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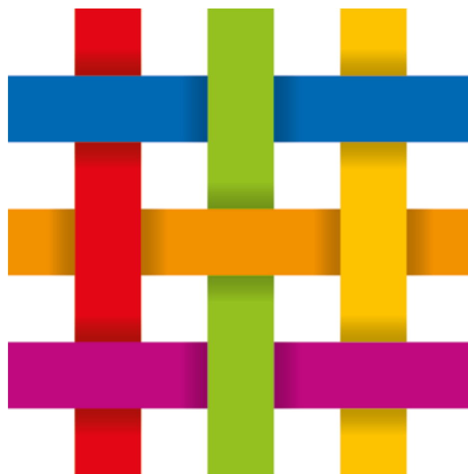

DESCA

Horizon 2020 Model Consortium Agreement

www.DESCA-2020.eu

Version 1.2,
February 2016

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Version	Date	Changes	Author
Version 1	February 2014		DESCA
Version 1.1	May 2014	"Remarks", item 4: reference to RfP updated	DESCA
Version 1.2	February 2014	Update taking into account user consultation and negotiation experience, see summary on www.desca-2020.eu	DESCA

REMARKS

This Consortium Agreement model is created for projects which will be governed by a "Multi-beneficiary General Grant Agreement" (MGA) under Horizon 2020, i.e. notably "Research and Innovation Actions" and "Innovation Actions". A use for other types of projects will likely require adaptations.
The new DESCA model addresses the features of Horizon 2020, which is intended to be a considerable evolution as compared to previous Framework Programmes. Following the feedback of many stakeholders, the explicit aim of the update for H2020 was to adapt where necessary and to keep the continuity of the DESCA FP7 text where possible.

In order to facilitate coordination and collaboration, this model provides for internal arrangements between beneficiaries, governance of the project and financial issues.
In order to be as user-friendly as possible, the model and the elucidations focus on a "mainstream" project and are not intended to give all alternatives for a given situation. The wording aims to be accessible and easy to understand notably for non-lawyers.

The H2020 MGA contains several options which will be adapted to the individual project. DESCA 2020 is based on what we expect to be the "default setting" of MGA options.

The model should be adapted in order to suit specific features of each single project.

The H2020 Rules for Participation, all MGAs, and the other related documents are available at: http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html

It is strongly advised to read the MGA and the related documents, and it is important to be aware of the fact that DESCA is supplementary to the Rules for Participation and the Grant Agreement. Many items regulated there are NOT repeated here, but should be carefully taken into account and re-read in case of doubt.

The DESCA model is presented with two columns: the left side with legal text and the right side with elucidation, remarks and references to the H2020 Multi-beneficiary General Model Grant Agreement (MGA). For easier navigation, we highlight relevant key words in bold letters in the elucidations. A version without elucidations is available on the website www.desca-2020.eu.

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

1. Core text: The main body of the text.

2. Two modules for Governance Structure:

Module GOV LP for Medium and Large Projects:
Complex governance structure: two governing bodies, General Assembly and Executive Board [Module GOV LP].
Module GOV SP for Small Projects:
Simple governance structure: only a General Assembly [Module GOV SP].
If the project implies just a modest number of work packages, and is not very complicated, Module GOV SP will normally do.
However, if the project is more complicated and has many work packages, the Module GOV LP, which includes an Executive Board, is advised.

3. Module IPR SC - special clauses for Software:

If your project has a strong focus on software issues, you may wish to use the software module which provides more detailed provisions regarding software (sublicensing rights, open source code software etc.) [Module IPR SC].

4. Options:

The core text contains different options in some clauses, especially in the IPR section. Any optional parts of the text are marked grey; so are other items where variable numbers/data should be adapted to the project.
Option 1 in the IPR clauses reflects the preference of most stakeholders (some Industry sectors as well as universities and research organisations) where fair and reasonable remuneration for having access to other partners' project results for exploitation is foreseen.
Option 2 in the IPR clauses reflects a situation preferred by some industries, where all project results are available for Exploitation without any form of remuneration to the owners.
Advice note: A mix of Option 1 and Option 2 can in some cases lead to inconsistencies.

