Model Project Consortium Agreement

for Research, Development and Innovation Actions

Funded By The

KDT Joint Undertaking

Note for the user of this template: On certain subjects, this document contains two or more different “OPTION”s. Please make sure that where the Options are numbered*,* once a choice for one such option is made the other OPTIONS(s) are deleted. OPTIONs that are not numbered can either be included or rejected.

At other places, mainly where amounts, numbers or time periods are mentioned, text is highlighted in green, which means that also here a choice has to be made, or another number or amount may be inserted.

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In addition, there are some (\*) foot notes for explanation purposes.

**THIS PROJECT CONSORTIUM AGREEMENT**

**BETWEEN:**

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

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

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

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

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

relating to the research project entitled:

**[FULL NAME OF ACTION]**

in short:

**[Insert: Action acronym]**

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

**WHEREAS**

* The KDT (Key Digital Technologies) Joint Undertaking (“**KDT JU**”) is a partnership between the private and the public sectors for electronic components and systems. It is established within the meaning of Article 187 of the Treaty on the Functioning of the European Union for the implementation of the Key Digital Technologies Joint Undertaking for a period up to 31 December 2031.
* The KDT Joint Undertaking has been established by COUNCIL REGULATION (EU) 2021/2085 of 19 November 2021 (the “**Council Regulation**”). With a view to the KDT JU, the rules for participation and dissemination set out in Regulation (EU) No 2021/695, establishing Horizon Europe - the Framework Programme for Research and Innovation (2021-2027) (hereinafter referred to as “**the Rules**”), shall apply to the actions funded by the KDT Joint Undertaking.
* Consequently, this Project Consortium Agreement (“PCA”) is based upon the COUNCIL REGULATION (EU) No 2021/695, and the Grant Agreement (“GA”) and its Annexes entered into between the Funding Authority on the one hand and the Parties hereto on the other hand, and is made on [Action start date / other agreed date], (hereinafter referred to as the “**Effective Date**”).

The Parties have submitted a proposal for the Action to the KDT Joint Undertaking as the Funding Authority underHorizon Europe.

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

**IT IS NOW AGREED AS FOLLOWS:**

**Section 1: Definitions**

**1.1 Definitions**

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

**1.2 Additional Definitions**

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

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

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

**AENEAS** means the French association with registered office at 44 rue Cambronne 75015 – Paris, France.

An **Affiliate** of a Party means:

(a) any Legal Entity directly or indirectly Controlling, Controlled by, or under common Control with that Party, for so long as such Control lasts **[START OF OPTION]** and which is established in a Member State or associated country **[END OF OPTION]**; and

(b) any other Legal Entity that is listed in Attachment 4 to this PCA as being an Affiliate of that Party, where such Legal Entity is one in which that Party (or a Legal Entity qualifying as an Affiliate of that Party under (a) directly above) has a 50% equity share or is the single largest equity shareholder.

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

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

**[START OF OPTION]** and which participate in the Action with similar rights and obligations as the Parties (obligation to implement Action tasks grant Access Rights and right to charge costs, receive Access Rights and claim contributions) and which may be Parties in this Consortium Agreement, if applicable **[END OF OPTION]**.

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

**Applicable Law** means the law applicable to this PCA as determined in Section 12.7

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

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

(i) owned by a Party or that a Party has a right to license, prior to the Effective Date; or

(ii) developed or acquired by a Party independently from the work in the Action even if in parallel with the performance of the Action,

but solely to the extent that such data, information, know-how and/or IPRs are introduced into the Action by the owning Party, or otherwise made available for Access Rights, in accordance with Section 9.1.1.

**Consortium** means the Parties to this Agreement at any point in time.

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

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

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

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

**Coordinator** means the Party first mentioned above, which is identified as such.

**Controller** has the meaning attributed to it (without initial capital) in the EU General Data Protection Regulation EU) 2016/679 (hereinafter : “**GDPR**”).

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

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

**Dissemination** means the public disclosure of the results by any appropriate means (other than resulting from protecting or exploiting the results), including by scientific publications in any medium.

**Effective Date** has the meaning attributed to it in the third preamble.

**EPoSS** means the European Technology Platform on Smart Systems Integration, with registered office at Steinplatz 1, 10623, Berlin, Germany.

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

**Executive Board Member** has the meaning attributed to it in Section 6.3.2.1.

**Exploitation** or **Exploit** means the use of Results in i) further research activities other than (a) those covered by the Action or (b) that are Internal Research and Teaching (as defined below) , or ii) in developing, creating or marketing a product, or process, or iii) in creating and providing a service, or iv) in standardisation activities.

**Fair and Reasonable** shall have the meaning given to it in the definition of **Fair and Reasonable Conditions** in the GA being appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for Access Rights, for example the actual or potential value of the Results or Background to which Access Rights are requested and/or the scope, duration or other characteristics of the Exploitation envisaged.

