

## Template Consortium Agreement for GroenvermogenNL

### INTRODUCTION

This Consortium Agreement model is created for projects which will be governed by the NWO Grant Rules 2017 (v.2019). It is originally based on the DESCA Model developed for R&D&I Project under the European framework programme “Horizon Europe” (“H.E.”) but (i) has undergone various changes as the H.E. rules as such do not apply, while the NWO Grant Rules do apply and (ii) where the DESCA Model refers to provisions or arrangements in the H.E. Model Grant Agreement, provisions have been inserted into this template that comply with the NWO Grant Rules on the same subject and with the “Principles” formulated by GroenvermogenNL.

**This 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 explanatory notes 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.

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

1. Core text: The main body of the text.
2. Parts highlighted in yellow have to be either (i) filled out, (ii) changed in line with preference, (iii) accepted or deleted (when there is an “[Optional]” preceding the text), or (iv) a choice has to be made between Option 1 or two in case there two options are presented ( [Option 1] ..... [End of Option 1] [Option 2] ..... [End of Option 2] )
3. IPR - special clauses for Software:

Art. 9.8 contains special clauses regarding Background and Results that are Software. If your project has no strong focus on software issues, you may wish to delete all of Section 9.8 except Section 9.8.2 first two paragraphs and if preferred, also 9.8.3.

# Consortium Agreement

[ACRONYM OF PROJECT]

Version [X] – [DATE]

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## CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is made on [Project start date // other agreed date], hereinafter referred to as the “**Effective Date**”,

### BETWEEN:

[OFFICIAL NAME OF THE PROJECT LEADER], having its registered address at ..... , .....<city>....., ...<country> ..... hereinafter “**Project Leader**” and

[OFFICIAL NAME OF THE TECHNICAL MANAGER], having its registered address at ..... , .....<city>....., ...<country> ..... hereinafter “**Technical Manager**” and

OTHER PARTY’s NAME, having its registered address at ..... , .....<city>....., ...<country> ..... hereinafter “<short name of party>” and

OTHER PARTY’s NAME, having its registered address at ..... , .....<city>....., ...<country> ..... hereinafter “<short name of party>” and

OTHER PARTY’s NAME, having its registered address at ..... , .....<city>....., ...<country> ..... hereinafter “<short name of party>” and

OTHER PARTY’s NAME, having its registered address at ..... , .....<city>....., ...<country> ..... hereinafter “<short name of party>” and

Etc .....

hereinafter, jointly respectively individually, referred to as “Parties” and “Party”

IN VIEW OF the project entitled “ [NAME OF PROJECT] “ in short [Insert: acronym]

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

### PREAMBLES:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Dutch Research Council (Dutch: Nederlandse Organisatie voor Wetenschappelijk Onderzoek), hereinafter “**NWO**”.

The Parties wish to agree on binding commitments among themselves regarding the Project in addition to or specifying the provisions of the NWO Grant Rules 2017 (v.2019) (“**NWO Rules**”), the provisions of the Call for Proposals for work package <. :>: ... < title work package> and the Grant Decisions. This Agreement is also subject to the EU Block exemption Regulation EU/2014/651 (as amended with the horizontal Block exemption Regulation EU/2022/2455) (“GBER” in Dutch “AGVV”)

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

# 1 Definitions

## 1.1 Definitions

Words beginning with a capital letter shall have the meaning defined herein.

## 1.2 Additional Definitions

“**Access Right(s)**” means rights to use Results or Background to implement the Project and/or for internal research or teaching and/or the right to Exploit under the terms and conditions as specified in this Consortium Agreement. Access Rights include the right to have a third party use the Results or Background, as the case may be, but only for and on behalf of the Access Rights granted Party (or its Affiliated Entity).

“**Affiliated Entities**” of a Party means

- (a) any legal person directly or indirectly Controlling, Controlled by, or under common Control with that Party, for so long as such Control exist; and
- (b) any other legal person that is listed in **Attachment 4** to this CA as being an Affiliate Entity of that Party, where such legal person can only be one in which that Party (or a legal person qualifying as an Affiliated Entity of that Party under (a) directly above) has a 50% equity share or is the single largest equity shareholder.

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

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

“**Agreement**” or “**Consortium Agreement**” or “**CA**” means this Consortium Agreement and all Attachments attached hereto.

