

THIS CONSORTIUM AGREEMENT IS MADE ON [Project Start Date or other agreed date], hereinafter referred to as Effective Date

BETWEEN:

[Official name of the project leader/partner 1], having its registered office at [Address], with registration number [registration number] and VAT number [VAT number], legally represented herein by [name of representative], acting as [position of the representative]; hereinafter referred to as **Project leader**

And

[Official name of the project partner 2], having its registered office at [Address], with registration number [registration number] and VAT number [VAT number], legally represented herein by [name of representative], acting as [position of the representative]; hereinafter referred to as **Project partner**

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

relating to the Project entitled

[Name of the Project]

hereinafter referred to as “Project”;

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to EIT Health InnoStars CROSS-KIC SRI Entrepreneurial Co-founder Match Call 2022.

The Parties wish to lay down the contractual arrangements between them and specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement to be signed by the Parties and the Funding Authority (hereinafter “Grant Agreement”).

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Article 1: Definitions

1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules of Participation for Horizon Europe or in the EIT Health InnoStars CROSS-KIC SRI Entrepreneurial Co-founder Match Call 2022 or in the Sub-granting Agreement including its Annexes.

1.2 Additional Definitions

“Project” shall mean the project to be carried out by the Parties in accordance with the Project Plan.

“Consortium Plan or Project Plan” shall mean the description of the action and the related agreed budget as first defined in the Grant Agreement, which contains and describes the Project Leader, the other Project Partners for that Project, the activities, the budgets for the activities, the milestones, decision points, deliverables, and KPI’s and other data relevant to such Project.

“Consortium body” shall mean any management body described in the Governance Structure section of this Consortium Agreement”

“Project Leader” shall mean the legal entity in the Project that monitors and coordinates progress of the Project in accordance with Article 6.

“EIT” shall mean the European Institute of Technology.

“EIT Health” and EIT Health InnoStars shall mean the autonomous partnership of higher education institutions, research organisations, companies and other stakeholders in the innovation process in the form of a strategic network based on joint mid-to long-term innovation planning to achieve the EIT challenges, in the field of health, comprising the EIT Health e.V and the EIT Health Partners.

“Funding Authority” shall mean the body awarding the grant for the Project.

“Defaulting Party” shall mean a Party which is in breach of this Consortium Agreement and/or the Grant Agreement as specified in Article 4.2 of this Consortium Agreement.

“Affiliated Entity” shall mean a legal entity that is directly or indirectly Controlled by, or under common Control with or Controlling a Party, where **“Control”** means the direct or indirect

- ownership of more than 50% of the issued share capital of the 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 in such entity, or

- right by any other means to elect or appoint managing board members of the entity (or persons performing similar functions) who together have a majority vote, while the status of Affiliated Entity lasts only as long as such Control exists, it being understood that common Control through government does not, in itself, create Affiliated Entity status.

“Access Rights are Needed” means:

- For the implementation of the Project:

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

- For exploitation of own Results:

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

“Software” shall mean 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.

“Authorized Representative” shall mean the person or persons duly authorized to sign this Consortium Agreement on behalf of a Party.

“Effective Date” shall mean the date first referenced above.

Article 2: Purpose

The purpose of this Consortium Agreement is to lay down the contractual arrangements and specify the relationships among the Parties, regarding the Project in which the Parties are involved, and regarding part of the Grant to be received in respect of the activities that will be performed by the Parties, including Project Partners in accordance with this Consortium Agreement and to further specify certain rights and obligations pertaining to them in respect thereof concerning inter alia governance of the Project, liability, Access Rights and dispute resolution.

Article 3: Entry into force, duration and termination

3.1 Entry into force

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

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

A new entity becomes a Party to this Consortium Agreement upon signature of the accession document (Annex 2) by the new Party and the Project Leader. Such accession shall have effect from the date identified in the accession document.

3.2 Duration and termination

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

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

If

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

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

3.3 Survival of rights and obligations

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

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

Article 4: Responsibilities of Parties

4.1 General principles

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

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

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

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

4.2 Breach

In the event that a Party is in breach of its obligations under this Consortium Agreement or the Grant Agreement (e.g. improper implementation of the Project), the Project leader or, if the Project leader is in breach of its obligation, the Party appointed, acting on behalf of the non-defaulting Parties will give formal notice to such Party requiring that such breach will be remedied within 30 calendar days from the date of receipt of this formal notice, unless such breach cannot be remedied.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Consortium Body may decide to declare the Party to be a Defaulting Party and to decide on

the consequences thereof which may include termination of its participation in the Project and thus withdrawal of funds.

