



HOW TO PREPARE A CONSORTIUM AGREEMENT FOR AAL JOINT PROGRAMME PROJECTS (GUIDELINES)

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This guide is aimed at assisting participants in AAL Joint Programme projects 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.

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1 INTRODUCTION

This document provides a non-binding guidance to Ambient Assisted Living Joint Programme (AAL JP) participants. Its content is based on the experience and practice acquired during the funding activity under AAL JP 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 Consortium Agreement (CA). Clarifications regarding the Intellectual Property Rights (IPR) regime applicable to AAL JP projects are 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.

The CA is an agreement made between project partners (consortium members) in a project financed under AAL JP 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 AAL JP projects and should be signed by all the project partners before the start of the project.¹

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 742/2008/EC of the European Parliament and of the Council of 9 July 2008 on the Community's participation in a research and development programme undertaken by several Member States aimed at enhancing the quality of life of older people through the use of new information and communication technologies ("the basic act"),
 - remaining EU legislation,
 - General Agreement No. 30-CE-00228962/00-54 with its Annex: "Detailed arrangements for the AAL Joint Programme",
 - corresponding bilateral agreements (administrative agreements) between Ambient Assisted Living Association and the corresponding national funding authorities (NFAs),
 - corresponding calls for proposals together with its specifications (e.g. templates and guidelines for proposals),
 - corresponding grant agreements (GAs) between NFAs and corresponding project partners
- which, in case of doubt, always prevail.

¹ In accordance with Article 6 of the Annex to General Agreement No. 30-CE-00228962/00-54 "Detailed arrangements for the AAL Joint Programme" (Annex to General Agreement), "*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 Article 6 of the Annex to the General Agreement^{II}, the intellectual property rules applicable to projects launched under the AAL Joint Programme shall be based on the IPR regime (Chapter III, Articles 39 to 51) of Rules for Participation for the Seventh Framework Programme (RfP)^{III} as a model. For this reason the IPR section of CA shall be based on IPR regime of RfP as well and, in no case, contradict it.

Project partners shall address IPR, in particular, issues concerning protection of foreground, ownership of the results and access rights to background and foreground 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 742/2008/EC of the European Parliament and of the Council of 9 July 2008 on the Community's participation in a research and development programme undertaken by several Member States aimed at enhancing the quality of life of older people through the use of new information and communication technologies, hereinafter referred to as the Basic Act, General Agreement No. 30-CE-00228962/00-54 with its Annex: "Detailed arrangements for the AAL Joint Programme", Call for Proposals <INDICATE CALL FOR PROPOSALS>, bilateral agreements between Ambient Assisted Living Association and <INSERT CORRESPONDING NFAs>, hereinafter referred to as Administrative Agreements, bilateral agreements between <INSERT CORRESPONDING NFAs> and <INSERT CORRESPONDING PROJECT PARTNERS>, hereinafter referred to as Grant Agreements and follows the Intellectual Property Rights regime, on the basis of the REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013), hereinafter referred to as the Rules for Participation 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>,

^{II} Article 6 of the Annex to the General Agreement states " *The AALA shall develop an IPR policy for the AAL Joint Programme and the intellectual property rules applicable to projects launched under the AAL Joint Programme shall be based on the Rules for Participation for the Seventh Framework Programme as a model*"

^{III} Regulation No. 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)

<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 proposal for the Project to Ambient Assisted Living Joint 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^{IV}. Words beginning with a capital letter shall have the meaning already defined either herein or, for example, in RfP or corresponding GAs. The examples showed 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:

<i>Access Rights</i>	<i>means licences and user rights to Foreground or Background.</i>
<i>Background</i>	<i>means information which is held by a Party prior to its accession to this agreement, as well as the intellectual property rights pertaining to such information, including the application that has been filed before its accession to this agreement, which is needed for carrying out the Project or for using Foreground.</i>
<i>Dissemination</i>	<i>means disclosure of Foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication and presentation of Foreground in any medium.</i>
<i>Fair and reasonable conditions</i>	<i>means appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the Foreground or Background to which access is requested and/or the scope, duration or other characteristics of the Use envisaged.</i>

^{IV} 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.