**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 PCA, were not reasonably foreseeable at the time of signing of this PCA, 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, unforseable consequences of pandemics, and general shortages of energy.

**Funding Authority** means the KDT Joint Undertaking.

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

**General Assembly Member** has the meaning attributed to it in Section 6.3.1.1.1.

**Grant Agreement** or **GA** means the written agreement between the Parties and the KDT Joint Undertaking for the carrying out of the Action, including any agreed amendment to such written agreement that may from time to time be in force.

**Indirect Utilisation** means the use by a third party of Access Rights for Exploitation, granted pursuant to this PCA and/or the GA to a Party and its Affiliates, while making or providing products and/or services, only for the account of and for the use, sale or other disposal by such Party and such Affiliates, while the substantial portion of the specifications of such products and/or services has been designed by or for such Party and such Affiliates.

**INSIDE** means the Dutch association with registered office at High Tech Campus 69, 5656 AG, Eindhoven, The Netherlands.

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

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

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

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

**Legal Entity** means any natural person, or any legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations.

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

Member has the meaning attributed to it in Section 6.2.1.

National **Funding Authority** or **NFA** means any public authority of a country, that co-funds one or more of the Parties hereto in the Action, independent from the Funding Authority,

**National Grant Agreement** means an agreement or other legally binding arrangement, in force and applicable between an NFA and one or more Parties hereto, in which funding for the Action is granted to this Party, or these Parties, by such NFA.

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

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

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

**Project Consortium Agreement or PCA** means this agreement, including all Annexes attached hereto.

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

**Personal Data** has the meaning attributed to it (without initial capital) in the GDPR.

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

**Rules** has the meaning attributed to it in the third preamble.

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

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

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

**Software** means a software program being sequences of instructions to carry out a process in, or convertible into, a form executable by a computer, and fixed in any tangible medium of expression.

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

**Section 2: Purpose**

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

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

**3.1 Entry into force**

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

**3.2 Duration and termination.**

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

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

(a) for a non-Defaulting Party by a decision of the General Assembly and subject without limitation to Sections 3.3, 4.1 and 9.8.2.1 of this PCA; The General Assembly shall not unreasonably withhold consent to an application by a Party to terminate its participation in this PCA;

(b) for a Defaulting Party subject and without limitation to Sections 3.3, 4.2 and 9.8.2.2 of this PCA and

(c) by the mutual written consent of all of the Parties on the termination of this PCA for all Parties, on terms to be agreed.

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

If the GA:

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

then this PCA 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 PCA.

The termination of the participation of a Party shall not affect this PCA for the remaining Parties. The consortium and the Action continue in such case.

**3.3 Survival of rights and obligations**

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

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the General Assembly and the leaving Party.

**Section 4: Responsibilities of Parties**

**4.1 General principles**

Each Party undertakes to take part in the efficient implementation of the Action, and to co-operate, perform and fulfil, in a timely manner, all of its obligations under the GA and this PCA as may be reasonably required from it and in a manner of good faith, whether or not as prescribed by Applicable Law.

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

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

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

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

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

**4.2 Breach**

In the event that a responsible Consortium Body identifies a substantial breach by a Party of its obligations under this PCA or the GA (e.g. the improper implementation of the Action), the Coordinator or, if the Coordinator is the Party in substantial breach of its obligations, a Party appointed by the General Assembly to that purpose, will, unless the breach is not capable of remedy, give formal notice to such Party in breach requiring that such substantial breach must be remedied within 30 calendar days.

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

**4.3 Involvement of third parties**

A Party that enters into a subcontract or otherwise involves third parties in the Action remains liable for carrying out its relevant part of the Action and for such third party’s compliance with the provisions of this PCA and of the GA. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this PCA and the GA, including with regards to Access Rights to Results generated by such third party

**4.4** **Access Rights by Affiliated Entities**

In case an Affiliated Entity of a Party owns Background or, in accordance with Section 8.3.1, owns Results, the relevant Party shall ensure that such Affiliated Entity will grant Access Rights to such Background or Results to the other Parties, as if it were a Party to this PCA.

**Section 5: Liability towards each other**

**5.1 No warranties**

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

Therefore,

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

However, and notwithstanding anything to the contrary, each Party undertakes to not knowingly use for the Action 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 PCA.

Upon notification or discovery that a Party has submitted defective or incorrect information to another Party at any time during the performance of the Action, such Party shall promptly notify the affected Parties in writing and correct and redeliver such corrected information at its own expense. Upon notification or discovery of infringement of any proprietary rights of third parties in connection with the Action, the notified or discovering Party shall promptly notify the affected Parties in writing.

