Model Consortium Agreement for co-funded European Partnerships

[TITLE OF THE CO-FUND ACTION]

(ACRONYM OF THE CO-FUND ACTION)

Version [X] – [DATE]

(Based on DESCA – Model Consortium Agreement for Horizon Europe, version 1.1, November 2022)

**Change Records**

|  |  |  |
| --- | --- | --- |
| Version | Date | Changes |
| version 1  | x 2023 | Initial draft for co-funded European Partnerships in Horizon Europe |

ERA-LEARN is the reference point for European Partnerships. It provides evidence and support for their preparation, implementation and evaluation. It is a trusted support platform and service provider for the European Partnership communities, the European Commission, policy makers and other stakeholders at the national/regional level. It supports the Strategic Coordinating Process (SCP) for Partnerships to exploit their potential as an instrument and a policy approach to effectively address major societal challenges. ERA-LEARN implements a responsive communication and outreach strategy with various tools and channels for communicating with the broadened Partnership community and the dissemination of results including a strategic and frequent use of social media. Based on a comprehensive analysis of existing and already validated procedures, ERA-LEARN facilitates the identification of tools that are suitable for a broad use (see [www.era-learn.eu](http://www.era-learn.eu/)).

Part of this set of tools is this Model Consortium Agreement for Co-funded European Partnerships, which is based on the DESCA Horizon Europe Model Consortium Agreement, Version 1.1, November 2022 ([https://www.desca-agreement.eu/](http://www.desca-2020.eu/)) with adaptations according to the co-fund needs. In particular the following sections and paragraphs of this Model Consortium Agreement were significantly changed or newly developed: Section 1 (Definitions), Section 6 (Governance structure), Section 7 (Financial provisions), Section 8 (Call implementation) (new), Section 9 (Results), Section 10 (Access Rights), Section 12 (Data Management) (new) and paragraph 13.8 (Settlement of disputes). Please consult the original DESCA Model as well (<https://www.desca-agreement.eu/fileadmin/user_upload/03_ueber_uns/organisation/Internationale_Bueros/Bruessel/DESCA/20221118_DESCA_HorizonEurope_Version_1.1_elucidations_PDF_final.pdf>).

**Please note that this document is provided as an exemplary consortium agreement without assuming neither any warranty nor any liability or responsibility. The use of the text in total or in part is at the user's own risk and does not free users from legal examination to cover their interests and protect their rights.**

It is compulsory to sign a Consortium Agreement for co-funded European Partnership actions and in this model, examples are given on how to deal with certain aspects implementing these actions. But for example the definitions used, the governance structure implemented, the payment rules agreed which are described in this particular Model Consortium Agreement are only suggestions and not compulsory. Each consortium has to define its own structures and rules fitting its specific requirements. This model shall only provide an example, to support the preparation of your specific Consortium Agreement. Please note, that the contractual requirements towards the Granting Authority are defined in the Grant Agreement (The Horizon Europe Regulation, all MGAs, and the other related documents are available at: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/reference-documents;programCode=HORIZON>. 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 Horizon Europe Regulation and the Grant Agreement.

This is the first version of the Model Consortium Agreement for co-funded European Partnerships, which offers further examples as options and a new paragraph regarding cost of Certificates on the Financial Statements. All options are marked in yellow. In turquoise and in brackets you can find clarifying notes. Red font colour highlights parts of the text which should be adapted or need to be discussed in detail within each consortium.

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**CONSORTIUM AGREEMENT**

THIS CONSORTIUM AGREEMENT is based upon Regulation (EU) No 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation (2021-2027), laying down its rules for participation and dissemination (hereinafter referred to as “Horizon Europe Regulation”), and the European Commission’s General Model Grant Agreement and its Annexes, and is made on [CO-FUND ACTION STARTING DATE / OTHER AGREED DATE], hereinafter referred to as the Effective Date

**BETWEEN:**

**[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT]**, [COORDINATOR SHORT NAME, LEGAL ADDRESS], the Coordinator

[**OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT** [PARTY SHORT NAME, LEGAL ADDRESS],

[Insert identification of Beneficiaries and Associated Partners]

[Insert identification of other Parties]

[If for voting rules or some financial aspects you like to distinguish between programme owner and programme manager you should add the specific function after the Party’s legal address above.]

hereinafter [, jointly or individually,] referred to as [”Parties” or ”Party”]

relating to the Action entitled

**[TITLE OF THE CO-FUND ACTION]**

in short

[**ACRONYM**]

hereinafter referred to as “Co-fund Action”

**WHEREAS:**

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Co-fund Action to the Granting Authority[[1]](#footnote-2) as part of Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement to be signed by the Parties and the Granting Authority (hereinafter “Grant Agreement”).

The Parties are aware that this Consortium Agreement is based upon the [DESCA Model Consortium Agreement](http://www.desca-agreement.eu/) for Horizon Europe.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

# Definitions

## Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Horizon Europe Regulation or in the Grant Agreement including its Annexes.

## Additional Definitions

 **“Consortium Body”**

Consortium Body means any management body described in the Governance Structure (section 6) of this Consortium Agreement.

**“Consortium Plan”**

Consortium Plan means the Description of the Action and the related agreed budget as first defined in the Grant Agreement and which may be updated by the General Assembly.

**“Defaulting Party”**

Defaulting Party means a Party which the General Assembly has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in 4.2 of this Consortium Agreement.

**“EC Financial Contribution”**

 **“**EC Financial Contribution”is the financial contribution of the Granting Authority to the Co-fund Action. [The term “EU-Top-Up” is not used in this model as it might be misleading.]

**“Expert Panel”**

Expert Panel is the board of independent experts evaluating proposals the Joint Call.

 **“Funding Organisation”**

Funding Organisation is a national or regional organisation responsible for providing the national share of funding for the Transnational Projects.

[If for voting rules or some financial aspects you like to distinguish the between programme owner and programme manager you should adapt/extend the definition above.]

**“Transnational Project”**

Transnational Project is a project selected for funding under the Joint Call.

 **“Granting Authority”**

Granting Authority means the body awarding the grant for the Co-fund Action.

 **“Highly Detrimental Situation”**

Highly Detrimental Situation means a situation that leads to the reduction of more than EUR 1,000,000 of the EC Financial Contribution.

[You may distinguish between the co-funded Joint Calls and additional Joint Calls, if any]

**“Joint Calls”**

Joint Calls mean the co-funded calls for collaborative proposals in [type of research] which is organised jointly in [timeframe year - year], [timeframe year - year] … by all Parties and represent the main objective of the Co-fund Action.

**“Needed”**

Needed means:

*For the implementation of the Co-fund Action:*

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

*For Exploitation of own Results:*

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

**“Observing Partner”**

Observing Partner is an entity that is not a Beneficiary of the Co-fund Action, contributing to some of the Co-fund Action’s activities with its own funding (see 6.3.6 of this Consortium Agreement).

**“Software”**

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

[You may include paragraph 1.3 to clarify, which documents are relevant]

1.3 **Applicable Documents**

For the sake of clarity, the following documents, listed from more general to the more specific, are part of the Co-funded Action and apply to this Consortium Agreement:

* [Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (…) (“Financial Regulation”);](http://data.europa.eu/eli/reg/2018/1046/oj)
* The [Horizon Europe Regulation](http://data.europa.eu/eli/reg/2021/695/oj);
* [Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation, and repealing Decision 2013/743/EU (Text with EEA relevance);](http://data.europa.eu/eli/dec/2021/764/oj)
* All and any information and provision provided by the Granting Authority during the award procedure;
* the Grant Agreement
* [Call implementation documents produced by the Co-funded Partnership and/or Call Secretariat]
* [Any other relevant documents governing the Co-funded Partnership]

# Purpose

The purpose of this Consortium Agreement is to specify with respect to the Co-fund Action the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the Co-fund Action and the rights and obligations of the Parties concerning inter alia liability, Access Rights, dispute resolution, financial provisions and call implementation.

For the avoidance of doubt, this Consortium Agreement is limited to the Co-fund Action. The consortia of the Transnational Projects under the Co-fund Action have to execute separate consortium agreements in accordance with their specific needs.

# Entry into force, duration and termination

## Entry into force

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

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

An entity becomes a new Party to the Consortium Agreement upon signature of the accession document (Attachment 2) by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

A Party which has not yet signed this Consortium Agreement shall neither be entitled to vote nor to receive any EC Financial contribution.

## Duration and termination

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

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

If

* the Grant Agreement is not signed by the Granting Authority or a Beneficary, or
* the Grant Agreement is terminated, or
* a Party's participation in the Grant Agreement is terminated,

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

If a Party’s participation in the Grant Agreement is terminated, the terminating Party shall do its utmost to limit the consequences for the Co-fund Action. Wherever possible, it shall honour all commitments to researchers, including future financial commitments.

