

EUCAR Model Consortium Agreement Horizon 2020

EUCAR Model Consortium Agreement for the Horizon 2020 Framework Programme for Research and Innovation (Funding Scheme Collaborative Projects)

[Action Title]([Project Short Title])

Consortium Agreement

Ref No: _____

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Article 1 Introduction

1.1 This CONSORTIUM AGREEMENT is made on _____ (herein referred to as "EFFECTIVE DATE" by and among:

(hereinafter referred to as "the BENEFICIARIES")

- 1.2 The BENEFICIARIES prepared a proposal for the implementation of the action as defined in **Annex A (PROPOSAL)** and, if the FUNDING AUTHORITY provides a GRANT AGREEMENT for the PROJECT that does not materially deviate from the PROPOSAL, shall accede to the GRANT AGREEMENT as a beneficiary and shall implement the PROJECT.
- 1.3 The BENEFICIARIES wish to define in more detail their rights and obligations towards each other in relation to the GRANT AGREEMENT and have agreed that the following additional terms and conditions shall apply to their performance of the GRANT AGREEMENT.
- 1.4 Where a stipulation in the CONSORTIUM AGREEMENT complements or modifies any stipulation in the GRANT AGREEMENT in a way that is not allowed under the GRANT AGREEMENT, the stipulation in the GRANT AGREEMENT shall prevail.

Article 2: Interpretation

In this CONSORTIUM AGREEMENT, the following expressions shall have the following meanings except where the context clearly indicates otherwise:-

ACCEDING PARTY	means any THIRD PARTY acceding to this CONSORTIUM AGREEMENT
ACCESS RIGHTS	means licenses and user rights in respect of RESULTS and BACKGROUND
ADMINISTRATIVE OBLIGATIONS	means the obligations of the BENEFICIARIES defined in Article 6
AFFILIATE	means any legal entity directly or indirectly owned or controlled by or owning or controlling or under the same ownership or control as any of the BENEFICIARIES, such ownership or control existing through the direct or indirect ownership of more than 30% of the nominal value of the issued equity share capital, or
-	ownership of more than 30% of the shares entitling the holders to vote for the

	election of directors or persons performing similar functions, or to the right by any other means to elect or appoint directors, or persons performing similar functions, who have a majority vote, or ownership of 30% or more of the shares and the right to control management or operation of the company through contractual provisions
BACKGROUND	means any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that: (a) is held by the BENEFICIARIES before they acceded to the GRANT AGREEMENT, and/or (b) is generated by the BENEFICIARIES outside the PROJECT after they acceded to the Agreement and introduced into the PROJECT by the relevant owning BENEFICIARIES, and (c) is needed to implement the PROJECT or NEEDED FOR USE of the RESULTS.
BENEFICIARY	means a signatory to this CONSORTIUM AGREEMENT and any ACCEDING PARTY
BUDGET	means the estimated cost of the PROJECT
COMMUNITY FINANCIAL CONTRIBUTION	means the Community financial contribution by the FUNDING AUTHORITY under the GRANT AGREEMENT
CONSORTIUM AGREEMENT	means this consortium agreement
CO-ORDINATOR	has the meaning defined in Article 5.1
DELIVERABLES	means all reports, certificates, data and other information required to be provided to the FUNDING AUTHORITY by the GRANT AGREEMENT
EFFECTIVE DATE	means the date of this CONSORTIUM AGREEMENT as defined in Article 1.1
EUCAR AGREEMENT	means the agreement dated 27 th May 1994 between Adam Opel AG, Bayerische Motoren Werke AG, Daimler-Benz AG (now Daimler AG), Fiat S.p.A., Ford Motor Company Limited, Peugeot S.A., Regie Nationale des Usines Renault S.A. (now Renault s.a.s.), Volkswagen AG and AB Volvo relating to the establishment of co-operative

activities in research and development of products processes and systems in order to improve the competitiveness of the European automotive industry and to achieve benefits for its customers and consumers (European Council for Automotive R&D), as amended from time to time

EUCAR MEMBERS

means the contracting parties of the agreement dated 27th May 1994, namely Adam Opel AG, Bayerische Motoren Werke AG, Daimler-Benz AG (now Daimler AG), Fiat S.p.A., Ford Motor Company Limited, Peugeot S.A., Regie Nationale des Usines Renault S.A. (now Renault s.a.s.), Volkswagen AG and AB Volvo and since acceded to by DAF Trucks N.V., Scania CV AB, Jaguar Cars Limited (now Jaguar Land Rover Limited), Volvo Car Corporation, Hyundai Motor Europe Technical Center GmbH and Toyota Motor Europe

FAIR AND REASONABLE CONDITIONS

means appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access, for example the actual or potential value of the RESULTS or BACKGROUND to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged

FAULT

means any wrongful act, omission, breach of applicable laws or failure to comply with the terms of this CONSORTIUM AGREEMENT and/or the GRANT AGREEMENT