“**Background**” means : all Know-How, including IP that is

- (i) owned by a Party or that a Party has a right to license, prior to the Effective Date of the CA; or
- (ii) developed or acquired by a Party in parallel with, but independently from, the work performed in the Project.

“**Consortium**” means the group of Parties to this Consortium Agreement together.

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

“**Defaulting Party**” means a Party which the **Project Committee** has identified to be in breach of this Consortium Agreement and/or the Grant Decision as specified in Section 4.2.

“**Effective Date**” means the first date written above.

“**Eligible Cost**” means the types of cost as referred to in Section 1.4 of the NWO Rules.

“**Exploitation**” or “**(to) Exploit**” means the use of Results or Background in

- i) further research activities other than (a) those covered by the Project or (b) that are internal research and teaching, or
- ii) developing, creating or marketing a product, or process, or

- iii) creating and providing a service, or
- iv) standardisation activities.

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

“**Grant**” means the pecuniary amount granted to the Project by the Funding Authority.

“**Grant Decision**” means the letter through which the decision by NWO to grant the Funding to the Project is sent to the Project Leader.

“**Granting Authority**” means NWO.

“**IP (Intellectual Property)**” means any patents, patent applications and other statutory rights in inventions, as well as copyrights (including without limitation copyrights in software), registered design rights, applications for registered design rights, unregistered design rights and other statutory rights in designs and other similar or equivalent forms of statutory protection, but not trademarks.

“**Know-How**” means and all data or information (tangible or intangible) of a Party, whatever its form or nature, including any IP.

“**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 Access Rights receiving Party would be technically impossible or legally not allowed, 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 impossible or legally not allowed, significantly delayed, or require significant additional financial or human resources.

“**NWO Rules**” has the meaning attributed to it in the second Preamble.

“**Project Committee**” has the meaning attributed to it in Section 6.1.

“**Project Leader**” has the meaning attributed to it in Section 6.1.

“**Project Plan**” means the description of the Project and the related agreed budget as defined in the Grant Decision and which may be updated by the Project Committee.

“**Result(s)**” means all Know-How, including IP, that is not Background.

“**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.

Where in this Consortium Agreement reference is made to “Sections”, this refers to sections of this Consortium Agreement unless explicitly stated otherwise.

## 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 duly authorised representatives of all<sup>1</sup> Parties.

This Consortium Agreement shall have effect from the Effective Date.

An entity becomes a new Party to the Consortium Agreement if all existing Parties agree thereto and the accession document (**Attachment 2**) is signed by new Party and the Project Leader, which is authorised to sign this document behalf of the other Parties. 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 Decision and 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 Granting Authority withdraws the Grant Decision or
- a Party's participation in the Project 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.

### 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 (joint) ownership, liability, notices, applicable law and settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

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<sup>1</sup> This agreement should only enter into force when all Parties listed above have signed, as for some Parties it may be relevant, if not decisive, for them to sign, that also one or more of the other Parties take part in the Project.

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 Project Committee and the leaving Party or in this Consortium Agreement. This includes the obligation to provide all necessary input, deliverables and documents for the period of its participation and the Access Rights granted by the leaving Party.

## **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 Decision and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Dutch law. The Project Leader and each Party receiving grants has the obligation to adhere to the obligation in NWO Rules and in the Grant Decision that apply to it, while implementing the Project under this Consortium Agreement.

Each Party undertakes to notify the Project Leader who then notifies 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, promptly after it becomes aware thereof or of the possibility thereto.

If Results are generated that qualify or may qualify for patent or copyright protection, the Party/ies having created such Results shall immediately inform the other Parties and the Project Leader and the Project Leader will immediately inform NWO thereof. The Party/ies having created such Results shall consider to file for protection and if so, they will proceed to the protection procedures.

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Project Leader to carry out its tasks.

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

### **4.2 Breach**

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

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Project Committee 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 and therewith termination of this Consortium Agreement for such Defaulting Party.

### **4.3 Involvement of third parties**

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the Grant Decision. 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 Decision.



## 4.4 Specific responsibilities regarding data protection

Where necessary, the Parties shall cooperate in order to enable one another to fulfil their 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, "GDPR"* and the relevant national data protection laws and regulations 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 Affiliated Entities) exercising its Access Rights.

However, and notwithstanding anything to the contrary, each Party undertakes to not knowingly use, or make available, for the Project any proprietary rights of a third party for which such Party has not acquired the corresponding right to use and to grant Access Rights to the other Parties in accordance with this CA.