## Survival of rights and obligations

The provisions relating to Access Rights, Dissemination, confidentiality, for the time period mentioned therein, as well as for liability, applicable law, settlement of disputes and financial provisions in 7.5 and 7.7 of this Consortium Agreement shall survive the expiration or termination of this Consortium Agreement.

Termination shall not affect any rights or obligations of a Party leaving the Co-fund Action incurred prior to the date of termination, unless otherwise agreed between the General Assembly and the leaving Party. This includes the obligation to provide all necessary input, deliverables and documents for the period of its participation.

# Responsibilities of Parties

## General principles

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

[Belgian law is commonly used in Consortium Agreements. It is also used by DESCA.]

Each Party undertakes to notify promptly the Granting Authority and the other Parties, in accordance with the Governance Structure of this Consortium Agreement, of any significant information, fact, problem or delay likely to affect the Co-fund Action.

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks and shall responsibly manage the access of its employees to the EU Funding & Tenders Portal.

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

[You can include specific responsibilities for Associated Partners (see DESCA AP Version), if relevant.]

## Breach

In the event that the General Assembly identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement (e.g. improper implementation of the Co-fund Action), the Coordinator or, if the Coordinator is in breach of its obligations, the Party appointed by the General Assembly, will give formal notice to such Party requiring that such breach will be remedied within 30 calendar days from the date of receipt of the written notice by the Party.

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

## Involvement of third parties

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

## Specific responsibilities regarding data protection

Where necessary, the Parties shall cooperate in order to enable one another to fulfil legal obligations arising under applicable data protection laws (the *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data* and relevant national data protection law applicable to said Party) within the scope of the performance and administration of the Co-fund Action and of this Consortium Agreement.

In particular, the Parties shall, where necessary, conclude a separate data processing, data sharing and/or joint controller agreement before any data processing or data sharing takes place.

[ERA-LEARN provides a Model Joint Controller Agreement ([https://www.era-learn.eu/documents/jca\_template](https://www.era-learn.eu/documents/jca_template?SearchTerm=jca) and a collection of examples https://www.era-learn.eu/documents/examples\_jca]

# Liability towards each other

## No warranties

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

Therefore,

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

However, each Party shall promptly inform the other Party/ies of any claims of third parties that come to their knowledge.

## Limitations of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, except in case of breach of confidentiality.

A Party’s aggregate liability towards the other Parties collectively shall be limited to [once or twice] the Party’s share of the total costs of the Co-fund Action as identified in Annex 2 of the Grant Agreement.

A Party’s liability shall not be limited under either of the two foregoing paragraphs to the extent such damage was caused by a wilful act or gross negligence or to the extent that such limitation is not permitted by law.

[You may also consider limiting the liability based on the EC Financial Contribution actually received.]

## Damage caused to third parties

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

## Force Majeure

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

Each Party will notify the General Assembly of any Force Majeure without undue delay. If the consequences of Force Majeure for the Co-fund Action are not overcome within six weeks after such notice, the transfer of tasks - if any - shall be decided by the General Assembly.

# Governance structure

[ERA-LEARN developed a general Model of Partnership Governance Functions. The governance functions should not be regarded as recommendation for Consortium Bodies. Instead, they may serve as a benchmark of important functions that should be included in the governance structure as a whole. Governance formats or Consortium Bodies may therefore incorporate more than one function. For more details see: <https://www.era-learn.eu/support-for-partnerships/governance-administration-legal-base/governance-structure-and-committees>]

## General structure

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

* The **General Assembly** as the ultimate decision-making body of the consortium;
* the **Executive Board** as the supervisory body for the implementation of the Co-fund Action, which shall report to and be accountable to the General Assembly;
* the **Call Steering Committee** as the body composed of the Funding Organisations participating in a given Joint Call and which acts as a decision-making body related to the implementation of a given Joint Call;
* the **Call Secretariat** as the body taking care of the management activities’ coordination of a given Joint Call;
* the **Compliance Management Team** to avoid conflicts of interests and ensure an equal and independent treatment of all applicants;
* the **Observing Partners Board** (OPB) with a consultative role;
* the **Coordinator** as the legal entity acting as the intermediary between the Parties and the Granting Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

## General operational procedures for all Consortium Bodies

### Representation in meetings

Any Party which is appointed to take part in a Consortium Body shall designate one representative (hereinafter referred to as "Member").

Any Member:

* should be present or represented at any meeting of such Consortium Body,
* may appoint a substitute or a proxy to attend and vote at any meeting of such Consortium Body, and shall participate in a cooperative manner in the meetings of such Consortium Body.

### Preparation and organisation of meetings

#### Convening meetings

The chairperson of a Consortium Body shall convene meetings of that Consortium Body.

|  |  |  |
| --- | --- | --- |
|  | Ordinary meeting | Extraordinary meeting |
| General Assembly | At least once a year | At any time upon request of the Executive Board or 1/3 of the Members of the General Assembly |
| Executive Board | At least quarterly | At any time upon request of any Member of the Executive Board |
| Call Steering Committee | xxx | xxx |
| Call Secretariat | xxx | xxx |
| Compliance Management Team | xxx | xxx |
| Observing Partners Board | xxx | xxx |

#### Notice of a meeting

The chairperson of a Consortium Body shall give written notice of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated below. The minimum number of days also apply to the case that the quorum is not reached and the chairperson of a Consortium Body has to convene another meeting (see 6.2.2.1).

|  |  |  |
| --- | --- | --- |
|  | Ordinary meeting | Extraordinary meeting |
| General Assembly | 45 calendar days | 15 calendar days |
| Executive Board | 20 calendar days | 15 calendar days |
| Call Steering Committee | 30 calendar days | 15 calendar days |
| Call Secretariat | 14 calendar days | 7 calendar days |
| Compliance Management Team | 14 calendar days | 7 calendar days |
| Observing Partners Board | 14 calendar days | 7 calendar days |

#### Sending the agenda

The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body an agenda no later than the minimum number of days preceding the meeting as indicated below.

|  |  |  |
| --- | --- | --- |
|  | Ordinary meeting | Extraordinary meeting |
| General Assembly | 14 calendar days | 14 calendar days |
| Executive Board | 14 calendar days | 14 calendar days |
| Call Steering Committee | 14 calendar days | 14 calendar days |
| Call Secretariat | 14 calendar days | 5 calendar days |
| Compliance Management Team | 14 calendar days | 5 calendar days |
| Observing Partners Board | 14 calendar days | 5 calendar days |

#### Adding agenda items:

Any agenda item requiring a decision by the Members of a Consortium Body must be identified as such on the agenda.

Any Member of a Consortium Body may add an item to the original agenda by written notice to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.

|  |  |  |
| --- | --- | --- |
|  | Ordinary meeting | Extraordinary meeting |
| General Assembly | 7 calendar days | 7 calendar days |
| Executive Board | 7 calendar days | 7 calendar days |
| Call Steering Committee | 7 calendar days | 7 calendar days |
| Call Secretariat | 7 calendar days | 2 calendar days |
| Compliance Management Team | 7 calendar days | 2 calendar days |
| Observing Partners Board | 7 calendar days | 2 calendar days |

During a meeting the Members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.

#### Forms of meetings and decisions

Meetings of each Consortium Body may also be held by tele- or videoconference, or other telecommunication means.

Decisions may also be taken via online voting tools, provided the online vote duly observes the principles of fairness, transparency, proper documentation and confidentiality as required to ensure the same degree of reliability than a vote in a physical meeting. The Coordinator shall inform the Parties of the tool to be used for online voting in due time before the vote to make sure they have sufficient technical access and opportunity to cast their vote.

[If you foresee electronic voting, you may wish to further detail provisions on the tools which should be used.]

Decisions will only be binding once the relevant part of the minutes has been accepted according to 6.2.5.

Any decision may also be taken without a meeting if

1. the Coordinator circulates to all Members of the General Assembly a suggested decision with a deadline for responses of at least 10 calendar days after receipt by a Party, and
2. the decision is agreed

option 1 : by 51% of all Parties.

option 2 : by two-thirds (2/3) of the votes cast, provided that at least two-thirds (2/3) of the Members entitled to vote answer the decision request (either by casting their vote or by notifying their abstention. (Abstentions thus count towards reaching the minimum participation, and their notification should be mentioned in the voting request sent by the Coordinator).

The Coordinator shall inform all the Parties of the outcome of this vote. A veto according to 6.2.4 of this Consortium Agreement may be submitted up to 15 calendar days after receipt of this information by the Party.
The decision will be binding after the Coordinator sends a notification to all Members of that Consortium Body. The Coordinator will keep records of the votes and make them available to the Parties on request.