FORCE MAJEURE

means any act, event or condition beyond the reasonable control of a BENEFICIARY that was not reasonably foreseeable and is not avoidable under normal circumstances, including but not limited to acts of God, war, riot, acts of Governments or any political subdivision thereof, fires, floods, explosions, or other catastrophes, labour disturbances, freight embargoes or material shortages

FUNDING AUTHORITY

means the body awarding the grant for the PROJECT

GENERAL ASSEMBLY

has the meaning defined in Article 4.2.1

GRANT AGREEMENT

means the grant agreement between the FUNDING AUTHORITY and the

	BENEFICIARIES regarding the PROJECT
LEGITIMATE INTERESTS	means a BENEFICIARY's interests of any kind, particularly a commercial interest, which may be claimed in the cases provided for in this CONSORTIUM AGREEMENT, if failure to take account of this interest would result in such BENEFICIARY's suffering disproportionately great harm
NEEDED FOR USE	means needed as necessary to enable the USE
PROJECT	means the project defined in Article 1.2
PROPOSAL	means the proposal referred to in Article 1.2
REPRESENTATIVE	means the one representative designated by each of the BENEFICIARIES in accordance with Article 4.1.1
RESULTS	means the results, including information, whether or not they can be protected, which are generated in the PROJECT; such results include rights related to copyright, design rights, patent rights, plant variety rights or similar forms of protection
STEERING COMMITTEE	has the meaning defined in Article 4.2.2
SUB-CONTRACT	means an agreement between one or more BENEFICIARIES and a THIRD PARTY, in order to carry out part of the work of the PROJECT
SUB-CONTRACTOR	means a THIRD PARTY which has entered into an agreement with one or more BENEFICIARIES, in order to carry out part of the work of the PROJECT
SUB-PROJECT	means a group of work packages, as identified in the GRANT AGREEMENT, performing a defined piece of work within the PROJECT
SUB-PROJECT COMMITTEE	the committees established in accordance with Article 4.3.2
SUB-PROJECT LEADER	the BENEFICIARIES as defined in Article 4.3.1
THIRD PARTY	means any person other than the BENEFICIARIES

USE	means the direct or indirect utilisation of RESULTS or BACKGROUND in research activities or for developing, creating, making (including have made) and marketing a product or process, or for developing, creating and providing a service, including the right to grant sub-licences
WRITTEN FORM	means (i) documents duly signed by an authorized representative of the BENEFICIARY with authority to legally bind such BENEFICIARY or (ii) electronic documents delivered with advanced electronic signatures which are based on a qualified certificate and which are created by a secure-signature-creation device.

Article 3: Purpose and Scope of the CONSORTIUM AGREEMENT

The CONSORTIUM AGREEMENT is intended to define more precisely the terms on which the BENEFICIARIES will co-operate within the scope of the GRANT AGREEMENT. Accordingly, the BENEFICIARIES agree amongst themselves to take all reasonable and necessary measures to ensure that the PROJECT is carried out in accordance with the terms and conditions of the GRANT AGREEMENT and the CONSORTIUM AGREEMENT.

Article 4: Organisation of the PROJECT

4.1 General Principles *and structure*

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

- The GENERAL ASSEMBLY
- The STEERING COMMITTEE
The PROJECT COORDINATOR
- The SUB-PROJECT LEADERS

4.1.1 Each BENEFICIARY shall designate a person as a representative (herein referred to as "REPRESENTATIVE").

4.1.2 General Principles for the GENERAL ASSEMBLY, the STEERING COMMITTEE, and the SUB-PROJECT COMMITTEES.

The chairman shall convene all meetings and shall give each of the members at least fourteen days' notice of such meetings. Such invitation should set an agenda including the items to be discussed and the decisions proposed to make. The members shall be represented by their REPRESENTATIVES. Each member may appoint a substitute for its REPRESENTATIVE to attend and vote at any meeting. The chairman shall convene meetings on the request of a third of the members.

The GENERAL ASSEMBLY, the STEERING COMMITTEE, and the SUB-PROJECT COMMITTEES making a decision shall be obliged to allow the BENEFICIARIES concerned to invoke objections and shall take into account, and draw the appropriate conclusions from, any objection by any BENEFICIARY based on LEGITIMATE INTERESTS. If a consensus

cannot be reached, the matter shall be resolved by a vote of the members. Each member shall have one vote.

The adoption of a decision shall require the favourable vote of two thirds of the members (whether present or not), unless a unanimous decision is required under this CONSORTIUM AGREEMENT.

Subject to the procedures herein defined being correctly followed, the BENEFICIARIES agree to abide by all decisions of the GENERAL ASSEMBLY, the STEERING COMMITTEE, and the SUB-PROJECT COMMITTEE.