A note on Innovation Procurement: In H2020, pre-commercial procurement (PCP) or public procurement of innovative solutions (PPI) will be more frequent than in FP7. For such actions, there are specific rules in accordance with Article 51 of the Rules for Participation and the multi-beneficiary model grant agreement for PCP or PPI action. For this kind of Innovation Procurement projects, a Party may enter into a procurement procedure and will have to ensure that the specific rules will be taken into account. For the later tender processes a separate procurement agreement is recommended.

The DESCA Core Group recognizes that users of the DESCA Model Consortium Agreement may wish to adapt the original DESCA text to their own needs and accordingly invites them, in the interests of transparency and integrity, to freely and clearly indicate for their actual or potential partners the adaptations which they have made.

		b. amounts to cover the planned work for the next X months c. amounts to cover YY% of the actual planning period d. including a retention of ZZ% ; which will be paid out at acceptance of all related deliverables. By consequence of implementing instalments all money will be retained until payment is due governed by the Payment Schedule You may wish to replace "undue delay" by a fixed number of calendar days.
The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or to a Beneficiary which has not yet signed this Consortium Agreement. The Coordinator is entitled to recover any payments already paid to a Defaulting Party. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Funding Authority.		A Beneficiary not wanting to become a Party to this Consortium Agreement is showing bad behaviour. It is in the interest of both the consortium and the Funding Authority not to forward any money. Poor quality of work or reports may be considered to be a breach. Withholding payments when this is suggested by or agreed with the EU may actually occur in cases where a Partner is deemed to be financially weak.

Section 8: Results		
8.1 Ownership of Results Results are owned by the Party that generates them.		Internally, the Parties have to ensure that they comply with Article 26.3 of the Grant Agreement - rights of third parties (including personnel)
8.2 Joint ownership Joint ownership is governed by Grant Agreement Article 26.2 with the following additions:		Be aware that the GA in H2020 explicitly allows that the joint owners may agree to apply another regime than joint ownership, but only once the results have been generated. (Article 26.2 of MGA).
[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	[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.	You may find it useful to be more specific about the kind of **research activities** you want to cover with this first indent of option 1, but please be aware that in principle it shall only cover activities wherein no further transfer or licensing of such jointly owned IP is required (otherwise, this should be dealt with under the second indent). So, the first indent will typically comprehend the main activities of universities or research organisations: own internal research and collaborative research (with or without public funding). Such research activities of Industry or SME are, of course, also covered by this provision. **Research activities on behalf of a third party** may also be understood to be non-commercial, in particular if they are

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.	The joint owners shall agree on all protection measures and the division of related cost in advance.	performed by a non-profit research organisation.The Parties should however be aware that under certain circumstances it may be appropriate to interpret certain research activities on behalf of a third party as commercial. If this aspect is expected to be relevant in the project, it may be appropriate for the Parties to define in more detail how far research on behalf of a third party shall be included in non-commercial activities which are free of sharing benefits and information obligations. Be aware that joint ownership only arises if relative contributions cannot be separated for protection purposes (Article 26.2 MGA), which means that it is mostly relevant in the context of patenting. Where it is about commercially valuable IP, we strongly recommend having a detailed **Joint ownership agreement**. This will allow beneficiaries to come to a detailed arrangement wherein they can both capture this value to its fullest extent. In such a context, there will in any case be a need for detailed agreements on the division of protection related cost, countries to be covered etc. which will typically be covered by the Joint Ownership agreement on a case by case basis. This will override the CA and allow adequate provisions for the individual case. In most other situations, and especially if no protection measures are considered to be useful, it will typically be more important for all parties concerned to use their own results for future projects without having to obtain the agreement of the other owners. If the two options don't suit you, then possibly the MGA text is a compromise (see below). Please consider, however, that for own use (not mentioned by the MGA) the national legal systems may be different. MGA, Article 26.2: Unless otherwise agreed: - each of the joint owners shall be entitled to Exploit their jointly owned Results on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and - each of the joint owners may grant non-exclusive licenses to third parties to exploit jointly-owned Results (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.
8.3 Transfer of Results		
8.3.1 Each Party may transfer ownership of its own Results		

