

# Consortium Agreement



NOVA

Version [14] – [06/03/23]

(Based on DESCA – Model Consortium Agreement for Horizon Europe, version 1, December 2021)

## Table of Contents

<b>1</b>	<b>Definitions .....</b>	<b>4</b>
<b>2</b>	<b>Purpose .....</b>	<b>5</b>
<b>3</b>	<b>Entry into force, duration, and termination .....</b>	<b>5</b>
<b>4</b>	<b>Responsibilities of Parties.....</b>	<b>6</b>
<b>5</b>	<b>Liability towards each other .....</b>	<b>7</b>
<b>6</b>	<b>Governance structure .....</b>	<b>9</b>
<b>7</b>	<b>Financial provisions .....</b>	<b>17</b>
<b>8</b>	<b>Results.....</b>	<b>19</b>
<b>9</b>	<b>Access Rights .....</b>	<b>22</b>
<b>10</b>	<b>Non-disclosure of information .....</b>	<b>25</b>
<b>11</b>	<b>Miscellaneous .....</b>	<b>27</b>
<b>12</b>	<b>Signatures .....</b>	<b>29</b>
<b>Attachment 1: Background included.....</b>		<b>Error! Bookmark not defined.</b>
<b>Attachment 2: Accession document .....</b>		<b>Error! Bookmark not defined.</b>
<b>Attachment 3: List of third parties for simplified transfer according to Section 8.3.2.....</b>		<b>Error! Bookmark not defined.</b>
<b>Attachment 4: Non-disclosure agreement .....</b>		<b>Error! Bookmark not defined.</b>
<b>Attachment 5: Statement (11/11/2021) on the financing of Swiss participation in European Union activities .....</b>		<b>Error! Bookmark not defined.</b>

## 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 (n° 101058554) and its Annexes, and shall be binding from 01.09.2022, the start date of the Project.

### BETWEEN:

**DECHEMA GESELLSCHAFT FÜR CHEMISCHTECHNIK UND BIOTECHNOLOGIE** (DECH, THEODOR-HEUSS-ALLEE 25, 60486 FRANKFURT, Germany), the Coordinator,

**FRAUNHOFER-GESELLSCHAFT ZUR FÖRDERUNG DER ANGEWANDTEN FORSCHUNG E.V.**, Hansastrasse 27c, 80686 München, Germany, acting as legal entity for and on behalf of its Fraunhofer Institute for Ceramic Technologies and Systems **IKTS**, Maria-Reiche-Strasse 2, 01109 Dresden, and its Fraunhofer Institute for Manufacturing Technology and Advanced Materials **IFAM**, Wiener Strasse 12, 28359 Bremen, Germany (hereinafter referred to as **FRAUNHOFER**),

**UNIVERZA V LJUBLJANI** (UL, KONGRESNI TRG 12, 1000, LJUBLJANA, Slovenia),

**USTAV POLYMEROV SLOVENSKEJ AKADEMIE VIED VEREJNA VYSKUMNA INSTITUCIA** (UPO SAV, DUBRAVSKA CESTA 5798/9, 84541, BRATISLAVA, Slovakia),

**EVONIK OPERATIONS GMBH** (EVO, RELINGHAUSER STRASSE 1-11, 45128, ESSEN, Germany),

**SPARTHA MEDICAL** (SPARTHA, 14B RUE DE LA CANARDIERE, 67100 STRASBOURG, France),

**AKZO NOBEL DECORATIVE COATINGS B.V.** (AKZO, CHRISTIAN NEEFESTRAAT 2, po box: 75730, 1077 WW, AMSTERDAM, Netherlands),

**SIEMENS HEALTHCARE GMBH** (Siemens Health, HENKESTRASSE 127, 91052, ERLANGEN, Germany),

**PRESTE** (PRESTE, 242 BOULEVARD VOLTAIRE, 75011 PARIS, France),

**DOLMEN DESIGN AND INNOVATION LIMITED** (Dolmen, INNOVATION HOUSE DCU ALPHA FINGLAS ROAD OLD, D11KXN4, Glasnevin Ireland),