A BENEFICIARY who can show that its own work, time for performance, costs or liabilities, or intellectual property rights would be severely impacted and who can claim LEGITIMATE INTERESTS, may veto the relevant part of the decision of the GENERAL ASSEMBLY, the STEERING COMMITTEE, or the SUB-PROJECT COMMITTEES within the following timeframe:

- a) When the decision is foreseen on the original agenda, a member may veto such a decision during the meeting only.
- b) When a decision has been taken on a new item added to the agenda after the [original agenda has been distributed](#), a member may veto such decision during the meeting and within 15 calendar days after the draft minutes of the meeting are sent.

Each of the BENEFICIARIES shall have the right to refuse to undertake any kind of work without its consent that is outside the scope of the work assigned to him or the cost of performance of which would exceed the BUDGET identified for that BENEFICIARY.

If there is any contradiction between the decisions taken by the GENERAL ASSEMBLY, the STEERING COMMITTEE, or the SUB-PROJECT COMMITTEES, the decision of the GENERAL ASSEMBLY shall prevail over the decisions taken by the STEERING COMMITTEE and the SUB-PROJECT COMMITTEES and the decisions of the STEERING COMMITTEE shall prevail over the decisions taken by the SUB-PROJECT COMMITTEES.

4.2 PROJECT Level

4.2.1 GENERAL ASSEMBLY

All BENEFICIARIES shall be members of the GENERAL ASSEMBLY. The CO-ORDINATOR shall chair all meetings of the GENERAL ASSEMBLY. The GENERAL ASSEMBLY shall have an annual meeting for reviewing and monitoring the progress of the PROJECT as well as identifying appropriate actions for the successful performance of the PROJECT.

The GENERAL ASSEMBLY shall be in charge of making decisions or proposals for decisions to be taken by the STEERING COMMITTEE, particularly decisions of major and strategic relevance.

4.2.2 STEERING COMMITTEE

The STEERING COMMITTEE shall be in charge of supervising the progress of the PROJECT, taking decisions regarding the PROJECT, particularly decisions of major and strategic relevance. The STEERING COMMITTEE shall report to the GENERAL ASSEMBLY.

Any decision taken by the STEERING COMMITTEE shall require the unanimous decision of all members.

The CO-ORDINATOR and the following BENEFICIARIES named in Annex C shall be members of the STEERING COMMITTEE.

The CO-ORDINATOR shall chair all meetings of the STEERING COMMITTEE. The CO-ORDINATOR shall convene meetings upon request if at least 30% of the BENEFICIARIES with at least four (4) weeks prior notice or at least once every six months during the term of the CONSORTIUM AGREEMENT.

4.3 SUB-PROJECTS Level

4.3.1 SUB-PROJECT COMMITTEES

All BENEFICIARIES participating in the respective SUB-PROJECT shall be members of the respective SUB-PROJECT COMMITTEE. The SUB-PROJECT LEADER shall chair all meetings of the SUB-PROJECT COMMITTEE.

The SUB-PROJECT COMMITTEE shall be in charge of managing the SUB-PROJECT within the PROJECT and consistent with the decisions taken by the GENERAL ASSEMBLY and the STEERING COMMITTEE.

The responsibilities of the SUB-PROJECT COMMITTEE shall include without limitation:-

- to supervise and provide day to day management of the activities of the respective BENEFICIARIES on the SUB-PROJECT,
- active planning and progress monitoring of the SUB-PROJECT.

4.3.2 SUB-PROJECT LEADERS

If not nominated in the PROPOSAL, each SUB-PROJECT COMMITTEE may elect a BENEFICIARY as a SUB-PROJECT LEADER.

The SUB-PROJECT LEADER shall

- submit the reports to the CO-ORDINATOR
- submit the DELIVERABLES to the CO-ORDINATOR
- submit information required to the CO-ORDINATOR

The SUB-PROJECT LEADER shall not be entitled to act or to make legally binding declarations on behalf of any other BENEFICIARIES.

Article 5: CO-ORDINATOR

5.1 _____ is the CO-ORDINATOR.

5.2 The CO-ORDINATOR shall represent the PROJECT towards the FUNDING AUTHORITY and other THIRD PARTIES, but shall not be entitled to act or to make legally binding declarations on behalf of any other BENEFICIARIES.

5.3 In addition to the obligations of the CO-ORDINATOR under the GRANT AGREEMENT, the CO-ORDINATOR shall be responsible for the following additional co-ordination responsibilities:

- interacting with the FUNDING AUTHORITY and THIRD PARTIES about the PROJECT, including the submission of DELIVERABLES to the FUNDING AUTHORITY;
- receiving, compiling, and distributing to the BENEFICIARIES' and other relevant recipients' documents, reports, statements of expenditure, minutes of meetings of the GENERAL ASSEMBLY and of the STEERING COMMITTEE and other relevant information from the BENEFICIARIES.