following the procedures of the Grant Agreement Article 30. 8.3.2 It may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (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 Article 30.1. 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. Any addition to Attachment (3) after signature of this Agreement requires a decision of the General Assembly. 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 other Parties still have - or still may request - Access Rights to the Results.	
8.4 Dissemination	Be aware that one of the main new features of H2020 is the obligation to make all publications of results available under open access, Article 29.2 MGA, and that open access to data may be foreseen, optional clause 29.3 MGA.
8.4.1 For the avoidance of doubt, nothing in Art.8.4 has impact on the confidentiality obligations set out in Section 10.	The confidentiality obligations exists regardless of the rules on dissemination. If your planned publication might contain confidential information of other parties, follow the rules in Section 10 first.
8.4.2 Dissemination of own Results	
8.4.2.1 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 Article 29.1 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 Coordinator 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. 8.4.2.2 An objection is justified if	The MGA obligation of Article 29 on this procedure is not expressly limited in time at all. Participants need, however, a defined end of this obligation to ask their project partners before each publication. The limit can be adapted to the needs of the individual project and might span from directly after the end of the project to 4 years afterwards. To avoid doubt: "dissemination" as per its definition in the GA does not cover patent application activities.

(a) the protection of the objecting Party's Results or Background would be adversely affected (b) the objecting Party's legitimate interests in relation to the Results or Background would be significantly harmed. The objection has to include a precise request for necessary modifications.	
8.4.2.3 If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion. 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,.	
8.4.3 Dissemination of another Party's unpublished Results or Background	
A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published.	Where unpublished material from more than one beneficiary is involved, the procedure of Section 8.4.1. will normally lead to a joint publication. This Section 8.4.2. simply wishes to clearly state the principle that each beneficiary remains solely entitled to decide on first publication of its own unpublished materials (be they Background or Results).
8.4.4 Cooperation obligations	
The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree that includes their Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.	
8.4.5 Use of names, logos or trademarks	
Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.	
Section 9: Access Rights	
9.1 Background included	

9.1.1 In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits. Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background. 9.1.2 Any Party may add further own Background to Attachment 1 during the Project by written notice to the other Parties. However, approval of the General Assembly is needed should a Party wish to modify or withdraw its Background in Attachment 1.	Be aware – **Attachment 1 is a vital document** – check what your project partners are listing and (more importantly) not listing! Earlier framework programmes required the parties to define Background and to make any exclusions "specific". This was translated into the Consortium Agreements by having Background exclusion lists, mostly in addition to the list of Background Included. The MGA for H2020 now obliges the parties to "identify and agree" upon the Background for the Project. Therefore, DESCA2020 proposes to work with actively listed Background. It is the responsibility of the parties to make this 'agreement on Background'. It seems reasonable to expect that if parties know of a specific need for access rights to specific Background, they will be able to identify this up front (potentially with limitations). In any case, such a duty to inform is explicitly mentioned in Article 25.2 and 25.3 of the MGA) and this information needs to be shared before accession to the GA. The counterpart of working with a positive list is that the parties fully accept that anything not listed simply IS no Background, and that therefore, there is no reason to "exclude" it. That is the reason why there is no need any more to explicitly exclude background in Attachment 1 such as the background of research units not involved in the Project as was usual in FP7 Consortium Agreements.
9.2 General Principles	The MGA does not contain a clause anymore on general principles for access rights. There are only parts of this scattered throughout the MGA (such as Article 25.1 for Background and Article 30.2 for Results).
9.2.1 Each Party shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party property rights.	This clauses wants to make clear that in their scientific and technological exchanges, the parties should be cautious about potential legal limits caused by intellectual property rights (regardless of the owner thereof). **If Attachment 1 is missing important Background** which turns out to be needed for the implementation of the Project as planned in Annex 1 of the Grant Agreement, this becomes a problem for the whole consortium, since it is jointly responsible towards the Funding Authority for achieving the planned project results. Although it will in the first instance be up to the owner of the Background concerned to remedy the situation (they had a duty to inform the consortium about the situation of their Background), if no consensus between the parties concerned can be found it will eventually be up to the consortium decision-making bodies to find a case-by-case solution.