**5.2 Limitations of liability**

**5.2.1 Liability: general**

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

**5.2.2 Excluded liabilities**

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

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

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

**5.2.3 Financial limit on liability**

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

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

The financial limitation of liability specified above in this Section 5.2.3 shall be doubled/not apply in the case of any **[START OF OPTION]** grossly negligent [**END OF OPTION]** breach by a Party of its obligations under (a) Section 10 (Non-disclosure of Sensitive Information), or (b) Section 8 (Results) of this PCA.

**5.2.4 Exceeding the scope of Access Rights**

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

**5.2.5 Other exceptions**

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

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

**5.3 Damage caused to third parties**

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party’s activities within the Action, either by itself or on its behalf under this PCA or from its use of Results or Background.

**5.4 Force Majeure**

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

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

**Section 6: Governance structure**

**6.1 General structure**

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

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

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

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

**6.1.4** The chairperson of each Consortium Body is **[START OF OPTION 1]** a representative of the Coordinator to be appointed by the Coordinator **[END OF OPTION 1] [START OF OPTION 2]** a representative of one of the Members to be appointed by the Members of each Consortium Body at its first meeting **[END OF OPTION 2]**

**6.2 General operational procedures for all Consortium Bodies**

**6.2.1 Representation in meetings**

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

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

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

**[START OF OPTION 1]**

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

**[END OF OPTION 1]**

 **[START OF OPTION 2]**

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

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

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

**[END OF OPTION 2]**

**[START OF OPTION 3]**

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

**[END OF OPTION 3]**

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

**6.2.2 Preparation and organisation of meetings**

**6.2.2.1 Convening meetings**

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

|  |  |  |
| --- | --- | --- |
|  | Ordinary meeting | Extraordinary meeting |
| General Assembly | At least once a year | At any time upon written request of the Executive Board or 1/3 of the General Assembly Members  |
| Executive Board | At least quarterly  | At any time upon written request of any Executive Board Member |

**6.2.2.2 Notice of a meeting**

The chairperson of a Consortium Body shall give notice in writing of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated in Section 6.2.2.3 below.

**6.2.2.3 Sending the agenda**

The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body a written (original) agenda no later than the minimum number of days preceding the meeting as indicated below:

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

**6.2.2.4 Adding agenda items**

Any Member of a Consortium Body may add an item to the original agenda at any time prior to the meeting provided a majority of two thirds of the Members agree to add such agenda item and during the meeting provided that all Members of the Consortium Body are present or represented and a majority of two thirds of the Members agree to add such agenda item.

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

**6.2.2.6** Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document setting out the decision being requested, if such decision is then agreed to in writing by the number of representatives equal to the defined majority (see Section 6.2.3. below) of all Members of the Consortium Body. Such document shall include the deadline for responses, but such deadline shall be at least fifteen (15) calendar days after such document is sent in view of the provisions at Clause 6.2.4.2 and Clause 6.2.5.2 below.

**6.2.3. Voting rules and quorum**

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

If the Quorum is not reached, the chairperson of the Consortium Body shall promptly convene another meeting within 15 calendar days. If in this second meeting the Quorum is not reached, then this second meeting shall nevertheless be entitled to decide .

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

**6.2.3.3** Defaulting Parties may not vote.

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

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

**6.2.4 Veto rights**

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

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

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

**6.2.5 Minutes of meetings**

**6.2.5.1.** The chairperson of a Consortium Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. The chairperson shall send the draft minutes to all Members within 10 calendar days counting from the date on which the meeting was held, informing the Members within how many days objections to the minutes, if any, must be submitted to the chairperson.

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

**6.3 Specific operational procedures for the Consortium Bodies**

**6.3.1 General Assembly**

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

**6.3.1.1 General Assembly Members**

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

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

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

**6.3.1.2. Decisions**

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

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

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

**6.3.2. Executive Board**

**6.3.2.1 Executive Board Members**

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

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

**6.3.2.2 Minutes of meetings**

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

**6.3.2.3 Tasks**

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

**6.3.2.3.2** When taking decisions, the Executive Board shall try to find consensus amongst the Executive Board Members. Howver, in case such consensus cannot be reached the Executive Board shall decide by simple majority.

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

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

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

**6.3.2.3.6** The Executive Board shall in accordance with the terms of the GA and this PCA:

* make proposals to the General Assembly for allocation of the Action's budget in accordance with the GA, review and propose budget reallocations to the Parties;
* manage the Action;
* propose to the General Assembly procedures and tools for the marking and handling of information exchanged between Parties in the performance of the Action;
* decide upon measures in the framework of controls and audit procedures
* to ensure the effective day-to-day coordination and monitoring of the progress of the technical work affecting the Action as a whole;
* decide upon the technical roadmaps with regard to the Action;
* propose to the General Assembly the plan for using and Dissemination of the Results;
* make proposals to the General Assembly that the General Assembly should serve notice on a Defaulting Party and that the General Assembly decide to assign the Defaulting Party's tasks to one or more specific Legal Entity(ies) (preferably chosen from the remaining Parties);
* support the Coordinator in preparing meetings with the Funding Authority and in preparing related data and deliverables; and
* prepare and implement the content and timing of press releases and other external communications by the Consortium or proposed by the Funding Authority in respect of the procedures of Article 17 of the Grant Agreement.