**INSTITUT NATIONAL DE LA SANTE ET DE LA RECHERCHE MEDICALE** (Inserm, RUE DE TOLBIAC 101, 75654 PARIS, France),

### AND

**INDUSTRIAL MICROBIOLOGICAL SERVICES LIMITED** (IMSL, OXFORD ROAD 118B, RG1 7NG, READING, United Kingdom) (Associated Partner),

**THE MANCHESTER METROPOLITAN UNIVERSITY** (MMU, OXFORD ROAD ALL SAINTS BUILDING, M15 6BH, MANCHESTER, United Kingdom) (Associated Partner),

**EIDGENÖSSISCHE MATERIALPRÜFUNGS- UND FORSCHUNGSANSTALT** (Empa, UEBERLANDSTRASSE 129, 8600 DÜBENDORF, Switzerland) (Associated Partner),

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

relating to the Action entitled

**Next Generation BiOactiVe NANocoatings**

in short

**NOVA**

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.

**“Exploitation”**

Exploitation means the use of Results in further research and innovation activities, in standardization activities and commercial exploitation such as developing, creating, manufacturing, and marketing a product or process, creating, or providing a service.

**“Granting Authority”**

Granting Authority means the body awarding the grant for the Project, namely the European Health and Digital Executive Agency (HADEA), under the powers delegated by the European Commission, which signs the Grand Agreement together with the Coordinator.

### **"Joint Results"**

Joint Results means Results developed under the Project jointly by two or more Parties or other Third parties and whose characteristics are such that it is not possible to establish the respective contribution of each Party or separate the intellectual contribution of each of the said entities in order to request or obtain intellectual property rights separately.

### **"Defaulting Party"**

Defaulting Party means a Party which the General Assembly has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Section 4.2 of this Consortium Agreement.

### **"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 be binding from 01.09.2022, the start date of the Project.

### **3.2 Duration and termination**

This Consortium Agreement shall continue in full force and effect until completion of the Project (which initial duration is planned for 48 months) and complete fulfilment of all obligations undertaken by the

Parties under the Grant Agreement and under this Consortium Agreement. This shall also apply in the event of amendments to the Project approved by the Granting Authority.

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 withdraws from the Project and/or its participation in the Grant Agreement is terminated (according to Article 32 of the Grant Agreement) or  
an Associated Partner withdraws from the Project and/or its participation in the Project 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.

### **3.3 Survival of rights and obligations**

The provisions relating to Section 8 (Results), Section 9 (Access Rights), and Section 10 (Non-disclosure of information), for the time period mentioned therein, as well as Section 5 (Liability towards each other), Section 11.7 (Applicable law) and Section 11.8 (Settlement of disputes) shall survive the termination of this Consortium Agreement.

Termination shall not affect any rights or obligations of a Party withdrawing from the Project incurred prior to the date of termination, unless otherwise agreed between the General Assembly and the withdrawing 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 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 shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

Each Party undertakes to notify promptly the Coordinator 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 each Beneficiary shall manage responsibly the access of its employees to the EU Funding & Tenders Portal.

The Parties do not undertake any liability in the event that the Project should not lead to the desired Results.

Associated Partners recognize and acknowledge that they have to comply with obligations under article 11 (proper implementation), 12 (conflict of interests), 13 (confidentiality and security), 14 (ethics), 16 (intellectual property rights), 17.2 (visibility), 18 (specific rules for carrying out action), 19 (information) and 20 (record-keeping) of the Grant Agreement and the specific rules set out in Annex 5 of the Grant Agreement in regards of the abovementioned articles, in the same way that they apply to Beneficiaries.

## **4.2 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 thirty (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.