<i>Foreground</i>	<i>means the tangible and intangible results which are generated under the project, including pieces of information, materials and knowledge and whether or not they can be protected. It includes intellectual property rights (e.g. copyrights, industrial designs, patents, plant variety rights), similar forms of protection (e.g. rights for databases) and know how or trade secrets (e.g. confidential information).</i>
<i>Grant Agreement</i>	<i>means the contract between a Party and its National Funding Administration.</i>
<i>Proposal</i>	<i>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.</i>
<i>Use</i>	<i>means the direct or indirect utilisation of Foreground in further research activities other than those covered by the Project, or for developing, creating and marketing a product or process, or for creating and providing a service.</i>
<i>Software</i>	<i>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.</i>

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.);
- 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;
- 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 for different consortium bodies in order to avoid the 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 NFAs to each project partner (subject to the GAs between each project partner and the corresponding NFA);
- 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 USE

Describe provisions on IPR, use 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 use of foreground, 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)

7.1 FOREGROUND

Foreground means the project results, including information, materials and knowledge, generated in a given project, whether or not they can be protected. It includes IPR (rights resulting from copyright protection, related rights, design rights, patent rights, plant variety rights, etc.), similar forms of protection (e.g. rights for databases) and unprotected know-how (e.g. confidential material).

Foreground includes 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 results. Results generated outside a project (sometimes described as “sideground”) are not numbered among foreground.

7.1.1 OWNERSHIP OF FOREGROUND

7.1.1.1 GENERAL RULES

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

It is recommended that all the project partners maintain evidence showing the development of the generation of its foreground in order to be able to prove its ownership and the date of its 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.

Additionally, in order to be able to meet its contractual obligations resulting from the CA, participants should reach an agreement with their employees and other personnel as soon as the latter may be entitled to claim rights to foreground (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”^V.

7.1.1.2 JOINT OWNERSHIP OF FOREGROUND

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, a default joint ownership regime applies. 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)
<p>Default ownership is applicable in the absence of a specific agreement between the project partners.</p>	<p>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.</p> <p><u>REMARK: some particular configurations of the joint ownership regime may lead to potential problems concerning Indirect State Aid within the meaning of Community Framework for State Aid for Research and Development (2006/C 323/01), 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.</u></p> <p>General provisions regarding the allocation and terms of exercise of the joint ownership can be included directly within the CA.</p> <p>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 Foreground concerned.</p>

^V 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

Default regime according to Article 40.2 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 the default regime of Article 40.2 RfP, 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 Use their jointly owned Foreground 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);

- fair and reasonable compensation must be provided to the other joint owner(s).

If the joint ownership is maintained, its allocation, terms of exercising and management may be agreed already in your CA. 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 joint owners to report any IPR infringements and appoint a responsible for taking action against infringers;
- determine whether and under what conditions each joint owner is allowed to apply the common foreground 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 use 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 form of territorial division (if applicable);
- establish form of division of exploitation markets (if applicable);
- determine whether and under what conditions each joint owner may

	<p>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);</p> <ul style="list-style-type: none"> • finally, it is recommended to redirect the negotiation and creation of more specific rules concerning joint ownership of specific results to further separate agreements: <p><i>Further arrangements concerning joint ownership, including its shares, protection measures, distribution of responsibilities, costs and profit sharing, territorial division and possibilities of transfer should be negotiated separately and be subject to separate agreements.</i></p>
	<p>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).</p>

7.1.2 PROTECTION OF FOREGROUND

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

In accordance with the Article 44 RfP, valuable foreground (capable of industrial or commercial application) should be protected. Protection is not mandatory in all cases, though the decision to leave foreground without protection should preferably be made in consultation with the other project partners, which may wish to overtake ownership.

Foreground 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:

Where Foreground is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection, having due regard to its legitimate interests, of the other Parties.

Where a Party which is not owner of the Foreground 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 piece of Foreground 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.

7.1.3 TRANSFER OF FOREGROUND

You may draw up rules concerning the transfer of ownership of the foreground as far as they are in accordance with Art. 42 RfP.

<p><i>Article 42</i></p> <p><i>Transfer of foreground</i></p> <p>(...)</p> <p><i>2. Where a participant transfers ownership of foreground, it shall pass on its obligations to the assignee, in particular those relating to the granting of access rights, and dissemination and use, in accordance with the grant agreement.</i></p> <p><i>3. Subject to its obligations concerning confidentiality, where the participant is required to pass on access rights, it shall give prior notice to the other participants in the same action, together with sufficient information concerning the new owner of the foreground to permit them to exercise their access rights under the grant agreement.</i></p> <p><i>However, the other participants may, by written agreement, waive their right to individual prior notice in the case of transfers of ownership from one participant to a specifically identified third party.</i></p> <p><i>4. Following notification in accordance with the first subparagraph of paragraph 2, the other participants may object to any transfer of ownership on the ground that it would adversely affect their access rights.(...)</i></p> <p><i>Where the other participants demonstrate that their rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between the participants concerned.</i></p> <p>(...)</p>