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

**6.4. Coordinator**

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

**6.4.2** In particular, the Coordinator shall

* monitor compliance by the Parties with their obligations;
* keep the address list of the Parties and other contact persons updated and available;
* collect, review to verify consistency and submit reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Funding Authority;
* administer, prepare the minutes and provide these to the chair of the General Assembly and the Executive Board (in respect of providing the chair of the General Assembly and the Executive Board, solely if nothing is decided otherwise in accordance with Sections 6.3.1.1.3 and/or 6.3.2.1 of this PCA, respectively), and follow-up the decisions of the General Assembly and the Executive Board;
* transmit documents and information connected with the Action to any other Parties concerned;
* administer the financial contribution of the Funding Authority and fulfilling the financial tasks described in Section 7.2 of this PCA;
* verify whether the Parties identified in the GA comply with the necessary formalities for accession to the GA in accordance with the GA;
* provide, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims;
* maintain details of approvals given in relation to material that is subject to Controlled Licence Terms; and
* maintain and on request circulate both during and for four years after the period of the Action set out in Article 4 and the Data Sheet of the Grant Agreement, a brief annual synopsis of Exploitations as envisaged by Article 16.4 with reference to Annex 5 page 104 of the Grant Agreement as disclosed by the Parties to the Coordinator when requested by the Coordinator to the Parties.

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

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

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

**6.4.5** If the Coordinator fails in its coordination tasks, the General Assembly may propose a new Coordinator to the Funding Authority.

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

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

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

**Section 7: Financial provisions**

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

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

**7.2. Payments**

**7.2.1** Payments of funding from the Funding Authority to Parties are the exclusive task of the Coordinator.

In particular, the Coordinator shall:

* notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references;
* perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts;
* keep the records and financial accounts relevant for the Funding Authority financial contribution and to inform the Funding Authority of its distribution thereof; and
* undertake to keep the financial contribution to the Action separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

**7.2.2** With reference to Articles 22.1 and 22.3, both with reference to the Data Sheet point 4.2 of the Grant Agreement, no Party shall before the end of the Action receive more than its allocated share of the maximum grant amount from which the amounts retained by the Funding Authority for the Mutual Insurance Mechanism and for the final payment have been deducted.

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

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

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

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

 **7.2.5** In case that, in accordance with the Grant Agreement, the Funding Authority takes into account the “no-profit rule “(as referred to in Article 22.3.4 of the Grant Agreement, Step 3) and, accordingly, reduces the grant amount of the Action, this reduction will be entirely assumed by the Party/Parties that received those Receipts.

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

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

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

**Section 8: Results**

**8.1. Ownership of Results**

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

**8.2. Joint ownership**

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

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

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

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

**8.2.3**

**[START OF OPTION 1]**Each of the joint owners and their Affiliated Entities shall be entitled to Exploit the jointly owned Result as they see fit, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner(s) for their own direct Exploitation only.

Unless otherwise agreed in a joint ownership agreement between the joint owners concerned, each joint owner shall be entitled to grant non-exclusive licenses to any third party, without any right to sub-license, upon a 45 days prior information to the other joint owners and payment of a Fair and Reasonable compensation to the other joint owners. **[END OF OPTION** **1]**

**[START OP OPTION 2]** Notwithstanding anything to the contrary in the provisions of Article 16.4 with reference to Annex 5 (p.104)of the Grant Agreement and unless otherwise agreed in a joint ownership agreement between the joint owners concerned, each of the joint owners and their Affiliated Entities shall be entitled to Exploit the jointly owned Result as they see fit, and shall be entitled to grant non-exclusive licenses to any third party, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner(s). **[END OF OPTION 2]**

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

**8.2.5**

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

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

**[START OF OPTION 2]** The joint owners shall agree on all protection measures and the division of related costs in advance of any such protection measures being undertaken by any of the joint owners.**[END OF OPTION 2]**

**8.3. Transfer of Results**

**8.3.1** Each Party may transfer ownership of its own Results (including without limitation its share in Results that it owns jointly with another Party or Parties and all rights and obligations attached to such Results) to any of its Affiliates without notification to any other Party, subject, however, to the entitlement of the other Parties to the Access Rights to such Results granted or to be granted in accordance with the PCA at any point in time.

