HOW TO PREPARE A CONSORTIUM AGREEMENT FOR PROJECTS FUNDED UNDER THE AAL PROGRAMME

(GUIDELINES)

Disclaimer

This guide aims at assisting participants in projects funded under the AAL Programme to identify issues that may arise during the project and which may be facilitated or governed by means of a Consortium Agreement. The Consortium Agreement may take time to negotiate and should be drafted carefully, taking into account the characteristics of each project.

The content of this guide is not binding and is provided for information and practical purposes only. It is not intended to replace consultation of any applicable legal sources or the necessary advice of a legal expert at the appropriate stage.

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Support services

In case of questions concerning call publication, proposal submission, evaluation and selection, please contact the **Central Management Unit of the AAL programmes (CMU).** Send email to: **cmu@aal-europe.eu**

In case of questions concerning negotiation, project funding (e.g. national funding rules) please contact **corresponding AAL National Contact Persons (AAL NCP). Find the list of corresponding AAL NCPs on: www.aal-europe.eu/aal-ncp**

In case of questions related to intellectual property contact the **European IPR Helpdesk**'s free of charge helpline service. Send email to **service@iprhelpdesk.eu**, call **+352 25 22 33-333**, send fax to +352 25 22 33-334 or visit our homepage: **www.iprhelpdesk.eu**

Table of contents

1 INTRODUCTION

This document provides a non-binding guidance to participants of projects funded under the Active and Assisted Living programme (AAL Programme). Its content is based on the experience and practice acquired during the funding activity under the AAL Programme which has been taking place so far.

The Ambient Assisted Living Association (AALA) with the collaboration of the European IPR Helpdesk has prepared this guide to highlight the main issues that should be approached by participants while preparing a Consortium Agreement (CA). Guidance regarding the Intellectual Property Rights (IPR) rules to be dealt with in projects funded under the AAL Programme is given and emphasis is also placed on essential issues as end-user involvement, the respectful of privacy rights of end-users and control of personal data.

Bear in mind that the examples proposed in the present guidelines exemplify only some of possible approaches and do not propose all alternatives for a given situation. For this reason, you do not have to follow them strictly. The shown examples should be, furthermore, adapted in order to suit specific features of each single project and correspond to the consortium members' necessities as well as to each relevant National Funding Body (NFB)'s intellectual property requirements.

The CA is an agreement made between project partners (consortium members) in a project funded under the AAL Programme to govern a number of legal issues that might arise during and after the implementation of a project. The CA is mandatory in the context of projects funded under the AAL Programme and should be signed by all the project partners before the start of the project. [I]

The AALA leaves the drafting of the CA to project consortia. Consortium members freely decide on its content which cannot, however, conflict with the provisions of:

- Decision No 554/2014/EU of the European Parliament and of the Council of 15 May 2014 on the participation of the Union in the Active and Assisted Living Research and Development Programme jointly undertaken by several Member States ("the Basic Act"),
- remaining EU legislation,
- Delegation Agreement No. 30-CE-0688218/00-46 with its Annex 1 "Description of entrusted tasks",
- corresponding bilateral agreements (administrative agreements) between the AALA and the corresponding national funding authorities (NFBs),
- corresponding calls for proposals together with their specifications (e.g. templates and guidelines for proposals),
- corresponding grant agreements (GAs) between NFBs and corresponding project partners

which, in case of doubt, always prevail.

[I] In accordance with Annex1 to Delegation Agreement No. 30-CE-0688218/00-46 "Description of entrusted tasks", "*a CA is mandatory and shall be signed by all the project partners before the start of the project*.

It should be furthermore mentioned, that in accordance with the stipulations of the Delegation Agreement the AAL Programme should follow the rules included in the provisions of EU Regulation 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)" and repealing EU Regulation 1906/2006. However, in accordance with a derogation provided for in the Delegation Agreement and in the Basic Act, the IPR provisions (art. 41 to 49) of the Horizon 2020 Rules for Participation will not apply and the IP rules applicable to each AAL project will be defined by each relevant NFB. Therefore, this skeleton agreement only provides for very general principles inspired from Horizon 2020, and each project consortium member must check these provisions with each of the relevant NFBs involved in the project, and ask them to confirm the conformity of such provisions to national rules, or to amend them accordingly.

Project partners shall address IPR, in particular, issues concerning protection of results, ownership of the results and access rights to background and results in details and with due care in their CA in order to avoid possible misunderstandings and/or conflicts during the execution of the project and/or in the later exploitation phase.

You may start your CA as proposed in the following example:

THIS CONSORTIUM AGREEMENT is based upon Decision No 554/2014/EU of the European Parliament and of the Council of 15 May 2014 on the participation of the Union in the Active and Assisted Living Research and Development Programme jointly undertaken by several Member States, hereinafter referred to as the Basic Act, Delegation Agreement No. <…> with its Annex 1 "Description of entrusted tasks", Call for Proposals <INDICATE CALL FOR PROPOSALS>, bilateral agreements between the AALA and <INSERT CORRESPONDING NFBs>, hereinafter referred to as Administrative Agreements, bilateral agreements between <INSERT CORRESPONDING NFBs> and <INSERT CORRESPONDING PROJECT PARTNERS>, hereinafter referred to as Grant Agreements and follows the general rules included in EU Regulation 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)" and repealing EU Regulation 1906/2006, hereinafter referred to as the Rules for Participation, and follows the intellectual property regimes laid out by <INSERT CORRESPONDING NFBs> and is made on <INSERT THE DATE>, hereinafter referred to as the Effective Date.

2 PARTIES / NAME OF THE PROJECT

- Identify all the participating parties to the CA and their official representatives.
- Enter the name of the project and its acronym.
- Summarise the context and the purpose of the CA.

Example:

THIS CONSORTIUM AGREEMENT IS CONCLUDED BETWEEN:

<OFFICIAL NAME OF THE COORDINATOR>,

<OFFICIAL NAME OF PARTY 2>,

<OFFICIAL NAME OF PARTY 3>,

<OFFICIAL NAME OF PARTY nr…>,

hereinafter, jointly or individually, referred to as the Parties or Party, relating to the project entitled

< NAME OF THE PROJECT>

known in short as

<ACRONYM>

hereinafter referred to as the Project

The Parties, having considerable experience in the field concerned, have submitted a Project proposal to participate in the Active and Assisted Living Programme under the funding scheme <SPECIFY THE CALL FOR PROPOSALS>*, and wish to specify or supplement binding commitments among themselves in addition to the provisions of the relevant Grant Agreements.*

THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

3 DEFINITIONS

Define the important terms used in the CA in order to avoid misunderstandings[II]. Words beginning with a capital letter shall have the meaning already defined either herein or, for example, in the Horizon 2020 Rules for Participation (RfP) (although the provisions of RfP do not prevail with regard to intellectual property, they can be used as a basis for terminology) or corresponding GAs. The examples shown are some that may be used. Depending on the specificities, needs and complexity of your project you may decide to include additional terms.

Some examples of useful definitions below:

Access Rights	*means rights to use Results or Background.*
Background	*means any data, know-how or information whatever its form or nature, tangible or intangible, including any rights such as intellectual property rights, which is: (i) held by the participants prior to their accession to the project; (ii) needed for carrying out the project of for exploiting the results of the project; and (iii) identified by the participants in any manner, in a written agreement.*
Dissemination	*means the public disclosure of the Results by any appropriate means (other than resulting from protecting or exploiting the Results); including by scientific publications in any medium.*
Exploitation	*means the (direct or indirect) use of Results in further research activities other than those covered by the project concerned, or in developing, creating and marketing a product or process, or in creating and providing a service, or in standardisation activities.*

[II] Definitions are important terms to be used in the CA in order to avoid misunderstandings in respect of the interpretation of provisions and commitments established therein.