### Voting rules and quorum

[If for voting rules or some financial aspects you like to distinguish between programme owner and programme manager you should adapt/extend the paragraph below accordingly.]

Each Consortium Body shall not deliberate and decide validly in meetings unless two-thirds (2/3) of its Members are present or represented (quorum).

If the quorum is not reached, the chairperson of the Consortium Body shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting in a decision is taken even if less than the quorum of Members is present or represented.

In case of decisions regarding the budget of the Joint Call, only Funding Organisations eligible for receiving of EC Financial contribution (i.e. Beneficaries) shall be entitled to vote. In case of all other decisions, each Member of a Consortium Body present or represented at the meeting shall have one vote. If two Parties act as an “institutional couple”, i.e. if they come from the same country and manage the same research budget, they shall share one vote.

[You can exclude Associated Partners from certain decisions (see DESCA AP Version), if relevant.]

A Defaulting Party may not vote.

Each Consortium Body shall strive to make decisions by consensus. If consensus cannot be achieved, decisions on proposals shall be taken by a majority of two-thirds (2/3) of the votes cast.

### Veto rights

A Party which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of that Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.

When the decision is foreseen on the original agenda, a Party may veto such a decision during the meeting only.

When a decision has been taken on a new item added to the agenda before or during the meeting, a Party may veto such decision during the meeting or within 15 calendar days after receipt of the draft minutes of the meeting by the Party.

When a decision has been taken without a meeting a Party may veto such decision within 15 calendar days after receipt of the written notice from the chairperson of the outcome of the vote by the Party.

In case of exercise of veto, the Parties shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Parties.

A Party may neither veto decisions relating to its identification to be in breach of its obligations nor to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the consortium or the consequences of them.

A Party requesting to leave the consortium may not veto decisions relating thereto.

### Minutes of meetings

The chairperson of a Consortium Body shall produce minutes of each meeting which shall be the formal record of all decisions taken. He/She shall send the draft minutes to all Members of that Consortium Body within 10 calendar days of the meeting.

The minutes shall be considered as accepted if, within 15 calendar days from receipt, no Member of that Consortium Body has sent an objection by written notice to the chairperson with respect to the accuracy of the draft of the minutes by written notice.

The chairperson shall send the accepted minutes to all the Members of that Consortium Body and to the Coordinator, who shall retain copies of them.

### Firewall during meetings

[Define rules on how to avoid the participation of Beneficiaries that might have interest in applying to the co-funded calls during sensible parts of the discussion.]

## Specific operational procedures for the Consortium Bodies

### General Assembly

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

#### Members

The General Assembly shall consist of one representative of each Party (hereinafter “General Assembly Member”).

Each General Assembly Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in 6.3.1.2. of this Consortium Agreement.

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

The Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties from exercising their veto rights, according to 6.2.4, or from submitting a dispute to resolution in accordance with the provisions of 13.8.

[You can exclude Associated Partners from voting on and vetoing decisions see DESCA AP Version), if relevant.]

Regarding unanimity or majority decisions, only Members of a Consortium Body with voting rights regarding the item are taken into account.

#### Decisions

The General Assembly is responsible for the overall direction and follow-up of the Co-fund Action.

The following decisions shall be taken by the General Assembly:

Content, finances and intellectual property rights

* Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Granting Authority;
* Changes to the Consortium Plan;
* Additions or modifications to all Attachments of this Consortium Agreement;
* Use of the reserve fund;
* Financial decision in case a Funding Organisation has no funds for the national/regional share in a Transnational Project (i.e. decision about how to replace and/or fund the final recipients of the Transnational Project);
* Decisions related to a Highly Detrimental Situation;
* Decisions related to a conflict of interests;
* OPTION: Settlement of disputes
* OPTION: Establishment of an ad hoc commission for the settlement of disputes.

Appointments

* Appointment of Members of the Executive Board
* Appointment of Members of the Compliance Management Team
* Appointment of Members of the Observing Partners Board and annual adjustment of its composition
* Appointment of Members of the External Expert Advisory Board

Evolution of the consortium

* Entry/withdrawal of a Party to/from the Co-fund Action and approval of the settlement on the conditions of the accession/withdrawal of such a Party;
* Decisions related to the termination of a Party’s participation in the Co-fund Action (including handling of additional costs, if any)
* Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement and the remedies to be performed by such Party;
* Declaration of a Party to be a Defaulting Party and the remedies to be performed by such Party (including termination of such Party’s participation in the Co-fund Action);
* Steps to be taken for litigation purposes and the coverage of litigation costs in case of joint claims of a Party/Parties against another Party/other Parties;
* Proposal to the Granting Authority for a change of the Coordinator
* Proposal to the Granting Authority for suspension of all or part of the Co-fund Action
* Proposal to the Granting Authority for termination of the Co-fund Action and the Consortium Agreement.

Decisions regarding the Joint Call

* Setup of timelines for the Joint Call(s);
* Approval of the text and topics
* Guidelines and rules for participation for the Joint Call of the Joint Call(s);
* Agreement on the Transnational Projects, according to the Ranking List.

### Executive Board

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

#### Members

The Executive Board shall consist of the Coordinator and the representatives of the Parties appointed to it by the General Assembly (hereinafter “Executive Board Members”).

The Coordinator shall chair all meetings of the Executive Board, unless decided otherwise in a meeting of the Executive Board.

#### Minutes of meetings

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

#### Tasks

The Executive Board shall:

* prepare the meetings, propose decisions and prepare the agenda of the General Assembly meetings according to Section 6.3.1.2.;
* seek a consensus among the Parties;
* be responsible for the proper execution and implementation of the decisions of the General Assembly;
* monitor the effective and efficient implementation of the Co-fund Action in collaboration with the Coordinator;
* collect information at least every six months on the progress of the Co-fund Action, examine that information to assess the compliance of the Co-fund Action with the Consortium Plan and, if necessary, propose modifications of the Consortium Plan to the General Assembly;
* support the Coordinator in preparing meetings with the Granting Authority and in preparing related data and deliverables;
* prepare the content and timing of press releases and joint publications by the consortium or proposed by the Granting Authority in respect of the procedures in article 17 of the Grant Agreement and its Annex 5, section “Communication, Dissemination, Open Science and Visibility” and of section 9 of this Consortium Agreement;
* in the case of abolished tasks as a result of a decision of the General Assembly, advise the General Assembly on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration any prior legitimate commitments which cannot be cancelled;
* steer the External Expert Advisory Board;
* develop the conflicts of interests management policy;
* develop data management guidelines.

### Call Steering Committee

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

#### Members

The Call Steering Committee is composed of one mandated representative from each Funding Organisation participating in a given Joint Call (hereinafter “CSC Members”).

#### Mandate

A Call Steering Committee will be set up for each Joint Call, acting as the decision-making body for all aspects related to the practical implementation and follow-up of the concerned Joint Call.

The mandate of the Call Steering Committee starts with the preparation of the concerned Joint Calls’ Memorandum of Understanding and ends when xxxxx.

#### Tasks

The Call Steering Committee shall:

* Develop and approve the Call Memorandum of Understanding and the text of the Call Announcement;
* Agree on the general eligibility of partners in Transnational Projects for funding based on the Joint Call and national/regional eligibility rules;
* Provide names of potential external reviewers to the Call Secretariat potential experts to the and Expert Panel;
* Appoint the Members of the Expert Panel;
* Decide on which projects to invite to step 2, based on the evaluation made by the Expert Panel (if applicable);
* Decide on which proposals to recommend for funding based on and not deviating from the Ranking List established by the Expert Panel;
* Re-evaluate the rules for the use of the EC Financial Contribution for the Transnational Projects, if necessary;
* Handle funding propositions of the Call Secreatariat.

### Call Secretariat

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

#### Members

Party xx and Party xx will act as the Call Secretariat for the Joint Call (hereinafter “Call Secretariat Members”).

#### Tasks

The Call Secretariat is responsible for leading the coordination and management activities regarding the Joint Call. In particular, the Call Secretariat shall:

* prepare a list with suggestions for fundable proposals for the Joint Call and give a funding recommendation to the Call Steering Committee;
* handle the proposition of the Call Steering Committee for names of potential external reviewers;
* prepare a template concerning potential situations of conflicts of interests and a declaration to be signed by the external experts, which is prepared using the expertise of the Compliance Management Team

### Compliance Management Team

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

#### Members

The decision about whom to appoint a member to the Compliance Management Team will be taken by the General Assembly.

