice is required by this Consortium Agreement, this is fulfilled also by other means of communication such as e-mail with acknowledgement of receipt.

### 11.4 Assignment and amendments

Except as set out in Section 8.3, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in 6.3.7 (SP)/ 6.3.1.2 (LP) require a separate written agreement to be signed between all Parties.

### 11.5 Mandatory national law

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

### 11.6 Language

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

### 11.7 Applicable law

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

### 11.8 Settlement of disputes

The Parties shall endeavour to settle their disputes amicably.

[Please choose an appropriate method of dispute resolution, possibly one of the options 1 (WIPO), 2 (ICC), 3 (Courts). Within option 1, please further choose, between 1.1. and 1.2]

[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.

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

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.

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

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

[Option 2: ICC Arbitration]

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

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

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

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.

[Option 3: Settlement by Court Litigation]

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

## 12 Signatures

### 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.

[INSERT NAME OF PARTY]

Signature(s)

Name(s)

Title(s)

Date

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

[INSERT NAME OF PARTY]

Signature(s)

Name(s)

Title(s)

Date

[INSERT NAME OF PARTY]

Signature(s)

Name(s)

Title(s)

Date

## Attachment 1: Background included

According to the Grant Agreement (Article 16.1) Background is defined as “data, know-how or information (...) that is (...) needed to implement the Action or exploit the results”. Because of this need, Access Rights have to be granted in principle, but Parties must identify and agree amongst them on the Background for the Project. This is the purpose of this attachment.

PARTY 1

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

[Option 1 start]

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

Describe Background	Specific restrictions and/or conditions for implementation (Article 16.4 Grant Agreement and its Annex 5, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the Action”)	Specific restrictions and/or conditions for Exploitation (Article 16.4 Grant Agreement and its Annex 5, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”)

[Option 1 end]

[Option 2 start]

Option 2: No data, know-how or information of [NAME OF THE PARTY] is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

[Option 2 end]

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

[Same for PARTY 2, PARTY 3, etc]



[ACRONYM OF PROJECT] Consortium Agreement, version [X], [DATE]

## Attachment 2: Accession document

ACCESSION

of a new Party to

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

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

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

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

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

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

Signature(s)

Name(s)

Title(s)

**Attachment 3: List of third parties for simplified transfer according to Section 8.3.2.**

[ACRONYM OF PROJECT] Consortium Agreement, version [X], [DATE]

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

[ACRONYM OF PROJECT] Consortium Agreement, version [X], [DATE]

**[Option: Attachment 5: NDA for External Expert Advisory Board  
agreed under Section 6]**

## [Option: Module GOV LP]

### Governance structure for Medium and Large Projects

To use the following paragraphs it is recommended to do as follows:

- (1) Select all the following clauses,
- (2) use Ctrl+X to cut the text (it will be stored in a clipboard. ),
- (3) select all clauses in section 6.1 to 6.5, and
- (4) use Ctrl+V to insert.

Using this process preserves a consistent numbering throughout the document. Cross references within the text will remain as they are.

## 12.1 General structure

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

- The General Assembly as the ultimate decision-making body of the consortium
- The 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 as the legal entity acting as the intermediary between the Parties and the Granting Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

## 12.2 General operational procedures for all Consortium Bodies

### 12.2.1 Representation in meetings

Any Party which is appointed to take part in a Consortium Body shall designate one representative (hereinafter referred to as "Member").

Any Member:

- 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.

### 12.2.2 Preparation and organisation of meetings

#### 12.2.2.1 Convening meetings:

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

	Ordinary meeting	Extraordinary meeting
General Assembly	At least <b>once</b> a year	At any time upon request of the Executive Board or 1/3 of the Members of the General Assembly

Executive Board	At least quarterly	At any time upon request of any Member of the Executive Board
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#### 12.2.2.2 Notice of a meeting

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

	Ordinary meeting	Extraordinary meeting
General Assembly	45 calendar days	15 calendar days
Executive Board	14 calendar days	7 calendar days

#### 12.2.2.3 Sending the agenda

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

General Assembly	21 calendar days, 10 calendar days for an extraordinary meeting
Executive Board	7 calendar days

#### 12.2.2.4 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 notice 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

#### 12.2.2.5

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

#### 12.2.2.6

Meetings of each Consortium Body may also be held by tele- or videoconference, or other telecommunication means.

#### 12.2.2.7

Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.2.5.2.

#### 12.2.2.8

##### *Decisions without a meeting*

Any decision may also be taken without a meeting if

- a) the Coordinator circulates to all Members of the General Assembly a suggested decision with a deadline for responses of at least 10 calendar days after receipt by a Party and
- b) the decision is agreed by 51 % of all Parties.

The Coordinator shall inform all the Parties of the outcome of the vote.

A veto according to Section 6.2.4 may be submitted up to 15 calendar days after receipt of this information.