5.4 All costs incurred by the CO-ORDINATOR in its performance of its co-ordination responsibilities (including costs incurred under any SUB-CONTRACT for the performance of

such responsibilities) shall be borne by the CO-ORDINATOR as part of the CO-ORDINATORS's work in the PROJECT.

Article 6 ADMINISTRATIVE OBLIGATIONS of the BENEFICIARIES

- 6.1 Upon request of any CONSORTIUM body or the FUNDING AUTHORITY the BENEFICIARIES shall in a timely manner supply to the requesting body all such information, reports, documents and DELIVERABLES that are relevant and necessary in order to fulfil their obligations under the GRANT AGREEMENT and the CONSORTIUM AGREEMENT.
- 6.2 The BENEFICIARIES shall support the CO-ORDINATOR in fulfilling the obligations of the CO-ORDINATOR under the GRANT AGREEMENT and under this CONSORTIUM AGREEMENT. In particular, the BENEFICIARIES shall
- (a) comply with their obligations under the GRANT AGREEMENT and the CONSORTIUM AGREEMENT;
 - (b) give immediate notice to the CO-ORDINATOR about any awareness about non-compliance of any BENEFICIARY in the PROJECT with its obligations under the GRANT AGREEMENT;
 - (b) make sure that they complete the necessary formalities for accession to the GRANT AGREEMENT;
 - (c) check the compliance of any receipt of financial contribution with the provisions of the CONSORTIUM AGREEMENT and the GRANT AGREEMENT and give immediate notice to the CO-ORDINATOR about any awareness about non-compliance;
 - (d) submit to the CO-ORDINATOR all information necessary for the records and financial accounts relevant for the financial contribution;
 - (e) make its communication to the FUNDING AUTHORITY via the CO-ORDINATOR and to submit to the CO-ORDINATOR all information necessary to report to the FUNDING AUTHORITY on the progress of the PROJECT;
 - (f) verify consistency of its reports with the PROJECT tasks before transmitting them to the CO-ORDINATOR;
- 6.3 Each BENEFICIARY shall inform the COORDINATOR about any relevant change in persons, addresses, telephone, fax numbers and e-mail addresses and other relevant means of communication as soon as possible. The COORDINATOR shall in turn make the information available to all BENEFICIARIES without undue delay.
- 6.4 Where a BENEFICIARY designates a SUB-CONTRACTOR, the BENEFICIARY shall ensure that the terms and conditions on which the SUB-CONTRACTOR is appointed are fully consistent with those of the CONSORTIUM AGREEMENT and the GRANT AGREEMENT. The BENEFICIARY shall be responsible for the work to be performed by the SUB-CONTRACTOR.

Article 7: DELIVERABLES

- 7.1 The BENEFICIARIES will use all reasonable endeavours to supply DELIVERABLES to the CO-ORDINATOR four weeks in advance of the date by which the DELIVERABLES are due for submission to the FUNDING AUTHORITY.
- 7.2 The STEERING COMMITTEE shall specify the format and number of copies in which all drafts, reports, DELIVERABLES and other information required to be submitted by any of the BENEFICIARIES in accordance with the CONSORTIUM AGREEMENT will be submitted.

Article 8: BUDGET and COMMUNITY FINANCIAL CONTRIBUTION

- 8.1 The BUDGET and COMMUNITY FINANCIAL CONTRIBUTION is allocated according to the GRANT AGREEMENT and any decision to change the BUDGET allocation pursuant to this Consortium Agreement and section 4.2. of the MGA.
- 8.2 BENEFICIARIES who spend less than their respective share in the BUDGET will be funded only in respect of the actual amount spent. BENEFICIARIES who spend more than their respective share in the BUDGET will be funded only up to the COMMUNITY FINANCIAL CONTRIBUTION as allocated under the GRANT AGREEMENT.
- 8.3 Where an amount, paid by the FUNDING AUTHORITY to the CO-ORDINATOR in its capacity of recipient of all payments, is to be recovered under the terms of the GRANT AGREEMENT, the final recipient of the amount due will repay to the CO-ORDINATOR or to the FUNDING AUTHORITY the sum in question with no undue delay.
- 8.4 Any costs incurred by the CO-ORDINATOR in connection with the transfer of payments from the FUNDING AUTHORITY to the CO-ORDINATOR shall be divided between the BENEFICIARIES in proportion to their respective share in the COMMUNITY FINANCIAL CONTRIBUTION.
- 8.5 Any costs incurred by the CO-ORDINATOR in connection with the transfer of payments to any of the BENEFICIARIES will be charged to the BENEFICIARY concerned.
- 8.6 Each BENEFICIARY shall specify to the CO-ORDINATOR an account to which the COMMUNITY FINANCIAL CONTRIBUTION shall be transferred.
- 8.7 The CO-ORDINATOR shall transfer COMMUNITY FINANCIAL CONTRIBUTION received from the FUNDING AUTHORITY to each of the other BENEFICIARIES without unjustified delay after the receipt of the COMMUNITY FINANCIAL CONTRIBUTION and relevant supporting information.
- 8.8 Each of the BENEFICIARIES shall bear all its own costs incurred in connection with the PROJECT and shall receive the COMMUNITY FINANCIAL CONTRIBUTION as allocated to it provided proper performance of the PROJECT.
- 8.9 Amongst EUCAR MEMBERS that are BENEFICIARIES and their AFFILIATES, the CONSORTIUM AGREEMENT shall supersede any provision of the EUCAR AGREEMENT relating to the implementation of this PROJECT; the cross-billing process of Article 20 of the EUCAR AGREEMENT shall not apply.