If a Party is declared to be a Defaulting Party, the other Parties shall use reasonable endeavours to reach a timely agreement on how to reallocate the Defaulting Party's tasks under the Consortium Plan, and their related budget and the European Commission's contribution, so that the overall objectives of the Project can still be met. Following the decisions above, the Coordinator shall promptly notify the Grant Authority, for its approval and any needed Grant Agreement amendment procedure.

## **4.3 Involvement of third parties**

A Party may involve subcontractors or third parties (including but not limited to Affiliated Entities or other Participants) only with prior consent of the other Parties such consent should be provided within two weeks, otherwise shall be deemed given. Such consent shall not be unreasonably withheld. The Party 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.

## **4.4 Specific responsibilities regarding data protection**

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

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

# **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 aggregate liability towards the other Parties collectively shall be limited to the Party's share of the total costs of the Project as identified in Annex 2 of the Grant Agreement or for the Associated Partners as provided in the proposal.

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 in case of breach of confidentiality 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 (not jointly and severally) for any loss, damage, or injury to third parties resulting from the performance of such 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 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 Coordinator and 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.

## **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 six (6) weeks after such notice, the transfer of tasks - if any - shall be decided by the General Assembly.



## 6 Governance structure

### 6.1 General structure

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

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

The **Project Management Board** as the supervisory body for the execution of the Project, which shall report to and be accountable to the General Assembly.

And 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.

### 6.2 General operational procedures for all Consortium Bodies

#### 6.2.1 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.

#### 6.2.2 Preparation and organization of meetings

##### 6.2.2.1 Convening meetings:

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

	Ordinary meeting	Extraordinary meeting
General Assembly	At least twice a year	At any time upon request of the Project Management Board or 1/3 of the Members of the General Assembly
Project Management Board	At least every two months	At any time upon request of any Member of the Project Management Board

##### 6.2.2.2 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	30 calendar days	10 calendar days
Project Management Board	10 calendar days	5 calendar days

#### 6.2.2.3 Sending the agenda

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

General Assembly	15 calendar days, 5 calendar days for an extraordinary meeting
Project Management Board	5 calendar days

#### 6.2.2.4 Adding agenda items:

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

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

General Assembly	10 calendar days, 2 calendar days for an extraordinary meeting
Project Management Board	2 calendar days

#### 6.2.2.5

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

#### 6.2.2.6

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

#### 6.2.2.7

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

#### 6.2.2.8

##### *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 a majority of two-thirds (2/3) of the votes 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.

### **6.2.3 Voting rules and quorum**

#### 6.2.3.1

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 fifteen (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.

#### 6.2.3.2

Each Member of a Consortium Body present or represented in the meeting shall have one vote. An Associated Partner may not vote on a decision regarding the distribution or use of the EC Financial Contribution

#### 6.2.3.3

A Party which the General Assembly has declared according to Section 4.2 to be a Defaulting Party shall not vote.

#### 6.2.3.4

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

- entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party,
- the approval of the settlement on the conditions of a withdrawal,
- proposal for amendments to the Consortium Agreement or Grant Agreement,
- changes to the Consortium Budget.

These last four resolutions require a minimum of 90 % agreement by the Members of the General Assembly.

#### **6.2.4 Veto rights**

##### **6.2.4.1**

A Party which can show that its own work, time for performance, costs, liabilities, intellectual property rights 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.

##### **6.2.4.2**

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

##### **6.2.4.3**

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 fifteen (15) calendar days after receipt of the draft minutes of the meeting.

##### **6.2.4.4**

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

##### **6.2.4.5**

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

##### **6.2.4.6**

A Party may neither veto decisions relating to its identification to be in breach of its obligations nor to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the consortium or the consequences of them. An Associated Partner may not veto a decision regarding the distribution or use of the European Commission Financial Contribution.

##### **6.2.4.7**

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

#### **6.2.5 Minutes of meetings**

##### **6.2.5.1**

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 fifteen (15) calendar days of the meeting.

##### **6.2.5.2**

The minutes shall be considered as accepted if, within fifteen (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.