<table>
<tr><td colspan="2"></td><td>As soon as the consortium becomes aware of such restrictions, it has to decide whether this has an impact on the Project, including the Exploitation as foreseen in Annex 1 and the Consortium Plan. If there is an impact, the Consortium Plan can be updated accordingly. The consortium can also keep the Consortium Plan as it is. This can mean that you are not allowed to use certain restricted Background and you have to implement the task in another way.</td></tr>
<tr><td colspan="2">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 on a non-exclusive basis.</td><td>See Article 25.1 MGA.

Of course, especially when an agreement on specific conditions for Access Rights is negotiated, the parties may agree to include a right to sublicense.

Regarding exclusive licenses see Article 30.2 MGA.</td></tr>
<tr><td colspan="2">9.2.5 Results and Background shall be used only for the purposes for which Access Rights to it have been granted.</td><td></td></tr>
<tr><td colspan="2">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.</td><td>The Party granting the access can also request to have a written agreement.</td></tr>
<tr><td colspan="2">9.2.7 The requesting Party must show that the Access Rights are Needed.</td><td>See definition of “Needed” in Definition section.</td></tr>
<tr><td colspan="2">9.3 Access Rights for implementation</td><td></td></tr>
<tr><td colspan="2">Access Rights to Results and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.</td><td>The Parties may in their entries for Attachment 1 detail access conditions for specific Background listed (e.g. upon royalties). Conditions other than royalty-free for Access to Background have to be agreed by all Parties before their accession to the MGA (Article 25.2 (b)).</td></tr>
<tr><td colspan="2">9.4 Access Rights for Exploitation</td><td></td></tr>
<tr><td>[Option 1:]

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 activities shall be granted on a royalty-free basis.</td><td>[Option 2:[

9.4.1 Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on a royalty-free basis.</td><td>Since access rights exclude the right to sublicense (Section 9.2.4 above), parties should be aware that their further “exploitation” should not require such sublicensing (even through the granting of access rights in a subsequent research project).
Option 1:
Access for exploitation for internal research is free, access for any other exploitation of own Results (including third party research) will be granted on Fair and Reasonable conditions.

Any Party exploiting another Party’s Results has to take care not to grant direct access to a third party, unless the owning Party has agreed to such granting of Access Rights.

Possible agreements regarding access to</td></tr>
</table>

		certain Results/ Background for further research might e.g. include the following aspects: Allowing to produce research results which are available to the third party but which contain hermetically-sealed Results from the Project; using Results from the Project for in-house testing or diagnosis purposes in doing research. **Option 2:** All Access for Use of own Foreground will be granted royalty-free. As per Section 9.2.6, the request for Access Rights is to be in writing, the agreement on fair and reasonable conditions normally also, unless both parties don't want that formality.
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 Section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.		The default time limit in the MGA (Articles 25.3 and 31.4.) is one year.
9.5 Access Rights for Affiliated Entities		Be aware that the wording of the MGA also allows different approaches, e.g. to not foresee access rights for Affiliated Entities.
Affiliated Entities have Access Rights under the conditions of the Grant Agreement Articles 25.4 and 31.4. [Optional: , if they are identified in [Attachment 4 (Identified Affiliated Entities) to this Consortium Agreement].		Regarding the optional addition: an identification of affiliates can bring more certainty to the parties regarding the scope of the access rights of their consortium. Some Industry partners however tend to frequently change their company structure and it may be more realistic that they provide a global description of that structure rather than a list of the hundreds of individual entities involved. Definition of Affiliated Entity: See Article 2.1(2) of the Rules for Participation.
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 Entites [listed in Attachment 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		In contrast to FP7, the MGA in Articles 25.4 and 31.4 now contains an explicit default provision indicating that the Affiliated Entity concerned must make the request directly to the owning Party.

<table>
<tr><td colspan="2">which owns the Background or the Results.</td><td></td></tr>
<tr><td colspan="2">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.</td><td></td></tr>
<tr><td colspan="2">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.</td><td></td></tr>
<tr><td colspan="2">9.6 Additional Access Rights</td><td></td></tr>
<tr><td>[Option 1:]

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.</td><td>[Option 2:]