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

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

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

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

**8.4 Dissemination**

**8.4.1 Dissemination of Results**

During the Action and for the period of time as stated in Section 10.2 of this PCA, the Dissemination of Results by one or several Parties including but not restricted to publications of whatever form (excluding patent applications(s) and other registrations of IPRs), shall be governed by the procedure of Article 17 with reference (17.4) to Annex 5 of the Grant Agreement subject to the following provisions:

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

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

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

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

If an objection has been raised on one or more of the above-mentioned grounds, the objecting Party and the publishing Party shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting Sensitive Information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

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

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

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

**8.4.3 Co-operation obligations**

1. The Parties undertake to co-operate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Results, Background and/or Sensitive Information, subject to the confidentiality and Dissemination provisions agreed in this PCA.
2. In accordance with Section 8.4.1 of this PCA, prior to submitting any planned publication and/or any planned Dissemination activity of Results, Parties shall undertake reasonable efforts to refrain from including in such planned publication and/or such planned Dissemination activity of any other Party’s Results, Background or Sensitive Information.

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

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

**8.5 Contributions to Standards**

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

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

Subject to a decision by the General Assembly that the Consortium may contribute to a European or other standard, a copy of any proposed contribution of Results to a meeting of a standard setting body, for the purpose of incorporation in a standard, shall be distributed in detail and in writing to the Parties, by the Party/ies proposing to submit the contribution, no later than 60 days prior to the date of the meeting (“Review Period”).

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

(i) that the objecting Party considers that the protection of the objecting Party’s Result would be adversely affected by the proposed contribution;

(ii) that the proposed contribution includes the Results, Background, or Sensitive Information of the objecting Party.

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

In the event that a Justifiable Objection is raised on either or both of the above defined grounds within the Objection Period, the Party proposing the contribution to a standard and the Party objecting shall seek in good faith to agree a solution on a timely basis whereby the Justifiable Objection is resolved.

**Section 9: Access Rights**

**[START OF OPTION 1]**

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

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

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

**[START OF SUB-OPTION]**

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

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

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

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

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

**[END OF SUB-OPTION]**

**[END OF OPTION 1]**

**[START OF OPTION 2]**

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

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

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

**[START OF SUB-OPTION]**

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

a) If Background includes all or part of a commercially available product of a Party or of a third party, the terms and provisions governing the access to and use of such commercially available product shall be the prevailing terms.

b) If the terms under the GA and/or this PCA regarding Access Rights to Background are in conflict with the terms of a pre-existing agreement between the owning Party and another Party or a third party, the terms and provisions of the pre-existing agreement shall be the prevailing terms.

(c) If for any Background the grant of Access Rights under the GA and/or this PCA would require any form of consent of or compensation to a Party or a third party, such Background is deemed to be listed in Attachment 1B as excluded.

(d) If Background is or at any time becomes licensed by the owner as essential to a standard adopted by a standard setting body, the terms and provisions governing the access to such Background via the standard shall be the prevailing terms.

**[END OF SUB-OPTION]**

**[END OF OPTION 2]**

**9.2. General Principles**

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

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

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

**9.2.4** Any requests for receiving Access Rights to be granted under this PCA shall be made within sixty (60) /thirty-six (36)monthsafter the end of the Action referred to in Article 4 of the Grant Agreement. The Party receiving Access Rights must at all times be able to demonstrate with all due care and in good faith that Access Rights are Needed.

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

**9.2.6** As far as not deemed granted by means of this Agreement, and unless stated otherwise in Sections 9.4.1 and/or 9.4.2 of this PCA, all requests for Access Rights for Exploitation shall be made in writing.

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

**9.2.8 Have Made Rights**

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

**9.2.9 Employee’s Rights**

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

**9.3 Access Rights for implementation**

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

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

**TO RESULTS**

**[START OF OPTION 1]**

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

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

**[END OF OPTION 1]**

**[START OF OPTION 2]**

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

(i) Without prejudice to (ii) below, Access Rights to Results (save regarding APIs, which will be granted on a royalty free basis), if Needed for Exploitation **[START OF SUB-OPTION]** of a Party's own Results **[END OF SUB-OPTION]** shall be granted on Fair and Reasonable Conditions, but only to if that notification about the existence of such Results is sent to the other Parties including sufficient details/references to enable the Parties to trace such Results (e.g. application number, title, priority date, and filing office). Said notification shall be provided within a reasonable period, but in no event more than six (6) months after the end of the Action. Access Rights to such Results, where said notification is absent (or not provided in the aforementioned time period), shall be deemed granted on a royalty-free basis.

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

**[END OF OPTION 2]**

**[START OF OPTION 3]**

**9.4.1 Access Rights to all Results for Internal Research and Teaching royalty-free; but other Access Rights to Results on Fair and Reasonable Conditions, with required**[[1]](#footnote-2)\* **Access Rights request**

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

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

(i) The Party requiring the grant of such Access Rights (the “**Requesting Party**”) shall make a written request to the Party (the “**Granting Party**”) from which it requires the Access Rights.