Fair and reasonable conditions	*means appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access, for example the actual or potential value of the Results or Background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged.*
Grant Agreement	*means the contract between a Party and its National Funding Administration.*
Proposal	*means the Proposal for this project submitted to the call for proposals of the AAL Joint Programme, dated the* <DATE> *and being an integral part of this Consortium Agreement.*
Results	*means any tangible or intangible output of the project, such as data, knowledge or information, that is generated in the project, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights.*
Software	*means a set of instructions capable, when incorporated in a machine-readable medium, of causing a machine having information-processing capabilities to indicate, perform or achieve a particular function, task or result.*

4 PURPOSE

Mention here only the general purpose and the general targets, for example:

The purpose of this Consortium Agreement is to specify in respect of the Project the relationship between the Parties, in particular concerning the organisation of the work between the Parties, the management of the Project and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.

Organisation of the work and distribution of tasks can be mentioned generally under a specific section of the CA. It is also convenient to attach the detailed work plan as an Annex to the CA in order to facilitate future updating according to the performance of the project.

Furthermore, the CA should include conflict resolution procedures/mechanisms to be invoked if and when necessary.

5 MANAGERIAL PROVISIONS

Describe the provisions dealing with the governance of the project/internal organisation of the consortium (e.g. management bodies, committees, working groups, tasks and the decision making process, preparation and organisation of meetings, etc.).

You should at least:

- establish an ultimate decision-making body of the consortium (which may be called the general assembly, steering committee, management committee, etc.) and define its roles and responsibilities;

- establish a supervisory body for the execution of the project and define its roles and responsibilities;
- you may also establish a separate responsible in charge of IP management in the consortium as well as other specialised management bodies – define their roles and responsibilities;
- map competences (functions and responsibilities) of the project coordinator;
- describe reporting, quality control and deliverables monitoring procedures;
- describe the decision making process;
- describe the conflict resolution procedure.

The governance should give clear responsibilities to different consortium bodies in order to avoid any abuse of power.

Explanation of detailed functions and procedures can be attached as an Annex.

6 FINANCIAL PROVISIONS

It is recommended to prepare the financial plan in a separate attachment and append it to your consortium agreement. Describe in detail the financial plan, including for example:

- a detailed estimate of the total cost per party and overall total;
- the expected financial contribution from the corresponding NFBs to each project partner (subject to the GAs between each project partner and the corresponding NFB);
- each project partner's own contribution (if applicable);
- external third party resources (if applicable);
- an expenses and financing plan;

You can, furthermore, deal with mutual payments and common costs of more than one project partner. Under certain circumstances, two or more project partners may incur common expenses. It is desirable to provide for the procedure governing the payment of this type of expense by each project partner in the CA (as well as methods of reimbursement, terms of payment, currency).

Describe as well the provisions concerning the costs related to the management of the project (costs of the administrative and financial management of the consortium)

You can use the following example:

The financial provisions concerning this Consortium including the Financial Plan are subject to the Attachment <NUMBER>.

7 IPR, DISSEMINATION AND EXPLOITATION

Describe provisions on IPR, exploitation and dissemination in your CA. The basic principle applied in drafting this section is to provide a flexible and efficient mechanism to support the cooperation between the project partners, to encourage the protection and maximum exploitation of results, as well as to ensure swift dissemination thereof. The CA should state a set of rules/procedures to ensure fair protection for the IPR interests of the project partners and

partners' employees (e.g. conditions/limitations on the ability of individual consortium partners to freely publish or profit from project results directly covered by other partners' IPR).

Please note:

The intellectual property provisions we have suggested in this Guide and in the corresponding CA skeleton are model ones inspired from the rules applicable in Horizon 2020. In AAL projects however, NFBs' intellectual property rules will prevail and for this reason it is essential that each project partner checks the compatibility of this section with their respective NFB and the rules applied by each of these NFBs, in particular any specific rules included in the Grant Agreements. In case the relevant NFBs involved in your project request the application of different rules and principles than those proposed hereunder, the NFBs' rules will have to be implemented.

7.1 RESULTS

Results means any tangible or intangible output of the project, such as data, knowledge or information, that is generated in the project, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights.

Results include the tangible (prototypes, microorganisms, source code, etc.) and intangible (intellectual work, valuable business information, skills, abilities and scientific or industrial methods or applications processes developed) project output. Results generated outside a project (sometimes described as "sideground") are not numbered among results.

7.1.1 OWNERSHIP OF RESULTS

7.1.1.1 GENERAL RULES[III]

- Results resulting from the project are owned by the project partner generating them.
- When results are generated jointly (and the respective share cannot be ascertained) the ownership is also joint, unless the project partners concerned agree on a different solution.

It is recommended that all the project partners maintain evidence showing the development of the generation of their results in order to be able to prove their ownership and the date of their generation. It might be useful in order to avoid or resolve conflicts between project partners about the origin of the results. For that reason you may use any means of recording data in order to be able to prove the work that has been done and its results. Keep hard copies or laboratory notebooks in order to maintain evidence about the dates of the experiments, obtainment of results, etc. If possible, use data management processes and/or systems.

It is also recommended to appoint a specific management body or person (such as an IPR manager) in charge of monitoring the creation of results.

Additionally, in order to be able to meet their contractual obligations resulting from the CA, participants should reach an agreement with their employees and

[III] These so-called "general rules" are the ones usually applying in Horizon 2020.

other personnel as soon as the latter may be entitled to claim rights to results (subcontractors, researchers, end-users actively involved in the project etc.). Such agreements may include a formal transfer of ownership or granting of appropriate access rights with a right to sublicense. This seems to be especially important in the case of the applicable laws of those countries which have a specific type of "professor's privilege" regime.

"The IP systems in the EU currently vary between Member States which maintain a system of professor's privilege (inventor ownership) and those which maintain a system of institutional ownership. (…) *"Professor's privilege" is the concept that the results of publicly-funded research created or developed by researchers, e.g. professors, are owned by that researcher and not the academic institution where the research is carried out.* (…) Currently, professor's privilege regime rules in Sweden and Italy. In Italy it applies to all employees and may extend to professionals involved in a research project (e.g. consultants, third parties). Researchers are entitled to rights deriving from patentable inventions. Concerning other IPR, exploitation rights in works created under a contractual relationship are governed by the relevant contract. Universities and public institutions are entitled to a portion of the profits deriving from the exploitation of the invention and can establish the consideration for granting a third party licence to use the invention. *"In Sweden "professor's privilege" applies to all teachers, postgraduates and doctoral candidates"*. Researchers are entitled to all rights in patentable inventions. In respect of copyright, "professor's privilege" operates in Sweden as a custom not statute"[IV].

7.1.1.2 JOINT OWNERSHIP OF RESULTS

In case of joint ownership, the joint owners shall establish an agreement regarding the allocation and terms of exercise of that joint ownership. Joint owners may do it by incorporating appropriate provision in their CA regarding joint ownership or entering into an additional joint ownership agreement. In the absence of such an agreement, it is important to be able to rely on a default joint ownership regime – and therefore to include one in your CA. The joint owners may also agree not to continue with joint ownership but decide on an alternative regime (see the table below).