Article 9: Confidentiality

- 9.1 Each of the BENEFICIARIES undertakes to use a reasonable degree of care (but in any event, no less care than they apply to safeguard their own confidential information) not to disclose to any THIRD PARTY - except as expressly permitted by the CONSORTIUM AGREEMENT or the GRANT AGREEMENT or by an order of a judicial or governmental authority or by law - any technical or business information which, during the course of the preparation of the proposal for, or in the course of the performance of, the PROJECT, it received, gained access to or otherwise obtained from any of the other BENEFICIARIES.
- 9.2 The undertaking in paragraph 9.1 shall not apply to any information that:-
 - the receiving BENEFICIARY can prove is already known to it;
 - is published or otherwise generally available to the public at the time of the communication or becomes published or so available after such communication through no wrongful act of the receiving BENEFICIARY;

- corresponds to information that is subsequently communicated to the receiving BENEFICIARY from a THIRD PARTY without any relevant obligation of non-disclosure;
- was developed independently of the work under the GRANT AGREEMENT by the receiving BENEFICIARY or any of its AFFILIATES;
- is necessarily divulged to enable by the exercise of any licence in accordance with the CONSORTIUM AGREEMENT or the GRANT AGREEMENT.

- 9.3 The undertaking in paragraph 9.1 shall not apply with respect to disclosures by the receiving BENEFICIARY to its AFFILIATES, as long as such AFFILIATES are subject to similar non-disclosure obligations.
- 9.4 The undertaking in the first paragraph shall apply for a period of five (5) years from the completion or termination of this PROJECT.
- 9.5 The BENEFICIARIES providing confidential information shall remain the vested holders of such information.

Article 10: Ownership of RESULTS

- 10.1 RESULTS shall be owned by the BENEFICIARY or BENEFICIARIES who carried out the work generating the RESULTS, or on whose behalf such work was carried out.
- 10.2 Where RESULTS are generated from work carried out jointly by two or more BENEFICIARIES and where their respective share of the work cannot be ascertained or where the contributions to or features of such RESULTS form an indivisible part thereof, such that under applicable law it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining a patent or any other intellectual property rights protecting such RESULTS, and where no joint ownership agreement has yet been concluded, those BENEFICIARIES (“CO-OWNING BENEFICIARIES”) shall jointly own equal undivided shares in those RESULTS. Each CO-OWNING BENEFICIARY shall have the perpetual and irrevocable right to USE such RESULTS – including the right to grant non-exclusive licenses for USE to its own AFFILIATES and to other THIRD PARTIES - independently of and without requiring consent from or the need to account to any other BENEFICIARY with whom such RESULTS are jointly owned and without payment of compensation to any other such BENEFICIARY.
- 10.3 The following BENEFICIARIES have entered or might want to enter into agreements under which ownership of the BENEFICIARY's solely-owned or jointly-owned RESULTS is assigned to one or more of their AFFILIATES. Those BENEFICIARIES warrant that such assignments, if any, do not or will not prejudice the ACCESS RIGHTS of the other BENEFICIARIES to such RESULTS and that the AFFILIATE will accept all the obligations under the CONSORTIUM AGREEMENT arising from ownership of the RESULTS. The other BENEFICIARIES hereby consent to such assignment

BENEFICIARY/Assignor	BENEFICIARY's AFFILIATE/Assignee
_____	_____
_____	_____
_____	_____
_____	_____

- 10.4 Save as provided above, if any of the BENEFICIARIES wishes to assign any solely owned RESULTS to a THIRD PARTY it shall promptly notify the other BENEFICIARIES with at least 45 days' notice of the planned assignment and of the THIRD PARTY. If any of the BENEFICIARIES wishes to assign any jointly owned RESULTS to a THIRD PARTY, it shall promptly notify the other BENEFICIARIES with at least 45 days' notice of the planned assignment and of the THIRD PARTY. but shall not make such an assignment without the

prior written consent of the other CO-OWNING BENEFICIARIES, which shall not be unreasonably withheld.

- 10.5 A BENEFICIARY/-IES may in its/their own discretion and at its/their own expense make applications for patent or similar form of protection in territories of their own choice and shall inform the other BENEFICIARIES of each such application in advance of publication of the application. For jointly owned RESULTS the CO-OWNING BENEFICIARIES shall however agree on all applications for patents or other adequate form of protection.