## 6.2.5.3

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

### 6.3 Specific operational procedures for the Consortium Bodies

#### 6.3.1 General Assembly

In addition to the rules described in Section 6.2 (General operational procedures for all Consortium Bodies), the following rules apply:

##### 6.3.1.1 Members

###### 6.3.1.1.1

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

###### 6.3.1.1.2

Each General Assembly Member shall be deemed to be duly authorized to deliberate, negotiate, and decide on all matters listed in Section 6.3.1.2 (Decisions) of this Consortium Agreement.

###### 6.3.1.1.3

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

###### 6.3.1.1.4

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 (Veto rights), or from submitting a dispute to resolution in accordance with the provisions of in Section 11.8 (Settlement of disputes).

##### 6.3.1.2 Decisions

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

In addition, all proposals made by the Project Management 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)
- 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
  - 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 Project and measures relating thereto
  - 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
- Appointments
- On the basis of the Grant Agreement, the appointment, if necessary, of: External Expert Advisory Board Members

### **6.3.2 Project Management Board**

In addition to the rules in Section 6.2 (General operational procedures for all Consortium Bodies), the following rules shall apply:

#### **6.3.2.1 Members**

The Project Management Board shall consist of the Coordinator and the Work Package leaders and Co-leaders as defined in the Grant Agreement.

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

#### **6.3.2.2 Minutes of meetings**

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

#### **6.3.2.3 Tasks**

##### **6.3.2.3.1**

The Project Management Board shall prepare the meetings, propose decisions, and prepare the agenda of the General Assembly according to Section 6.3.1.

##### **6.3.2.3.2**

The Project Management Board shall seek a consensus among the Parties.

#### 6.3.2.3.3

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

#### 6.3.2.3.4

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

#### 6.3.2.3.5

In addition, the Project Management 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.

#### 6.3.2.3.6

The Project Management 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 (Results) of this Consortium Agreement.

#### 6.3.2.3.7

In the case of abolished tasks as a result of a decision of the General Assembly, the Project Management 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.

## 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 certifications) and specific requested documents to the Granting Authority

- preparing the meetings, proposing decisions, and preparing the agenda of General Assembly Project Management Board and the EEAB meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings
- 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 (Payments)
- 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.

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 External Expert Advisory Board (EEAB)

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

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 **Error! Reference source not found..** The mandate of the Coordinator comprises solely the execution of the NDA in **Error! Reference source not found.** Its terms shall be not less stringent than those stipulated in this Consortium Agreement, and it shall be concluded no later than thirty (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.



## 7 Financial provisions

### 7.1 General Principles

#### 7.1.1 Associated Partners

All provisions included in this Section apply to Beneficiaries. The provisions of this Section do not apply to the Associated Partners.

#### 7.1.2 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. (Payments).

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

#### 7.1.3 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 Affiliates, 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.

#### 7.1.4 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.

#### 7.1.5 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 Party has to inform the Coordinator and return the relevant amount to the Coordinator without undue delay. In case no refund takes place within thirty (30) days upon request for return of excess payment from the Coordinator, the Party 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 Parties 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.

#### **7.1.6 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.

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

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 Defaulting Beneficiary shall, within the limits specified in Section 5.2 (Limitations of contractual liability) 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 Beneficiary 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:

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.

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

## **8 Results**

### **8.1 Ownership of Results**

Results generated within the Project are owned by the Party that generates them.

### **8.2 Joint ownership**

In case of Joint Results, the Parties involved shall negotiate and agree on a joint ownership agreement regarding the allocation and terms of exercising that joint ownership of such Joint Results, within six (6) months as of claim of right by the last involved Party of such Joint Results.

Joint ownership is governed by Grant Agreement Article 16.4 and its Annex 5, Section Ownership of results. The following additions shall apply, unless otherwise agreed:

- each of the joint owners shall be entitled to use their Joint 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 by themselves or through their Affiliated Entities the Joint 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 thirty (30) calendar days advance notice; and (b) fair and reasonable one-time compensation.