For the avoidance of doubt, in the event that the proper implementation of the Project is jeopardized by an overall lack of performance by the Parties in the Project, the Funding Authority on the basis of a justified decision shall have the right to act and decide on the consequences of the non-performance, which may include termination of the Project.

4.3 Involvement of third parties

4.3.1 General conditions

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

4.3.2 Subcontracting

If a Party has to conclude subcontracts covering the implementation of certain tasks, it shall do so on a best value for money basis or, if appropriate, the lowest price. The procurement must be well documented by the Party in order to demonstrate the transparency of the process. The Party shall only enter into subcontracts with respect to a limited part of the Project, as set out in the Project Plan.

Towards the Funding Authority, the Party shall remain the sole responsible party with respect to the part of the Grant received by it, and the sub-contractor shall have no rights or claims to be enforced against EIT Health InnoStars or the EIT.

The Party must ensure that the EIT, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights towards their subcontractors.

4.3.4 Third parties providing in-kind contributions against payment.

The third parties providing in-kind contributions against payment and their contributions must be set out in the Project Plan.

The contractual relationship with those third parties shall be covered by a written agreement.

The Parties must ensure that the EIT, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights towards the third parties.

Article 5: Liability towards each other

5.1 No warranties

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

Therefore,

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

5.2 Limitations of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act or by a breach of confidentiality.

For any remaining contractual liability, a Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's share of the total costs of the Project as set out in the Project Plan of the Grant Agreement, provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability.

5.3 Damage caused to third parties

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

5.4 Force Majeure

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

Each Party will notify the Project Leader of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks and grants- if any - shall be decided by the Consortium Body/Project Leader together with the Funding Authority.

Article 6: Governance structure

6.1 Set-up of governance

The Parties shall set up an efficient internal project organization and governance structure for the Project, which structure shall not be in conflict with the provisions of the Grant Agreement. At the latest at the Effective Date, the Project Leader shall notify the Funding Authority of the structures and processes agreed upon between the Parties, and the Project Leader shall notify the Funding Authority of any changes thereto immediately.

6.2 Project Leader

The Project Leader is the legal entity acting as the intermediary between the Parties and the Funding Authority and is the first point of contact for the Funding Authority regarding the Project, its progress and its participants.

6.2.1 The Project Leader shall, in addition to its responsibilities as a Party, perform the following tasks:

- monitoring compliance by the Parties with their obligations under this Consortium Agreement; and in particular:
 - monitoring overall project performance and the execution of decisions taken by the governance bodies of the Project;
 - monitoring compliance of the Parties with the guidelines issued by Funding Authority to provide reports and regular updates on the reports;
- collecting from the Parties:
 - information on technical progress; and
 - an explanation of the use of recourses and the use of subcontracting services and in-kind contributions by third parties and from each linked third party
- reviewing such collected information regarding technical progress reports on consistency,
- monitoring the effective and efficient implementation of the Project;
- submitting reports (in particular technical progress reports and financial reports) and specific requested documents to the Funding Authority;
- keeping the address list of the Parties and other contact persons updated and available;
- transmitting promptly documents and information connected with the Project to any other parties concerned.
- attending the Project review meetings by a representative in person at a time and location specified well in advance by the Funding Authority.
- providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

6.2.2 If one or more of the Parties is late in submission of any of the information referred to in Article 6.2.1, or any other Project deliverable, the Project Leader may nevertheless submit the other Parties' Project deliverables and all other documents required by the Grant Agreement to the Funding Authority in time.

6.3 Replacement of the Project Leader

If the Project Leader fails in its tasks, the Consortium Parties may propose to the Funding Authority to replace the Project Leader with another Party.

6.4 Acting on behalf of other Parties

The Project Leader shall not be entitled to act or to make legally binding declarations on behalf of any other Party, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement.