#### Tasks

The main purpose is to avoid conflicts of interests and to ensure equal and independent treatment of all applicants by constantly monitoring compliance with the conflict of interests management policy established. Potential conflicts of interests will be identified and methods to avoid them will be established and monitored. The Compliance Management Team reports annually to the General Assembly and immediately informs the Coordinator about any potential and identified conflict of interests. The activities of the Compliance Management Team will be included in the annual reporting.

### Non-Beneficaries and Observing Partners

Entities that are not Beneficiaries of the Co-fund Action may nevertheless collaborate with the co-funded Partnership and take part in some activities, provided they have sufficient own funding for their participation and do not compromise the performance of the activities foreseen by the Beneficiaries.

These entities may in particular become Observing Partners, and participate in the Observing Partners Board.

Neither Observing Partners nor other entities collaborating without being signatory or Associate Partners of a grant agreement have any voting right in the decision-making of the Co-Fund Action.

#### The Observing Partners Board

The Observing Partners Board is gathering a range of entities that are not Beneficiaries who are interested in following the development of the Co-fund Action and/or in participating in some actions on a voluntary basis, without EC Financial Contribution. The Observing Partners Board has a flexible composition, adjusted annually by decision of the General Assembly.

A list of Observing Partners is established in Annex x “List of Observing Partners”. This list is updated annually by decision of the General Assembly without the need to amend this Consortium Agreement.

### Coordinator

The Coordinator shall be the intermediary between the Parties and the Granting Authority and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.

#### Tasks

In particular, the Coordinator shall be responsible for:

* monitoring the progress of the Co-fund Action in collaboration with the Executive Board;
* monitoring compliance by the Parties with their obligations under this Consortium Agreement and the Grant Agreement;
* convening and chairing General Assembly and Executive Board meetings and support the Call Secretariat;
* keeping the address list of Members of the Consortium Bodies and other contact persons updated and available;
* collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Granting Authority;
* transmitting documents and information related to the Co-fund Action to any other Party concerned;
* administering the EC Financial Contribution and fulfilling the financial tasks described in section 7;
* establishing a cost monitoring system and providing the General Assembly with the results of this cost assessment;
* providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims;
* handle propositions of the Compliance Management Team concerning conflicts of interests;
* OPTION: Settlement of disputes;
* OPTION: ensure the execution of a NDA with each Member of the External Expert Advisory Board.

If one or more of the Parties is late in submission of any Co-fund Action deliverable, the Coordinator may nevertheless submit the other ’Parties’ Co-fund Action deliverables and all other documents required by the Grant Agreement to the Granting Authority in time.

If the Coordinator fails in his/her coordination tasks, the General Assembly may propose to the Granting Authority to change the Coordinator.

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

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

[Where foreseen in the Grant Agreement or otherwise decided by the consortium, you may add an External Expert Advisory Board to the Governance Structure.]

### External Expert Advisory Board (EEAB)

An EEAB will be appointed and steered by the Executive Board to assist and facilitate the decisions made by the General Assembly.

The Coordinator will ensure that a non-disclosure agreement (hereinafter “NDA”) is executed between all Parties and each Member of the EEAB.

[Optional: By way of exception to 6.3.7.1 of this Consortium Agreement, the Parties mandate the Coordinator to execute, in their name and on their behalf, a NDA with each Member of the EEAB, in order to protect Confidential Information disclosed by any of the Parties to any Member of the EEAB, either directly, or through the Coordinator in the case where the concerned Party gave to the Coordinator its prior written approval for such disclosure. The template for such NDA is provided in Attachment xx. The mandate of the Coordinator comprises solely the execution of the NDA in Attachment xx.]

Its terms shall be not less stringent than those stipulated in this Consortium Agreement, and it shall be concluded no later than 30 calendar days after the nomination or before any Confidential Information will be exchanged/disclosed, whichever date is earlier. The Coordinator shall write the minutes of the EEAB meetings and submit them to the General Assembly. The Members of the EEAB shall be allowed to participate in General Assembly meetings upon invitation but without voting rights.

# Financial provisions

Section 7 of the Consortium Agreement does not apply to Associated Partners.

## General Principles

As presented in Annex 2 of the Grant Agreement, the EC Financial Contribution consists of the contribution to direct costs and the related indirect costs.

### Distribution of the EC Financial Contributions

The EC Financial Contribution shall be distributed by the Coordinator according to:

* the Consortium Plan
* the approval of reports by the Granting Authority, and
* the provisions of payment in 7.2.

A Beneficiary shall be funded only for its tasks carried out in accordance with the Consortium Plan.

### Justifying Costs towards the Granting Authority

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs (and those of its Affiliated Entities, if any) with respect to the Co-fund Action towards the Granting Authority. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Granting Authority.

### Financial Consequences of the termination of the participation of a Party

A Party leaving the consortium shall refund to the Coordinator any payments it has received except the amount of contribution accepted by the Granting Authority or another contributor to the Co-funded Action or consortium.

In addition, a Defaulting Party shall, within the limits specified in 5.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform the leaving Party´s task and necessary additional efforts to fulfil them as a consequence of the Party leaving the consortium. The General Assembly should agree on a procedure regarding additional costs which are not covered by the Defaulting Party or the Mutual Insurance Mechanism.

## Payments

## Payments to Beneficiaries are the exclusive task of the Coordinator. Related banking and transaction costs are borne by the receiving Beneficiaries.

In particular, the Coordinator shall:

* notify the Beneficiary concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references
* perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts, and
* undertake to keep the EC Financial Contribution separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

With reference to article 22 of the Grant Agreement, no Beneficiary shall before the end of the Co-fund Action receive more than its allocated share of the maximum grant amount less the amounts retained by the Granting Authority for the Mutual Insurance Mechanism.

The Coordinator is entitled to withhold any payments due to a Beneficiary identified by the General Assembly 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 except the costs already claimed by the Defaulting Party and accepted by the Granting Authority. The Coordinator is equally entitled to withhold payments to a Beneficiary when this is suggested by or agreed with the Granting Authority.

### Budgeting

[For most of the co-funded partnerships the funding rate is 30 % of the eligible costs reported to the Granting Authority and the related indirect costs. These costs have to be reported in line with the categories indicated in the budget table of the grant agreement (Annex 2), i.e. personnel costs (A), subcontracting (B), purchase costs (C), , indirect costs (E) as well as costs for providing financial support to third parties (D1) and internally invoiced goods and services (D2). Despite the general provision, partnerships might agree on an internal model with different co-funding rates to distribute the EC Financial Contribution. Parties can agree to apply lower co-funding rates e.g. to the funding of trans-national projects (category D1) to be able to use higher co-funding rates for the implementation of the other project’s activities. This means that the national/regional contributions for transnational projects need to be increased to receive the EC Financial Contribution foreseen in the Grant Agreement. The distribution will be carried out according to internal reimbursement rates applied to their agreed activities (e.g. coordination of the partnership, strategic program management, Call Secretariat).

ERA-LEARN suggests using a model for distribution based on these principles:

* Keep it as simple as possible
* Apply the same principles of reporting internally as towards the funding authority
* Adapt internal funding rates based on the different cost categories – e.g. lower funding rate in category D1 (increased national/regional contribution)
* Adapt funding based on work packages, if needed.
* Use a reserve fund for unexpected situations - e.g. using the related funding of indirect costs

See example calculation on the ERA-LEARN website as starting point for your budget considerations.]

The **EC Financial Contribution** should be used as follows:

Despite the general co-funding rate is 30 %, the Parties agree to apply different co-funding rates to the Project’s activities. They notably agree to use lower co-funding rates for the funding of Trans-national Projects to be able to use higher co-funding rates for the implementation of the other project’s activities. The national/regional funding for the Trans-national Projects will be increased accordingly.

Costs will be reimbursed to the Beneficiaries as follows:

[Please insert your scheme].

### Justifying costs for the Co-fund Action towards the General Assembly

[Please ensure that all Parties are aware of the Horizon Europe eligibility rules for costs. See Article 6 of the Grant Agreement.]

All direct costs shall be reported to the General Assembly on an annual basis [specify details] by each Beneficiaries using the same cost categories as reported towards the Granting Authority.

[When you are using a specific reporting template please specify the above paragraph.]

### Payment schedule

Funding of costs included in the Consortium Plan will be paid by the Coordinator to the Beneficiaries after receipt of payments from the Granting Authority in separate instalments as agreed below:

* + xx % on receipt of the first pre-financing payment by the Granting Authority
	+ xx % on receipt of the second pre-financing payment by the Granting Authority (if applicable)
	+ xx % on receipt of the first interim payment from the Granting Authority
	+ xx % on receipt of the second interim payment from the Granting Authority
	+ xx % on receipt of the third interim payment from the Granting Authority
	+ xx % on receipt of the final payment including the amount retained for the Mutual Insurance Mechanism as foreseen in the Grant Agreement

The support to the Transnational Projects shall be paid by the respective Party. The Coordinator shall not transfer any funds directly to the Transnational Projects.