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

### **8.3 Transfer of Results**

#### **8.3.1**

Each Party may transfer ownership of its own Results, including its share in Joint 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”.

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.

Each Party may freely transfer the ownership of its Results or share in Joint Results to any entity under the same control and/or within the framework of a merger or an acquisition of an important part of its assets or the technology package to which this Agreement pertains.

The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. The other Parties hereby waive their right to prior notice and their right to object to such a transfer to such entity under common control or within the framework of a merger or an acquisition 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.

### **8.3.2**

In any other case, the Party that wishes to transfer ownership of its Results or share in Joint Results to a third party shall prior to such transfer offer such Results or share thereof to the other Parties at the conditions a third party would acquire such Results or the share thereof.

The transferring Party shall at the time of the transfer, inform the other Parties at least forty-five (45) calendar days in advance (or less if agreed in writing) unless impossible under the applicable law of such transfer. This notification must include sufficient information on the new owner to enable the Parties concerned to assess the effects on their access rights. The transferring Party shall ensure that the rights of the other Parties under the Consortium Agreement and the Grant Agreement will not be affected by such transfer.

A Party's obligation to give prior notice to the other Parties in case it intends to transfer its solely owned Results to a third party will cease five (5) years after the expiration of this Agreement, whereas the obligations regarding the transfer of the share of Joint Results shall survive the expiration or termination of this Agreement and stay in force and effect.

### **8.3.3**

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 forty-five (45) calendar days prior notice for the transfer as foreseen in the Grant Agreement.

### **8.3.4**

Subject to Section 8.3.2, 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 General principles**

For the avoidance of doubt, the confidentiality obligations set out in Section 10 (Non-disclosure of information) 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 Joint) Results**

#### **8.4.2.1**

During the Project and for a period of two (2) years 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 forty-five (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 thirty (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 ninety (90) calendar days from the time it raises such an objection. After ninety (90) calendar days the publication is permitted, provided that the objections of the objecting Party have been addressed and remedied.

### **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.

### **8.4.6 Acknowledgement of national funding**

If a publication or other dissemination activity requires acknowledgement of EC funding under Article 17 of the Grant Agreement, and the publication or other dissemination activity includes Results generated

solely or jointly with an Associated Partner, then, where applicable, acknowledgement of national funding to be provided by the Associated Partner shall be included.

#### **8.4.7 Acknowledgement of further support of Associated Partner's**

Acknowledgment of further support e.g., by national funding agencies or ministries, for instance the Swiss State Secretariat for Education, Research, and Innovation (SERI) (Attachment 5), needs to be acknowledged as laid down in the respective agreements. This applies to any communication or dissemination related to the action involving Participants receiving such support. Moreover, it must indicate the following notice: «This work has received funding from the Swiss State Secretariat for Education, Research and Innovation (SERI)»

## **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 own 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.

For the avoidance of any doubt, any Party may grant a sublicensable license to their own results to their Affiliated Entity or its technology transfer office, which is in charge of the management and transfer of its intellectual property.

#### **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 or verbally during project meetings. 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.

Parties are allowed to disclose Background and Results to Affiliates to the extent such disclosure is necessary for the purpose of the Project, subject to such Affiliate being bound by confidentiality obligations. A Party disclosing Background or Results to an Affiliate remains fully responsible and liable towards the other Parties for such Affiliate's handling of such Background or Results.

### **9.4 Access Rights for Exploitation**

#### **9.4.1 Access Rights to Results**

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

Subject to the confidentiality obligations, access rights to Results for internal research and for teaching activities shall be granted on a royalty-free basis.

#### **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 and upon written agreement.

#### **9.4.3**

A request for Access Rights may be made up to twelve (12) months after the end of the Project or, in the case of Section 9.7.2.1.2 (Non-defaulting Party), after the termination of the requesting Party's participation in the Project.