Article 11: ACCESS RIGHTS

- 11.1 According to Article 24 of the GRANT AGREEMENT, the BENEFICIARIES identify the BACKGROUND for the PROJECT in the Annex B ("Agreement on BACKGROUND").

11.2 ACCESS RIGHTS for the performance of the PROJECT

Each of the BENEFICIARIES hereby agrees to grant to each of the other BENEFICIARIES royalty-free, non-exclusive ACCESS RIGHTS in respect of their RESULTS and, subject to LEGITIMATE INTERESTS of the respective owner, BACKGROUND to the extent needed for the performance of the PROJECT.

11.3 ACCESS RIGHTS for USE (among BENEFICIARIES in different SUB-PROJECTS)

- 11.3.1 **RESULTS.** Each of the BENEFICIARIES hereby agrees to grant permanent, world-wide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's RESULTS to the extent NEEDED FOR USE of RESULTS generated in the SUB-PROJECT they participate in on fair FAIR AND REASONABLE CONDITIONS to the other BENEFICIARIES and their AFFILIATES.

- 11.3.2 **BACKGROUND.** Subject to LEGITIMATE INTERESTS of the respective owner, each of the BENEFICIARIES shall grant- upon the signature of a written agreement between the relevant granting BENEFICIARY and the relevant receiving BENEFICIARY - world-wide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's BACKGROUND to the extent NEEDED FOR USE of RESULTS generated in the SUB-PROJECT they participate in on FAIR AND REASONABLE CONDITIONS to the other BENEFICIARIES and their AFFILIATES.

11.4 ACCESS RIGHTS for USE (among the BENEFICIARIES of the same SUB-PROJECT)

- 11.4.1 **RESULTS.** Each of the BENEFICIARIES hereby agrees to grant permanent, world-wide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's RESULTS on the following terms
- royalty-free to the other BENEFICIARIES participating in the same SUB-PROJECT and their AFFILIATES
 - on FAIR AND REASONABLE CONDITIONS to any ACCEDING PARTY participating in the same SUB-PROJECT and its AFFILIATES with regard to RESULTS generated before the accession.

- 11.4.2 **BACKGROUND.** Subject to LEGITIMATE INTERESTS of the respective owner, each of the BENEFICIARIES shall grant - upon the signature of a written agreement between the relevant granting BENEFICIARY and the relevant receiving BENEFICIARY - permanent, world-wide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's BACKGROUND to the extent NEEDED FOR USE of RESULTS on FAIR AND REASONABLE CONDITIONS to the other BENEFICIARIES participating in the same SUB-PROJECT and their AFFILIATES.

- 11.5 Any request for ACCESS RIGHTS may be made without any time-limit. By signing the CONSORTIUM AGREEMENT, the BENEFICIARIES shall be deemed to have requested in WRITTEN FORM the grant of all ACCESS RIGHTS referred to above.
- 11.6 The BENEFICIARIES shall inform each other as soon as possible of any limitation to the granting of ACCESS RIGHTS to BACKGROUND, or of any other restriction which might substantially affect the granting of ACCESS RIGHTS.

Article 12: Accession to this CONSORTIUM AGREEMENT

- 12.1 Any accession to this CONSORTIUM AGREEMENT shall require
- the conclusion of an accession agreement in WRITTEN FORM duly signed by all BENEFICIARIES and by the ACCEDING PARTY; the BENEFICIARIES may authorise the CO-ORDINATOR to sign the respective accession agreement on their behalf and
 - the accession by the ACCEDING PARTY to the GRANT AGREEMENT.
- 12.2 The ACCEDING PARTY shall take the obligations and shall have the rights, as if it were a BENEFICIARY from the EFFECTIVE DATE.

Article 13: Liability in Contract

13.1 General Principles

This Article shall apply for any liability for damages based on contract, but not with regard to any liability based on tort or based on other statutory liability.

13.2 Liability towards the BENEFICIARIES

- 13.2.1 **Liability.** Each BENEFICIARY undertakes to use all reasonable endeavours to insure the accuracy of its performance of the PROJECT and of the information furnished to other BENEFICIARIES in connection with such performance.

Upon notification or discovery that it has submitted defective or incorrect information to another BENEFICIARY at any time during the performance of the PROJECT, a BENEFICIARY shall promptly notify the affected BENEFICIARIES and correct and redeliver such information at its own expense.

Other than as set forth in the foregoing paragraphs, no warranty, condition or representation of any kind is made, given or to be implied in any case as on the sufficiency accuracy or fitness for purpose of information or materials or the absence of any infringement of statutory monopoly or intellectual property rights of THIRD PARTIES by the USE of such information and materials, and a BENEFICIARY receiving information and materials, shall be entirely responsible for the USE to which they are put.