Transfers of ownership of foreground are allowed, and yet the obligations regarding that foreground must be passed on to the transferee. In case the ownership is transferred, the assignor must conclude appropriate arrangements to ensure that its contractual obligations with respect to dissemination, use, 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 must be given to the other project partners together with sufficient information concerning the new owner of the foreground 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 foreground concerned would be transferred to a competitor is not in itself 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.) 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 foreground 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, the limitation of Article 42.3 RfP - *subject to its obligations concerning confidentiality* - clarifies that 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 Foreground of your CA as proposed in the following example:

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

Where a Party transfers ownership of Foreground, it shall pass on its obligations regarding that foreground 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 Foreground 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 its Foreground 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

In accordance with Article 46.2 RfP, each project partner shall ensure that the foreground that it owns is disseminated as swiftly as possible.

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 foreground or background could suffer disproportionately great harm (Article 46.4 RfP).

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 foreground or background is adversely affected.

The rules mentioned only apply to dissemination activities of own foreground. Where foreground of another project partner is 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 remain 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 (Article 3 RfP).

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

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

Dissemination activities shall be compatible with intellectual property rights, confidentiality, and the legitimate interests of the owner of the Foreground.

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 Foreground or Background could suffer disproportionately great harm.

The objection should include reasonable proof that the Party's interests in relation to its Foreground 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 foreground of another project partner is meant to be published, appropriate rules shall be established. Find below two different examples:

No Party shall disseminate Foreground of another Party, even if such Foreground is linked to its own Foreground, unless another 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 Foreground apply as well for the dissemination of another Party's Foreground.

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 USE

The project partners should use the foreground which they own, or ensure that it is used. You can use the foreground directly or indirectly in further research activities other than those covered by the project, or developing, creating and marketing a product or process, or for creating and providing a service.

Direct utilisation is done by the project partner owning the foreground while indirect utilisation is made by other participants e.g. through licensing.

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

You may use the following example:

The Parties shall use the Foreground which they own or ensure that it is used.

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 "foreground", 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 foreground, in some cases, may be exploitable only with background or with foreground of certain project partners. Access to background

and/or foreground 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, licences and user rights (in general – authorisation) to foreground or background owned by another participant in the project.

The provisions of Articles 47-51 RfP concerning access rights to foreground and background form the minimal rules that cannot be restricted or set aside. In your CA, however, you may establish additional access rights (e.g. to sideground, to all foreground and not only to that which is needed to implement the project/use your own foreground) or access rights on more favourable conditions than foreseen in RfP.

Bear in mind, that under RfP access rights to another participant’s background or foreground shall only be granted if the requesting participant NEEDS that access in order to carry out the project (Article 49 RfP) or to use its own foreground (Article 50 RfP). In all other situations, appropriate access rights may be freely negotiated and set in your CA, but there is no requirement to grant them.

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. Below there are shown two options on handling background to be included in the project:

Positive list	Exclusion of background
<p>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.</p> <p>This approach has the advantage of clearly identifying which background is available for access by the other project partners.</p> <p>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.</p>	<p>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).</p> <p>While preparing the negative list, make sure that necessary background is not excluded by error.</p>

Positive list	Exclusion of background
<p>Example:</p> <p><i>The Parties define in the Attachment <NUMBER> the Background which may be subject to Access Rights of other Parties.</i></p> <p><i>For the avoidance of doubt, all Background not listed in Attachment <NUMBER> shall be, accordingly, excluded from Access Rights.</i></p> <p>You may, furthermore, set rules regarding expansion / limitation of the positive list in the CA, for example:</p> <p><i>The Party which owns the Background may at any time expand the existing list by adding further Background to the Attachment <NUMBER>.</i></p> <p><i>However, any limitation to Attachment <NUMBER> after signature of this Agreement requires an acceptance of the <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM>.</i></p>	<p>Example:</p> <p><i>If Parties want to define specific Background as excluded from Access Rights they should list it in Attachment <NUMBER >.</i></p> <p><i>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.</i></p> <p>You may, furthermore, set rules regarding expansion / limitation of the negative list in the CA, for example:</p> <p><i>The Party which owns the Background may at any time limit the existing list by removing Background from the Attachment <NUMBER>.</i></p> <p><i>However, any expansion to Attachment <NUMBER> after signature of this Agreement requires an acceptance of the <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM>.</i></p>

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 Foreground or Background may be granted subject to written confirmation by all the other Parties that they waive their Access Rights thereto.