6.5 Limitation of the Role of the Project Leader

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

6.6 Cooperation with the Project Leader

In accordance with the provisions of Article 4.1 of this Consortium Agreement, the Parties shall co-operate with the Project Leader and with the Funding Authority to provide all information as is required to fulfil the reporting obligations towards the Funding Authority and the EIT. The Parties shall provide a technical and financial report as provided for in the Grant Agreement. The Parties and the Project Leader shall further comply with the guidelines issued by the Funding Authority to provide reports and shall provide regular updates on the reports regarding technical progress and financial aspects in accordance with these guidelines, as agreed with the legal representatives of the Parties.

Article 7: Financial provisions

7.1 General Principles

7.1.1 Distribution of Financial Contribution

The financial contribution of the Funding Authority to the Project shall be distributed in accordance with:

- the project plan,
- the eligible cost as set out in the financial statements of the individual Parties, however, subject to the approval of these financial statement by the Funding Authority, and the provisions of payment in Article 7.3.

A Party shall receive financial contributions only for its tasks carried out in accordance with the Project Plan.

Each Party is aware that the only cost eligible for funding under the grant from the Funding Authority are those as described in the Grant Agreement. Furthermore, each Party is aware that it must keep the records and the original documents supporting the costs declared in accordance with the Grant Agreement.

7.1.2 Justifying Costs

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the Funding Authority, if required with original supporting documents. Neither the Project Leader nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Funding Authority.

7.1.3 Funding Principles

A Party which spends less than its allocated share of the budget as set out in the Project Plan or - in case of reimbursement via unit costs - implements less units than foreseen in the Project Plan, will be funded in accordance with its actual duly spent and justified eligible costs only.

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

7.1.4 Return of excess payments; receipts

7.1.4.1 In any case of a Party having received excess payments, the Party has to return the relevant amount to the Funding Authority without undue delay.

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

7.1.5 Financial consequences of the termination of the participation of a Party

A Party leaving the consortium 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 Article 5.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks.

7.2 Budgeting

The budget set out in the Project Plan shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

7.3 Payments

7.3.1 Payments to Parties are the exclusive tasks of the Funding Authority.

In particular, the Funding Authority shall:

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

- inform the Project Leader of all payments made in this respect, for the purpose of the Project Leader's administration tasks set out in Article 6.2.a).
- With reference to the Grant Agreement, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount from which the amounts retained by the Funding Authority for the Guarantee Fund and for the final payment have been deducted.

7.3.2 The parties will receive one pre-financing payment from the Funding Authority in accordance with the Grant Agreement.

7.3.3 Payment of the balance at the end of the Project shall be made in accordance with the Grant Agreement.

7.3.4 Once any payment of financial contributions is done the Funding Authority, the Party shall have no recourse to the Funding Authority for such financial contribution.

7.3.5 Payment by the Funding Authority to Parties hereunder, shall be made to the bank account named by the Party in the Grant Agreement.

Payment to any other bank account details for the purpose of this project can be made and in such a case the details must be provided by the Party to the Funding Authority. New details shall only be effective five working days after receipt by the Funding Authority of written notice from the Party in that respect.

Article 8: Results

8.1 Ownership of Results

Results are owned by the Party that generates them.

8.2 Joint ownership

Option 1

Unless otherwise agreed:

- each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and

- each of the joint owners shall be entitled to otherwise Exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given:

(a) at least 45 calendar days advance notice; and

(b) Fair and Reasonable compensation.

Option 2

In case of joint ownership, each of the joint owners shall be entitled to Exploit the joint Results as it sees fit, and to grant non-exclusive licences, without obtaining any consent from, paying

compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

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

8.3 Transfer of Results

8.3.1 Each Party may transfer ownership of its own Results following the procedures of the Grant Agreement.

8.3.2 It may identify specific third parties it intends to transfer the ownership of its Results to in Annex 3 to this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to a transfer to listed third parties according to the Grant Agreement.

8.3.3 The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer.

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

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

8.4 Dissemination

8.4.1 Dissemination of own Results

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

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

8.4.1.2 An objection is justified if

- (a) the protection of the objecting Party's Results or Background would be adversely affected
- (b) the objecting Party's legitimate academic or commercial interests in relation to the Results or Background would be significantly harmed.

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

8.4.1.3 If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted, provided that Confidential Information of the objecting Party has been removed from the Publication as indicated by the objecting Party.