SUMMARY:

DEFAULT JOINT OWNERSHIP	JOINT OWNERSHIP AGREEMENT (recommended)
Default ownership is applicable in the absence of a specific agreement between the project partners.	The joint owners have the entire freedom to agree among themselves on alternative regimes of the allocation and terms of exercise of the joint ownership. REMARK: some particular configurations of the joint ownership regime may lead to

[IV] cp. P. van Eecke, J. Kelly, P. Bolger, M. Truyens "Monitoring and analysing of technology transfer and intellectual property regimes and their use", pgs. 43 – 94

	potential problems concerning Indirect State Aid within the meaning of Community Framework for State Aid for Research and Development and Innovation C(2014)3282, and thus, affect eligible costs of respective project. We strongly recommend you to consult your corresponding NCP about potential consequences of specific provisions for the project and its participants before setting joint ownership regime of your CA. General provisions regarding the allocation and terms of exercise of the joint ownership can be included directly within the CA. Nevertheless, it is quite recommended that specific provisions and rules of joint ownership be subject to a separate agreement, according to the nature or type of each of the results concerned.
Default regime inspired from Article 41.2 RfP: Where no joint ownership agreement has been concluded regarding the allocation and terms of exercising that joint ownership, each of the joint owners shall be entitled to grant non-exclusive licences to third parties, without any right to sublicense subject to the following conditions: (a) prior notice must be given to the other joint owners; (b) fair and reasonable compensation must be provided to the other joint owners. In case you opt for this default regime, you may add this statement in your CA: *"Where no joint ownership agreement has yet been concluded, each of the joint owners shall be entitled to exploit their jointly owned results as it considers suitable.* *Each of the joint owners shall, furthermore, be entitled to grant non-exclusive licences to third parties, without any right to sublicense, subject to the following conditions:* *- at least <NUMBER> days prior notice must be given to the other joint owner(s);*	If the joint ownership is maintained, its allocation, terms of exercising and management can be agreed already in your CA, although concluding a separate joint ownership agreement is often advisable. Do not forget to: • identify the joint owners as well as the object of the joint ownership; • assign the shares of the joint ownership (they can be equally split among all joint owners or proportionate to their contributions); • set rules for the protection, such as e.g. sharing of the costs arising from legal protection procedures (when and how to protect, who bears the costs for protection/enforcement, such as patent filling/examination fees, infringement actions); protection costs are normally covered by all joint owners, unless otherwise agreed; • establish the obligation of the join owners to report any IPR infringements and appoint a responsible for taking action against infringers;

- fair and reasonable compensation must be provided to the other joint owner(s).	• determine whether and under what conditions each join owner is allowed to apply the common results in research work carried out with third parties (joint owners could be required to inform each other of such plans and sign confidentiality agreements); • set rules for exploitation and licensing by the joint owners; if necessary, set regulation concerning specified limits and/or profit sharing; the possibility of licensing may be also totally restricted (e.g. licensing only upon agreement of all joint owners) or subject to certain conditions; • establish a form of territorial division (if applicable); • establish a form of division of exploitation markets (if applicable); • determine whether and under what conditions each joint owner may transfer its share to third parties (the rest of the joint owners could e.g. reserve the right to be informed of any such plans / be given a first refusal right); • finally, it is recommended to redirect the negotiation and creation of more specific rules concerning joint ownership of specific results to further separate agreements: *Further arrangements concerning joint ownership, including its shares, protection measures, distribution of responsibilities, costs and profit sharing, territorial division and possibilities of transfer will be negotiated separately and be subject to separate agreements.*
	Project partners may also agree not to continue with joint ownership and decide on an alternative regime, in the CA (e.g. a single owner with access rights for the other project partners that transferred their ownership share) or at a later stage (by way of

	subsequent transfer agreements).

7.1.2 PROTECTION OF RESULTS

In this part you should indicate how the project's results will be protected (type of protection, duration, etc.).

You should also identify the partner(s) (usually the owner) responsible for such protection and, if applicable, identify a management body (such as an IPR manager) in charge of monitoring the parties' progress towards the protection of results.

In accordance with rules usually applicable in EU-funded projects such as Horizon 2020 (see for instance Article 42 RfP), valuable results (capable of industrial or commercial application) should be protected. Protection is not mandatory in all cases, though the decision to leave results without protection should preferably be made in consultation with the other project partners, which may wish to overtake ownership.

Results should be, furthermore, protected in an adequate and effective manner in conformity with the relevant legal provisions, having due regard to the legitimate interests of all project partners.

You may use the following example as a start, and complement it with details according to the type of results and protection mechanisms envisioned:

Results that are capable of, or may reasonably be expected to be capable of industrial or commercial application, shall be protected by adequate and effective means by their owner having due regard to its legitimate interests and to the legitimate interests of the other Parties, particularly those commercial.

Where a Party which is not owner of the results invokes its legitimate interest, it must, in any given instance, show that it would suffer disproportionately great harm.

Furthermore, although a Party does not have to formally consult the other Parties before deciding to protect or not to protect a specific part of the results it owns, they should preferably be informed, so that they can be in position to express and substantiate possible legitimate interests. They should also preferably be informed after protective measures have been taken. These issues may be covered in detail within your CA. For instance, it may be useful to set up a procedure in your CA, according to which all partners could be informed of a protection decision and would be given the opportunity to express concerns linked to the protection of their own legitimate interests.

7.1.3 TRANSFER OF RESULTS

You may draw up rules concerning the transfer of ownership of the results, for instance on the basis of article 44 RfP (still provided that such rules are in accordance with the rules laid down by each NFB involved in your project and/or each relevant Grant Agreement).

According to article 44 RfP, transfers of ownership of results are allowed, and yet the obligations regarding those results must be passed on to the transferee. This is the principle we have included in the skeleton consortium agreement.

In case the ownership is transferred, the assignor should conclude appropriate arrangements to ensure that its contractual obligations with respect to dissemination, exploitation, and the granting of access rights are passed on to the new owner (as well as by the latter to any subsequent assignee).

Furthermore, prior notice about the intent of transfer should be given to the other project partners together with sufficient information concerning the new owner of the results to permit them to exercise their access rights.

Objections to the intended transfer may only be raised if such transfer would adversely affect the objecting project partner's access rights. If such an effect is demonstrated, the intended transfer will not take place until an arrangement has been reached (the mere fact that the results concerned would be transferred to a competitor should not in itself be a valid reason for an objection).

The participants may, furthermore, agree in advance that no prior notification is required with regard to specially identified third parties (e.g. mother companies, affiliates, etc.). Such third parties can be listed in an attachment to your CA. Once such a global authorisation has been provided, the authorised participant no longer has to give prior notice to the other project partners of each individual transfer and therefore the latter will no longer have the possibility to object. Before agreeing to such an exemption, you should carefully examine the situation, in particular, the identity of the third party concerned to determine if their access rights could be properly exercised in case the transfer takes place.

Transfer of ownership of results can take place explicitly but may also arise in the aftermath of a take-over, the merger of two companies, etc. However, in this case, legal confidentiality constraints (relating for example to mergers and acquisitions) prevail, and may for instance justify that the other participants are only informed ex-post about the transfer, instead of being notified ex-ante, in order to comply in particular with legislation relating to mergers and acquisitions.

You may formulate the section Transfer of Results of your CA as proposed in the following example:

Each Party may transfer ownership of its own results to any legal entity, subject to the following conditions:

Where a Party transfers ownership of results, it shall pass on its obligations regarding those results to the assignee, including the obligation to pass them on to any subsequent assignee.

Subject to its obligations concerning confidentiality, as in the context of a merger or an acquisition of a large part of its assets, where a Party is required to pass on its obligations to provide access rights, it shall give at least <NUMBER> days prior notice to the other parties of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the results to permit the other Parties to exercise their access rights.

Following notification in accordance with the previous paragraph, any other Party may object within <NUMBER> days of the notification or within a different time-limit agreed in writing between all Parties, to any envisaged transfer of ownership on the grounds that it would adversely affect its access rights.

Where any of the other Parties demonstrate that their access rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between the Parties concerned.

