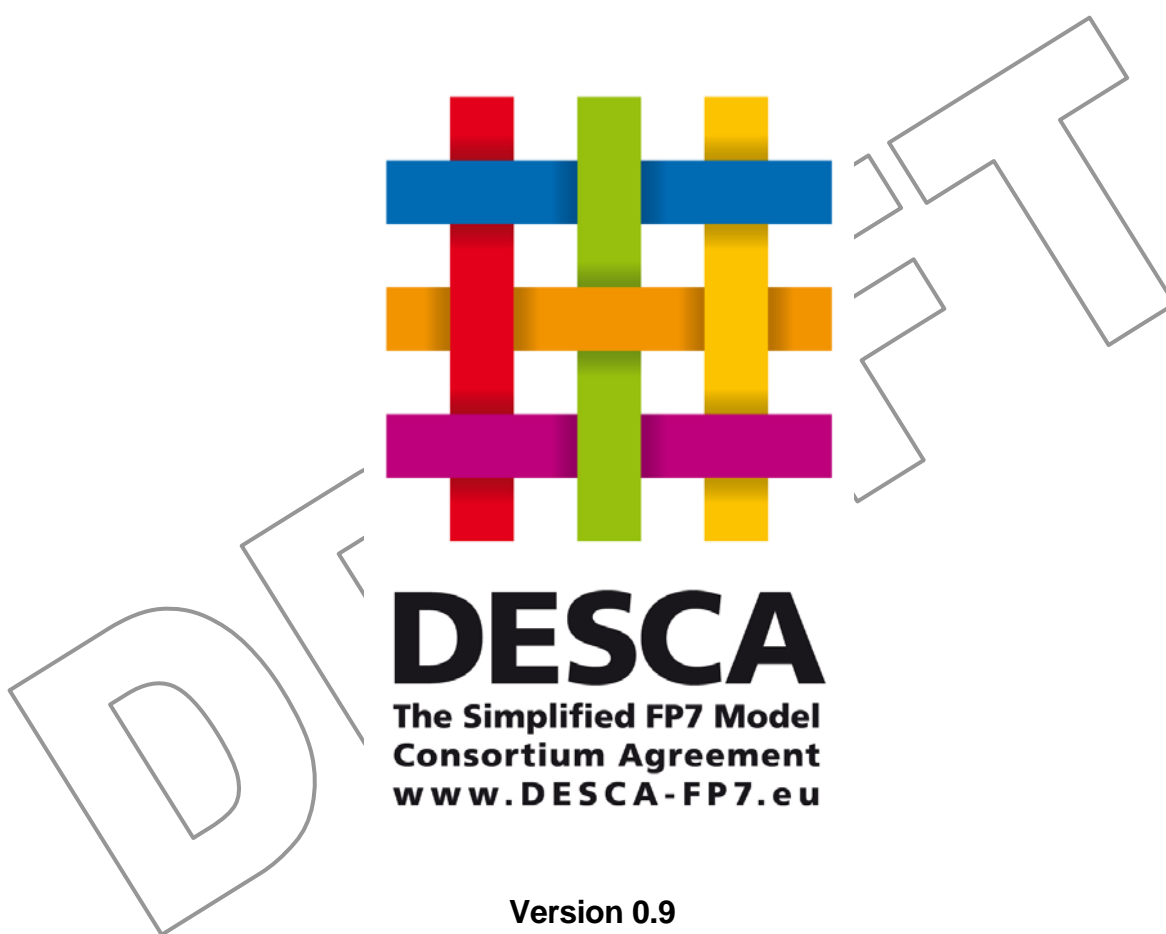


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Change Records

Version	Date	Changes	Author
0.9	2007-01-17	First CA Model	DESCA

Basic documents (references):

REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)

30.12.2006 Official Journal of the European Union L 391/1

Grant Agreement, Draft Versions, 20.12.2006, Annex II Draft Versions, 20.12.2006

<u>CONSORTIUM AGREEMENT</u>	<u>Elucidation & Comments</u>
<p>THIS CONSORTIUM AGREEMENT is made on [YYYY-MM-DD] hereinafter referred to as "Effective Date"</p> <p>BETWEEN:</p> <p>(1) [OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT], the Coordinator</p> <p>(2) [OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT],</p> <p>(3) [OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT],</p> <p>[Insert identification of other Parties ...]</p> <p>hereinafter, jointly or individually, referred to as "Parties" or "Party"</p> <p>relating to the Project entitled [NAME OF PROJECT]</p> <p>in short [Insert: acronym]</p> <p>hereinafter referred to as "Project"</p> <p>WHEREAS:</p> <p>The Parties, having considerable experience in the field concerned, have submitted a Proposal for the Project to the Commission as part of the Seventh Framework Programme for Research and Technological Development.</p> <p>The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the Grant Agreement.</p> <p>NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:</p>	<p>Insert here the Effective Date of the Consortium Agreement.</p> <p>This date can be retroactive and it may vary from the entry into force of the Grant Agreement. Each Party commits to this Consortium Agreement when signing the document on its own behalf (see 3.1 of this Consortium Agreement). Still the Effective Date is the same for all Parties that have signed the document. Consider also if it is necessary with regard to confidentiality obligations to have retroactiveness of the Consortium Agreement, however it is always preferable to have a separate confidentiality agreement signed for the proposal phase.</p> <p>Insert the official names of the Parties as identified in the Grant Agreement and the contract preparation forms. The term Party is used in this Consortium Agreement for the sake of clarity. The corresponding term in the Grant Agreement is Beneficiary.</p> <p>General explanation: In this section the very essential responsibilities originating from the Belgian legislation, the Grant Agreement and this Consortium Agreement are stated.</p> <p>Check with Belgian law.</p>

Section 1: Definitions	Section 1: Definitions
1.1 Definitions	1.1 Definitions
<p>Words beginning with a capital letter shall have the meaning defined either herein or in the Rules for Participation REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)</p> <p>(OJEC L 391/1) or in the Grant Agreement including its Annexes without the need to replicate said terms herein.</p>	<p>Rules for Participation abbreviation: [RfP Article 2]</p> <p>FP7 Grant Agreement abbreviation: [MGA Article], FP7 Grant Agreement - Annex II abbreviation: [MGA Article II.1.]</p>
1.2 Additional Definitions	1.2 Additional Definitions
<p>“Consortium Plan”</p> <p>Consortium Plan means the description of the work and the related agreed Consortium Budget including the payment schedule as updated and approved by the General Assembly.</p>	<p>An essential part of the Grant Agreement is the Description of Work as included in the Annex I thereof. As from the start of the project this Description of Work will be modified by the Consortium as needed to execute its task in an optimal way.</p> <p>The resulting Consortium Plan is not a formal annex to the Grant Agreement automatically. It is strongly advised to have synchronised this Consortium Plan with the Commission accordingly. This could generate an updated version of Annex I, as an amendment to the MGA.</p> <p>The Consortium Plan is the only and total framework for all Tasks and Deliverables and as such it steers all activities inside the Consortium. The Consortium Plan is the formal outcome of the regular process of decision making inside the Consortium as laid down in this Consortium Agreement. Included in the Consortium Plan is the Consortium Budget needed to fulfil the tasks and deliverables planned.</p>
<p>“Consortium Budget”</p> <p>Consortium Budget means the allocation of all the resources in cash or in kind for the activities as defined in Annex I of the</p>	<p>The Consortium Budget comprises the total resources needed to execute the Project. This is more than the European Community</p>