[You should prepare a liquidity plan considering that only part of the total EC Financial Contribution (5 % is retained for the Mutual Insurance Mechanism) will be transferred to the Coordinators’ bank account as first pre-financing.]

### Reserve fund

The Parties have agreed on a budget of EUR xx or of defined percentage from the foreseen EC Financial contribution as reserve fund. This budget will be used to cover additional costs encountered while implementing the Consortium Plan or in case of less EC Financial Contribution than foreseen (see cases in 7.3).

Any Party may apply for this reserve fund during a meeting of the General Assembly in order to implement an activity. The Party shall present this activity and the budget required from the reserve funds to implement this activity. The General Assembly decides whether this Party may implement this activity with the help of the agreed budget.

In case the reserve fund is not used during the Co-funded Action’s duration, it will be released according to a decision by the General Assembly at the end of the Co-fund Action.

### Excess payments

A Party has received excess payment

1. if the payment received from the Coordinator exceeds the amount declared or
2. if a Beneficiary has received payments but, within the last year of the Co-fund Action, its real Co-fund Action costs fall significantly behind the costs it would be entitled to according to the Consortium Plan.

In case a Beneficiary has received excess payment, it has to inform the Coordinator and return the relevant amount to the Coordinator without undue delay. In case no refund takes place within 30 days upon request for return of excess payment from the Coordinator, the Beneficiary is in substantial breach of the Consortium Agreement.

Amounts which are not refunded by a breaching Party and which are not due to the Granting Authority, shall be apportioned by the Coordinator to the remaining Beneficiary pro rata according to their share of total costs of the Co-fund Action as identified in the Consortium Plan, until recovery from the breaching Party is possible.

### Revenue

In case a Beneficiary earns any revenue that is deductible from the total funding as set out in the Consortium Plan, the deduction is only directed toward the Beneficiary earning such revenue. The other Beneficiaries’ financial share of the budget shall not be affected by one Beneficiary’s revenue. In case the relevant revenue is more than the allocated share of the Beneficiary as set out in the Consortium Plan, the Beneficiary shall reimburse the funding reduction suffered by other Beneficiaries.

### Costs of Certificates on the Financial Statements

[If a Beneficiary or Affiliated Party is requests a total financial contribution from the Granting Authority of EUR 430,000.00 or more as reimbursement for all reported costs (including indirect costs), a Certificate on the Financial Statement (CFS) is required. The costs of a mandatory CFS are eligible, but as the EC Financial Contribution is distributed according to the rules of the consortium agreement, the Beneficiary concerned might not receive the EC Financial Contribution it is eligible for.]

[Please choose one of the following options and adapt the text marked in red.]

**[Option 1: Each Beneficiary covers the related costs for the Certificate on the Financial Statements by itself]**

Each Beneficiary shall cover the costs for its own mandatory Certificate on the Financial Statements by itself.

**[Option 2: Reserve fund for costs of Certificates on the Financial Statements]**

All Beneficiaries agree to cover the costs for the mandatory Certificates on the Financial Statements by the EC Financial Contribution. Part of the reserve fund budget will be used to cover these costs. The Coordinator shall suggest an appropriate amount according to the distribution of direct costs related to Transnational Projects. This budget shall be decided upon in the meeting of the General Assembly for the selection of the Transnational Projects.

## Insufficient EC Financial Contribution

In the unlikely case that the EC Financial Contribution is not sufficient to contribute to the costs of the Co-fund Action as foreseen, the Parties agree to use the procedure described in the following paragraphs.

### Cost monitoring system

The EC Financial Contribution for the Joint Calls is based on actual costs. According to the Grant Agreement a reimbursement of 30% for all direct and indirect costs foreseen in the Consortium Plan will be awarded by the Granting Authority. If these costs are less than foreseen in the Grant Agreement, the EC Financial Contribution will be less as well and funding gaps might appear. In order to avoid such situations, the Coordinator, shall establish a cost monitoring system, which shall allow for an overview of the budget available for reimbursement and for a cost assessment to plan the consequences of a potentially low leverage of EC Financial Contribution, especially related to the Joint Calls. The Coordinator shall provide the General Assembly with the results of this costs assessment and deliver an early warning, should a scenario of severe reduction of EC Financial Contribution arise in comparison with the numbers foreseen in the Consortium Plan, so that appropriate changes of activities, delays or cancellation of payments can be discussed. The respective decisions shall then be taken by the General Assembly taking into account the obligation of the consortium, as agreed upon in the Grant Agreement, to fulfil the Consortium Plan in a reasonable manner and in compliance with the relevant clauses of this Consortium Agreement.

### Regular trainings on cost reporting

Each Party shall ensure that the employees working for the Co-fund Action are fully aware of and follow the rules of the Granting Authority. These employees shall attend trainings on cost reporting on a regular basis.

### Less EC Financial Contribution than foreseen for the Joint Calls (category D1)

The following cases might occur:

Case 1: Less Transnational Projects than anticipated resulting in less reported costs in cost category D1

Each Funding Organisation shall endeavour to avoid such situation by appropriating relevant budgets, by raising awareness for the Joint Call and by establishing a support service for applicants.

Case 2: Transnational Projects reporting less eligible costs than foreseen in the national/regional funding contracts resulting in less reported costs in cost category D1

Each Funding Organisation shall endeavour to avoid such situation, for example by allowing the respective Transnational Project to replace final recipients or to shift tasks between final recipients, if a final recipient for some reason has to leave the consortium of the Transnational Project.

Case 3: A Funding Organisation has to revoke after the ranking lists were fixed

In case that a Funding Organisation has to revoke and cannot fund its respective national/regional share of the related Transnational Project(s) for one or several Joint Call(s), the other Parties shall convene a meeting of the General Assembly to discuss the possibility to replace and fund the respective final recipients of the concerned Transnational Project(s).

If the above mentioned mitigation approach is not sufficient and a Highly Detrimental Situation might occur, the Parties agree to follow the procedure mentioned in 7.3.5 of this Consortium Agreement.

### Less EC Financial Contribution than foreseen for in-kind contribution (all cost categories except of D1)

Each Party shall attempt to contribute to the Consortium Plan as expected. If the contribution foreseen is not possible, the respective Party shall immediately inform the Coordinator, who shall suggest a mitigation strategy to the General Assembly. This might include budget shifts among the Parties or the involvement of new Parties.

If the abovementioned mitigation approach is not sufficient and a Higly Detrimental situation might occur, the Parties agree to follow the procedure mentioned in 7.3.5 of this Consortium Agreement.

### Procedure to cover financial gaps

[The Parties may need to agree on their core activities which are essential for the implementation of the Co-Fund Action and the related costs based on their Consortium Plan to define how to prioritise the distribution of the EC Financial Contribution in case of a Highly Detrimental situation. Please remember that major changes in the Consortium Plan (e.g. reducing/ deleting an activity) may cause an amendment to the Grant Agreement].

In case a Highly Detrimental Situation occurs, without undue delay the Coordinator shall convene a meeting of the General Assembly and inform in detail about the financial gap and propose a solution based on the following principles:

**[Option 1]**

Redirect the reimbursement to central activities e.g. by decreasing the funding rates of the following activities:

Xxx [Please insert your first preferences here]

If this is not sufficient, the EC Financial Contribution will be used first to cover the following costs:

Xxx [Please insert your first preferences here].

The Parties agree only in case that the following costs

Xxx [Please insert your first preferences here] cannot be covered with the EC Financial Contribution, that the Parties shall pay their proportional share to the Coordinator without unjustified delay.

The proportional share is agreed as follows:

Xxx [Please insert a proportion fitting to your Co-Fund Action here e.g. call budget, country size, equal share]

**[Option 2]**

The internal funding rates should be decreased in the order of priority below

Xxx (insert your preferences here e.g. no reimbursement for indirect costs):

[An internal national/regional agreement between programme owner and programme manager of each programme involved might be important to follow the above mentioned rules. Each Party has to ensure that these rules can be followed.]

### No EU Financial Contribution

In the unlikely case that the Co-fund Action is terminated and no EC Financial Contribution is paid, the Parties agree to cover the following costs

Xxxx [Please insert your preferences here] incurred up to the end of the Co-fund Action.

Regardless of their respective responsibility, the other Parties shall pay their proportional share to the Coordinator without unjustified delay.