The decision will be binding after the Coordinator sends a notification to all Members. The Coordinator will keep records of the votes and make them available to the Parties on request.

### **12.2.3 Voting rules and quorum**

#### 12.2.3.1

Each Consortium Body shall not deliberate and decide validly in meetings unless two-thirds (2/3) of its Members are present or represented (quorum).

If the quorum is not reached, the chairperson of the Consortium Body shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members is present or represented.

#### 12.2.3.2

Each Member of a Consortium Body present or represented in the meeting shall have one vote. Associated Partners are excluded from certain decisions of the General Assembly according to Section 6.3.1.1.4.

#### 12.2.3.3

A Party which the General Assembly has declared according to Section 4.3 to be a Defaulting Party may not vote.

#### 12.2.3.4

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

### 12.2.4 Veto rights

#### 12.2.4.1

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

#### 12.2.4.2

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

#### 12.2.4.3

When a decision has been taken on a new item added to the agenda before or during the meeting, a Party may veto such decision during the meeting or within 15 calendar days after receipt of the draft minutes of the meeting.

A Party that is not appointed to participate to a particular Consortium Body may veto a decision within the same number of calendar days after receipt of the draft minutes of the meeting.

#### 12.2.4.4

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

#### 12.2.4.5

In case of exercise of veto, the Members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all the Parties.

#### 12.2.4.6

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.

#### 12.2.4.7

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

### 12.2.5 Minutes of meetings

#### 12.2.5.1

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



#### 12.2.5.2

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

#### 12.2.5.3

The chairperson shall send the accepted minutes to all the Parties and to the Coordinator, who shall retain copies of them.

### 12.3 Specific operational procedures for the Consortium Bodies

#### 12.3.1 General Assembly

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

##### 12.3.1.1 Members

###### 12.3.1.1.1

The General Assembly shall consist of one representative of each Party (hereinafter General Assembly Member).

###### 12.3.1.1.2

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.

###### 12.3.1.1.3

The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise in a meeting of the General Assembly.

###### 12.3.1.1.4

The Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties from exercising their veto rights, according to Section 6.2.4.1 or from submitting a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 11.8.

The Associated Partner(s) is/are excluded from voting on and vetoing the following decisions of the General Assembly (6.3.1.2) and therefore are not counted towards any respective quorum:

- Financial changes to the Consortium Plan
- Distribution of EU contribution among the Beneficiaries
- Proposals for changes to Annex 2 of the Grant Agreement to be agreed by the Granting Authority
- Decisions related to Section 7.1.4 of this Consortium Agreement
- [Insert further decisions in bullet points]

Regarding unanimity or majority decisions, only Members with voting rights regarding the item are taken into account (e.g. Section 6.2.2.8).

#### 12.3.1.2 Decisions

The General Assembly shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein.

In addition, all proposals made by the Executive Board shall also be considered and decided upon by the General Assembly.

The following decisions shall be taken by the General Assembly:

Content, finances and intellectual property rights

- Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Granting Authority
- Changes to the Consortium Plan
- Modifications or withdrawal of Background in Attachment 1 (Background Included)
- Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3.2)
- Additions to Attachment 4 (Identified entities under the same control)

Evolution of the consortium

- Entry of a new Party to the Project and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the Project and the approval of the settlement on the conditions of the withdrawal
- Proposal to the Granting Authority for a change of the Coordinator
- Proposal to the Granting Authority for suspension of all or part of the Project
- Proposal to the Granting Authority for termination of the Project and the Consortium Agreement

Breach, defaulting party status and litigation

- 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
- Steps to be taken for litigation purposes and the coverage of litigation costs in case of joint claims of the parties of the consortium against a Party (Section 4.2, Section 7.1.4)

#### Appointments

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

- Executive Board Members
- External Expert Advisory Board Members

**Kommentiert [KD15]:** AP elucidations: For better distinction and avoidance of doubt, this list was restructured and a heading was added. The newly introduced decision power of the General Assembly for litigation purposes (also general DESCA HE) should cover cases in which all beneficiaries of a consortium have a common claim against a (single) Party. It is not intended for claims and proceedings among single Parties – the General Assembly has no decision power for these cases. Therefore, references to relevant sections 4.2 and 7.1.4 are provided.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

### 12.3.2 Executive Board

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

#### 12.3.2.1 Members

The Executive Board shall consist of the Coordinator and the representatives of the Parties appointed to it by the General Assembly.

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

#### 12.3.2.2 Minutes of meetings

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

#### 12.3.2.3 Tasks

##### 12.3.2.3.1

The Executive Board shall prepare the meetings, propose decisions and prepare the agenda of the General Assembly according to Section 6.3.1.2.

##### 12.3.2.3.2

The Executive Board shall seek a consensus among the Parties.

##### 12.3.2.3.3

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

##### 12.3.2.3.4

The Executive Board shall monitor the effective and efficient implementation of the Project.

##### 12.3.2.3.5

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.