- 13.2.2 **Limitations of Liability.** Except in the case of wilful misconduct or gross negligence, a BENEFICIARY shall not be liable to other BENEFICIARIES for indirect or consequential loss or damages such as but not limited to loss of profit, loss of revenue, or loss of contracts.

Except in the case of wilful misconduct or gross negligence, each BENEFICIARY's total and cumulative limit of liability resulting from any FAULT towards all the other BENEFICIARIES collectively, in respect of any and all claims regarding any FAULT, shall not exceed twice the amount of that BENEFICIARY's share in the COMMUNITY FINANCIAL CONTRIBUTION as defined at the time of the occurring of the FAULT.

The BENEFICIARIES' liability in respect of any wilful or negligent breaches of Confidentiality under this Agreement shall be uncapped, in which case the first two paragraphs shall not apply.

13.3 Liability towards the FUNDING AUTHORITY and THIRD PARTIES

13.3.1 Notwithstanding the foregoing, each BENEFCIARY agrees to indemnify the CO-ORDINATOR, in case of any action, complaint or proceeding brought by the FUNDING AUTHORITY against the CO-ORDINATOR as result of damage caused, either by any act or omission committed by the BENEFCIARY in performing its ADMINISTRATIVE OBLIGATIONS.

13.3.2 Should the FUNDING AUTHORITY, in accordance with the provisions of the GRANT AGREEMENT, or any THIRD PARTY, under the laws applicable, make a claim for specific performance or any reimbursement, indemnity or payment of damages from one or more BENEFCIARIES, the BENEFCIARIES who perform such BENEFCIARY's work or pay the reimbursement, indemnity or payment shall be entitled to receive from any BENEFCIARY a contribution to their additional cost or payment to the extent such BENEFCIARY's FAULT caused such claim.

13.3.3 In the event it is not possible to attribute the FAULT to any BENEFCIARY, the amount claimed by the FUNDING AUTHORITY or the THIRD PARTY shall be apportioned among all the BENEFCIARIES in proportion to their respective share in the COMMUNITY FINANCIAL CONTRIBUTION as defined at the time of the implementation of the work or the payment to the FUNDING AUTHORITY.

13.4 The BENEFCIARIES warrant that as of signing they are not aware of any LEGITIMATE INTERESTS that restrict, prevent or otherwise interfere with the grant of ACCESS RIGHTS as set forth in the CONSORTIUM AGREEMENT.

Article 14: FORCE MAJEURE

No BENEFCIARY shall be liable for any failure to perform or any delay in performing any of its obligations under the CONSORTIUM AGREEMENT if such failure or delay arises out of FORCE MAJEURE. The BENEFCIARY relying on FORCE MAJEURE shall promptly notify the other BENEFCIARIES and shall use its best endeavours to remedy any default or delay occasioned thereby forthwith upon such event ceasing to apply.

Article 15: Dissemination, Publicity and Press Releases

15.1 The BENEFCIARIES shall not issue any press release or similar publicity about the PROJECT without the prior approval of the STEERING COMMITTEE, which shall not be unreasonably withheld or delayed longer than four weeks after receipt by the STEERING COMMITTEE.

15.2 Without prejudice to any other obligations in this CONSORTIUM AGREEMENT, each relevant BENEFCIARY shall be entitled to disseminate and/or publish without prior notice to the other BENEFCIARIES its own RESULTS. In case such RESULTS are jointly generated by two or more BENEFCIARIES or contains BACKGROUND or Confidential Information of a CO-OWNING BENEFCIARY, the BENEFCIARY being interested in dissemination and/or publication, shall ask the other CO-OWNING BENEFCIARIES for their consent.

A BENEFCIARY shall not disseminate or publish BACKGROUND, RESULTS or Confidential information of another BENEFCIARY without the prior written approval of the BENEFCIARY.

Article 16: Notices and other communication

Any notice to be given under this CONSORTIUM AGREEMENT shall be made in WRITTEN FORM to the following recipients listed in Annex D or to such other address and recipient as a BENEFICIARY may designate in respect of that BENEFICIARY by notice in WRITTEN FORM to the other COORDINATOR. The COORDINATOR shall maintain this information and shall make it freely available to the BENEFICIARIES.

Communication (including approvals) not specified to be in WRITTEN FORM may be made by e-mail (to the recipients as set out above) with acknowledgement of receipt.

Article 17: Amendments to the GRANT AGREEMENT and to this CONSORTIUM AGREEMENT

- 17.1 Any approval or request addressed to the FUNDING AUTHORITY regarding the amendment or the termination of the GRANT AGREEMENT shall require the approval of all BENEFICIARIES in WRITTEN FORM, which shall not be unreasonably withheld.
- 17.2 All amendments and changes to this CONSORTIUM AGREEMENT require an amending agreement made in WRITTEN FORM.