<p>Grant Agreement and in the Consortium Plan thereafter.</p>	<p>contribution. Insight in the total costs of the Project, helps to manage the Consortium in the most effective way.</p> <p>The Consortium Budget should be organised according to the tasks and deliverables as scheduled in the Consortium Plan.</p> <p>These tasks and deliverables normally will be reviewed at least every six months by the Executive Board; most tasks however will have a longer time span than this six months. In order to arrive at a practical organisation, it makes sense to partitionate the Consortium Budget in six months parts.</p> <p>An inherent part of the Consortium Budget needs to be a detailed payment scheme where ,according to decisions made, the advanced payments will be scheduled: in time, to tasks and to Parties.</p>
<p>“Defaulting Party”</p> <p>Defaulting Party means a Party which is in breach of this Consortium Agreement or the Grant Agreement and which has been identified as such by the General Assembly.</p>	<p>The task of taking needed measures with regard to default situations shall be handled in accordance with the normal governance structure(see 6.3.1.2, 6.3.2.3 and 6.3.3.2 of this Consortium Agreement). The consequences resulting from the default can be found:</p> <ul style="list-style-type: none"> - Liability Article 5.2 - Governance Article 6.2.5 - Consortium Plan Article 6.3.1.2 - Finances Article 7.1 and 7.3 - Access Rights Article 8.6.2.2 and MGA Article II.21.
<p>“Needed”</p> <p>for the implementation of the Project: In the case of Access Rights granted for the implementation of the Project, Needed means that without the grant of such Access Rights carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources.</p> <p>for Use: In the case of Access Rights granted for Use, Needed means</p>	<p>Beneficiaries have access rights if they are “needed”, and this provision aims to make this condition more precise and easier to work with.</p> <p>It makes access “needed for the project” very open in order to make work on the project as uncomplicated as possible.</p> <p>It is stricter regarding the access “needed for Use” after the project</p>

that without the grant of such Access Rights the Use of the recipient Party's own Foreground would be technically or legally impossible.	because Participants after the end of the project want to be reasonably sure that other Participants can only claim access to their IPR if they have no other options. Organisation by Subprojects does not have any influence on the "needed"-condition as such.
"Software" Software means sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression.	Specific provisions of software see 8.7 of this Consortium Agreement The use of software has to be identified as Foreground or Background.
Section 2: Purpose	Section 2: Purpose
The purpose of this Consortium Agreement is to specify with respect to the Project the relationship between the Parties, in particular concerning the organisation of the work between the Parties, the management of the Project and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.	See MGA Article 1.4. and MGA Article II.2.1. Here only the general purpose and the general targets are given. See RfP Article 24
Section 3: Entry into force, duration and termination	Section 3:Entry into force, duration and termination
3.1 Entry into force	3.1 Entry into force
An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative. This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement. A new Party enters the Consortium upon signature of an accession document [Attachment 3] by the new Party and the Coordinator. Such accession shall have effect from the date identified in the Accession document.	Each Party commits to this Consortium Agreement when signing the document on its own behalf. Still the Effective Date is the same for all Parties that have signed the document. It is advised that the Consortium Agreement should be signed before the Grant Agreement. The rules and process for accepting new parties are laid down in: Decisions of the General Assembly (see 6.3.1.2), of the Executive Board (6.3.2.3) and of the Sub project Committee (see 6.3.3.2) of this Consortium Agreement. A model accession document is attached to this Consortium Agreement.
3.2 Duration and termination	3.2 Duration and termination
This Consortium Agreement shall continue in full force and	Termination may take place in case

<p>effect until complete fulfilment of all obligations undertaken by the Parties under the Grant Agreement and under this Consortium Agreement. However, this Consortium Agreement may be terminated in accordance with the terms of this Consortium Agreement (Art. 6.3.1.2) and the Grant Agreement Annex II (Article II.38.).</p>	<p>of normal end of the Project or a pre-termination during its implementation. Also, it is possible to either terminate the whole Project or the participation of one or more of the Parties. The initiative for the termination may come from the Commission or from the Consortium.</p>
<p>3.3 Survival of rights and obligations</p>	<p>3.3 Survival of rights and obligations</p>
<p>The provisions relating to Access Rights, Confidentiality, Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this Consortium Agreement as agreed in respective articles. Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination. This includes the obligation to provide all input, deliverables and documents for the period of its participation.</p>	<p>Note that some of these clauses contain a time limit for the survival or use of the provisions whereas some are just general surviving clauses. Termination shall not affect previous obligations of the leaving Party, here only the most important issues to remember are stated.</p>
<p>Section 4: Responsibilities of Parties</p>	<p>Section 4: Responsibilities of Parties</p>
	<p>Specific responsibilities are detailed in other sections. It is especially important to note the obligations of each Party stated in the MGA Article II.3.</p>
<p>Each Party undertakes to use all necessary and reasonable endeavours and resources to ensure the efficient implementation of the Project, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the Project in a manner of good faith as prescribed by Belgian law.</p>	<p>One of the basic principles in Belgian Law is the principle of “Good faith”, which makes it possible to make this Consortium Agreement as short as it is, as many items that need to be addressed under e.g. Anglo-Saxon jurisdiction can be omitted. Check with Belgian law</p>
<p>Each Party undertakes to notify promptly, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the Project.</p>	<p>Art.11.3 of this Consortium Agreement supplies the possible forms of notification</p>
<p>Each Party shall provide promptly all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.</p>	
<p>Each Party shall use all reasonable endeavours to ensure the accuracy of any information or materials it supplies to the other Parties.</p>	
<p>A Party that enters into a subcontract or otherwise involves third parties in the Project remains solely responsible for carrying out its relevant part of the Project and for such subcontractor’s or other third party’s compliance with the provisions of this Consortium Agreement and of the Grant Agreement. Such Party shall ensure that the use of subcontractors or other third</p>	<p>Third party means any entity which is not a signatory to this Consortium Agreement. Subcontracting is covered by the Grant Agreement Annex II Article</p>

<p>parties does not affect the rights and obligations of the other Parties regarding Background and Foreground. It shall also be the responsibility of each Party to ensure compliance of its Affiliated Entities with the Grant Agreement and this Consortium Agreement.</p>	<p>II.7. In addition to those responsibilities, for clarity here also the general responsibility with regard to subcontractors and other third parties is stated. Check: Belgian law</p>
<p>Section 5: Liability towards each other</p>	<p>Section 5: Liability towards each other</p>
<p>5.1 No warranties</p>	<p>5.1 No warranties</p>
<p>No warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose of any information or materials supplied under the Project nor as to the absence of any infringement of any proprietary rights of third parties. The recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials.</p>	<p>This basic clause sets the base especially for the limitation of liability with regard to outputs (covering also the Foreground and Background) delivered by one Party to another Party. The essential limitation is that in case any such output is delivered, the receiving Party shall bear the liability for the use to which it is put and possible IPR infringements. If the Parties consider it necessary to increase the liability of the Party delivering the output, it should be stated clearly and considered very carefully if such additional liability should be taken.</p>
<p>5.2 Limitations of contractual liability</p>	<p>5.2 Limitations of contractual liability</p>
<p>No Party shall be responsible to any other Party for punitive damages, indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts.</p> <p>A Party's aggregate liability towards the other Parties collectively shall be limited to [Insert: once or twice] the Party's share of the total costs of the Project.</p> <p>The exclusions and limitations of liability stated above shall not apply in the case of damage caused by a wilful act [or gross negligence]. The terms of this Consortium Agreement shall not be construed to amend or limit any statutory liability.</p>	<p>The basic limitations of contractual liability are stated here. The Parties may choose what amount to set as the limitation of liability. It is usually either once or twice the project share, but if so decided by the Parties it might also be another sum. The basic rule of Belgian law, as well as most of the other legislations in Europe, is that liability with regard to wilful breaches of contract cannot be limited.</p> <p>It may be possible to limit damage also in case of gross negligence, but such limitation and its consequences should be carefully considered. Parties should notice that this limitation of liability covers only the limitations of contractual liability. In case there are obligatory statutory</p>

	<p>liability in the legislation, these are not overruled by this clause. The Parties might want to increase their liability with regard to certain cases. This should always be considered case by case and if so chosen, written down in the Consortium Agreement very clearly and defined. Issues to be considered in this connection might relate for instance to insurance coverage of the Parties or specific liability concerning confidential information delivered. However it should be remembered that it is always possible for the Parties to make bilateral agreements concerning for instance certain specific delivery confidential information. In addition as the basic rule is that a Party granting Access Rights may require a separate agreement to be concluded, all increase of liability relating to such grant, should be handled in that separate agreement.</p>
<p>5.3 Damage caused to third parties</p>	<p>5.3 Damage caused to third parties</p>
<p>Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations under this Consortium Agreement or from its use of Foreground or Background.</p>	<p>With this Consortium Agreement you can limit only the liability vis-à-vis the Parties. Therefore these limitations do not have any direct effect on a third party, which is not a Party to this Consortium Agreement. Between the Parties the rules stated herein however apply as a Party might in case of suffering damage because of the other Party have a secondary claim to such other Party within the limits set out in this Consortium Agreement. This clause excludes the possibility to this sort of a secondary claim for instance in cases one Party uses the Foreground or Background of another Party. Clauses that limit the responsibilities, and hence liability, of the Parties with regard to Access Rights can also be found in Section 8.</p>
<p>5.4 Force Majeure</p>	<p>5.4 Force Majeure</p>
<p>No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure. Each</p>	<p>Art.11.3 of this Consortium Agreement supplies the possible</p>