(ii) The written request shall identify the Results concerned.

(iii) Any such Access Rights shall only be granted upon the signature of a written agreement between the Granting Party and the Requesting Party and shall not be otherwise deemed granted.

**[END OF OPTION 3]**

**[START OF OPTION]** Fair and Reasonable Conditions to the potential benefit of the Requesting Party will also take into account the fact that such Party and the Granting Party have collaborated in the Action to their mutual benefit, which should result in better than market conditions. **[END OF OPTION]**

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

**ACCESS RIGHTS TO BACKGROUND**

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

**9.5 Access Rights to and by Affiliates**

**[START OF OPTION 1]**

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

Each Party hereby grants Access Rights to Results and Background to any Affiliate of any other Party as if such Affiliate was a Party to this PCA, and subject to the condition that such Affiliate undertakes to grant Access Rights to Background or Results, if it owns any in accordance with Section 8.3.1, on terms identical to Access Rights granted under this PCA by the Parties hereto, to all Parties and their Affiliates (subject to such Affiliates also having accepted such obligations) and (without prejudice to the Parties' obligations to carry out the Action and to provide Action deliverables) to fulfil all confidentiality and other obligations towards the Funding Authority and the other Parties accepted by the Parties under the GA or this PCA as if such Affiliate was a Party. Access Rights granted to any Affiliate are subject to the continuation of the Access Rights of the Party of which it is an Affiliate, and shall automatically terminate upon termination of the Access Rights granted to such Party. Further, if an Affiliate fails in any material respect to comply with the undertaking given by it as above, and fails to rectify the non-compliance after being given a reasonable opportunity to do so, all Access Rights granted to it based upon that undertaking shall terminate, without affecting the Access Rights granted by i.

**[END OF OPTION 1]**

**[START OF OPTION 2]**

**9.5.1 Sub-Licensing to Affiliates**

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

When granting any Access Rights to Results and Background under this PCA, each licensing Party hereby grants, or shall cause any Affiliates owning any Background and/or Results, if they own any in accordance with Section 8.3.1, to grant to the licensed Party a right to sublicense the Access Rights granted to that licensed Party by or pursuant to this PCA, solely and exclusively to such licensed Party’s Affiliates , and subject to the condition that such Affiliates undertake to grant Access Rights to Background or Results, if they own any in accordance with Section 8.3.1, to all Parties and with the right to grant sublicense to these Parties´ Affiliates (subject to such other Affiliates also having accepted the same obligations), on terms identical to Access Rights granted under this PCA by the Parties hereto.

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

Access Rights sub-licensed to any Affiliate are subject to the conditions attached to the Party granting such sub-license (if any) and subject to continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party subject to Section 9.5.2.

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

**[END OF OPTION 2]**

For the avoidance of doubt, this Section 9.5.1 of this PCA is intended to confer a benefit on Affiliates of the Parties by affording them the opportunity to obtain Access Rights, but it shall not oblige any Affiliate of any Party to accept the granting of any Access Rights to it.

**9.5.2 Cessation of Affiliates**

(a) **Rights granted to Affiliates**

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

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

If a Legal Entity which used to be an Affiliate fails in any material respect to comply with the undertaking given by it as specified within this PCA, and fails to rectify the non-compliance after being given a reasonable opportunity to do so, all Access Rights granted to it based upon that undertaking shall immediately terminate.

(b) **Rights granted by Affiliates**

Upon any Legal Entity ceasing to be an Affiliate of a Party, the licenses or user rights previously granted by such Legal Entity to any Party and/or its Affiliates under or in respect of Background, or Results, as well as the obligation to grant Access Rights upon request in the period after such ceasing, during which the Parties can still request Access Rights, shall continue in full force and effect.

**9.6 Additional Access Rights**

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

**9.7 Access Rights to third parties**

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

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

**9.8.1 New Parties entering the Consortium**

As regards to Results generated by any Party before the Accession Date of a new Party, said new Party will be granted Access Rights to such Results as of the Accession Date of said new Party as if such Results were Background under the same terms and condition as Access Rights to Background are granted to any other Party to this PCA.

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

The new Party is hereby deemed a third party in respect of any Sensitive Information, including Sensitive Information that is part of Background made available to the Action, disclosed by a Party with respect to whom this PCA has been terminated for any reasons **[START OF OPTION]** other than any breach of such Party’s obligations under this PCA **[END OF OPTION]**, at an effective date prior to the Accession Date of said new Party, unless otherwise provided in writing by the Party with respect to whom this PCA has been terminated.