Article 18: Term and Termination of the CONSORTIUM AGREEMENT

- 18.1 The CONSORTIUM AGREEMENT and the participation of any BENEFICIARY in the PROJECT is effective retroactively from the EFFECTIVE DATE.
- 18.2 A BENEFICIARY shall be entitled to request termination of its participation in the GRANT AGREEMENT, CONSORTIUM AGREEMENT and in the PROJECT with no undue delay by written notice signed by its duly authorised representatives and personally delivered to the COORDINATOR. Such request shall include the reasons for the termination and be handled in accordance with Article 50.2 in the Model Grant Agreement.

The consortium shall be entitled to terminate the participation of one or more BENEFICIARIES in the GRANT AGREEMENT, CONSORTIUM AGREEMENT and in the PROJECT with due reason.

A decision on termination of a beneficiary's participation in the PROJECT according to the first or second paragraphs shall require a decision of the BENEFICIARIES with a two-thirds majority in WRITTEN FORM.

The BENEFICIARIES whose participation is terminated under the first or second paragraphs shall be relieved from further implementing the PROJECT, but the Articles of the CONSORTIUM AGREEMENT on ADMINISTRATIVE OBLIGATIONS, Confidentiality, ACCESS RIGHTS, Liability, and Publicity and Press Releases, Settlement of Disputes, and Applicable Law shall survive the termination, but shall - as far as they refer to RESULTS - apply on RESULTS only which has been generated before the termination has taken effect.

- 18.3 If the Grant Agreement is not signed by the FUNDING AUTHORITY or a BENEFICIARY, or is terminated, this CONSORTIUM AGREEMENT shall automatically terminate in respect of the affected BENEFICIARY/IES, subject to the provision regarding surviving clauses set out above.
- 18.4 The termination of the participation of a BENEFICIARY shall in no way affect the obligation of that BENEFICIARY to grant ACCESS RIGHTS to the remaining BENEFICIARIES.
- 18.5 The termination of the participation of a BENEFICIARY shall in no way affect the effectiveness of the CONSORTIUM AGREEMENT for the remaining BENEFICIARIES. The consortium and the PROJECT continues in such case.

Article 19: Settlement of Disputes

In case of dispute or difference between the BENEFICIARIES arising out or in connection with this CONSORTIUM AGREEMENT, the BENEFICIARIES shall first endeavour to settle it amicably.

All disputes which cannot be settled in this way shall be finally settled by arbitration. The Arbitration Board shall convene in Brussels under the Rules of Arbitration of the International Chamber of Commerce and shall comprise one or more arbitrators to be appointed under the terms of these Rules. In any arbitration in which there are three arbitrators, the Chairman shall be of legal education. The language to be used in the arbitral proceedings shall be English.

The award of the Arbitrator will be final and binding upon all BENEFICIARIES concerned.

Article 20: Applicable Law

The CONSORTIUM AGREEMENT shall be construed according to and governed by the laws of _____.

Annotation: insert country

- *Belgium*

or

- *another country as determined by the Coordinator*

(If you have an attorney in Belgium available, you should prefer the laws of Belgium, otherwise it might be preferable to choose the CO-ORDINATOR's principal place of business, who can then provide legal opinions on questions arising from this agreement.)

CONSORTIUM AGREEMENT Ref No: _____
Authorised Signature(s) of the BENEFICIARY:

BENEFICIARY: _____

Date(s)	Authorised Representative(s)	Signature(s)
_____	_____	_____
_____	_____	_____

CONSORTIUM AGREEMENT Ref No: _____
Authorised Signature(s) of the BENEFICIARY:

BENEFICIARY: _____

Date(s)	Authorised Representative(s)	Signature(s)
_____	_____	_____
_____	_____	_____

CONSORTIUM AGREEMENT Ref No: _____
Authorised Signature(s) of the BENEFICIARY:

BENEFICIARY: _____

Date(s)	Authorised Representative(s)	Signature(s)
_____	_____	_____
_____	_____	_____

CONSORTIUM AGREEMENT Ref No: _____
Authorised Signature(s) of the BENEFICIARY:

BENEFICIARY: _____

Date(s)	Authorised Representative(s)	Signature(s)
_____	_____	_____
_____	_____	_____

Annex A
Proposal

Annex B
Agreement on BACKGROUND

Annex C
Members of the Steering Committee

Annotation: insert

- *name of legal entities*

or

- *"the SUB-PROJECT LEADERS"*

Annex D
Notices

- _____ nominates as contact for technical matters (project officer)
M _____, Dept. _____
and as contact for administrative matters (financial officer)
M _____, Dept. _____

- _____ nominates as contact for technical matters (project officer)
M _____, Dept. _____
and as contact for administrative matters (financial officer)
M _____, Dept. _____

- _____ nominates as contact for technical matters (project officer)
M _____, Dept. _____
and as contact for administrative matters (financial officer)
M _____, Dept. _____

- _____ nominates as contact for technical matters (project officer)
M _____, Dept. _____
and as contact for administrative matters (financial officer)
M _____, Dept. _____

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