<p>Party will notify the relevant Consortium Bodies of any Force Majeure as soon as possible. The relevant Consortium Bodies shall examine in good faith the possible transfer of tasks consequent upon the event of Force Majeure. If the event of Force Majeure is not overcome within 6 weeks after such notification, the transfer of tasks – if any- shall be decided by the relevant Consortium Bodies.</p>	<p>forms of notification.</p>
<p>Section 6: Governance structure</p>	<p>Section 6: Governance structure</p>
<p>6.1 General structure</p>	<p>6.1 General structure</p>
<p>The organisational structure of the Consortium shall comprise the following Consortium Bodies:</p> <p>(a) General Assembly as the ultimate decision-making body of the Consortium</p> <p>(b) Executive Board as the supervisory body for the execution of the Project which shall report to and be accountable to the General Assembly</p> <p>(c) Sub Project committees as management groups for Sub Projects.</p> <p>The Coordinator is the legal entity acting as the intermediary between the Parties and the European Commission. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.</p> <p>The Management Support Team assists the Executive Board and the Coordinator.</p>	<p>Sub Projects are part of the Project. They are not independent clusters.</p>
<p>6.2 General operational procedures for all Consortium Bodies</p>	<p>6.2 General operational procedures for all the Consortium Bodies</p>
	<p>The rules of Article 6.2 of this Consortium Agreement apply to all the Consortium Bodies:</p> <ul style="list-style-type: none"> - General Assembly, - Executive Board - Sub Project Committees. <p>Be aware they are not repeated in each section but they apply. Only specific additional rules are described in the relevant Consortium Body section.</p>
<p>6.2.1 Representation in meetings</p>	<p>6.2.1 Representation in meetings</p>
<p>Any member of a Consortium Body: should be present or represented at any meeting of such Consortium Body; may appoint a substitute or a proxy to attend and vote at any meeting; and shall participate in a cooperative manner in the meetings.</p>	<p>Participate in a cooperative manner in the meeting means in the spirit of a collaborative project. Each Party</p>

A member who is neither present nor represented at a meeting shall lose its right to vote at that meeting.		shall act in good faith and e.g. not exercise abusive or unnecessary veto rights. The loss of voting rights means that the member becomes irrelevant for the quorum.	
6.2.2 Preparation and organisation of meetings		6.2.2 Preparation and organisation of meetings	
The chairperson of a Consortium Body shall convene meetings of that Consortium Body:			
Consortium Body	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 members of the General Assembly
Executive Board	At least [quarterly]		At any time upon written request of any member of the Executive Board
Sub Project Committee	At least every [2] months		At any time upon written request of any member of the respective Sub Project
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 within the minimum number of days preceding the meeting:			
Consortium Body	Ordinary meeting		Extraordinary meeting
General Assembly	30 calendar days		15 calendar days
Executive Board	14 calendar days		7 calendar days
Sub Project Committee	10 calendar days		7 calendar days
The chairperson of a Consortium Body shall send each member of that Consortium Body a written agenda within the minimum number of days preceding the meeting:			
General Assembly	14 calendar days		
Executive Board	7 calendar days		
Sub Project Committee	7 calendar days		
Any agenda item requiring a decision by the members of a Consortium Body must be identified as such on the agenda. Any member of a Consortium Body may add an item to the agenda by written notification to all of the other members of that Consortium Body within the minimum number of days preceding the meeting:			
General Assembly	7 calendar days		

Executive Board	2 calendar days	
Sub Project Committee	2 calendar days	
<p>During a meeting the members of a Consortium Body present or represented can unanimously agree to add a new item to the agenda.</p>		
<p>Decisions can be taken on points that have been put on the agenda only.</p> <p>Any decision may also be taken without a meeting by circulating to all members of the Consortium Body a written document which is then signed by the quorum (see Art. 6.2.3. of this Consortium Agreement) of members of the Consortium Body.</p> <p>Meetings of each Consortium Body can also be held by teleconference or other telecommunication means.</p> <p>Decisions may only be executed once the relevant part of the minutes is accepted according to Article 6.2.5 of this Consortium Agreement</p>		
6.2.3 Voting rules and quorum		6.2.3 Voting rules and quorum
<p>Each Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of its members are present or represented (quorum).</p> <p>Each member of a Consortium Body shall have one vote. Defaulting Party members may not vote.</p> <p>Decisions shall be taken by a majority of two-thirds (2/3) of the votes, unless otherwise provided for in this Consortium Agreement.</p>		
6.2.4 Veto rights		6.2.4 Veto rights

<p>A member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of a Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision. :</p> <p>When the decision foreseen on the agenda before the meeting, a member may veto such a decision during the meeting only. When a decision is added to the agenda during the meeting, a member may veto such decision during the meeting and within 15 days after the minutes of the meeting are sent.</p> <p>In case of exercise of veto, the members of the respective Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all of the members of the respective Consortium Body.</p>	<p>Legitimate interests = e.g. in case of a new party joining the Consortium (but not only) [see def in Rules]</p> <p>A member of a Consortium Body who is not present nor represented at a meeting of this Consortium Body loose its right to vote. He cannot veto any decision (foreseen or not on the agenda) during the meeting because he is not present nor represented !</p> <p>He also loose its right to veto a decision foreseen on the agenda before the meeting (no suspensive veto in that case).</p> <p>But if a new decision has been added to the agenda during the meeting, he may veto this decision within 15 calendar days after receipt of the minutes of the meeting.</p> <p>In such a case, the other members of the Consortium Body who were present or represented at the meeting may also veto this decision within 15 calendar days after receipt of the minutes of the meeting.</p>																			
<p style="text-align: center; font-size: 48px; opacity: 0.3; transform: rotate(-15deg);">DRAFT</p>	<table border="1"> <thead> <tr> <th rowspan="2"></th> <th colspan="2">Item on the agenda before the meeting</th> <th colspan="2">Item added on the agenda during the meeting</th> </tr> <tr> <th>Veto during the meeting</th> <th>Veto within 15 days after the minutes are sent</th> <th>Veto during the meeting</th> <th>Veto during 15 days after the minutes are sent</th> </tr> </thead> <tbody> <tr> <td>Party present or represented</td> <td>YES</td> <td>NO [YES]</td> <td>YES</td> <td>YES</td> </tr> <tr> <td>Party not present nor represented</td> <td>NO Impossible</td> <td>NO (YES)</td> <td>NO impossible</td> <td>YES</td> </tr> </tbody> </table>		Item on the agenda before the meeting		Item added on the agenda during the meeting		Veto during the meeting	Veto within 15 days after the minutes are sent	Veto during the meeting	Veto during 15 days after the minutes are sent	Party present or represented	YES	NO [YES]	YES	YES	Party not present nor represented	NO Impossible	NO (YES)	NO impossible	YES
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Party present or represented	YES	NO [YES]	YES	YES																
Party not present nor represented	NO Impossible	NO (YES)	NO impossible	YES																
<p>6.2.5 Minutes of meetings</p> <p>The chairperson of a Consortium Body shall draft the minutes of each meeting to formalise in writing all decisions taken and shall send said draft of the minutes to all of the members of the respective Consortium Body within [10] calendar days of the meeting.</p> <p>The minutes shall be considered as accepted by the members of a Consortium Body if, within 15 calendar days from receipt thereof, no member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes.</p> <p>The original of the accepted minutes shall be sent to the Coordinator who shall safeguard them and to all of the members of the respective Consortium Body. If requested the Coordinator shall provide authenticated duplicates to Parties.</p>	<p>6.2.5 Minutes of meetings</p> <p>Formalisation of the decisions taken during a meeting means the writing of the minutes in a way it is conform to the decisions taken during the meeting</p> <p>The original may be necessary for proof purposes regarding the content of the Consortium Plan , including budget transfers, payment schemes, etc. and it therefore has to be ensured that it remains available to all concerned. Authorised duplicates may be needed for legal affairs.</p> <p>When the drafted minutes are not approved (good faith) by the</p>																			