8.4.2 Dissemination of another Partner's unpublished Results or Background

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

8.5 Cooperation obligations

8.5.1 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 Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

8.5.2 The Parties undertake to cooperate with the Funding Authority for making available information to the Funding Authority that can be used for dissemination purposes in the context of the overall mission and activities of the Funding Authority and the EIT Health. The Project Leader shall act as an intermediary for transmitting such information from the Parties to the Funding Authority.

8.6 Use of names, logos or trademarks

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

Any communication activity related to the Project by Parties must acknowledge the EIT Health support received and, when appropriate, display the EIT Health logo.

Article 9: Access Rights

9.1 Background included

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

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

9.1.2 Any Partner can propose to the other Parties to modify its Background in Annex 1.

9.2 General Principles

9.2.1 Each Party shall implement its tasks in accordance with the Project Plan and shall bear sole responsibility for ensuring that it acts within the Project do not knowingly infringe third party property rights.

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

9.2.3 Access Rights shall be free of any administrative transfer costs.

9.2.4 Access Rights are granted to on a non-exclusive basis.

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

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

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

9.3 Access Rights for implementation

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

9.4 Access Rights for Exploitation

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

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

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

9.4.3 A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Article 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

9.5 Access Rights for Affiliated Entities

Affiliated Entities have Access Rights under the conditions of the Grant Agreement.

Such Access Rights must be requested by the Affiliated Entity from the Party that holds the Background or Results. Alternatively, the Party granting the Access Rights may individually agree with the Party requesting the Access Rights to have the Access Rights include the right to

sublicense to the latter's Affiliated Entities [listed in Annex 4]. Access Rights to Affiliated Entities shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.

Affiliated Entities which obtain Access Rights in return 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 may be refused to Affiliated Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated 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.

9.6 Additional Access Rights

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

9.7 Access Rights for Parties entering or leaving the Consortium

9.7.1 New Parties entering the Consortium

As regards Results developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.

9.7.2 Parties leaving the Consortium

9.7.2.1 Access Rights granted to a leaving Party

9.7.2.1.1 Defaulting Party

Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the Funding Authority to terminate its participation in the Project.

9.7.2.1.2 Non-defaulting Party

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Results developed until the date of the termination of its participation.

It may request Access Rights within the period of time specified in Article 9.4.3.

9.7.2.2 Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

9.8 Specific Provisions for Access Rights to Software

For the avoidance of doubt, the general provisions for Access Rights provided for in this Article 9 are applicable also to Software.

Parties' Access Rights to Software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

Article 10: Non-disclosure of information

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

10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of 4 years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information 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. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations.

10.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

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

- the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;

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

10.5 The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.

10.6 Each Party shall promptly advise the other Parties in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

10.7 If any 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.

Article 11: Miscellaneous

11.1 Annexes, inconsistencies and severability

This Consortium Agreement consists of this core text and

Annex 1 (Background included)

Annex 2 (Accession document)

Annex 3 (List of Third Parties for simplified transfer according to Article 8.3.2)

Annex 4 (Identified Affiliated Entities)

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

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

11.2 No representation, partnership or agency

Except as otherwise provided in Article 6.4.4, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

11.3 Notices and other communication

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Project Leader.

Formal notices:

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.

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 Project Leader. The address list shall be accessible to all concerned.

11.4 Assignment and amendments

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

Amendments and modifications to the text of this Consortium Agreement require a separate written agreement to be signed between all Parties.

11.5 Mandatory national law

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

11.6 Language

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

11.7 Applicable law

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

11.8 Settlement of disputes

The Parties shall endeavour to settle their disputes amicably.

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Brussels unless otherwise agreed upon. The language to be used in the mediation shall be English unless otherwise agreed upon.

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

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

Article 12: Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Party 1

Signature(s):
Name(s):
Title(s): CEO
Date:

Party 2

Party 3

Signature(s):

Name(s):

Title(s): CEO

Date:

Annex 1: Background included

Party 1

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

Option 1

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

Describe Background	Specific limitations and/or conditions for implementation (in line with the Grant Agreement)	Specific limitations and/or conditions for Exploitation (in line with the Grant Agreement)

Option 2

No data, know-how or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project or Exploitation of that other Party's Results.

Party 2

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

Option 1

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

Describe Background	Specific limitations and/or conditions for implementation (in line with the Grant Agreement)	Specific limitations and/or conditions for Exploitation (in line with the Grant Agreement)

Option 2

No data, know-how or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project or Exploitation of that other Party's Results.