**9.8.2 Parties leaving the Consortium**

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

A Party withdrawing from, and terminating this PCA for itself (“leaving Non-Defaulting Party”), shall continue to grant Access Rights pursuant to the GA and this PCA in respect of its Background and Results existing at the time of such termination as stated in this PCA.

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

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

Any and all Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the General Assembly to terminate this PCA for such Defaulting Party.

A Defaulting Party shall continue to grant Access Rights pursuant to the GA and this PCA in respect of its Background; and Results existing at the time of such termination as prescribed in this PCA, as if it were still a Party to the PCA.

A Defaulting Party shall immediately return at its own cost any and all other Party’s materials, equipment, and any other element being in its possession, if requested by a Party (including without limitation Sensitive Information capable of being returned. However, a Defaulting Party may keep one copy of such Sensitive Information if legally required.

**9.9 Specific provisions on Software**

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

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

Subject to Section 9.9.3 below, in the event that:

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

then, in respect of such Background or Result (“Open Source Software”), the terms of the open source license will prevail over the terms of this Section 9.9.

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

(i) Source Code, or

(ii) Object Code ported to a certain hardware platform, or

(iii) Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting such Access Rights.

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

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

**9.9.5 Access Rights to Software**

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

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

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

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

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

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

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

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

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

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

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

**9.9.6.3 Background and Results (Object Code)**

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

**9.9.6.4 Results - (Source Code)**

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

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

Access Rights to Source Code under this Section 9.9 for the Exploitation of **[START OF OPTION]** a Party’s own **[END OF OPTION]** Results shall include the right to sub-license such Source Code solely for purpose of error correction, maintenance and/or support of the Software **[START OP OPTION]**, but the terms and conditions of such right to grant these sublicenses shall be agreed upon in writing between the Parties concerned **[END OF OPTION]**.

**9.9.6.6 Background (Source Code)**

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

**9.9.6.7 Specific formalities**

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

**Section 10: Non-disclosure of Sensitive Information**

**[START OF OPTION 1]**

**10.1 Scope**

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

 **[END OF OPTION 1]**

**[START OF OPTION 2]**

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

**[END OF OPTION 2]**

**10.2 Obligations**

The Recipient hereby undertakes, for a period of 4/5 years after the end of the Action:

(a) not to use Sensitive Information otherwise than for the purpose for which it was disclosed;

(b) not to disclose Sensitive Information to any third party other than its Affiliates and Subcontractors without the prior written consent by the Disclosing Party, wherein the Recipient must ensure that an arrangement is in place prior to such disclosure that subjects the Affiliates and/or Subcontractors to provisions at least as strict as provided in this Section 10;

(c) to apply for the security of Sensitive Information at least the same degree of care as it applies for the security of its own Sensitive Information (but in any case, shall apply not less than reasonable care); and

(d) to ensure that internal distribution of Sensitive Information by a Recipient, its Affiliates and Subcontractors shall take place on a need-to-know basis;

The recipient hereby further undertakes at the end of the Action **[START OF OPTION]** upon the Disclosing Part´s request **[END OF OPTION]** to return to the Disclosing Party, or destroy, all Sensitive Information that has been disclosed to the Recipient including all copies thereof, and to delete all such Sensitive Information stored in a machine-readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Sensitive Information because of compliance with applicable laws and regulations, for the proof of on-going obligations or to the extent the Sensitive Information is archived (such as by Recipient’s automated back-up archiving practices), provided that the Recipient complies with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

**10.3 Exceptions**

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

(a) the Sensitive Information has become publicly available by means other than a breach of the Recipient’s confidentiality obligations hereunder;

(b) the Disclosing Party has informed the Recipient that the Sensitive Information is no longer confidential;

(c) the Sensitive Information has been 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;

(d) the Sensitive Information was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or

(e) the Sensitive Information was already known to the Recipient prior to disclosure without any obligation of confidence to the Disclosing Party or

(f) the Recipient is required to disclose the Sensitive Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provisions of Section 10.5 hereunder.

**10.4** **Notification**

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

**10.5** **Compliance with laws and orders**

If any Recipient becomes aware that it will be required, or is likely to be required, to disclose Sensitive Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure (i) notify the Disclosing Party, and (ii) comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the Sensitive Information.

**[START OF OPTION]**

**10.6** **Residual Information**

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

**10.7 Inherent Disclosure**

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

**[END OF OPTION]**

**Section 11: Privacy and data protection**

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

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

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

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

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

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

**Section 12: Miscellaneous**

**12.1 Attachments, inconsistencies and severability**

This PCA consists of this core text and:

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

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

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

**12.2 No representation, partnership or agency**

No Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium. Nothing in this PCA 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.

**12.3 Notices and other communication**

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

1. **Formal notices:**

If it is required in this PCA (including, but not necessarily limited to, Sections 4.2, 6.3 and 9.8.2.2 of this PCA) 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.

1. **Other communication:**

Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all concerned.