The proportional share is agreed as follows:

Xxx [Please insert a proportion fitting to your Co-Fund Action here e.g. call budget, country size, equal share]

[An internal national/regional agreement between programme owner and programme manager of each programme involved might be important to follow the above mentioned rules. Each Party has to ensure that these rules can be followed.]

# Call Implementation

[Annex 5 to the Grant Agreement, section “Specific rules for Co-funded Partnerships” contains specific rules for Co-funded Partnerships. The related elucidation notes in the Annotated Grant Agreement, among others, mention the following: “The Beneficiaries must base their selection (joint selection list) on the order of the ranking list (or the ranking lists, if there are different topics). If proposals have identical scores, the proposals coming from participating EU Member States or Horizon Europe associated countries with still available funding can be given precedence, in order to maximise the number of selected projects.”. In the past, this was interpreted by the European Commission in a way that gaps in the ranking list(s) are not possible. ERA-LEARN recommends to use the same understanding in Co-funded Partnerships to lower the risk. The standard factual findings to be confirmed by an auditor are not available yet.]

## Selection process

[In order for costs to be eligible, the selection procedure has to follow the rules identified in the Grant Agreement. ERA-LEARN recommends following a two-step submission process including a pre- and a full proposal in order to limit oversubscription rates, to balance national/regional call budgets and to reduce the effort for applicants.]

### Step 1

[You may choose one of the following options.]

**Option 1: Central scientific evaluation**

A single international peer review shall be accomplished after the national and transnational eligibility checks to evaluate the submitted proposals. Only those proposals which are eligible according to transnational rules shall be evaluated. At least three independent experts shall evaluate each proposal. The result of the peer review shall be a Ranking List of proposals suggested for submitting a proposal in step 2.

**Option 2: National assessment**

The -proposals received are selected by means of the following steps:

* Eligibility approved by the Funding Organisations,
* National/regional prioritisation (1- “must have”, 2-“want to fund”, 3-“can fund”, NO-”not eligible”, “-“ - “no participant from this country/region”) done for each proposal
* Combination of the national/regional prioritisation in one single Ranking List of -proposals

### Limited oversubscription in step 1

The Parties shall make their best efforts to match their national funding budget with the expected success of their respective research communities.

[Please choose one of the following options and adapt the numbers marked in red.]

**Option 1: Limited potential oversubscription**

The selected proposals should not exceed the proposed total individual national/regional budget of the Joint Call by more than two times.

The exact cut-off line shall be agreed upon by the Call Steering Committee. Maximum national requested budgets will be decided after the proposals selection in step 1.

**Option 2: Best-effort obligation to commit higher national/regional budgets**

If the number of proposals submitted is more than 10 times the number of proposals that can be funded, the Funding Organisations shall strive to bring additional national funding to allow for an equivalent distribution of the EC Financial Contribution.

The exact cut-off line shall be agreed upon by the Call Steering Committee. Maximum national requested budgets will be decided after the proposals selection in step 1.

### Step 2

The proposal selection in step 2 shall be implemented following the rules indicated in Annex 5 of the Grant Agreement , section “Specific rules for Co-funded Partnerships”.

A single international peer review shall be implemented. Only those step 2 proposals which are eligible shall be evaluated. The Expert Panel shall rank proposals according to the programme’s evaluation criteria. At least three independent experts shall evaluate each step 2 proposal. The result of the peer review shall be a list of step 2 proposals suggested for funding (i.e. Ranking List).

The selection procedure must be followed by an independent expert observer, who must make a report.

## Use of EC Financial Contribution for Transnational Projects

[The Parties should agree how much budget should be used for a specific Joint Call. This paragraph is related to a specific Joint Call]

The Parties agree to fund as many Transnational Projects as possible following the Ranking List.

When the Ranking List of projects recommended for funding is set up, the main goal should be first to explore all funding solutions to unblock situations at national level (i.e. national funding organisations shall make all reasonable efforts to match national funding with the success of their respective research communities).

The EC Financial Contribution for Transnational Projects shall be used in the most efficient way possible. The Parties thus agree that they will not insist on an equal share of the EC Financial Contribution.

The EC Financial Contribution for Transnational Projects for each Party shall be limited to the Party’s respective financial contribution to the Joint Call.

The Parties agree to use a mixed mode financing system to compensate cases where participating Funding Organisations have exhausted their budget at different points in the Ranking List.

A minimum of 40 % EC Financial Contribution for Transnational Projects will be used for proportional topping-up of the national/regional funding of the respective Parties. The remaining part of the EC Financial Contribution for Transnational Projects will be reserved for financial balancing purposes. If more than 60 % of the EC Financial Contribution for Transnational Projects is needed for balancing purposes in order to maximise the number of Transnational Projects that can be funded, this percentage may be further increased by a decision of organisations eligible for EC Financial Contribution in the Call Steering Committee. The Call Steering Committee may re-evaluate the rules for using the EC Financial Contribution for Transnational Projects, if needed.

## Ranking List

Based on the ranking by the Expert Panel, and taking into account the available budgets of the Funding Organisations and the EC Financial Contribution, the Call Secretariat will propose a funding recommendation to the Call Steering Committee, taking into account that it is a requirement of the Co-fund Action to follow the Ranking List as suggested.

The Call Steering Committee shall agree on the Ranking List based on the suggestion by the Call Secretariat. Projects with scores below the thresholds given in the text of the Joint Call will not be funded even if there is national funding available.

## Conflicts of interests/ information barrier

[Parties and their representatives cannot be Beneficiary of competitive activities implemented in the context of the Co-fund Action. In particular, they cannot participate in proposals submitted to the transnational calls for research proposals, unless they have been listed and allowed to do so in the Grant Agreement. Beneficiaries that are not listed may not apply for funding under the Joint Calls. Each organisation allowed to apply to the Joint Calls has indicated in the Grant Agreement their individual measures to mitigate the conflicts of interests, including but not limited to staff separation and information barriers (8.4.2). In order to further avoid conflicts of interests, Parties have also agreed to the setting up of “firewalls”. Parties that may apply to Joint Calls cannot participate in the Work Package dedicated to the preparation, implementation or monitoring of the respective Joint Call(s), nor have access to any information pertaining to these activities. This may require to organise meetings in compartmentalized sessions, in order to separate topics and discussions.

Furthermore, all experts need to check and follow the rules of the Model Contract for Experts <https://ec.europa.eu/research/participants/data/ref/h2020/experts_manual/h2020-experts-mono-contract_en.pdf>.

NCP Host-organisations should check potential conflicts of interest]

### Conflicts of interest

* Parties applying in a Joint Call

Parties agree to a compartmentalized organisation and governance, meaning that Parties that may apply to Joint Calls (or other competitive activities supported by the Co-fund Action) may not participate in Work Packages and Tasks dedicated to the preparation, implementation and monitoring of said activities. Neither may they access any information pertaining to the implementation of these Work Packages and Tasks.

A list of Parties allowed to apply to the Joint Calls is included in the Grant Agreement. Parties that are not listed may not apply for funding under the Joint Calls. Each Parties allowed to apply to the Joint Calls has indicated in the Grant Agreement their individual measures to mitigate the Conflicts of Interest, including but not limited to staff separation and Information barriers (8.4.2). For transparency, these Parties will also be listed in the texts of the relevant Joint Calls.

* Conflicts of interests in evaluation

Each Party agrees that, in order to avoid any conflict of interests within the Joint Calls, it will not be involved in the evaluation process (including the appointment of the international panel of independent experts), if the Party and/or its Affiliated Entities plan to respond themselves to this Joint Call.

In selecting the experts for the evaluation, the Executive Board shall endeavour to avoid any possible conflicts of interests.

The Call Secretariat shall prepare a template concerning potential conflicts of interests and a declaration, which shall be approved by the Compliance Management Board. The declaration has to be signed by each expert involved in the evaluation of the Joint Calls.

#### Conflict of interests management policy

An extensive conflict of interests management policy shall be developed by the Executive Board to address all possible types of conflicts of interests.

The compliance with the conflict of interests management policy will be consistently monitored by the Compliance Management Team.

All Parties must report a potential conflict of interests to the Compliance Management Team.

All staff involved in the Co-fund Action shall be required to disclose any conflict of interests that they might have to the Compliance Management Team, which will handle the case and propose adequate measures to the Coordinator and report annually to the General Assembly.

### Information barrier

[If Parties or departments of Parties might apply to a Joint Call, they must set up information barriers to avoid the technical possibility for Parties with a conflict of interests (see above) to access emails, documents or any information received by the staff involved with the preparation of documents to be used in the award procedure (e.g. Joint Call, evaluation) as well as internal guidance and control standards clearly prohibiting sharing such information within the organisation. Information barriers therefore prevent any possible conflict of interests and prevent Parties from accessing information regarding the preparation, implementation and monitoring of the Joint Calls. This includes compartmentalising discussion themes during meetings of relevant Consortium Bodies. These must have been described in the proposal and is part of the grant agreement: <https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/horizon/temp-form/af/af_he-cofund-top-up_en.pdf>]

Describe your procedure here.