Each Party may, however, identify specific third parties to whom it can potentially transfer the ownership of itsrResults in Attachment <NUMBER> to this Consortium Agreement. The other Parties thereby waive their right to object to a transfer to the listed third parties.

Modifications to Attachment <NUMBER> after signature of this Agreement requires an acceptance of the <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM>.

7.1.4 DISSEMINATION

Each project partner shall ensure that the results that it owns are disseminated as swiftly as possible, provided that such dissemination complies with the requirements set forth by the relevant NFBs.

Please note that notwithstanding the above, all dissemination activities carried out by way of scientific publications must in any case be made in accordance with the Open Access principle. To read more about Open Access, please visit the OpenAIRE website - the OpenAIRE initiative (Open Access Infrastructure for Research in Europe) aims to support the implementation of the Open Access policies of the European Commission and the European Research Council. In order to visit their website, please follow this link: https://www.openaire.eu/

The principles linked to dissemination included in our skeleton CA are, once again, inspired from those which normally apply in EU-funded projects. In particular:

Prior notice of any dissemination activity shall be given to the other project partners concerned.

The other project partners may object to the dissemination activity if their legitimate interests in relation to their results or background could suffer disproportionately great harm.

An objection is justified if:

- the objecting participant's legitimate interests (e.g. academic, commercial) are compromised by the publication; or
- the protection of the objecting participant's results or background is adversely affected.

We would therefore recommend setting up detailed notice/ information and objection procedures in your CA.

The rules mentioned only apply to dissemination activities of a partner's own results. Where results of another project partner are meant to be published, appropriate rules shall be established by the project partners and introduced in the CA (a written approval of the affected project partner could be one of the suitable options in this case).

Any dissemination (e.g. publications in either printed or electronic formats) should be delayed until a decision about its possible protection has been made through IPR or other legal means (e.g. protection as trade secrets). If you do not do so, any disclosure to a person who is not bound by secrecy of confidentiality obligations, prior to filing for protection, may for example invalidate any subsequent patent application.

It is therefore recommended that confidentiality obligations (additional to those mentioned in Article 3 RfP) be detailed in your consortium agreement. Any data which remains secret should be clearly labelled as confidential and appropriate measures should be taken by the other participants to maintain confidentiality, even after the end of the project.

You may formulate the section "DISSEMINATION" of your CA on the model of the following example:

Each Party shall ensure that the Results of which it has ownership are disseminated as swiftly as possible.

Dissemination activities shall be compatible with intellectual property rights, confidentiality, and the legitimate interests of the owner of the Results, as well as with the rules on dissemination applied by each Party's respective NFB.

The dissemination of scientific publications shall be made in accordance with the principle of Open Access, as set out in Article 18 of Regulation (EU) No 1291/2013.

At least <NUMBER> days prior notice of any dissemination activity shall be given to the other Parties concerned, including sufficient information concerning the planned dissemination activity and the data envisaged to be disseminated.

Following notification, any of those Parties may object within <NUMBER> days of the notification to the envisaged dissemination activity if it considers that its legitimate interests in relation to its Results or Background could suffer disproportionately great harm.

The objection should include reasonable proof that the Party's interests in relation to its Results or Background could suffer disproportionately great harm and a precise request for necessary modifications. In such cases, the dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests. However, if no justified objection is made within the time limit stated above, it shall be understood that the publication is allowed.

Parties may agree in writing on different time-limits to those set out above, which may include a deadline for determining the appropriate steps to be taken.

It is now advisable to set up a regime regarding conflict solutions in case of a hypothetical objection. Your CA may e.g. provide for an obligatory discussion between

the project partner who tries to disseminate and the one who claims to be affected by this activity (and the principles of such discussion). Find below an example:

In case of objection, the Parties involved should make their best endeavours to discuss how to overcome the matters raised in the objection on a timely basis.

If a dispute regarding a dissemination activity cannot be settled amicably within <NUMBER> days following the first submission of the proposed dissemination activity, <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM> shall decide how to resolve the conflict.

Furthermore, where results of another project partner are meant to be published, appropriate rules shall be established. Find below two different examples:

No Party shall disseminate the Results of another Party, even if such Results are linked to its own Results, unless the other Party previously approves of such an activity in writing.

or

For the avoidance of doubt, the rules applicable for the dissemination activities of the Party's own Results apply as well for the dissemination of another Party's Results.

Do not forget, furthermore, to establish such rules for publication as validation process, use of logos, publicity obligations, content standards of publications, etc.

7.1.5 EXPLOITATION

The project partners should exploit the results which they own, or ensure that they are exploited. You can exploit the results directly or indirectly in further research activities other than those covered by the project, or by developing, creating and marketing a product or process, or by creating and providing a service, or in standardisation activities.

Direct use is done by the project partner owning the results while indirect use is made by other participants or third parties e.g. through licensing.

Do not forget, that when ownership of results is transferred, one of the obligations to be passed on to the transferee is the obligation to exploit the results concerned.

You may use the following example:

The Parties shall exploit the Results which they own or ensure that they are exploited.

Besides this sentence, you may also include in your CA more details about exploitation routes and/or strategies already known by the partners at the time of signature of the CA – you may also refer to future exploitation agreements or to exploitation structures (e.g. joint venture) to be created at later stages.

7.2 ACCESS RIGHTS

Project partners usually do not start their projects from scratch. They join the projects with their own knowledge, data, etc., that are protected or not by the IPR. In the terminology of the research projects this input is called "background". In addition, the project itself will generate new knowledge, data, etc. In the terminology of the research projects this output is called "results", as already described in this document.

Some elements of the background may have to be shared with other project partners in order to implement the project. Also results, in some cases, may be exploitable only with background or with results of certain project partners. Access to background and/or results of each project partner may imply certain legal issues from the point of view of IPR and is crucial for the smooth functioning of the research projects.

Access rights mean, thus, rights to use the results or background owned by another participant in the project.

The provisions of Articles 45-49 RfP concerning access rights to results and background have been used in this guidance document to set up similar rules. These rules have been used as standard, minimum rules which should be checked with each relevant NFB and should not contradict your Grant Agreement.

In your CA, however, and still subject to compliance with your national rules, you may establish additional access rights (e.g. to sideground, to all results and not only to those which are needed to implement the project/exploit your own results) or access rights on more favourable conditions.

Bear in mind, that under RfP access rights to another participant's background or results shall only be granted if the requesting participant NEEDS that access in order to carry out the project or to exploit its own results. This is a balanced approach we have chosen to keep in this guidance document. Please remember that wider access rights may be freely negotiated and set in your CA.

No universal rules can be established, and thus, assessing whether or not access rights are needed shall take place on your case basis, with all due care and in good faith. You should agree in your CA on the interpretation of the "need to" requirement.