### 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, [OPTIONAL] **except in case of breach of confidentiality** [END OF OPTIONAL].

A Party's aggregate liability towards the other Parties collectively shall be limited to **[Insert: once or twice]** the Party's share of the total costs of the Project as identified in Grant Decision.

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 or non-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 and shall indemnify all other Parties against claims from third parties in that respect.

## 5.4 Force Majeure

No Party shall be liable for 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 Project Leader of any Force Majeure it has become subject to and of the consequences thereof for its performance under the Project, without undue delay and the Project Leader shall inform the other Parties (possibly) affected by such consequences. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notice, a transfer of tasks - if any - may be decided by the Project Committee.

## 5.5 [OPTION : 5.5 Export control]

Force Majeure shall be deemed to include a prevention from fulfilling its obligation under this Consortium Agreement 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 Project Committee 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 Project Committee.] [END OF OPTION]

## 6 Governance structure

### 6.1 General structure

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

- 1) The **Project Committee** is the decision-making body of the Consortium.
- 2) The **Project Leader** is the legal entity acting as the intermediary between the Parties and the Granting Authority. The Project Leader shall, in addition to its responsibilities as a Party, perform the tasks assigned to the Project Leader as described in the Grant Decision and this Consortium Agreement. The Project Leader is also the “main Beneficiary” and “Coordinator”, as these terms are used in the NWO Rules.
- 3) The **Technical Manager** is the Party (or representative of such Party) chosen by the Consortium to fulfil the role of technical manager as described in the NWO Rules. The technical manager for the Project is .... <name of person> of <name of Party>.
- 4) Any other governance substructure deemed necessary by the project, e.g. Research Line / Task Line / User committee and described further in detail here:

### 6.2 Parties to Project Committee

The Project Committee shall consist of .....

Each members of the Project Committee shall be deemed to be duly authorised to deliberate, negotiate and vote on all matters presented to the Project Committee.

The Project Leader shall chair all meetings of the Project Committee (“chairperson”), unless decided otherwise by the Project Committee.

The Parties agree to abide by all decisions of the Project Committee.

## **7 Financial provisions**

### **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 Project Leader according to:

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

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

#### **7.1.2 Justifying Costs**

In accordance with its own usual accounting and management principles and practices, each Party 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 Project Leader (other than as a beneficiary itself of the Funding) nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Granting Authority.

#### **7.1.3 Funding Principles**

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

A Party that spends more than its allocated share of the budget as set out in the Project Plan will be funded only in respect of duly justified Eligible Costs up to an amount not exceeding that allocate share.

#### **7.1.4 Excess payments**

A Party has received excess payment

- a) if the payment received from the Project Leader exceeds the amount declared or
- b) if a Party has received payments but, within the last year of the Project, its real Project costs fall significantly behind the costs it would make according to the Project Plan.

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

Amounts of excess payment which are not repaid by a breaching Party and which are due to the Granting Authority, shall be apportioned by the Project Leader to the remaining Parties pro rata

according to their share of the total costs of the Project as identified in the Project budget, until recovery from the breaching Party is possible.

#### **7.1.5 Revenue**

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

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

A Party leaving the Consortium shall refund to the Project Leader any payments it has received except the amount of contribution already accepted by the Granting Authority or another contributor.

In addition, a Defaulting Party shall, within the limits specified in Section 5.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform the leaving Party's task and necessary additional efforts to fulfil them as a consequence of the Defaulting Party leaving the Consortium. The Project Committee shall agree on a procedure regarding additional costs which are not covered by the Defaulting Party or, if any, the Project insurance policy.

### **7.2 Payments**

#### **7.2.1 Payments to Parties**

Payments to the Parties are the exclusive task of the Project Leader. In particular, the Project Leader shall:

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

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

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 Project Leader is a Public Body or is not entitled to do so due to statutory legislation;

No Party shall before the end of the Project receive more than its allocated share of the maximum Funding amount less the amounts retained by the Granting Authority for the final payment.

#### **7.2.2**

The transfer of the initial pre-financing (if any), the additional pre-financings (if any) and interim payments to Parties will be handled in accordance with the relevant arrangement in the Grant Decision following this payment schedule:

##### **[Option 1:]**

Funding of costs included in the Project Plan will be paid by the Project Leader to the Parties 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 Project Leader to the Party concerned.