## Contractual obligations towards the Granting Authority on selection

[Deliverables are listed in the Description of the Action (Annex 1 to the Grant Agreement). The required deliverables can be found in the proposal template https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/horizon/temp-form/af/af\_he-cofund\_en.pdf (page 14ff).]

The Funding Organisations shall provide to the Coordinator within 10 days after the end of the selection process a formal and duly signed commitment on availability of funds for their selected projects.

After the end of the selection process, the Coordinator shall submit to the Granting Authority the following:

 (a) the ranking list(s) of the projects;

 (b) the observers' report on the evaluation;

 (c) the joint selection list of the Transnational Projects, and

 (d) from each Funding Organisation participating in the Joint Call, a formal and duly signed commitment on availability of funds for the Transnational Projects.

The Coordinator will furthermore submit to the Granting Authority after the end of the selection process an information on each Transnational Project, including data on each participant and abstracts of the project proposal, in a format specified by the Granting Authority, for publication and evaluation purposes.

This information will be updated at the end of the Co-fund Action (information on each Transnational Project, including data on each participant and overview of the results).

The Funding Organisations shall inform their final recipients in funding contracts that the above-mentioned data will be submitted to the Granting Authority.

## Contractual obligations for Transnational Projects

[You can distinguish between the co-funded Joint Call and additional non-co-funded Joint Calls, if any.

Under article 9.4 of the Grant Agreement is mentioned that “beneficiaries must ensure that their contractual obligations under articles 12 (conflict of interest), 13 (confidentiality and security), 14 (ethics), 17.2 (visibility), 18 (specific rules for carrying out action), 19 (information) and 20 (record-keeping) also apply to the third parties receiving the support (recipients). The beneficiaries must also ensure that the bodies mentioned in article 25 (e.g. granting authority, OLAF, Court of Auditors (ECA), etc.) can exercise their rights also towards the recipients”.]

The Parties acting as Funding Organisations for Transnational Projects agree to oblige their final recipients in funding contracts to the following:

* to have a signed consortium agreement prior to the start of the Transnational Project at least addressing the following topics:
	+ Internal organisation and management of the consortium
	+ Intellectual property arrangements
	+ Settlement of internal disputes
* to prepare popular science summaries of the content of the Transnational Project for programme activities and publications (e.g. for brochures, [digital] newsletters, the website);
* to take part in, and contribute with presentations of the Transnational Project and/or posters to the foreseen events of the Co-fund Action;
* to prepare short annual reports according to a standardised template and to respond to two in-depth monitoring surveys (mid-term and final) to measure the progress and contribution to overall Co-fund Action aims of the Transnational Project;
* to provide the information on their Transnational Projects, including data on each participant and abstracts of the proposal, in a format specified by the Granting Authority, for publication and evaluation purposes;
* to follow the obligations of the Grant Agreement, especially

Avoiding conflict of interests (see article 12)

Confidentiality and security obligations (see article 13)

Ethics (see article 14)

Give visibility to the EU funding as appropriate (see article 17.2)

Respect specific rules for the action implementation (see article 18)

Information obligations (see article 19)

Record-keeping (see article 20);

* to ensure that the bodies mentioned in article 25 (e.g. Granting Authority, the European Court of Auditors (ECA), the European Anti-Fraud Office (OLAF)) have the right to carry out checks, reviews, audits and investigations on the final recipients, and in particular to audit the payments received. If access is denied by the final recipient, the costs will be rejected by the Granting Authority.
* A Beneficiary of a Transnational Project leaving the consortium shall refund to the Coordinator of the Transnational Project any payments it has received except the amount of contribution accepted by the Funding Organisation. In addition, a Beneficiary declared to be a Defaulting Party shall, within the limits specified in its Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Beneficiaries in order to perform the leaving Beneficiary’s task and necessary additional efforts to fulfil them as a consequence of the Beneficiary leaving the consortium.

# Results

For the avoidance of doubt, the term “Results” in this section refers to the Results generated by the consortium of the Co-fund Action and does not include the results generated by Transnational Projects.

## Ownership of Results

Results are owned by the Party that generates them.

## Joint ownership

Joint ownership is governed by article 16.4 of the Grant Agreement and its Annex 5, section “Ownership of results”, with the following additions:

Unless otherwise agreed:

* each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research and teaching activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s).
* each of the joint owners shall be entitled to otherwise Exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given:

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

(b) fair and reasonable compensation.

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

## Transfer of Results

###

Each Party may transfer ownership of its own Results, including its share in jointly owned Results, following the procedures of the article 16.4 of the Grant Agreement and its Annex 5, section “Transfer and licensing of results”, sub-section “Transfer of ownership”.

###

Each Party may identify specific third parties it intends to transfer the ownership of its Results to in Attachment 3 of this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to such a transfer to listed third parties according to article 16.4 of the Grant Agreement and its Annex 5, section “Transfer of licensing of results”, sub-section “Transfer of ownership”, third paragraph.

###

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 under the Consortium Agreement and the Grant Agreement will not be affected by such transfer. Any addition to Attachment 3 after signature of this Consortium Agreement requires a decision of the General Assembly.

###

The Parties recognise 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 at least 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.

###

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

## Dissemination

For the avoidance of doubt, the confidentiality obligations set out in section 11 apply to all dissemination activities described in 9.4 as far as Confidential Information is involved.

### Dissemination of own (including jointly owned) Results

During the Co-fund Action and for a period of one year after the end of the Co-fund Action, 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 17.4 of the Grant Agreement and its Annex 5, section “Dissemination”, 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 by written notice 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.

An objection is justified if

1. the protection of the objecting Party's Results or Background would be adversely affected, or
2. the objecting Party's legitimate interests in relation to its Results or Background would be significantly harmed, or
3. the proposed publication includes Confidential Information of the objecting Party.

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

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

The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted, provided that the objections of the objecting Party have been addressed.

### 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.

### 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.

### 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.

# Access Rights

For the avoidance of doubt, this section refers to the Access Rights of the consortium of the Co-fund Action and does not include the Background/Results of the Transnational Projects.

## Background included

In Attachment 1, the Parties have identified and agreed on the Background for the Co-fund Action 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.

Any Party may add additional own Background to Attachment 1 during the Co-fund Action provided they give 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.

## General Principles

Each Party shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts within the Co-fund Action do not knowingly infringe third party property rights.

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

Access Rights shall be free of any administrative transfer costs.

Access Rights are granted on a non-exclusive basis.

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

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.

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

## Access Rights for implementation

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

## Access Rights for Exploitation

### Access Rights to Results

 [Please choose one of the following options.]

**[Option 1:]**

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

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

**[Option 2:]**

Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on a royalty-free basis.

### Access Rights to Background

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

### Requests

A request for Access Rights may be made up to 12 months after the end of the Co-fund Action or, in the case of 10.7.2.1.2, after the termination of the requesting Party’s participation in the Co-fund Action.

## Access Rights for entities under the same control

Entities under the same control have Access Rights under the conditions of article 16.4 of the Grant Agreement and its Annex 5, section "Access rights to results and background”, sub-section “Access rights for entities under the same control”.

Such Access Rights must be requested by the entity under the same control 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 entity under the same control (listed in Attachment 4). Access Rights to an entity under the same control shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.

Entities under the same control which obtain Access Rights in return fulfil all confidentiality obligations accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such entities were Parties.

Access Rights may be refused to entities under the same control if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.

Access Rights granted to any entity under the same control are subject to the continuation of the Access Rights of the Party with whom it is under the same control, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an entity under the same control, any Access Rights granted to such former entity under the same control shall lapse.

Further arrangements with entities under the same control may be negotiated in separate agreements.

## Additional Access Rights

 [Please choose one of the following options.]

**[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.

**[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.

## Access Rights for Parties entering or leaving the consortium

### New Parties entering the consortium

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

### Parties leaving the consortium

#### Access Rights granted to a leaving Party

##### Defaulting Party

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

##### Non-defaulting Party

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

It may request Access Rights within the period of time specified in 10.4.3.

#### Access Rights to be granted by any leaving Party

Any Party leaving the Co-fund Action 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 Co-fund Action.

## Specific Provisions for Access Rights to Software

For the avoidance of doubt, the general provisions for Access Rights provided for in this section 10 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.

# Non-disclosure of information

##  Confidential Information

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 Co-fund Action 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”.