The Parties agree to negotiate in good faith any additional Access Rights to Results as might be asked for by any Party, upon adequate financial conditions to be agreed.</td><td></td></tr>
<tr><td colspan="2">9.7 Access Rights for Parties entering or leaving the consortium</td><td></td></tr>
<tr><td colspan="2">9.7.1 New Parties entering the consortium</td><td></td></tr>
<tr><td colspan="2">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.</td><td>Any new Party must fill in Attachment 1 regarding Background – to be decided by the General Assembly together with the decision on the accession.</td></tr>
<tr><td colspan="2">9.7.2 Parties leaving the consortium</td><td></td></tr>
<tr><td colspan="2">9.7.2.1 Access Rights granted to a leaving Party</td><td></td></tr>
<tr><td colspan="2">9.7.2.1.1 Defaulting Party</td><td></td></tr>
<tr><td colspan="2">Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the General Assembly to terminate its participation in the consortium.</td><td>Any consequences for sub-licences have to be covered in the licence itself.</td></tr>
<tr><td colspan="2">9.7.2.1.2 Non-defaulting Party</td><td></td></tr>
<tr><td colspan="2">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.</td><td>In case of a Party leaving voluntarily its Access Rights shall be frozen as they are at the time such Party leaves the project.</td></tr>
</table>

It may request Access Rights within the period of time specified in Section 9.4.3.	Any consequences for sub-licences have to be covered in the licence itself.
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.	Parties leaving the Project in principle have to continue granting Access Rights in order not to hinder the progress of the Project. When deciding about a Party's request to leave the consortium, the General Assembly may, however, decide that such Access Rights will not be necessary.
9.8 Specific Provisions for Access Rights to Software	
For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 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.	[If Software is a core element for the Project, participants may replace this Article 9.8 with the special clauses for Software [Module IPR SC]].
Section 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".	"Any form/mode of communication" will now also include the electronic exchange system. Other than orally disclosed Confidential Information must be identified as confidential at the time it is disclosed (see MGA Article 36.1).
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 without the prior written consent by the Disclosing Party; - to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and - to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in a machine readable form to the	The consent of the owner of confidential data is needed before giving it to subcontractors /affiliates even if those have a role in project. The source of this 4-year duration lies in the MGA, Article 36. The obligation is not to disclose confidential information to anybody (whether inside the consortium or not).

extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained. -	
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.	Consent of the owner of the Confidential Information is needed before giving such Confidential Information to third parties (e.g. subcontractors and affiliates). **Third parties** in this context covers any entities which are not a party to the CA, including but not limited to linked third parties and subcontractors. It is not relevant whether the third parties are involved in the project or not.
10.4 The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that: - the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient's confidentiality obligations; - the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential; - the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidence to the Disclosing Party; - the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement; - the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; - the Confidential Information was already known to the Recipient prior to disclosure; or - the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 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 Party 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.	
Section 11: Miscellaneous	
11.1 Attachments, inconsistencies and severability	
This Consortium Agreement consists of this core text and Attachment 1 (Background included) Attachment 2 (Accession document) Attachment 3 (List of Third Parties for simplified transfer according to Section 8.2.2) Attachment 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.	Please note to delete reference to Attachment 4 if not used in Section 9.5.
Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated that fulfils the purpose of the original provision.	
11.2 No representation, partnership or agency	
Except as otherwise provided in Section 6.4.4, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.	Regarding the role of the coordinator: see Section 6.4.
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	Any communication which requires formal or written form is listed in this clause. Clear notifications and notification routes are