	relevant members, the Chairperson shall send a new draft to the members. If the dispute can't be resolved (good faith), a new decision shall be made again.
6.3 Specific operational procedures for the Consortium Bodies	6.3 Specific operational procedures for the Consortium Bodies
6.3.1 General Assembly	6.3.1 General Assembly
In addition to the rules described in Art. 6.2, the following rules apply:	
6.3.1.1 Members	6.3.1.1 Members
<p>The General Assembly shall consist of one representative of each Party (hereinafter GA Member).</p> <p>Each GA Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Art. 6.3.1.2. of this Consortium Agreement</p> <p>The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise in a meeting of the General Assembly.</p> <p>The Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of settlement of disputes in Article 11.8 of this Consortium Agreement</p>	
6.3.1.2 Decisions	6.3.1.2 Decisions
<p>The General Assembly shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. In addition, all proposals received by the Executive Board shall also be fully considered and decisions taken by the General Assembly.</p> <p>The General Assembly shall decide any main issue, in particular on the following items:</p> <p>The following decisions shall be taken unanimously by GA Members present or represented at the meeting:</p> <ul style="list-style-type: none"> - Entry of a new Party to the Consortium - Termination of a Defaulting Party's participation in the Consortium and measures relating thereto 	
<p>The following decisions shall be taken by a majority of 2/3 of the votes, by GA Members present or represented at the meeting:</p> <p><u>Content, finances and intellectual property rights</u></p> <ul style="list-style-type: none"> - Changes to Annex I of the Grant Agreement - Changes to the Consortium Plan (including the Consortium Budget) - Withdrawals from Attachment.1 (included Background) 	<p>Normally decisions will be based upon and following the proposals of the Executive board, as reflected in its proposed agenda for the GA.</p> <p>Be aware that the Consortium Plan –apart of planning the work to be done- also includes the related (detailed) budgets and the</p>

<ul style="list-style-type: none"> - Additions to Attachment.2 (excluded Background) - Additions to Attachment X (List of Third Parties to which transfer of Foreground is possible without prior notice to other Parties) <p><u>Evolution of the Consortium</u></p> <ul style="list-style-type: none"> - Entry of a new Party to the Consortium - Withdrawal of a Party from the Consortium - Identification of a Party to be a Defaulting Party - Corrective measures to be required from a Defaulting Party - Termination of a Defaulting Party's participation in the Consortium and measures relating thereto - Change of the Coordinator - Suspension of all or part of the Project - Termination of the Project or the Consortium Agreement <p><u>Appointments</u></p> <p>On the basis of Annex I, the appointment if necessary of:</p> <ul style="list-style-type: none"> - Sub Project Leaders - Executive Board Members 	<p>connected (detailed) payment schemes.</p> <p>No separately signed document from all the Parties is necessary to implement the decisions even for the listed changes to Attachments to this Consortium Agreement. See also :</p> <ul style="list-style-type: none"> - Transfer of Foreground Art. 8.1.2 - Background exclusions Art. 8.2.1 - Amendments on the Consortium Agreement Art. 11.4.
<p>6.3.2 Executive Board</p>	<p>6.3.2 Executive Board</p>
<p>In addition to the rules in Art. 6.2, the following rules shall apply:</p>	
<p>6.3.2.1 Members</p>	<p>6.3.2.1 Members</p>
<p>The Executive Board shall consist of the Coordinator and all of the Sub Project Leaders as appointed by the General Assembly (hereinafter Executive Members). The [Coordinator] shall chair all meetings of the Executive Board, unless decided otherwise by the General Assembly</p>	<p>To be efficient, the main issues shall be discussed between a small number of persons. It's very difficult to discuss and prepare decisions in a meeting with more than 8/10 persons.</p> <p>Sub Project Leaders represented in the Executive board shall be limited. In designing the governance structure of the Consortium, the Parties shall limit the number of Sub Projects. When it is not possible or relevant, only a few Sub Project Leaders shall be authorised to become members of the Executive Board, upon a GA decision</p> <p>In some cases, the Coordinator is not in the best position to chair the Executive Board meeting. On a case by case basis, the chairperson may be another Executive Member</p>

	than the Coordinator.
6.3.2.2 Minutes of meetings	6.3.2.2 Minutes of meetings
Minutes of Executive Board meetings, once accepted, shall be sent by the Coordinator to the GA Members for information.	
6.3.2.3 Tasks	6.3.2.3 Tasks
<p>The Executive Board shall prepare the business of meetings of the General Assembly according to Art. 6.3.1.2. It shall seek a consensus between the Parties.</p> <p>The Executive Board shall execute the decisions of the General Assembly.</p> <p>The Executive Board shall monitor the effective and efficient implementation of the Project.</p> <p>The Executive Board shall:</p> <ul style="list-style-type: none"> - initiate, coordinate and organise the Sub Project(s) - agree on the members of the Management Support Team, upon a proposal by the Coordinator - support the Coordinator in preparing meetings with the European Commission and in preparing related data and deliverables - agree on the content and timing of press releases and joint publications by the Consortium or proposed by the European Commission in respect of the procedures of Art. II 30.3 MGA. <p>In the case of abolished tasks as a result of a decision of the General Assembly, the Executive Board shall advise the General Assembly on ways to compensate the Parties concerned. Such compensation shall be limited to costs actually incurred or assignments actually contracted.</p> <p>In addition, the Executive Board shall collect information at least every 6 months on the progress of the Project, examine that information to assess the compliance of Project with the Consortium Plan and, if necessary, propose modifications of the Consortium Plan to the General Assembly.</p>	<p>The Executive board shall update the Consortium plan with the implementation plans from the Sub project.</p> <p>In case of modifications of the Consortium Plan, it can happen that the decisions to be made , would have severe financial effects for a Party.</p> <p>If such effects are the direct consequence of needed engagements made under the actual Consortium Plan, that Party is bound to minimise the costs attached to the tasks to be abolished.</p> <p>The resulting commitments could be compensated by decision of the General Assembly.</p> <p>The compensation is not automatic but appreciated on a case by case basis. The compensation shall be based on the costs made or assignments contracted by the Parties which tasks are abolished.</p> <p>In order to meet its tasks the Executive Board collects all information needed to secure the</p>

	<p>progress of the Project. This information, combined with requests of Sub Project Committees or the Commission for changes of the Project Plan (including Budget Plans) , must be reviewed and used to arrive at revisited plans that accommodate changed circumstances and developments and fits into the borders of Deliverables and the total budget of the Project.</p> <p>Normally some rounds of deliberations and fine tuning with the sub projects are needed to fit these constraints. The result is modified task, related budgets and payment schemes, which together will form the new to propose Consortium Plan. This new Consortium Plan will be proposed to the General Assembly, eventually combined with a proposal for change of Annex I to the Commission.</p>
6.3.3 Sub Project Committees	6.3.3 Sub Project committees
In addition to the rules in Art. 6.2, the following rules shall apply:	
6.3.3.1 Members	6.3.3.1 Members
<p>A Sub Project Committee shall consist of one representative of each Party having a task within the respective Sub Project (hereinafter Sub Project Member). A Sub Project Leader shall chair all meetings of a Sub Project Committee.</p>	<p>Sub Project Leader appointed by GA: See Article 6.3.3.3</p>

6.3.3.2 Tasks	6.3.3.2 Tasks
<p>Each Sub Project Committee shall manage the respective Sub Project, in particular with regard to:</p> <ul style="list-style-type: none"> - the timely delivery of reports and Sub Project results to the Executive Board - proposing to the Executive Board changes to Annex I of the Grant Agreement - making proposals to the Executive Board for the admission of new Parties to the Grant Agreement and to the Consortium Agreement in order for said new Parties to participate in the Sub Project - alerting the Executive Board and the Coordinator in case of delay in the performance of the Sub Project or in case of breach of responsibilities of any Party under said Sub Project - analysing and documenting, at the request of the Executive Board, a presumed breach of responsibilities of a Party under the Sub Project and preparing a proposal of remedies to the Executive Board - formulating an implementation plan for the activities within the Sub Project for the future period - deciding upon any exchange of tasks and related budgets between the Parties in a Sub Project when such exchange has no impact beyond the scope of the Sub Project and its budget. 	<p>Implementation plan of the sub project is part of the Consortium plan consolidated by the Executive Board</p>

6.3.3.3 Sub Project Leader	6.3.3.3 Sub Project Leader
<p>The Sub Project Leader of each Sub Project is appointed by the General Assembly.</p> <p>The Sub Project Leader shall have the following functions only:</p> <ul style="list-style-type: none"> - communicating any plans, deliverables, documents and information connected with the Sub Project between its members and, if relevant, to the Executive Board - submitting the implementation plan of the Sub Project to the Executive Board for review and proposing an update of the Consortium Plan. - coordinating on a day-to-day basis the progress of the technical work under the Sub Project - following up decisions made by Consortium Bodies insofar as they affect the Sub Project - advising the Coordinator of any discrepancy with the Consortium Plan, including any delay in delivery. 	<p>Including communicating changes of tasks and/or budget within the sub project, delivery of minutes, etc.</p> <p>Discrepancies can be e.g. delays in delivery, overspending or underspending, etc. In such cases it is the task of the Sub Project Committee to cure inside its possibilities and alert the Executive Board.</p>