7.2.1 BACKGROUND COVERED

The participants may define accurately which background is needed for the purposes of the project. Furthermore, where appropriate, they may exclude specific background from the obligation to grant access. You may freely define in any manner what background should be included in your CA, and identify it in writing. Below are shown two options on handling background to be included in the project:

Positive list	**Exclusion of background**
Only the background defined in the CA may be subject to access rights for other project partners. All other background is, thus, excluded from the access. This approach has the advantage of clearly identifying which background is available for access by the other project partners. Consortium members should identify background they need precisely and make sure that the list is complete. In case some essential background is missing it may lead to deadlocks in the workflow during the implementation phase.	Background defined in the CA is explicitly excluded from the access. Adequately, background not listed in the CA may be subject to access rights of other project partners (provided that it is needed). While preparing the negative list, make sure that necessary background is not excluded by error.
Example: *The Parties define in the Attachment <NUMBER> the Background which may be subject to Access Rights of other Parties.* *For the avoidance of doubt, all Background not listed in Attachment <NUMBER> shall be, accordingly, excluded from Access Rights.* You may, furthermore, set rules regarding expansion / limitation of the positive list in the CA, for example: *The Party which owns the Background may at any time expand the existing list by adding further Background to the Attachment <NUMBER>.* *However, any limitation to Attachment <NUMBER> after signature of this Agreement requires an acceptance of the <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM>.*	Example: *If Parties want to define specific Background as excluded from Access Rights they should list it in Attachment <NUMBER >.* *For the avoidance of doubt, all Background not listed in Attachment <NUMBER > shall be available for the granting of Access Rights in accordance with the provisions of this Consortium Agreement.* You may, furthermore, set rules regarding expansion / limitation of the negative list in the CA, for example: *The Party which owns the Background may at any time limit the existing list by removing Background from the Attachment <NUMBER>.* *However, any expansion to Attachment <NUMBER> after signature of this Agreement requires an acceptance of the <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM>.*

7.2.2 GENERAL PRINCIPLES

We advise you to follow the examples and to specify the aspects mentioned here in your CA:

All requests for Access Rights shall be made in writing.

The granting of Access Rights might 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.

Without prejudice to their obligations regarding the granting of Access Rights, Parties shall inform each other as soon as possible of any limitation to the granting of Access Rights to Background, or of any other restriction which might substantially affect the granting of Access Rights.

Exclusive licenses for specific Results or Background may be granted, but shall be subject to written confirmation by all the other Parties that they waive their Access Rights thereto. [You may include here, in your CA, the procedure to follow in order for a party to waive its access rights].

Unless otherwise agreed by the owner of the Results or Background, Access Rights shall confer no entitlement to grant sub-licenses.

Project partners may, however, decide between them to permit full or partial sublicensing and include appropriate provisions in the CA.

Without prejudice to the previous paragraphs, any agreement providing Access Rights to Results or Background to Parties or third parties shall be such as to ensure that potential Access Rights for other Parties are maintained.

7.2.3 ACCESS RIGHTS FOR IMPLEMENTATION

Access rights may be requested by any project partner if it needs them for carrying out its own work under the project, until the end of the project.

The premature termination of participation of a partner in a project shall in no way affect the obligation of that participant to grant access rights to the remaining partners in the same project.

In our proposed clauses, written on the basis of the RfP, access rights to background for implementing the project will be granted on a royalty-free basis, unless otherwise agreed before the start of the project. If you decide on another solution, it is advisable to avoid leaving the conditions of such access rights totally open, so as to avoid unforeseen circumstances arising later. You should cover these aspects in your CA.

In our proposed clauses, and still on the basis of the RfP, access rights to results for implementing the project MUST be granted on a royalty-free basis.

Use the following template:

Access Rights to Results Needed for the performance of the own work of a Party under the Project must be granted on a royalty-free basis.

Access Rights to Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed before the start of the project.

7.2.4 ACCESS RIGHTS FOR EXPLOITATION

7.2.4.1 GENERAL PRINCIPLES

Access rights for exploitation purposes (research or commercial exploitation) may be requested by a participant only if it needs them to exploit its own results arising from the project. In all other situations, appropriate access rights may be freely negotiated, but there is no requirement to grant them (please specify it in your CA!).

Access rights for exploitation may be granted either on a royalty-free basis or on fair and reasonable conditions to be agreed as well as a combination of both (please specify it in your CA!). For instance, partners can provide in their CA that access rights for exploitation will have to be granted on a royalty-free basis if they are needed for the purposes of further, non-commercial research, but will have to be granted on fair and reasonable conditions if they are needed for the purposes of commercial exploitation.

Additional or more favourable access rights may be always agreed in your CA.

Participants which remain in the project up to its end, as well as participants leaving the project before its end, can request access rights for exploitation, and may be requested to grant such access rights, until one year after the end of the project, unless a different period (shorter or longer) is agreed (it is e.g. a common practice to deprive defaulting parties of access rights for exploitation already at the moment of their expulsion of the consortium). The duration for which access rights for exploitation will be granted has to be negotiated on a case by case basis or should be specified in your CA!

Establish your "ACCESS RIGHTS FOR EXPLOITATION" regime according to the participants' necessities or the common consent of all participants. A basic template below (complete it according to your necessities):

Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on <A ROYALTY-FREE BASIS / ON FAIR AND REASONABLE CONDITIONS>.

Access Rights to Background if Needed for Exploitation of a Party's own Results shall be granted on <A ROYALTY-FREE BASIS / ON FAIR AND REASONABLE CONDITIONS>.

A request for Access Rights may be made up to <NUMBER OF MONTHS> after the end of the Project, or after the termination of the requesting Party's participation in the Project.

7.2.4.2 ACCESS RIGHTS FOR AFFILIATES

You can decide in your CA to grant certain access rights to affiliated entities established in a member state or associated country. Any such affiliate of a participant enjoys access

rights to results or background of another participant, provided that it needs them in order to exploit the results of the project partner to which it is affiliated.

You may also decide to grant broader or more favourable access rights to affiliates. For example, project partners can agree in their consortium agreement to attach a right to sublicense to such access rights, or to grant access rights to affiliates other than those mentioned above.

You should provide for arrangements regarding access rights for affiliated entities in your CA (including any notification arrangements).

You may also exclude such access rights for these affiliates by inserting a provision to this effect in your CA.

In case you decide to exclude access rights for the affiliates in your CA, you may follow the example below:	In case you decide to include access rights for the affiliates in your CA based on the option which is foreseen in RfP, you may follow the example below. Do not forget to adjust it to your special needs or the arrangements between the consortium members:
According to this Consortium Agreement, no grant of Access Rights to affiliated entities is foreseen.	<u>Standard option (access rights for affiliated entities established in a member state or associated country + access rights are needed):</u> *An Affiliated entity established in a Member State or associated country shall also enjoy Access Rights to Results or Background for exploitation purposes, if those Results and Background are needed to exploit the Results generated by the participant to which it is affiliated.* *Such Access Rights will be granted on <A ROYALTY-FREE BASIS or ON FAIR AND REASONABLE CONDITIONS>.* *Further arrangements with Affiliated Entities may be negotiated in separate agreements.* <u>Alternative options:</u> Set and insert in CA your own specific provisions with regard to access rights for affiliates: - access rights for affiliated entities established in a member state or associated country / access rights for

	affiliated entities established outside member states or associated countries (you should, however, discuss the applicability of this alternative option with the AAL CMU/relevant NFAs first); - access rights for affiliates on standard / limited / more favourable conditions (specify and introduce the details), - access rights only if needed by the affiliate to exploit the results of the beneficiary to which it is affiliated / or access rights also if not needed. - such access rights to affiliated entities shall be granted on fair and reasonable conditions / on a royalty-free basis / other; - rules relating to the termination of the status of affiliate (would access rights cease immediately or be renegotiated); - rules regarding consequences of termination of access rights for an affiliate (e.g. do they automatically terminate upon termination of the access rights granted to the project participant to which it is affiliated). You may also leave an open clause in your CA by stating: *Further arrangements with affiliated entities should be negotiated separately and be subject to separate agreements.*

7.2.5 ADDITIONAL ACCESS RIGHTS

Possible additional access rights to be established in your CA:

- to results or background not needed for the project;

- to "sideground" (the output which is generated by a project partner during the project's lifetime but outside of the project, and which is not needed for undertaking and completing the project or the exploitation of results).

You may leave here an open clause:

Grant of additional Access Rights to those covered by this Consortium Agreement may be negotiated [DISCRETIONARILY OR IN GOOD FAITH] separately and be subject to separate agreements.