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

Access Rights according to Section 9.4.1 and 9.4.2 shall include without being limited the right to grant sublicenses to 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".

Notwithstanding the foregoing, a Party that has obtained Access Rights may sublicense such Access Rights to its entities under the same control in connection with the Exploitation of its Results by such entities under the same control.

Alternatively, such Access Rights may be requested directly by the Affiliated Entity from the Party that holds the Background or Results. Such Access Rights must be requested by the entity under the same control from the Party that holds the Background or Results. Access Rights to an entity under the same control shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.

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

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

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

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

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

## **9.6 Additional Access Rights**

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.

For the avoidance of doubt any grant of Access Rights not covered by the Grant Agreement or this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

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

### **9.7.1 New Parties entering the consortium**

New Parties will have to complete Attachment 1 and give Access Rights to other Parties, based on the conditions of the Consortium Agreement. 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.



An entity becomes a new Party to the Consortium Agreement after the decision of the General Assembly upon subsequent 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.

## **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 (Access Rights) 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 fifteen (15) calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is "Confidential Information", also referred to as "sensitive information" in Article 13 of the Grant Agreement.

For the avoidance of doubt, Associated Partners acknowledge and consent to be bound by obligations under Article 13 (confidentiality and security) of the Grant Agreement, the specific rules on confidentiality and security set out in Annex 5 and all provisions included in this Section, in the same way that they apply to Beneficiaries.

## 10.2

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

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information without the prior written consent by the Disclosing Party; provided however that a Party is allowed to disclose Confidential Information of another Party to an Affiliate, subject to the conditions set out in Section 10.3.
- 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 Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees, or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

Notwithstanding the foregoing, the Recipient may disclose the Confidential Information to an entity under the same control, but only to the extent it is necessary for the fulfilment of the rights and obligations under the Grant Agreement and/or this Consortium Agreement. The Recipient shall in all such cases undertake that the entity under the same control is bound by obligation of confidentiality and non-disclosure as set forth herein.

## 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 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, 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.

## 10.8 Extending obligations to Affiliated, Represented Associated Partners and other Third Parties

Parties shall ensure in their contracts with their Affiliated Entities or third parties that the obligations of the present Section are extended to such entities.

# 11 Miscellaneous

## 11.1 Attachments, inconsistencies, and severability

This Consortium Agreement consists of this core text and:

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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, agency, or licence**

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.

Except as explicitly granted herein, no licence, immunity or other right is granted or assigned under this Consortium Agreement, either directly or indirectly, implied or otherwise, to any Party or any of its entities under the same control with respect to any Intellectual Property Right of the other 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 4.2, 9.7.2.1.1, and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery 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.

## **11.4 Assignment and amendments**

Except as set out in Sections 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, except that either Party may assign this Consortium Agreement without such approval of the other Parties to an entity under the same control or an entity that acquires all of the business or assets of such Party to which this Consortium Agreement pertains, whether by merger, reorganization, acquisition, sale or otherwise, provided, however, that any such assignee has agreed to be bound by the terms and conditions of this Consortium Agreement as if being an original Party hereto..

Amendments and modifications to the text of this Consortium Agreement 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.

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.

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within sixty (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 sixty (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.

## 11.9 Publication of the Consortium Agreement

In terms of the relevant provisions of Act No. 211/2000 of the Coll. on Free Access to Information and on amendments to certain laws (Freedom of Information Act), as amended, according to UPO SAV mandatory publication in the Central Register of Contracts governed by the Government Office of the Slovak Republic relates to this Consortium Agreement. This Consortium Agreement may be published by UPO SAV in the [Central Register of Contracts](#) governed by the Government Office of the Slovak Republic. In order to fulfil its obligation to publish this Consortium Agreement, UPO SAV is obliged to arrange for its publication without undue delay after the signing of this Consortium Agreement by all Parties, as well as ensure the non-disclosure of the Attachments.

## 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.