##  Approach

The Recipients hereby undertake in addition and without prejudice to any commitment on non-disclosure under the Grant Agreement, for a period of 5 years after the final payment of the Co-fund Action:

* 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 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 complies with the confidentiality obligations herein contained with respect to such copy.

##  Range

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

##  Exception

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 confidentiality to the Disclosing Party;
* the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
* the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
* 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 provisions in 11.7 hereunder.

##  Handling

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

##  Unauthorised disclosure

Each Recipient shall promptly inform the relevant Disclosing Party by written notice of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

##  Disclosure of Confidential Information for compliance with applicable laws and regulations

If any Recipient 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.

## Confidentiality in Transnational Projects

[If national rules are contradictory to the following paragraph, this paragraph should be adapted.]

The content of the proposals received under the Joint Call(s) is deemed to be confidential, except of the lists of applications and lists of Transnational Projects. This obligation shall survive the expiration or termination of the Consortium Agreement.

# Data management

Appropriate and secure use of materials and data of Transnational Projects will be enabled according to the application of common standards. Data management guidelines will be developed by the Executive Board in month xx and will be applied in the Joint Call(s). The collected data will be protected and secured, in order to avoid a malevolent use of it.

# Miscellaneous

## 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 9.3.2)
* Attachment 4 (Identified entities under the same control)
* Attachment 5 (NDA for External Expert Advisory Board agreed under section 6)
* Attachment 6 (List of Observing Partners)

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

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

## No representation, partnership or agency

Except as otherwise provided in 6.3.4.1, 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.

## Formal and written notices

Any notice to be given under this Consortium Agreement shall be addressed to the recipients as listed in the most current address list kept by the Coordinator. Any change of persons or contact details shall be immediately communicated to the Coordinator by written notice. The address list shall be accessible to all Parties.

Formal notices:

If it is required in this Consortium Agreement (4.2, 10.7.2.1.1, and 13.4) 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 with acknowledgement of receipt.

Written notice:

Where written notice is required by this Consortium Agreement, this is fulfilled also by other means of communication such as e-mail with acknowledgement of receipt.

## Assignment and amendments

Except as set out in 9.3, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties’ prior formal approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in 6.3.1.2 require a separate written agreement to be signed between all Parties.

## 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.

## Language

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

## Applicable law

[Belgian law is commonly used in Consortium Agreements. It is also used by DESCA.]

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

## Settlement of disputes

### Amicable solution within the consortium

The Parties shall endeavour to settle their disputes amicably.

 [Please choose one of the following options.]

**[Option 1: Coordinator and General Assembly]**

In case of a conflict of opinion which cannot be solved within the respective Consortium Body or between the respective Consortium Bodies, the Coordinator shall be approached for advice. He/She may decide to seek a decision of the General Assembly in order to come to a solution. If the Coordinator is involved in the conflict, Party xxx should take over this role.

 **[Option 2: Ad hoc commission]**

In case of a conflict of opinion which cannot be solved within the respective Consortium Body or between the respective Consortium Bodies, an impartial ad hoc commission shall be established by the General Assembly. Parties involved in the dispute cannot take part in the ad hoc commission to settle the dispute, but they may state their case to the ad hoc commission.

The ad hoc commission will proceed by vote. Each member of the ad hoc commission has one vote. A non-binding recommendation will be issued based on the agreement of a majority of two-thirds (2/3).

### Dispute resolution

Should the attempts to settle the dispute within the consortium fail to bring about a full agreement between the Parties, the Consortium will try to solve it through the following method of dispute resolution.

[Please choose one of the following options as appropriate method of dispute resolution. Within option 1, please further choose between 1.1 and 1.2.]

[Option 1: WIPO Mediation followed]

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.

[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 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.

The award of the arbitration will be final and binding upon the Parties.

[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.

[Option 3: Settlement by court litigation]

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled by the courts of Brussels.

# 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.

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

Signature(s)

Name(s)

Title(s)

Date

[It is recommended to insert a new page for each signature.]

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

Signature(s)

Name(s)

Title(s)

Date

...

Attachment 1: Background Included

According to article 16.1 of the Grant Agreement, 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 Co-fund Action. This is the purpose of this attachment.

PARTY 1

As to [OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT], it is agreed between the Parties that, to the best of their knowledge, [please choose one of the following options].

**[Option 1]**

the following Background is hereby identified and agreed upon for the Co-fund Action. Specific limitations and/or conditions, shall be as mentioned hereunder:

|  |  |  |
| --- | --- | --- |
| **Background description** | **Specific restrictions and/or conditions for implementation (article 16.4 of the Grant Agreement and its Annex 5, section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the Action”)** | **Specific restrictions and/or conditions for Exploitation (article 16.4 Grant Agreement and its Annex 5, section “Access rights to results and background”, sub-section “Access rights for exploiting the results”)** |
|  |  |  |
|  |  |  |

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

**[Option 2]**

no data, know-how or information of [OFFICIAL NAME OF THE PARTY AS IDENTIFIED IN THE GRANT AGREEMENT] is Needed by another Party for implementation of the Co-fund Action (article 16.1 of the Grant Agreement and its Annex 5, section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (article 16.1 of the Grant Agreement and its Annex 5, section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

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

[Same for PARTY 2, PARTY 3, etc]

Attachment 2: Accession document

ACCESSION

**of a new Party to**

**[ACRONYM OF THE CO-FUND ACTION] Consortium Agreement, version [X], [DATE]**

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE GRANT AGREEMENT]

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [DATE].

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT]

hereby certifies that the consortium has accepted in the meeting held on [DATE] the accession of [OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE GRANT AGREEMENT] to the consortium starting [DATE].

This accession document has been issued in two originals to be duly signed by the undersigned authorised representatives.

[DATE] [PLACE]

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE GRANT AGREEMENT]

Signature(s)

Name(s)

Title(s)

[DATE] [PLACE]

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE GRANT AGREEMENT]

Signature(s)

Name(s)

Title(s)

Attachment 3: List of third parties for simplified transfer according to Section 8.3.2.

[Option: Attachment 4: Identified entities under the same control according to Section 9.5]

[Option: Attachment 5: NDA for External Expert Advisory Board agreed under Section 6]

[Option: Attachment 6: List of Observing Partners]

[Option: MODULE IPR SC] Specific Software provisions for the Access Rights under section 9.8

[To use the following paragraphs it is recommended to do as follows: (1) Select all the flowing clauses, (2) use Ctrl+X to cut the text (it will be stored in a clipboard), (3) select all clauses in section 9.8, including that section header, and (4) use Ctrl+P to insert. Using this process preserves cross references. These may need to be refreshed/updated]

## Specific provisions for Access Rights to Software

### Definitions relating to Software

**“Application Programming Interface”(API)**

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 License Terms"**

Controllled License Terms means terms in any license 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:

1. (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;
2. that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
3. that a royalty-free license relating to the Work or Derivative Work be granted to any third party.

For the avoidance of doubt, any Software license that merely permits (but does not require any of the things mentioned in (a) to (c) is not under Controlled License Terms.

**“Object Code”**

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”**

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”**

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.

### General principles

For the avoidance of doubt, the general provisions for Access Rights provided for in this section 10 are applicable also to Software as far as not modified by this section 14.1.

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 introduction of Software under Controlled License Terms in the Co-fund Action requires the prior approval of the General Assembly to implement such introduction into the Consortium Plan.

[Option] In case of an [approved] introduction of Software under Controlled License Terms’ in the Co-fund Action, the Controlled License Terms shall prevail over any conflicting provisions of this Consortium Agreement for affected original and derivative Background and Results.

### Access to Software

Access Rights to Software that is Results shall comprise:

* Access Rights to the Object Code; and,
* where normal use of such an Object Code requires an API, Access Rights to the Object Code and such an API; and,
* if a Party can show that the execution of its tasks under the Co-fund Action or the Exploitation of its own Results is technically or legally impossible without Access Rights to the Source Code, Access Rights to the Source Code to the extent necessary.

Background shall only be provided in Object Code unless otherwise agreed between the Parties concerned.

### Software license and sublicensing rights

#### Object Code

##### 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 10.4, as far as Needed for the Exploitation of the Party’s own Results, comprise the right:

* to make an agreed 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 14.1.4.1.1, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in section 10.2.

##### 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.

##### 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.

#### **Source Code**

##### Results - Rights of a Party

Where, in accordance with section 14.1.3, 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 14.1.4.2.1, 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 10.2.

##### 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.

Further sublicensing of Source Code is explicitly excluded.

##### 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.

### Specific formalities

Each sublicense granted according to the provisions of section 14.1.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.

1. It is expected that the European Commission will act as the Granting Authority. [↑](#footnote-ref-2)