7.2.6 ACCESS RIGHTS CONCERNING PROJECT PARTNERS LEAVING THE CONSORTIUM

Start with the following sentence (about access rights to be granted by any leaving project partner to remaining project partners):

The termination of the participation of a Party shall in no way affect the obligation of the Party to grant Access Rights to the remaining Parties in the same Project.

You may, furthermore, create one unique regime concerning access rights that have to be granted to a leaving project partner by remaining project partners. However, it is advisable to distinguish two different situations and, accordingly, create two different regimes: one general - for non-defaulting project partners, and a special one – for defaulting project partners (example below):

A Party leaving the Consortium shall have Access Rights to the Results developed until the date of the termination of its participation. The period of time to request Access Rights should be the same as the one set in section "ACCESS RIGHTS FOR EXPLOITATION".

However, in case of a Defaulting Party, Access Rights granted to it shall cease and its right to request Access Rights shall end immediately at the moment of decision of <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM> to terminate the Defaulting Party's participation in the Consortium.

For the sake of clarity, Defaulting Party according to this Consortium Agreement means a Party which <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM> has identified to be responsible of Irregularity provoked by non-compliance of provisions of this Consortium Agreement.

7.2.7 SPECIFIC PROVISIONS FOR ACCESS RIGHTS TO SOFTWARE

The general provisions for access rights are, in principle, applicable also for software. However, bearing in mind the essential characteristics of software and possible specific requirements linked to the respective projects, new legal problems for the project partners may appear. It is, therefore, advisable to specify certain issues regarding access rights to software in your CA. You may start with the following clause:

All provisions concerning Access Rights in this Consortium Agreement apply as well to Software. However, in case of inconsistency provisions of this section should prevail.

Do not forget to define the important terms relating to software used in the CA in order to avoid misunderstandings. Some examples below:

***Object Code** means the code produced by a compiler from the Source Code, usually in the form of machine language that a computer can execute directly.*

***Source Code** means the code written by a programmer in a high-level language and readable by people but not computers; Source Code must be converted to Object Code or machine language by a compiler before a computer can read or execute the program.*

Application Programming Interface *is a particular set of rules and specifications that Software programs can follow to communicate with each other; it serves as an interface between different Software programs and facilitates their interaction, similar to the way the user interface facilitates interaction between humans and computers.*

Then, you should identify the relevant rules concerning access rights to software in your CA. They shall be customised based on the circumstances of each project.

Determine what components of software should comprise access rights:

- access to object code
- access to API – not always obligatory (but necessary e.g. in cases when the use of object code is technically/legally not possible without access to API), define under which circumstances and in what range;
- access to source code – not always obligatory (but necessary e.g. in cases when the use of object code is technically/legally not possible without access to source code), define under which circumstances and in what range).

You should, furthermore, create a regime of licensing and (eventually) sub-licensing of software (Has the project partner with access rights to object code/API/source code right to make copies, distribute or sell such object code/API/source code? Under what conditions is it possible? Does it have right to grant sub-licenses? When and under which circumstances it is possible?)

In case software is a core element in your project it is strongly recommendable to prepare this subsection with the help or after preliminary consultation with a legal practitioner experienced in IT issues.

8 NON-DISCLOSURE OF INFORMATION / CONFIDENTIALITY / PRIVACY

8.1 GENERAL PROVISIONS

In the proposal phase potential participants develop appropriate ideas for joint research and development activities. Participants should know what knowledge they each bring, what they may need from others, what the state of the art is in the field of the project and should develop a strategy on protection, exploitation and dissemination of the future results. Such activities require discussions, exchange of information and ideas between the parties. Exchanging information with other parties is, thus, a necessity when planning a project proposal.

It seems, thus, necessary for you to create a confidentiality regime according to the necessities of your Consortium.

A preliminary agreement including a confidentiality clause for all information (unprotected know-how, e.g. your ideas) exchanged during negotiations at the proposal stage and during the performance of the future project is strongly recommended. In order to obtain protection on the mentioned information/data, a confidentiality agreement should be signed before entering project negotiations (such confidentiality agreement might be at a later stage incorporated into the future CA or at least constitute a basis for its confidentiality section). The purpose of such confidentiality agreements is to guarantee a party that information that is about to be made available to another party will not be used or revealed to third parties without its consent.

Furthermore, confidentiality clauses should always be found in your CA (which is usually negotiated and concluded subsequently). They should develop the general confidentiality obligation established in Article 3 RfP: (…) "*any data, knowledge and information communicated as confidential […] shall be kept confidential"*.

Participants should establish confidentiality obligations adjusted to their necessities. Take especially into consideration:

- what information is considered confidential (scope/exceptions);
- what steps/procedures must be undertaken in order to mark and transfer confidential information;
- to whom the confidential information may be divulged and under which conditions;

Furthermore, you can include penalties for misuse or unauthorised disclosure and set a definite or indefinite period after the termination of the project during which the confidential information has to be kept confidential.

Crucial information or data should be revealed to the remaining participants only under terms of confidentiality established in such confidentiality agreements in order to protect your know-how or ideas. Otherwise, the information might be freely usable by the other parties, regardless of whether you have agreed on a partnership or not. For this reason, any written confidential information should be identified as such on each page. Information transmitted orally should be confirmed as confidential in writing.

You may use this basic example or modify and adjust it to your necessities:

During the Project and for a period of <YEARS> years after its completion, the Parties undertake to preserve the confidentiality of any data, documents or other material that is identified as confidential in relation to the execution of the project.

For the avoidance of doubt, any written confidential information should be identified as such on each page.

When confidential information was communicated orally, its confidential character must be confirmed by the Disclosing Party in writing within <DAYS> days after disclosure.

You may, furthermore, define what should be understood as a preservation of confidentiality according to this CA (i.e. not to use confidential information otherwise than for the purpose for which it was disclosed; not to disclose confidential information without the prior written authorization of the disclosing project partner, etc.).

Define, as well, the exceptional circumstances under which the disclosure of confidential information is permitted. You may use the following example adjusting it to the consortium members' needs:

The previous paragraph no longer applies where:

- *the confidential information becomes publicly available by means other than a breach of the confidentiality obligations;*
- *the disclosing Party subsequently informs the receiving Party that the confidential information is no longer confidential;*
- *the confidential information is subsequently communicated to the receiving Party without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;*

- *the confidential information was already known to the Receiving Party before the moment of disclosure;*
- *the disclosure or communication of the confidential information is foreseen by provisions of the Grant Agreement(s);*
- *the confidential information was developed by the Receiving Party independently of any such disclosure by the Disclosing Party.*

You should, furthermore, establish specific provisions concerning cases when the disclosure of confidential information is required by the national law/administrative order of one of (some) project partners or is required in order to comply with a court decision.

Additionally, in order to be able to meet their contractual obligations resulting from the confidentiality regime established within the CA, project partners should ensure that their employees remain as well obliged to the fulfilment of the above mentioned obligations concerning confidentiality. The project partners should commit themselves in the CA to make admission of liability for the activities of their employees.

8.2 PRIVACY AND CONTROL OF PERSONAL DATA CONCERNING END-USERS

End-users of the AAL projects are older persons, their partners, their carers, family or friends. The projects are expected to include proactive end-user involvement. Issues regarding confidentiality, privacy, control of personal data and information and confidentiality may be of concern to the intended end-users, and this has to be addressed in the project proposal. In the CA you may also include the rules concerning how personal or sensitive data of end-users of the AAL project should be handled. In most cases, this will be covered by existing legislation and directives (national and EU) on privacy and data protection. The relevant security and privacy rules regarding storage and transmission of personally identifiable information have to be respected. Data have to be made anonymous, codified and stored in a secure place guaranteeing access only to authorised persons. All collection of data and other interventions in the project should follow the principles of proportionality and purposefulness, i.e. be restricted to what is necessary to meet the aims of the project.