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6.4 Coordinator	6.4 Coordinator
<p>The Coordinator shall be the intermediary between the Parties and the European Commission and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.</p> <p>In particular, the Coordinator shall be responsible for:</p> <ul style="list-style-type: none"> - monitoring compliance by the Parties with their obligations - collecting, reviewing and submitting reports and other deliverables (including financial statements and related certification) to the European Commission - preparing the agenda of General Assembly and Executive Board meetings, chairing the meetings when relevant, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings - transmitting documents and information connected with the Project, including copies of accession documents and changes of contact information to and between Sub Project or Work Package Leaders, as appropriate, and any other Parties concerned - administering the Community financial contribution and fulfilling the financial tasks described in Art. 7.3. - providing, 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 	
<p>If the Coordinator fails in its coordination tasks, the General Assembly may propose to the Commission to change the Coordinator.</p>	
<p>The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party. The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the Grant Agreement.</p>	
6.5 Management Support Team	6.5 Management Support Team
<p>The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the Executive Board and shall assist and facilitate the work of the Executive Board.</p> <p>The Management Support Team shall provide assistance to the Coordinator and the Executive Board for executing the decisions of the General Assembly. It shall be responsible for the day-to-day management of the Project.</p>	<p>See MGA Article II.2.3 MGA regarding Subcontracting of tasks of the Coordinator</p>

Section 7: Financial provisions	Section 7: Financial provisions
7.1 General Principles	7.1 General Principles
7.1.1	7.1.1
<p>The financial contribution of the Commission to the Project shall be distributed by the Coordinator according to:</p> <ul style="list-style-type: none"> - the Consortium Budget as included in the Consortium Plan - the approval of reports by the Commission, and - the provisions of payment in Art. 7.3. 	<p>As in FP7 it is the Consortium authority to implement the redistribution of tasks and budget according to the Consortium Plan. The actualisation of the Consortium Plan including the re-budgeting process characterises the following cycle:</p> <ul style="list-style-type: none"> - decision on the Consortium Plan (Description of Work as starting point) - implementation of the Consortium Plan - reporting of the implemented activities - approval of reports/deliverables by the Commission - actualisation and re-planning for the next Consortium Plan - decision on this proposed Consortium Plan by the General Assembly Next cycle... <p>Annex I may have to be updated following re-planning.</p>
7.1.2	7.1.2
<p>In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the Commission. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Commission.</p>	<p>This accounting system cannot be affected by the Commission, Consortium or one of the Parties.</p>
7.1.3	7.1.3
<p>A Party which spends less than its allocated share of the Consortium Budget will be funded in accordance with its actual duly justified eligible costs only. A Party that spends more than its allocated share of the Consortium Budget will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.</p>	<p>In such a case that Party may ask for a supplement on the sub project level.</p>
7.1.4	7.1.4
<p>A Party leaving the Consortium shall refund all advances paid to it except the amount of expended eligible costs accepted by the Commission.</p>	

<p>Furthermore a Defaulting Party shall, within the limits specified in Article 5.2 of this Consortium Agreement, bear any additional costs occurring to the other Parties in order to perform its and their tasks.</p>	
<p>7.2 Budgeting</p>	<p>7.2 Budgeting</p>
<p>All resources made available for the Project shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties and shall be budgeted.</p>	<p>Above management challenges require effective and regular (re)budgeting of all resources needed to execute the Project. As a consequence of the (re)budgeting process an actualised Consortium Plan will be issued.</p> <p>Within FP7 the consortium may face the need to fine tune different funding schemes (eligible costs, lump sum, flat rate and unit of scale) within the Project. The various schemes may be imposed by the Commission and/or implemented at the request of the Consortium. As a consequence it will be reflected in the payment scheme for the related task.</p>
<p>7.2.1 Budgeted costs eligible for 100% reimbursement</p>	<p>7.2.1 Budgeted costs eligible for 100% reimbursement</p>
<p>These costs shall be budgeted in the Consortium Budget in the following order of priority:</p> <ul style="list-style-type: none"> - banking and transaction costs related to the handling of any financial resources made available for the Project by the Coordinator - a reasonable costs of Parties related to <ul style="list-style-type: none"> o the delivery of certification of financial statements according to the Grant Agreement o the certification of the financial/administrative methodology (unless the methodology has already been used by the beneficiary in a previous grant agreement and has not changed) (Grant Agreement Annex II.14.1.e) and/or o the certification of the simplified method of calculation of a Party's full indirect eligible costs (Grant Agreement Annex II.15.2.a) if any - costs related to calls for new Beneficiaries - costs related to updating this Agreement - management costs of the Coordinator and the Management Support Team, if any - costs related to the tasks of the Executive Board - costs for publications - costs for the tasks of chairpersons - any other costs eligible for 100% reimbursement 	<p>All costs eligible for 100% reimbursement are defined by the Commission. In order to claim these costs and to facilitate an effective management of the Project it is strongly advised to budget all these costs specifically and fully.</p> <p>In case the Commission does not want to cover these costs explicitly to the full amount and insists on a flat rate or lump sum, the Consortium must take care of these costs as much as possible. In such case these costs can only be re-budgeted at a lower percentage. re-budgeting can be effectuated in two different ways:</p> <ul style="list-style-type: none"> - through prioritising this tasks; and as a consequence reviewing the (distribution of) tasks of the whole Project. - taking into account the limited budget for these tasks, addressing these costs according the priority

	<p>as indicated in Article 7.2.1.; and as a consequence perhaps leaving some of these costs up to the Parties concerned.</p> <p>The 2nd and 3 certification costs items are new in FP7 and could give rise to difficult situations as these costs are normally one-time costs for an organisation, but could be out of proportion for the budget of 1 project. Therefore these costs will normally be spread between a number of projects at the start of FP7 by the organisation striving for such a certification. (These costs will be eligible only during the lifetime of those projects). Even if spread among different Projects, such costs can influence the relevant project budgets substantially. Therefore decisions about budgeting a reasonable part of those cost inside a Project, have to be made inside the consortia concerned.</p> <p>The legal costs for protection might be eligible as Management costs under MGA Article II.16.5.</p>
7.2.2 Budgeting of coordination costs	7.2.2 Budgeting of coordination costs
Costs of coordination of research and, which are not allowed as management cost according to Article II.16.5 of the Grant Agreement, have to be budgeted Separately.	Coordination costs refer to both scientific and other activities and will be paid to the low percentage of the activity applicable for the Party involved; cost for the Coordinator, etc. are management costs and in principle paid at 100% - as elucidated above..
7.2.3 Budgeting of intellectual property protection costs	7.2.3 Budgeting of intellectual property protection costs
Costs for protection of Foreground have to be budgeted, even if it is not predictable which Party will need that budget in the budget period.	The legal costs for protection might be eligible as Management costs under MGA Article II.16.5.
7.3 Payments	7.3 Payments
<p>Payments to Parties are the exclusive tasks of the Coordinator.</p> <p>In particular, the Coordinator shall:</p> <ul style="list-style-type: none"> - notify the Party concerned promptly of the date and composition of the amount transferred to its bank 	As referred above, the Consortium Plan undergoes a cyclic update. As the Consortium Plan comprises the