##### 12.3.2.3.6

The Executive Board shall:

- support the Coordinator in preparing meetings with the Granting Authority and in preparing related data and deliverables
- prepare the content and timing of press releases and joint publications by the consortium or proposed by the Granting Authority in respect of the procedures of the Grant Agreement Article 17 and Annex 5 Section “Communication, Dissemination, Open Science and Visibility” and of Section 8 of this Consortium Agreement.

#### 12.3.2.3.7

In the case of abolished tasks as a result of a decision of the General Assembly, the Executive Board shall advise the General Assembly on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration any prior legitimate commitments which cannot be cancelled.

## 12.4 Coordinator

### 12.4.1

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

### 12.4.2

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations under this Consortium Agreement and the Grant Agreement
- keeping the address list of Members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Granting Authority
- transmitting documents and information connected with the Project to any other Parties concerned
- administering the financial contribution of the Granting Authority and fulfilling the financial tasks described in Section 7.2
- providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

– providing a copy of the Grant Agreement and its Annexes to the Associated Partners.

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

### 12.4.3

If the Coordinator fails in its coordination tasks, the General Assembly may propose to the Granting Authority to change the Coordinator.

### 12.4.4

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.

**Kommentiert [KD16]:** AP elucidations: As APs do not sign the Grant Agreement, but certain obligations apply to them via this Consortium Agreement, the Coordinator should issue a copy to the APs as soon as it was signed by all Beneficiaries.

These are specific AP elucidations – for more elucidations check the general DESCA HE elucidated version on the website: <https://www.desca-agreement.eu/desca-model-consortium-agreement/>.

#### 12.4.5

The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.

#### **12.5 [Optional, where foreseen in the Grant Agreement or otherwise decided by the consortium: External Expert Advisory Board (EEAB)]**

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 will ensure that a non-disclosure agreement is executed between all Parties and each EEAB member.

[Optional: By way of exception to Section 6.4.4 above, the Parties mandate the Coordinator to execute, in their name and on their behalf, a non-disclosure agreement (hereafter "NDA") with each member of the EEAB, in order to protect Confidential Information disclosed by any of the Parties to any member of the EEAB, either directly or through the Coordinator in the case where the concerned Party gave to the Coordinator its prior written approval for such disclosure. The NDA for the EEAB members is enclosed in Attachment 5. The mandate of the Coordinator comprises solely the execution of the NDA in Attachment 5.]

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

## **[Option: MODULE IPR SC] Specific Software provisions for the Access Rights Section 9.8**

[To use the following paragraphs it is recommended to do as follows: (1) Select all the flowing clauses, (2) use Ctrl+X to cut the text (it will be stored in a clipboard), (3) select all clauses in section 9.8, including that section header, and (4) use Ctrl+V to insert. Using this process preserves cross references. These may need to be refreshed/updated]

### **12.6 Specific provisions for Access Rights to Software**

#### **12.6.1 Definitions relating to Software**

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

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

- 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 license relating to the Work or Derivative Work be granted to any third party.

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

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

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

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

#### **12.6.2 General principles**

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.

Parties' Access Rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive Source Code, Object Code or respective

Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

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

[Option] In case of an [approved] introduction of Software under Controlled License Terms' in the Project, the Controlled License Terms shall prevail over any conflicting provisions of this Consortium Agreement for affected original and derivative Background and Results.

### 12.6.3 Access to Software

Access Rights to Software that is Results shall comprise:

- Access Rights to the Object Code; and,
- where normal use of such an Object Code requires an API, Access Rights to the Object Code and such an API; and,
- if a Party can show that the execution of its tasks under the Project or the Exploitation of its own Results is technically or legally impossible without Access Rights to the Source Code, Access Rights to the Source Code to the extent necessary.

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

### 12.6.4 Software license and sublicensing rights

#### 12.6.4.1 Object Code

##### 12.6.4.1.1 Results - Rights of a Party

Where a Party has Access Rights to Object Code and/or API that is Results for Exploitation, such Access shall, in addition to the Access for Exploitation foreseen in Section 9.4, as far as Needed for the Exploitation of the Party's own Results, comprise the right:

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

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

If it is intended to use the services of a third party for the purposes of this Section 9.8.4.1.1, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.

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

In addition, Access Rights to Object Code shall, as far as Needed for the Exploitation of the Party's own Results, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code alone or as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:

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

#### 12.6.4.1.3 Background

For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

#### 12.6.4.2 Source Code

##### 12.6.4.2.1 Results - Rights of a Party

Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code that is Results for Exploitation, Access Rights to such Source Code, as far as Needed for the Exploitation of the Party's own Results, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service.

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.

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

In addition, Access Rights, as far as Needed for the Exploitation of the Party's own Results, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.

Further sublicensing of Source Code is explicitly excluded.

##### 12.6.4.2.3 Background

For the avoidance of doubt, where a Party has Access Rights to Source Code that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

#### 12.6.5 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.