You should establish your regime for privacy and control of personal data concerning end-users according to the project partners' necessities or the common consent of all project partners (provisions in your CA shall, however, respect corresponding national and EU provisions concerning privacy and protection of personal data).

9 MISCELLANEOUS

Please find below some solutions and useful tips on how to prepare this section. Bear in mind that examples given below are not obligatory and you may modify / adjust them to the necessities of your Consortium.

9.1 ENTRY INTO FORCE, DURATION AND TERMINATION

An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement.

This Consortium Agreement shall enter into force on the Effective Date identified at the beginning of this Consortium Agreement.

or

This Consortium Agreement shall enter into force after its signature by all the Parties on the day of the last signature.

(in this case, however, you should remove words *"and is made on <INSERT THE DATE>, hereinafter referred to as the Effective Date"* from the first sentence of the CA template included at the beginning of this guide).

You may also specify what happens in case the work on the project started before the signature of the agreement. Should your CA have a retrospective effect? If so, describe how to determine the exact day when the work on the project started.

You may establish the rules regarding potential new project partners that would like subsequently to join the CA. If foreseen, you can leave an open clause:

A new Party enters the Consortium upon signature of the accession document, Attachment <NUMBER>, by the new Party and <all Parties forming this Consortium/Coordinator>. Such accession shall have effect from <the date identified in the accession document/ the day of the last signature>.

Continue using the following example:

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

However, this Consortium Agreement or the participation of one or more Parties to it may be terminated before the complete fulfilment of all obligations undertaken by the Parties under the GAs and under this Consortium Agreement in accordance with the specific terms of this Consortium Agreement and GAs.

You should clearly specify in your CA cases in which a termination of the CA before the end of the project or an early termination of an individual project partner's participation in the consortium is foreseen.

Determine, furthermore, the consequences if not all project partners accede to their GAs (e.g.: shall the CA automatically terminate in respect of all the consortium members or only in respect of the affected project partner?)

9.2 SURVIVAL OF RIGHTS AND OBLIGATIONS

Describe which provisions of your CA shall survive its duration. The minimal provisions regarding survival of rights and obligations of the project partners which must be contained in your CA derive from RfP and/or from the national funding rules included in your GAs. Furthermore, in most cases, the survival of the rights and obligations will be established directly in the corresponding sections of your CA (e.g. access rights and non-disclosure of information/confidentiality - for the time period mentioned therein). There are also some general surviving provisions, like applicable law, contractual liability or settlement of conflicts. You can enumerate in this section all the above mentioned cases. You can, furthermore, establish further rights/obligations for survival (e.g. use of project acronym/rights to logos arisen during the project, etc.).

9.3 AMENDMENTS TO THE CA

You may set simple and clear conditions or procedures for amendments or revision of the CA. The standard solution is a formal signature (approval) of each project partner. However, you may also move the decision competence to the ultimate decision-making body of your consortium (precise in which cases, set a procedure).

9.4 IRREGULARITY / BREACH

Define what constitutes an irregularity/breach of the obligations under the CA, for example:

For the avoidance of doubt, <IRREGULARITY/BREACH> means any infringement of the provisions of this Consortium Agreement.

Determine, furthermore, who in the consortium is responsible for identifying the irregularity/breach (we suggest the ultimate decision-making body of your consortium).

Set the provisions concerning the consequences of irregularity/breach:

- what procedure should be followed (e.g. a requirement to give a formal notice identifying the irregularity/breach);
- possible options given to a project partner committing irregularity/breach in order to remedy such irregularity/breach or its consequences (within a given period);
- liability for the damage caused and indemnification thereof;
- possible penalties;
- possible termination of CA vis-à-vis the party concerned.

9.5 LIABILITY

Set the regime on project partners' contractual liability towards each other (e.g. possible exclusions of liability or its limitations) for damage caused. In doing so, you should take into account the following rules:

- the provisions of CA shall not be construed to amend or limit any project partner's obligatory statutory liability;
- in accordance with most national laws in Europe, the liability with regard to wilful breaches of contract cannot be limited;
- with the CA the liability can be only limited between the project partners (such limitations do not have any direct effect to any third party, which does not form part of your consortium);
- no liability in case the irregularity/breach was caused by Force Majeure.

9.6 APPLICABLE LAW AND JURISDICTION

Describe which law governs the CA and which forum must be used for conflict resolution. Any national law can be chosen, however, the application of Belgian law has been commonly used in EU-funded framework programmes (also the law of Luxembourg is an

option). The parties should in all cases look into the ruling law of the Grant Agreements. The CA may also stipulate that the rules of international trade will be applied, although it is preferable that a national law is chosen on a subsidiary basis to avoid any gaps.

The jurisdiction or forum chosen to settle disputes can be a national court or an alternative dispute resolution mechanism (e.g. settlement of disputes within the consortium, arbitration, mediation, etc.).

9.7 MANDATORY NATIONAL LAW

It is strongly recommended that the provisions of your consortium agreement shall not conflict with the national legislations of each project partner. Project partners shall be familiarized with their legislations and be very cautious while preparing the provisions of the CA in order not to include rules which may lead to a potential breach of the national law of any of project partners. Just in case, it is advisable to add a following clause:

For the sake of clarity, nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

9.8 LANGUAGE

Define which language shall govern the documents, notices, meetings, arbitral proceedings and processes relative thereto. The obligation to draft up the CA in English might arise from the requirements of the corresponding call for proposals.

9.9 COMMUNICATION

Define how notices and other communication under the CA should be made. Do not forget, especially, to establish rules regarding formal notices (e.g. written form, receipt of acknowledgement, procedure of emission, etc.) and further means of communication between project partners.

10 END-USER INVOLVEMENT

10.1 GENERAL PRINCIPLES

End-users should be actively involved in the work to be performed with an appropriate methodology applied. Effective solutions are flexible and adaptable to the end-user needs throughout the phases of ageing. Applying technologies to fulfil the needs of older persons and their partners, carers, family or friends, requires the highest attention to user acceptance, user interface and usability design in order to meet the expectations, cognitive capabilities, etc. of the end-users. To fulfil these requirements, the involvement of end-users during the whole process is essential.

The projects may raise ethical concerns as the types of technology are likely to be new and not necessarily transparent to the end-users. Issues of transparency, autonomy and dignity may be of concern to the intended end-users, and this has to be addressed by the project.

In the conduct of an AAL project, ethical issues concern *inter alia* the correct recruitment and involvement of end-users (e.g. for tests, etc.).

Whenever end-users are involved in projects, informed consent is a standard procedure. All end-users who participate in an AAL project, through interviews, observations and/or

testing of prototypes, should know what they are signing up for. The role(s) of the end-users in the project should be, furthermore, specified. The compensation provided to the end-users (expenses or fees paid, etc.) should be established. A contact person for ethical issues and related questions in the project should be appointed. All the above-mentioned issues must be included in the project proposal. However, in order to avoid misunderstandings, we recommend you to establish the provisions concerning end-users treatment in your CA as well.

10.2 THE EXIT STRATEGY FOR THE END USERS OF THE TEST ENVIRONMENT

The end-users of the test environment may become dependent of the developed pilot services. In your project proposal you must describe a procedure for withdrawal of the end-users from the project at any time, without giving a reason and without incurring costs or penalties. However, in order to avoid misunderstandings, we recommend you to establish the provisions concerning the exit strategy for the end-users in your CA as well. Please give a short description of possible exit strategies at the end of the project period.