<p>account, giving the relevant references</p> <ul style="list-style-type: none"> - perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts - undertake to keep the Community contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is not entitled to do so due to statutory legislation or as a public body. <p>All payments shall be made without undue delay after receipt by the Coordinator of funds from the Commission in accordance with the decisions of the General Assembly on the Consortium Budget, which includes the payment schedule.</p> <p>Payments to Parties will be handled according to the following two kinds of modalities:</p> <ul style="list-style-type: none"> - payments for past performance approved by the Commission will be compared with the advance payment given to a Party for such past performance; the difference will be balanced directly with the Party concerned - financing in respect of future work included in the Consortium Plan, which may be forwarded to Parties in separate instalments [e.g. every 6 Month 30 %] in conformity with the decisions of the General Assembly and any related decisions of a Sub Project Committee. <p>The Coordinator is entitled to withhold any advances due to a Defaulting Party. The Coordinator is entitled to recover any advances already paid to a Defaulting Party.</p>	<p>Project Budget, which in itself comprises the Payment Scheme, both the Consortium Budget and the Payment Scheme are subject to the same dynamics as the Consortium Plan.</p> <p>As a consequence it would be rare to find a Consortium Budget or a Payment Scheme that is fixed for a longer period than the reporting period to the Commission.</p> <p>In order to help the Consortium to react swiftly on circumstances and enhance deliveries in good time, the Consortium Plan can foresee mechanisms to that effect. This mechanisms can also be effectuated in the embedded Payment Scheme:</p> <ul style="list-style-type: none"> - Instalments of advance payment based upon progress made in delivering. - Instalments of advance payments in periods. - Instalment of advance payments in percentages. <p>Or combinations of the above.</p>
<p>Section 8: Intellectual property rights, ownership and Access Rights</p>	<p>Section 8: Intellectual property rights, ownership and Access Rights</p>
<p>8.1 Ownership</p>	<p>8.1 Ownership</p>
<p>Regarding Foreground, Article II.26 – Article II.29. of Annex II of the Grant Agreement shall apply with the following additions:</p>	
<p>8.1.1. Joint ownership</p> <p>OPTION 1:</p> <p>In case of joint ownership of Foreground, the provisions of Article II.26.2. of the Grant Agreement shall apply.</p>	<p>8.1.1. Joint ownership</p> <p>OPTION 2:</p> <p>The provisions of Article II.26.2. of the Grant Agreement shall be applied such that, unless otherwise agreed between the contributors, each of the contributors shall be entitled to use the joint Foreground as it sees fit, and to grant non-exclusive licenses,</p>
<p>8.1.1. Joint ownership</p>	

	<p>without obtaining any consent from, paying compensation to, or otherwise accounting to any other contributor.</p> <p>The contributors shall agree all protection measures and the division of related cost in advance.</p>	
8.1.2 Transfer of Foreground		8.1.2 Transfer of Foreground
<p>Each Party may transfer ownership of its own Foreground to any third party identified in Attachment [X] to this Consortium Agreement. The other Parties hereby waive their right to object to such transfer according to Article II.27.3 of the Grant Agreement.</p> <p>The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer.</p> <p>Any addition to Attachment [X] after signature of this Agreement requires a decision of the General Assembly.</p>		<p>Disputes about conflicts of interests should be solved in the CA negotiation phase as soon as one Party lists a third party which is considered to be problematic by other Parties.</p>
8.2 General clauses on Access Rights		8.2 General clauses on Access Rights
<p>As provided in Art. II.32.3 of the Grant Agreement, Parties shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Project).</p> <p>The Consortium will decide whether the Consortium Plan needs to be updated.</p>		<p>Other possible restrictions: Party has already granted exclusive license to third party; Party is not owner but only has license without right to sublicense, etc.</p> <p>Decision mechanism structure applies</p>
<p>Access Rights granted in accordance with this Section expressly exclude any rights to sublicense unless expressly stated otherwise.</p> <p>Access Rights shall be free of any administrative transfer costs. Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties according to Article II.32.7 of the Grant Agreement.</p>		See exclusive licences according to MGA Article II.32.7
<p>Foreground and Background shall be used only for the purposes for which Access Rights to it have been granted.</p>		
<p>All Access Rights shall be granted upon written request. The granting of Access Rights may be made conditional on the acceptance of specific conditions in a written bilateral agreement.</p>		
<p>The requesting Party must show that the Access Rights are Needed.</p>		See definition of "Needed"
<p>OPTION 1:</p> <p>For the avoidance of doubt any grant of Access Rights not covered by this Consortium Agreement shall be at the</p>	<p>OPTION 2:</p> <p>The Parties agree to negotiate in good faith any additional Access Rights to Foreground as might be</p>	<p>Additional Access rights might be to Foreground or Background not needed for the project or to sideground (IPR acquired in parallel to the project).</p>

<p>absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.</p>	<p>asked for by any Party, upon adequate financial conditions to be agreed.</p>	<p>The main difference between the options lies in the obligation to enter into negotiations in the 2nd option.</p>
<p>8.2.1 Background covered</p>		<p>8.2.1 Background covered</p>
<p>OPTION 1:</p> <p>The Parties may identify in the [Attachment 1] the background to which they are ready to grant Access Rights, subject to the provisions of this Consortium Agreement and the Grant Agreement. Such identification may also be done by naming a specific department of a Party. The owning Party may add further Background to [Attachment 1] during the Project by written notice. However, only the General Assembly can permit a Party to withdraw any of its Background from [Attachment 1].</p> <p>The Parties agree that all Background not listed in [Attachment 1] shall be explicitly excluded from Access Rights.</p> <p>In addition, if a Party wishes to exclude specific Background, it shall list such Background in the [Attachment 2]</p> <p>The owning Party may withdraw any of its Background from [Attachment 2] during the Project by written notice. However, only the General Assembly can permit a Party to add Background to [Attachment 2].</p>	<p>OPTION 2:</p> <p>In accordance with and subject to the provisions of the Grant Agreement, any Party may enter in [Attachment 2] any specific Background excluded from the obligation to grant Access Rights in accordance with the provisions of this Consortium Agreement. All other Background except that listed in [Attachment 2] shall be available for the granting of Access Rights in accordance with the provisions of this Consortium Agreement.</p>	<p>Uses a positive list (only the background listed is subject to access rights of other Parties, all other background is therefore excluded from access) and additionally gives participants the option to specifically exclude background in a negative list if they wish to.</p> <p>The positive list may serve also for narrowing down Access rights to a specific department (or work team, institute etc.) within the Party. When using a positive list, all partners should thoroughly check whether all input they will need from other partners is included on the list in order to prevent blockages during the project implementation.</p>
<p>8.3 Access Rights for carrying out the project</p>		<p>8.3 Access Rights for carrying out the project</p>
<p>Access Rights to Foreground and Background Needed for the execution of the own work of a particular Party under the Project shall be granted on a royalty-free basis to that Party.</p>		

8.4 Access Rights for Use		8.4 Access Rights for Use
<p>OPTION 1:</p> <p>Access Rights to Foreground if Needed for Use of a Party's own Foreground shall be granted:</p> <ul style="list-style-type: none"> - in general on fair and reasonable conditions and - on royalty-free conditions in the case of: <ul style="list-style-type: none"> o internal research activities and o third-party research, provided the third party does not have direct Access to Foreground from the Project generated by other Parties. 	<p>OPTION 2:</p> <p>Access Rights to Foreground if Needed for Use of a Party's own Foreground shall be granted on a royalty-free basis.</p>	<p>For example: producing research results which are available to the third party but which contain hermetically-sealed <i>Knowledge</i> from the <i>Project</i>, using <i>Knowledge</i> from the <i>Project</i> for in-house testing or diagnosis purposes in doing research.)</p> <p>The Parties obligations to act in good faith implies: In the case of research in collaboration with and/or for a third party where the third party needs Access Rights to confidential Knowledge from the Project of another Party, the researching Party shall in a traceable form (before starting or committing to start the research) inform the third party of such need, and shall use reasonable endeavours to inform the owner of that Knowledge of such need in a traceable form. If the owner has been so informed, he shall</p> <ul style="list-style-type: none"> - not unreasonably delay his decision on whether or not to refuse to grant the needed third party Access Rights and - not unreasonably refuse to grant such rights on fair and reasonable terms but may, in good faith, so refuse on the grounds of business interest. <p>However, if despite such reasonable efforts on behalf of the researching Party, the owner has not been so informed, the researching Party may carry out the research without prejudice to the owner's rights to enforce its rights in any way it deems fit against such third party.</p>
<p>Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on fair and reasonable conditions.</p>		<p>The MGA in theory allows to agree on royalty-free access to background for use but we do not recommend to do so because such</p>

	a clause endangers the participation of SME, Universities and public research organisations. Furthermore there remain concerns regarding violation of competition law and, as soon as there is one public funded Party, state aid provisions.
8.5 Access Rights for Affiliated Entities	8.5 Access Rights for Affiliated Entities
Affiliated Entities have Access Rights under the conditions of Article II.34.3. of the Grant Agreement.	MGA, Article II.34.3. provides that Affiliates have access rights under the same conditions as beneficiaries. As the access rights of beneficiaries require that access is needed to use own foreground, this only applies if ownership of foreground was (partially) transferred to an affiliate entity established in a Member State or Associated country.
Such Access Rights shall be granted upon written bilateral agreement under the same conditions as if such Affiliated Entities were Parties. Affiliated Entities in return grant Access-rights to all Parties and fulfil all confidentiality and other obligations accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such Affiliated Entities were Parties. Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party of which it is an Affiliated Entity, and shall automatically terminate upon termination of the Access Rights granted to such Party. Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse. Further arrangements with Affiliated Entities may be negotiated in separate Agreements.	Possible wording to put into bilateral Agreements regarding Affiliate Access Rights: If an Affiliated Entity 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.
8.6 Access Rights for Parties entering or leaving the Consortium	8.6 Access Rights for Parties entering or leaving the Consortium
8.6.1 New Parties entering the Consortium	8.6.1 New Parties entering the Consortium
All Foreground developed before the Accession of the new Party shall be considered to be Background with regard to said new Party.	
8.6.2 Parties leaving the Consortium	8.6.2 Parties leaving the Consortium
8.6.2.1 Access Rights granted to a leaving Party	8.6.2.1 Access Rights granted to a leaving Party