**12.4 Assignment and amendments**

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

**12.5 Mandatory national law**

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

**12.6 Language**

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

**12.7 Applicable law**

This PCA shall be construed in accordance with and governed by the laws of Belgium / ………………. (“the **Applicable Law**”) - excluding its conflict of laws provisions.

**12.8 Settlement of disputes**

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

**[START OF OPTION 1 – COURTS]**

**12.8.2 Court proceedings**

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

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

**[END OF OPTION 1]**

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

**12.8.2 ICC Arbitration**

All disputes directly arising under this PCA (other than disputes relating to the infringement and/or validity of IPR which shall be the exclusive jurisdiction of the competent court[[2]](#footnote-3)\*), which cannot be settled amicably, shall be **[START OF OPTION]** submitted to settlement proceedings under the International Chamber of Commerce ADR Rules. If the dispute has not been settled pursuant to the said Rules within ninety (90) days following the filing of a Request for ADR or within such other period as the Parties may agree in writing, such dispute shall be finally **[END OF OPTION]** settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules of arbitration. The place of arbitration shall be Brussels, Belgium / ……………, ……... The chairman of such arbitration shall be of legal education. The arbitral proceedings shall be conducted in English. The award of the arbitration will be final and binding upon the Parties.

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

**[END OF OPTION 2]**

**12.9 Parties having concluded a National Grant Agreement**

Any Party, having concluded a National Grant Agreement with a National Funding Authority, is individually and solely liable for complying with the provisions of that National Grant Agreement. There shall be no joint and several liability of the other Parties hereto, for any obligations under any such National Grant Agreement. The definition of "Grant Agreement" in this PCA does not include any National Grant Agreements. No National Grant Agreement shall affect the obligations of any Party under this PCA.

**Section 13: Signatures**

**AS WITNESS:**

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

[INSERT NAME OF PARTY]

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

Date

[INSERT NAME OF PARTY]

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

Date

[INSERT NAME OF PARTY]

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

Date

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

|  |
| --- |
| **It is agreed between the Parties that the following data, information or know-how is introduced by [NAME OF THE PARTY] into the Action as Background** |
| **Describe Background included** | **Specific limitations and/or conditions for implementation (Article 16.1 with reference to Annex 5 of the Grant Agreement) (if any)** | **Specific limitations and/or conditions for Exploitation (Article 16.1 with reference to Annex 5 of the Grant Agreement) (if any)** |
| **…** | **…** | **…** |
| **…** | **…** | **…** |

|  |
| --- |
| **It is agreed between the Parties that the following data, information or know-how is introduced by [NAME OF THE PARTY], into the Action as Background** |
| **Describe Background included** | **Specific limitations and/or conditions for implementation (Article 16.1 with reference to Annex 5 of the Grant Agreement) (if any)** | **Specific limitations and/or conditions for Exploitation (Article 16.1 with reference to Annex 5 of the Grant Agreement) (if any)** |
| **…** | **…** | **…** |
| **…** | **…** | **…** |

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

|  |
| --- |
| **It is agreed between the Parties that, the following data, information or know-how is excluded from Background as referred to in Section 9.1.1 [NAME OF THE PARTY]**  |
| **Describe Background excluded (if any)** |
| **…** |
| **…** |

|  |
| --- |
| **It is agreed between the Parties that, the following data, information or know-how is excluded from Backghround, as referred to in Section 9.1.1 [NAME OF THE PARTY** |
| **Describe Background excluded (if any)** |
| **…** |
| **…** |

**Attachment 2: Declaration of Accession**

DECLARATION OF ACCESSION

of a new Party to

[Acronym of the Action]

GA No [INSERT NUMBER] Dated [INSERT DATE]

PCA, dated [INSERT DATE]

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

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

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

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

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

[Date and Place]

 [INSERT NAME OF THE NEW PARTY]

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

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

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

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

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

**Attachment 5: Template for Non-Disclosure Agreement in case OPTION for Section 6.5 is chosen.**

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

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

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

Members”);

and;

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

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

**:**

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

**NOW THEREFORE IT IS HEREBY AGREED:**

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

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

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

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

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

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

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

The arbitration shall be held in Brussels, Belgium.

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

[Option 2 Courts]

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

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

[End of Option 2]

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

[*Signature page will follow.*]

1. \* As opposed to OPTION 1 and 2. [↑](#footnote-ref-2)
2. \* Note: A choice for ICC arbitration could be induced by the preference to have dispute settlement on IPR infringement or validity conducted in a non-public place, like in arbitration. However, please be aware that in many countries an arbitrational decision can be refused by the competent authorities if such decision refers to IPR validity or infringement, such as the existence of such rights. (See e.g. Art V.2 (e) of the New York Convention 1958, which provides for such possibility to refuse) [↑](#footnote-ref-3)