[end of option 1]

[Option 2:]

Funding of costs included in the Project Plan will be paid by the Project Leader to the Parties after receipt of payments from the Granting Authority without undue delay and in conformity with the provisions of the Grant Decision. Costs accepted by the Granting Authority will be paid to the Party concerned.

[End of option 2]

The Project Leader is entitled to withhold any payments due to a Party that is identified by the Project Committee to be in breach of its obligations under this Consortium Agreement or the Grant Decision or identified as a Defaulting Party, or to a Beneficiary which has not yet signed this Consortium Agreement.

The Project Leader is entitled to recover any payments already paid to a Defaulting Party except the costs already claimed by the Defaulting Party and accepted by the Granting Authority.

## 8 Results

### 8.1 Ownership of Results

Results are owned by the Party that generates them.

### 8.2 Joint ownership

#### 8.2.1

In each case where Results are generated by two or more Parties (employees), they shall jointly and equally own the Results if it is not possible to:

- (i) establish the respective contribution(s) of each Party; or
- (ii) separate their respective contributions for the purpose of applying for, obtaining or maintaining their protection.

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 or informing the other joint owner(s).

[Option 1:]

### 8.2.2

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) a 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:]

### 8.2.2

Each of the joint owners shall be entitled to Exploit the jointly owned 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]

### 8.2.3

The joint owners shall further enter into a joint ownership agreement between them which shall, in addition, at least include an arrangement on:

- (a) if, how and where the joint Results will be protected, including issues related to who takes the lead in drafting an invention disclosure form (if any), filing protection, who pays the cost of protection (*patent filing and examination fees, renewal fees, prior use searches, infringement actions, etc.*).
- (b) the rights of joined owners not joining the filing for protection in any country or area, such as, but no necessarily limited to, royalty free licenses.
- (c) Dispute resolution between them.

## 8.3 Transfer of Results

### 8.3.1

Each Party may transfer ownership of its own Results, including its share in jointly owned Results, provided any such transfer does not affect compliance with its obligations under this Consortium Agreement, i.e. it shall ensure that its obligations under this Consortium Agreement regarding their Results are passed on to the new owner and that this new owner has the obligation to pass them on in any subsequent transfer.

### 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. Any addition to Attachment 3 after signature of this Consortium Agreement requires a decision of the Project Committee.

### 8.3.3

In case a Party intends to transfer Results to a third party not listed in Attachment 3, such Party must inform the other Parties of the transfer at least 45 days in advance. This notification must include sufficient information on the new owner to enable the other Parties to assess the effects on their Access Rights. Each other Parties may object within 30 days of receiving notification, if they can show that the transfer would adversely affect its Access Rights. In this case, the transfer may not take place until agreement has been reached between the Parties concerned.

### 8.3.4

The Parties recognise, however, that in the framework of a merger or an acquisition of (an important part of) a Party's assets or business, 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.

### 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 9.8 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 2 year after the end of the Project, each Party must disseminate their Results as soon as feasible, in a publicly available format (Open Access, see also NWO Rules), subject to any restrictions due to the protection of intellectual property, security rules or legitimate interests, and 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 planned publication. Any objection to the planned publication shall be made by written notice to the Project Leader and to the Party or Parties proposing the publication, within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted, without prejudice, however, to Sections 8.4.3. and 8.4.2.2 c).

#### 8.4.2.2

An objection is justified if

- a) the protection of the objecting Party's Results or Background<sup>2</sup> 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.

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<sup>2</sup> See Section 9.1.1. c)

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 such 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 defence 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

- a) In Attachment 1, the Parties have identified and agreed on the Background available for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.
- b) Background not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.
- c) Where hereafter in this Section 9 or in Section 8.4 above reference is made to Background this will be considered to be Background made available by a Party in Attachment 1.

#### 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 Project Committee 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 Project 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 grant sublicense unless expressly stated or agreed upon 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 a Party's tasks under the Project are hereby deemed requested and shall be granted by and to all Parties on a royalty-free basis, unless otherwise agreed for Background in Attachment 1, and shall either terminate automatically upon completion of the Project or upon termination of a Party's participation in the Project in accordance with Section 9.7.2.

## **9.4 Access Rights for Exploitation, Internal Research and Teaching**

### **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 and for internal research and for teaching activities shall be granted on a royalty-free basis.

[end of option 2]

#### **9.4.2 Access Rights to Background**

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 Request for Access Rights**

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, twelve months after the termination of the requesting Party's participation in the Project.