most current address list kept by the Coordinator. Formal notices: If it is required in this Consortium Agreement (Sections 4.2, 9.7.2.1.1, and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery 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 Coordinator. The address list shall be accessible to all Parties.	important in view of the question of proof in dispute cases. 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. Only in Sections 4.2, 9.7.2.1.1 and 11.4 a formal notice is necessary. All other communication than "formal" may be taken for instance by e-mail with acknowledgement of receipt (e.g. Minutes). The updated lists of contact information shall be kept by the Coordinator (including scientific and administrative person(s).
11.4 Assignment and amendments	
Except as set out in Section 8.2, 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 explicitly listed in Section 6.3.1.2 (LP)/ 6.3.6 (SP) require a separate written agreement to be signed between all Parties.	Changes to the core text of the Consortium Agreement have to be negotiated between the 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 and will not require a formal signature of each Party. Parties are protected against major contract changes through the use of veto rights (see Section 6.2.4 [GOV LP]/6.3.4 [GOV SP]). For small projects see [Module GOV SP] Article 6.3.6.
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.	The legislation of a Party's country may state certain statutory restrictions for the Parties, and naturally these restrictions should be respected by all Parties.
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.	This Consortium Agreement has been drafted based on Belgian law. The Parties should however in all cases look into the choice of law in the Grant Agreement in order to harmonise possible conflicts.
11.8 Settlement of disputes	
The parties shall endeavour to settle their disputes amicably.	In case an amicable solution cannot be reached within the consortium, the following dispute resolution is recommended: 1.) Mediation, (if not successful) 2.) Binding arbitration or Courts DESCA suggests two different providers for mediation and/or arbitration services for this model clause. There are of course more providers and the choice of the ADR-provider should be discussed within the consortium. If the consortium opts for another mediation and arbitration provider, please make sure that the ADR clause used in this consortium agreement is consistent with their specific procedures.
[Please choose an appropriate method of dispute resolution, possibly one of the options 1 (WIPO) or 2 (ICC). Within option 1, please further choose, between 1.1. and 1.2] [Option 1: WIPO Mediation Followed, in the Absence of a Settlement, by WIPO Expedited Arbitration or by Court Litigation] 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. [Please choose one of the following options.] [Option 1.1. WIPO Mediation Followed, in the Absence of a Settlement, by WIPO Expedited Arbitration] 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, it shall, upon the filing of a Request for Arbitration by either Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of 60 calendar days, either Party fails to participate or to continue to participate in	In cross-border disputes there are several issues to be considered in the context of dispute resolution: the costs of and time consumed by the process and the enforcement of the decision. Disputes arising in related contracts concluded at the preparatory stage of a research collaboration (e.g. letters of intent, non-disclosure agreements, options), during a collaboration (e.g. the consortium agreement, sub-contracts, material transfer agreements) and after a collaboration (e.g. licensing agreements, purchase contracts) may require consistent dispute resolution clauses. In some cases, consortium partners will opt for mediation, followed by court litigation instead of arbitration. This is why DESCA proposes option 1.2. and 2.2 that refer the conflict to the courts instead of arbitration should the mediation fail. For more information about the WIPO Arbitration and Mediation Center, visit http://www.wipo.int/amc/en/ For more information about the ICC Arbitration, visit http://www.iccwbo.org/products-and-services/arbitration-and-adr/

the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be Brussels unless otherwise agreed upon. The language to be used in the arbitral proceedings shall be English unless otherwise agreed upon. [Option 1.2. WIPO Mediation Followed, in the Absence of a Settlement, by Court Litigation] 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. [Option 2: ICC Arbitration] 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 place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties. The award of the arbitration will be final and binding upon the Parties.	
Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.	

Section 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.	It is too impractical for all Parties to sign the same document at the same time. The procedure proposed for the signatures is widely used: Each Party signs a **separate signature page** as many times as there are Parties (it is also possible to sign only 1 or 2 originals as only one fully signed copy is necessary according to Belgian Law). The Coordinator gathers all originals and then delivers the whole package consisting of the text and all signatures (original or copies) to all Parties.
[INSERT NAME OF PARTY] Signature(s) Name(s)	

Title(s) Date	
[INSERT NAME OF PARTY] Signature(s) Name(s) Title(s) Date	
[INSERT NAME OF PARTY] Signature(s) Name(s) Title(s) Date	

[Attachment 1: Background included]

According to the Grant Agreement (Article 24) Background is defined as "data, know-how or information (…) that is needed to implement the action or exploit the results". Because of this need, Access Rights have to be granted in principle, but Parties must identify and agree amongst them on the Background for the project. This is the purpose of this attachment.

PARTY 1

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

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 (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 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 (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

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

PARTY 2.

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

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	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant

Be aware – Attachment 1 is a vital document – check what your project partners are listing and (more importantly) not listing!

Earlier framework programmes required the parties to define Background and to make any exclusions "specific". This was translated into the Consortium Agreements by having Background exclusion lists, mostly in addition to the list of Background Included. The new MGA for **H2020** obliges the parties to "identify and agree" upon the Background for the Project. Therefore, DESCA2020 proposes to work with actively listed Background. It is the responsibility of the parties to make this 'agreement on Background'.