8.6.2.1.1 Defaulting Party	8.6.2.1.1 Defaulting Party
Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the decision of the General Assembly to terminate its participation in the Consortium.	
8.6.2.1.2 Non-defaulting Party	8.6.2.1.2 Non-defaulting Party
A Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Foreground developed until the date of the termination of its participation. The time-limit for its right to request these Access Rights shall start on the same date.	<p>I.e. In case of a Party leaving voluntarily its access rights shall be frozen as they are at the time such Party leaves the project.</p> <p>Time-limit for right to request access rights is one year (Article II. 34.4)</p>
8.6.2.2 Access Rights to be granted by any leaving Party	8.6.2.2 Access Rights to be granted by any leaving Party
Any Party leaving the Project shall continue to grant Access Rights pursuant to the Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.	
8.7 Specific Provisions for Access Rights to Software	8.7 Specific Provisions for Access Rights to Software
[If Software is the core element for the Project, participants replace this 8.7 with the detailed software clause]	
For the avoidance of doubt, the general provisions for Access Rights provided for in 8.2, 8.3 and 8.4 herein are applicable also to Software. Parties' Access Rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.	Software can be either Background or Foreground. This difference has to be considered.
Section 9: Dissemination	Section 9: Dissemination
For the avoidance of doubt, a Party may not publish or communicate Foreground generated by another Party or any Background of such other Party, even if such Foreground or Background is amalgamated with such Party's Foreground, without the other Party's prior written approval. Dissemination activities including but not restricted to publications and presentations shall be governed by Article II.30 of the Grant Agreement. If any Party has shown within [30] days of notification that its legitimate interests in relation to its Foreground or Background could suffer disproportionately great harm and if the Parties have not agreed on other measures, the Party intending to disseminate shall take the appropriate step of deleting such other Party's Foreground or Background from the intended	<p>Possible addition: It's possible for participants to change the delays foreseen by MGA Article II.30.3. Reasons to extend the period can be to have more time to examine intended publications and to block them in the meantime. Reasons to shorten the period can be to make prior notification easier, considering that e.g. presentations for conferences tend to be prepared rather close to the actual event and not months before.</p>

dissemination.	
The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Foreground or Background.	
Nothing in this Agreement shall be construed as conferring rights to use in advertising, publicity, or otherwise the name of the Parties or any of their logos or trademarks, without their prior written approval.	
Section 10: Non-disclosure of information	Section 10: Non-disclosure of information
All information in whatever form or mode of transmission, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with the Project during its implementation and which has been explicitly marked as “confidential”, or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within thirty (30) days at the latest as confidential information by the Disclosing Party, is “Confidential Information”.	
<p>The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of five years after the end of the Project:</p> <ul style="list-style-type: none"> - not to use Confidential Information otherwise than for the purpose for which it was disclosed; - not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party; - to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and - to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. If needed for the recording of ongoing obligations, the Recipients may however request to keep an archive copy. <p>The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.</p>	
<p>The Recipient shall not be liable for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:</p> <ul style="list-style-type: none"> - the Confidential Information becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations; - the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential; - the Confidential Information is communicated to the 	

<p>Recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;</p> <ul style="list-style-type: none"> - the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement; - the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or - the Confidential Information was already known to the Recipient prior to disclosure. 	
<p>The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.</p>	
<p>Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse by any person of Confidential Information as soon as practicable after it becomes aware of such unauthorised disclosure, misappropriation or misuse.</p>	
<p>If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure notify the Disclosing Party, and comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information. The confidentiality obligations under this Consortium Agreement and the Grant Agreement shall not prevent the communication of Confidential Information to the Commission.</p>	<p>This may be especially relevant if publicly funded Parties from Sweden participate in the project, as there is a Swedish law allowing all citizens to demand access to such Party's files even if they are confidential. (Secrecy Act (Sekretesslag 1980:100), available in Swedish language (http://62.95.69.15/) (more info in English (http://www.sweden.gov.se/sb/d/3288)).</p>
<p>Section 11: Miscellaneous</p>	<p>Section 11: Miscellaneous</p>
<p>11.1 Attachments, inconsistencies and severability</p>	<p>11.1 Attachments, inconsistencies and severability</p>
<p>This Consortium Agreement consists of: This body text [Attachment 1 (Background included)] and/or [Attachment 2 (Background excluded)] [Attachment 3 (Accession document)] [Attachment 4 (Initial Project address list)]</p> <p>In case this Consortium Agreement is in conflict with the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the appendices and the body text of this Consortium Agreement, the latter shall prevail. Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of</p>	<p>Insert here the total list of Attachments.</p>

<p>the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.</p>	
<p>11.2 No representation, partnership or agency</p>	<p>11.2 No representation, partnership or agency</p>
<p>The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.</p>	
<p>11.3 Notices and other communication</p>	<p>11.3 Notices and other communication</p>
<p>If it is required in this Consortium Agreement that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement to the Parties or their representatives at their addresses listed in the most current address list kept by the Coordinator.</p> <p>Notices as required under this Consortium Agreement or the Grant Agreement shall be forwarded to the other Parties via the Coordinator.</p> <p>Other notices required under this Consortium Agreement or the Grant Agreement to the other Parties shall be forwarded via the governance structure.</p> <p>Communication between the Parties that is not required to be taken in a formal form may also be effected by other means such as e-mail. E-mail with acknowledgement of receipt shall be considered to fulfil the requirement of written form.</p> <p>Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all concerned.</p>	<p>The communication channels which require formal or written form are gathered in this clause. Most of the issues should be decided in accordance with the governance structure chosen for the Project. This covers all technical issues and other issues in which decision making power is granted to a governing body. These cases are Article 4 (Problems and delays), Article 5.4 (Force Majeure), Article 6.2.2 and 6.2.4 (Meetings), Article 8.2 (Access Right restrictions).</p> <p>Due to the Grant Agreement, some issues need to be communicated through the Coordinator. See Article 8.2.1 (Background covered).</p> <p>Only in specific cases a formal notice, consent or approval (signed by authorised signatories) is necessary. One of such cases is major contractual changes. These cases are Article 11.4 (Assignments).</p> <p>All other communication than "formal" may be taken for instance by e-mail. These cases are for instance Article 9 (Dissemination), Article 8.1.2 (Notification of assignment of Foreground to a specifically identified third party), Article 10 (Non-disclosure).</p> <p>The updated lists of contact information shall be kept by the Coordinator.</p> <p>Linked directly to the management processes,</p> <p>Listing the cases to be checked with</p>

	Belgian law..
11.4 Assignment and amendments	11.4 Assignment and amendments
No rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.	Note that subcontracting is not considered as an assignment as the responsibilities remain for the Party itself.
Amendments and modifications to the text of this Consortium Agreement not listed in Article 6.3.1.2 require a separate agreement between all Parties.	All Parties should notice that some changes to this Consortium Agreement (for instance Accession of a new Party) may be taken by a decision made by the General Assembly. The basic protection for the Parties with regard to major contractual changes is however provided in the governance structure: there are requirements of unanimity, veto rights and some major decisions cannot even be taken by a governing body. Elucidation: Limitation: national rules (once / twice)
11.5 Mandatory statutory restrictions	11.5 Mandatory statutory restrictions
Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory restrictions under which the Party is operating.	The legislation of a Party may state certain statutory restrictions for the Parties, and naturally these restrictions should be respected by all Parties.
11.6 Language	11.6 Language
This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings and processes relative thereto.	
11.7 Applicable law	11.7 Applicable law
This Consortium Agreement and all clauses in the Grant Agreement affecting the rights and obligations between the Parties shall be construed in accordance with and governed by the laws of Belgium .	This Consortium Agreement has been drafted based on Belgian law . The application of Belgian law has been commonly used in FP6. In all cases the Parties should however look into the choice of law in the Grant Agreement in order to harmonise possible conflicts.
11.8 Settlement of disputes	11.8 Settlement of disputes
All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The award of the arbitration will be final and binding upon the Parties.	In international disputes it might be difficult to use a foreign national court in the settlement of disputes. The choice of national court should be considered carefully. There are several issues to be considered in this context: the costs of and time