### **9.5 Access Rights for Affiliated Entities**

Affiliated Entities of a Party are entitled to Access Rights under the following conditions:

Such Access Rights must be requested by the Affiliated Entity from the Party that holds the Background or Results. Access Rights to an Affiliated Entity shall be granted [OPTION 1] on the same conditions as to the Party to which it is an Affiliated Entity [END OF OPTION 1] [OPTION 2] on Fair and Reasonable conditions [END OF OPTION 2] and upon written bilateral agreement.

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

Notwithstanding the subparagraphs of 9.5 here above, Access Rights may be refused to Affiliated Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.

Access Rights granted to any Affiliated Entity 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 Affiliated Entity, any Access Rights granted to such former entity under the same control shall lapse.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

### **9.6 Additional Access Rights**

For the avoidance of doubt any grant of Access Rights not covered by 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.

[Optional]

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. [End of Optional]

## **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 Project Committee 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, whether voluntarily or as a Defaulting Party, shall continue to grant Access Rights pursuant to 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**

### **9.8.1 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") is 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 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.

### **9.8.2 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 as Background in the Project requires that the introducing Party notifies the other Parties of the intention thereto and such introduction requires the prior approval of the Project Committee to implement such introduction into the Project 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.

### **9.8.3 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 impossible or legally not allowed 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.

## 9.8.4 Software license and sublicensing rights

### 9.8.4.1 Object Code

#### 9.8.4.1.1 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.

#### 9.8.4.1.2 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 and any updated versions of these directives.

#### 9.8.4.1.3 Background

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

### 9.8.4.2 Source Code

#### 9.8.4.2.1 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.

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

In addition, Access Rights to Software that is Results, 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 excluded unless explicitly otherwise agreed upon.

#### 9.8.4.2.3 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.

#### 9.8.5 Specific formalities

Each sublicense granted according to the provisions of Section 9.8.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.

## 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 Recipients hereby undertake in addition and without prejudice to any arrangement on non-disclosure under the Grant Decision, for a period of 5 years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed or was later agreed upon;
- 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, unless such Confidential Information is required to make use of the Access Rights granted under this Consortium agreement. 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, for as long as the obligations of confidentiality and restrictions of use apply..

### 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 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 of Section 10.7 hereunder.

### 10.5

The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed to it 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.

## 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)
- [OPTIONAL] Attachment 3 (List of third parties for simplified transfer according to Section 8.3.2)
- [OPTIONAL] Attachment 4 (Identified entities under the same control )

In case the terms of this Consortium Agreement are in conflict with the terms of the Grant Decision, 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, as referred to in Section **Error! Reference source not found.**, 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 Project Leader.

Any change of persons or contact details shall be immediately communicated to the Project Leader 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 and 9.7.2.1.1) 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.

Other written notice:

Where other 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 **Error! Reference source not found.** 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 The Netherlands excluding its conflict of laws 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 that cannot be solved amicably between the Parties concerned (herein referred to as a "Dispute"), shall be submitted to mediation if the Parties involved so agree. If the Parties do not agree on mediation, the Dispute shall be finally settled

[Option 1] by the competent courts in Amsterdam, The Netherlands. [End of Option 1]

[Option 2] through arbitration by the Dutch Arbitration Institute /Nederlands Arbitrage Instituut (NAI) in accordance with its rules. The place of arbitration shall be Amsterdam 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. [End of Option 2]

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

## 12 Signatures

The Parties have caused this Consortium Agreement to be duly signed by the Parties' 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

In view of Section 9.1 of the Consortium Agreement the Parties must identify and agree amongst them on the Background each Party make available for the Project. This is the purpose of this attachment.

### PARTY 1

- 1) As to [NAME OF THE PARTY], the following Background is hereby identified as made available 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 Project”)	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”)

- 2) As to [NAME OF THE PARTY], the following Background is hereby identified as made available 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 Project”)	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”)

- 3) As to [NAME OF THE PARTY], the following Background is hereby identified as made available 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 Project”)	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”)

[Same for PARTY 4, PARTY 5, etc]

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

## Attachment 2: Accession document

ACCESSION

of a new Party to

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

[OFFICIAL NAME OF THE NEW PARTY]

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 PROJECT LEADER]

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], and that it is authorised to execute this Accession Document on behalf of all Parties to the Consortium Agreement.

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 PROJECT LEADER]

Signature(s)

Name(s)

Title(s)

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

**[Option: Attachment 4: Identified Affiliated Entities]**