It seems reasonable to expect that if parties know of a specific need for access rights to specific Background, they will be able to identify this up front (potentially with limitations). In any case, such a duty to inform is explicitly mentioned in Article 25.2 and 25.3 of the MGA) and this information needs to be shared before accession to the GA.

The counterpart of working with a positive list is that the parties fully accept that anything not listed simply IS no Background, and that therefore, there is no reason to "exclude" it.

That is the reason why there is no need any more to explicitly exclude background in Attachment 1 such as the background of research units not involved in the Project as was usual in FP7 Consortium Agreements.

The annotated MGA also allows for negative list. You may wish to refer to the FP7 DESCA if you prefer this approach.

	(Article 25.2 Grant Agreement)	**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 (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

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

Etc.

[MODULE IPR SC]	
Specific Software provisions	
9.8 Specific provisions for Access Rights to Software	
9.8.1 Definitions relating to Software	
"Application Programming Interface" means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software. "Controlled Licence Terms" means terms in any licence that require that the use, copying, modification and/or distribution of Software or another work ("Work") and/or of any work that is a modified version of or is a derivative work of such Work (in each case, "Derivative Work") be subject, in whole or in part, to one or more of the following: a) (where the Work or Derivative Work is Software) that the Source Code or other formats preferred for modification be made available as of right to any third party on request, whether royalty-free or not; b) that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party; c) that a royalty-free licence relating to the Work or Derivative Work be granted to any third party. For the avoidance of doubt, any Software licence that merely permits (but does not require any of) the things mentioned in (a) to (c) is not a Controlled Licence (and so is an Uncontrolled Licence). "Object Code" means software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for linking procedures and functions to other software. "Software Documentation" means software information, being technical information used, or useful in, or relating to the design, development, use or maintenance of any version of a software programme. "Source Code" means software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.	
9.8.2. General principles	

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For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software as far as not modified by this Section 9.8. Parties' Access Rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.	
The intended introduction of Intellectual Property (including, but not limited to Software) under Controlled Licence Terms in the Project requires the approval of the General Assembly to implement such introduction into the Consortium Plan.	
9.8.3. Access to Software	
Access Rights to Software that is Results 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 Exploitation of its own Results is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary. Background shall only be provided in Object Code unless otherwise agreed between the Parties concerned.	
9.8.4. Software licence and sublicensing rights	
9.8.4.1 Object Code	
9.8.4.1.1 Results - Rights of a Party	
Where a Party has Access Rights to Object Code and/or API that is Results for Exploitation, such Access shall, in addition to the Access for Exploitation foreseen in Section 9.4, as far as Needed for the Exploitation of the Party's own Results, comprise the right: to make an unlimited number of copies of Object Code and API; and to distribute, make available, market, sell and offer for sale such Object Code and API alone or as part of or in connection with products or services of the Party having the Access Rights; provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to exploit Object Code and API for its own Results. If it is intended to use the services of a third party for the purposes of this Section 9.8.4.1.1, the Parties concerned shall	"Alone or": Some users considered "alone" to be too far-reaching, which is why it is now an option.

agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.	
9.8.4.1.2 Results - Rights to grant sublicenses to end-users	
In addition, Access Rights to Object Code shall, as far as Needed for the Exploitation of the Party's own Results, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code alone or as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential: - to maintain such product/service; - to create for its own end-use interacting interoperable software in accordance with the Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs -	
9.8.4.1.3 Background	
For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.	
9.8.4.2 Source Code	
9.8.4.2.1 Results - Rights of a Party	
Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code that is Results for Exploitation, Access Rights to such Source Code, as far as Needed for the Exploitation of the Party's own Results, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service. If it is intended to use the services of a third party for the purposes of this Section 9.8.4.2.1, the Parties shall agree on the terms thereof, with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.	
9.8.4.2.2 Results – Rights to grant sublicenses to end-users	
In addition, Access Rights, as far as Needed for the Exploitation of the Party's own Results, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.	

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Further sublicensing of Source Code is explicitly excluded.	
9.8.4.2.3 Background	
For the avoidance of doubt, where a Party has Access Rights to Source Code that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.	
9.8.5 Specific formalities	
Each sublicense granted according to the provisions of Section 9.8.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.	