<p>Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief or to enforce an arbitration award in any applicable competent court of law.</p>	<p>consumed by the process and the enforcement of the decision. Check: Belgian law</p>
<p>Section 12: Signatures</p>	<p>Section 12: Signatures</p>
<p>AS WITNESS: The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in [Insert the form of signing: separate signature pages or counterparts or accession forms] the day and year first above written.</p>	<p>There are several ways for the signature process of the document. Often it is too impractical for all Parties to sign the same document at the same time.</p> <p>The following are widely used: Each Party signing a separate signature page: Each Party signs a separate signature page as many times as there are Parties (also it might be decided to have only 1 or 2 originals). The Coordinator gathers all originals and then delivers the whole package consisting of the text and all signatures to all Parties. Signing the document in counterparts: The Coordinator and each Party sign the signature page in duplicate. One is for the Coordinator and the other one for the Party. The Coordinator has in this way all the originals of all the Parties. Another possibility is to mirror the signature process of the Grant Agreement (accession forms): 2 Parties sign the Consortium Agreement in duplicate. The other Parties accede the Consortium Agreement by separate accession forms. Check with Belgian law.</p>
<p>[INSERT NAME OF PARTY] Signature(s) Name(s) Title(s)</p>	
<p>[INSERT NAME OF PARTY] Signature(s) Name(s) Title(s)</p>	
<p>[INSERT NAME OF PARTY] Signature(s) Name(s)</p>	

Title(s)	
MODULE A:	MODULE A:
Governance structure for Small Collaborative Project Will be drafted later on [to be brought in line with large projects]	
MODULE B: Specific Software provisions:	MODULE B: Specific Software provisions:
	Replace Art. 8.7 with the following clause in case Software is a core element in your Project:
8.7 Specific provisions for Access Rights to Software	8.7 Specific provisions for Access Rights to Software
8.7.1 Definitions relating to Software	8.7.1 Definitions relating to Software
<p>“Application Programming Interface” means an interface or other means provided for by a Software application, component or library for the purpose of interfacing or interaction of other Software with such application, component or library including, but not limited to, data types and structures, constant and macro definitions, function and procedure definitions including their name, parameters, parameter count and parameter data type(s) and any data type of function results thereof, as set forth in header files, specifications and related documentation.</p> <p>“Object Code” means software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for linking procedures and functions to other software.</p> <p>“Software Documentation” means software information, being technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a software programme.</p> <p>“Source Code” means software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.</p>	
8.7.2. General principles	8.7.2. General principles
8.7.2.1	8.7.2.1
For the avoidance of doubt, the general provisions for Access Rights provided for in Article 8.2, Article 8.3 and Article 8.4 herein are applicable also to Software as far as not modified by this Article 8.7.	[OPTION possible to be inserted at the end in case of the use of the Industry-Option: Such rights shall only be granted

Parties' Access Rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.	upon bilateral agreement between the Parties concerned on fair and reasonable conditions. For the avoidance of doubt, such conditions shall be due even in case the Parties have agreed Access Rights to software for Use (see 8.4 above) to be royalty-free.]
8.7.2.2	8.7.2.2
The development of open source code software in the Project requires the approval of the General Assembly to implement such development into the Consortium Plan.	Use of open source software covered by Article 8.2 If open source software is used in the project by doing part of the work with the help of such software, this can have serious impact on the possible use of the results.
8.7.3. Access to Software	8.7.3. Access to Software
Access Rights to Software which is Background or Foreground shall comprise: Access to the Object Code; and, where normal use of such an Object Code requires an Application Programming Interface (hereafter API), Access to the Object Code and such an API; and, if a Party can show that the execution of its tasks under the Project or the Use of its own Foreground is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary.	
8.7.4. Software license and sublicensing rights	8.7.4. Software license and sublicensing rights
8.7.4.1 General aspects to Object Code and Source Code	8.7.4.1 General aspects to Object Code and Source Code
Each sublicense granted according to the provisions of Article 8.7 shall, be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.	
8.7.4.2 Object Code	8.7.4.2 Object Code
8.7.4.2.1 Rights of a Party	8.7.4.2.1 Rights of a Party
Where a Party has Access Rights to Object Code and/or API which is Foreground for Use, such Access shall, as far as Needed, comprise the right: <ul style="list-style-type: none"> - to use Object Code and API in research, or to create and market a product or process, or to create and provide a service; and - to make and have made an unlimited number of copies of Object Code and API; and - to distribute, make available, market, sell and offer for sale; even by using services of a third party, such Object Code and API in connection with products or services of 	

<p>the Party having the Access Rights; provided however that any product, process or service has been developed by or for the Party having the Access Rights in accordance with its rights to use Object Code and API for its own Foreground.</p>	
<p>8.7.4.2.2 Rights to end-users</p>	<p>8.7.4.2.2 Rights to end-users</p>
<p>In addition, Access Rights to Object Code shall, as far as Needed for the Use of the Party's own Foreground, comprise the worldwide right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services a perpetual, irrevocable, worldwide license to the extent as necessary for the normal use of the relevant product or service:</p> <ul style="list-style-type: none"> - to Use Object Code in connection with or integrated into, products and services of the Party having the Access Rights and, as technically essential; - to maintain such product/service; and - to create for its own end-use interacting interoperable software in accordance with the Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC). 	<p>Considering that there are some sublicensing rights included in the software access provisions, parties who have decided in Article 8.4 to choose royalty-free access to knowledge for use may still consider it adequate to foresee for compensation here.</p>
<p>8.7.4.2.3</p>	<p>8.7.4.2.3</p>
<p>For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API which is Background for Use, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.</p>	
<p>8.7.4.3 Source Code</p>	<p>8.7.4.3 Source Code</p>
<p>8.7.4.3.1 Rights of a Party</p>	<p>8.7.4.3.1 Rights of a Party</p>
<p>Where a Party has Access Rights to Source Code which is Foreground for Use, Access Rights to such Source Code shall comprise a worldwide right to use, to make and have made copies, to modify and have modified, develop and have developed, to adapt and have adapted Source Code for research, to create /market a product/process and to create /provide a service.</p>	
<p>8.7.4.3.2 Rights to end-users</p>	<p>8.7.4.3.2 Rights to end-users</p>
<p>In addition, Access Rights shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software. Further sublicensing of Source Code is explicitly excluded.</p>	
<p>8.7.4.3.3</p>	<p>8.7.4.3.3</p>
<p>For the avoidance of doubt, where a Party has Access Rights to Source Code which is Background for Use, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.</p>	

<p>[Attachment 1: Background included]</p>	<p>[Attachment 1: Background included]</p>
<p>Access Rights to Background made available to the Parties: a. b. ... This represents the status at the time of signature of this Consortium Agreement.</p>	
<p>[Attachment 2: Background excluded]</p>	<p>[Attachment 2: Background excluded]</p>
<p>Background excluded from Access Rights: a. b. ... This represents the status at the time of signature of this Consortium Agreement.</p>	

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<p>[Attachment 3: Accession document]</p>	<p>[Attachment 3: Accession document]</p>
<p style="text-align: center;">ACCESSION</p> <p>of a new Party to</p> <p>[Acronym of the Project] Consortium Agreement, version [..., YYYY-MM-DD]</p> <p>[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE GRANT AGREEMENT]</p> <p>hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].</p> <p>[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT]</p> <p>hereby certifies that the Consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the Consortium starting [date].</p> <p>This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.</p> <p>[Date and Place]</p> <p>[INSERT NAME OF THE NEW PARTY] Signature(s) Name(s) Title(s)</p> <p>[Date and Place]</p> <p>[INSERT NAME OF THE COORDINATOR] Signature(s) Name(s) Title(s)</p>	
<p>[Attachment 4: Initial project address list]</p>	<p>[Attachment 4: Initial project address list]</p>
<p>LOGOs of the DESCA Core Group:</p>	
<p>LOGOs of the DESCA Consultation Group:</p>	