10.3 ETHICAL ISSUES

The AAL Programme should comply with ethical principles as set out in Horizon 2020. Particular attention should be paid to the principle of proportionality, the right to privacy, the right to the protection of personal data, the right to the physical and mental integrity, the right to non-discrimination and the need to ensure high levels of human health protection.

The handling of ethical issues in the AAL Programme will also be dependent on the national rules of the partners involved in a project that is to be funded. In some countries, projects have to get a positive statement or permission by ethical committees before they can start working. In other countries, the national partners responsible for the involvement of end-users will have to submit the final draft of the informed consent for assessment. The common ethical declaration table is obligatory and can be found in every project proposal. However, it is sometimes advisable to establish the uniform ethical rules concerning end-users as well in your CA. You can consult your National Contact Person about requirements that are applicable to your project in the corresponding country.

Describe in detail the ethical approach developed by the project partners in your CA:

- How the issue of informed consent is handled;
- What procedures the project partners have agreed to preserve the dignity, autonomy and values (human and professional) of the end-users;
- If the project includes informal carers (e.g. relatives, friends or volunteers) in the project or in the planned service-model: what procedures exist for dealing with ethical issues in this relationship;
- If the project includes technology-enabled concepts for confidential communication between the older person and informal or formal carers, service providers and authorities: what procedures are planned for safeguarding the right to privacy, self-determination and other ethical issues in this communication.

11 SIGNATURES

ATTACHMENTS

Each attachment should start on a new page of the CA.

ATTACHMENT 1

Access Rights to Background made available to the Parties (status at the time of signature of this Consortium Agreement)

ATTACHMENT 2

Background excluded from Access Rights (status at the time of signature of this Consortium Agreement)

ATTACHMENT 3 (if applicable)

Accession of a new Party to

<ACRONYM OF THE PROJECT> *Consortium Agreement, version* <…, YYYY-MM-DD>

<OFFICIAL NAME OF THE NEW PARTY>

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>

hereby certifies that the Consortium has accepted in the meeting held on <DATE> *the accession of* <THE NAME OF THE NEW PARTY> *to the Consortium starting* <DATE>.

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

<DATE AND PLACE>

<INSERT NAME OF THE NEW PARTY>

Signature(s)
Name(s)
Title(s)

<DATE AND PLACE>

<INSERT NAME OF THE COORDINATOR>

Signature(s)
Name(s)
Title(s)

ATTACHMENT 4

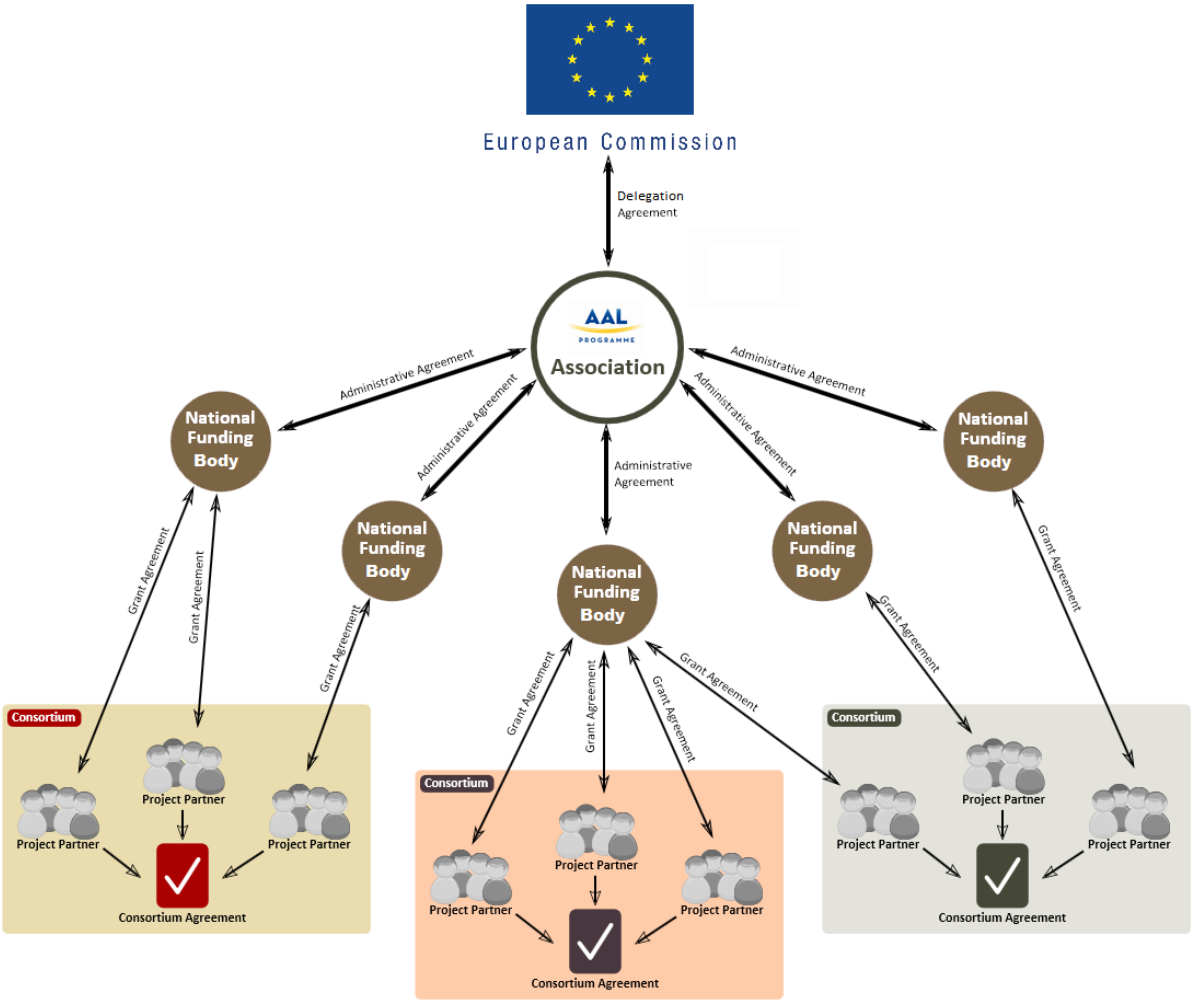
Financial provisions including Financial Plan

ATTACHMENT <THE SAME NUMBER AS MENTIONED IN SECTION 7.1.3>

List of Third Parties to which transfer of Results is possible with prior notice to the other Parties who have waived their right to object.

(Additional documents might be added to this CA, e.g. description of the work plan and/or the managerial organisation and specific tasks and responsibilities of the staff appointed to work in the project)

CONTRACTUAL RELATIONSHIPS UNDER THE AAL PROGRAMME



USEFUL RESOURCES

- AAL Call for Proposal documents at http://www.aal-europe.eu/calls

- EU Regulation 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)" and repealing EU Regulation 1906/2006
  http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1413802799283&uri=CELEX:32013R1290

- Guidance for a Consortium Agreement for H2020
  http://ec.europa.eu/research/participants/data/ref/h2020/other/gm/h2020-guide-cons-a_en.pdf

- Guide to Intellectual Property Rules for H2020 projects
  http://www.iprhelpdesk.eu/sites/default/files/documents/EU_IPR_Guide-to-IP-H2020.pdf

- DESCA model consortium agreement:
  http://www.desca-2020.eu/

- Lambert Model Consortium Agreements (multi-party)
  http://www.ipo.gov.uk/whyuse/research/lambert/lambert-mc.htm

- IPR helpdesk Factsheets (including IPR for medical devices, for business websites)
  http://www.iprhelpdesk.eu/library/fact-sheets