Unless otherwise agreed by the owner of the Foreground 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 Foreground or Background to Parties or third parties shall be such as to ensure that potential Access Rights for other Parties are maintained.

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.

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.

Access rights to background for implementing the project will be granted on a royalty-free basis, unless otherwise agreed in your CA. 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.

Access rights to foreground for implementing the project MUST be granted on a royalty-free basis.

Use the following template:

Access Rights to Foreground 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 / ON FAIR AND REASONABLE CONDITIONS / OTHER – TO SPECIFY>.

7.2.4 ACCESS RIGHTS FOR USE

7.2.4.1 GENERAL PRINCIPLES

Access rights for use purposes (research or exploitation) may be requested by a participant only if it needs them for using its own foreground resulting 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 use 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!). 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 to use, 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 to use already in the moment of their expulsion of the consortium). The duration of access rights for use has to be negotiated and should be specified in your CA!

Establish your “ACCESS RIGHTS FOR USE” 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 Foreground if Needed for Use of a Party's own Foreground shall be granted on <A ROYALTY-FREE BASIS / ON FAIR AND REASONABLE CONDITIONS>.

Access Rights to Background if Needed for Use of a Party's own Foreground 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

Article 50.3 RfP constitutes:

An affiliated entity established in a Member State or associated Country shall also have access rights (...) to foreground or background under the same conditions as the participant to which it is affiliated, unless otherwise provided for in the grant agreement or consortium agreement.

It follows that RfP provides certain access rights to affiliated entities established in a member state or associated country. Any such affiliate of a participant enjoys access rights to foreground or background of another participant, provided that it is needed by that affiliate to use its own foreground.

As the access rights require that access is needed to use own foreground, this provision only applies to the extent that ownership of foreground was transferred to an affiliate entity established in a member state or associated country (in that case it may be necessary to synchronise this section with the section TRANSFER OF FOREGROUND!).

The general principle according to which the participants may agree on more favourable or broader access rights applies here as well. 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.

<p>In case you decide to exclude access rights for the affiliates in your CA, you may follow the example below:</p>	<p>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</p>
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	arrangements between the consortium members:
<p><i>According to this Consortium Agreement, no grant of Access Rights to affiliated entities established in a Member State or Associated Country is foreseen.</i></p>	<p><u>Standard option (access rights for affiliated entities established in a member state or associated country + access rights are needed):</u></p> <p><i>An affiliated entity established in a Member State or Associated country shall also enjoy Access Rights to Foreground or Background under the same conditions as the Party to which it is affiliated.</i></p> <p><i>Access Rights require that access is needed to use own Foreground, this paragraph only applies to the extent that ownership of Foreground was transferred to an affiliate entity established in a Member State or Associated country.</i></p> <p><u>Alternative options:</u></p> <p>Set and insert in CA your own specific provisions with regard to access rights for affiliates:</p> <ul style="list-style-type: none"> - 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 use its own foreground / 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 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

	<p>participant to which it is affiliated).</p> <p>You may also leave an open clause in your CA by stating:</p> <p><i>Further arrangements with affiliated entities should be negotiated separately and be subject to separate agreements.</i></p>
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7.2.5 ADDITIONAL ACCESS RIGHTS

Possible additional access rights to be established in your CA:

- to foreground or background not needed for the project;
- to “sideground” (the results, including data, know-how and information, whether or not they can be protected, which are generated by a project partner under the project but outside of the project objectives and which are not needed for undertaking and completing the project or the use of foreground).

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 special one – for defaulting project partners (example below):

A Party leaving the Consortium shall have Access Rights to the Foreground 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 TO USE”.

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 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 a 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, use 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 might be a good solution. 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: (...) *the participants shall keep confidential any data, knowledge and documents communicated to them as confidential.*

Participants should establish confidentiality obligations adjusted to its 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 the fact 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 its contractual obligations resulting from confidentiality regime established within 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 shall commit themselves in the CA 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. Furthermore, in most cases, the survival of the rights and obligations is 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 the 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 previous 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 handling of ethical issues in the AAL JP is 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 Point 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)

ATTACHMENT 2

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

ATTACHMENT 3 (if applicable)

Accession of a new Party to Consortium Agreement 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

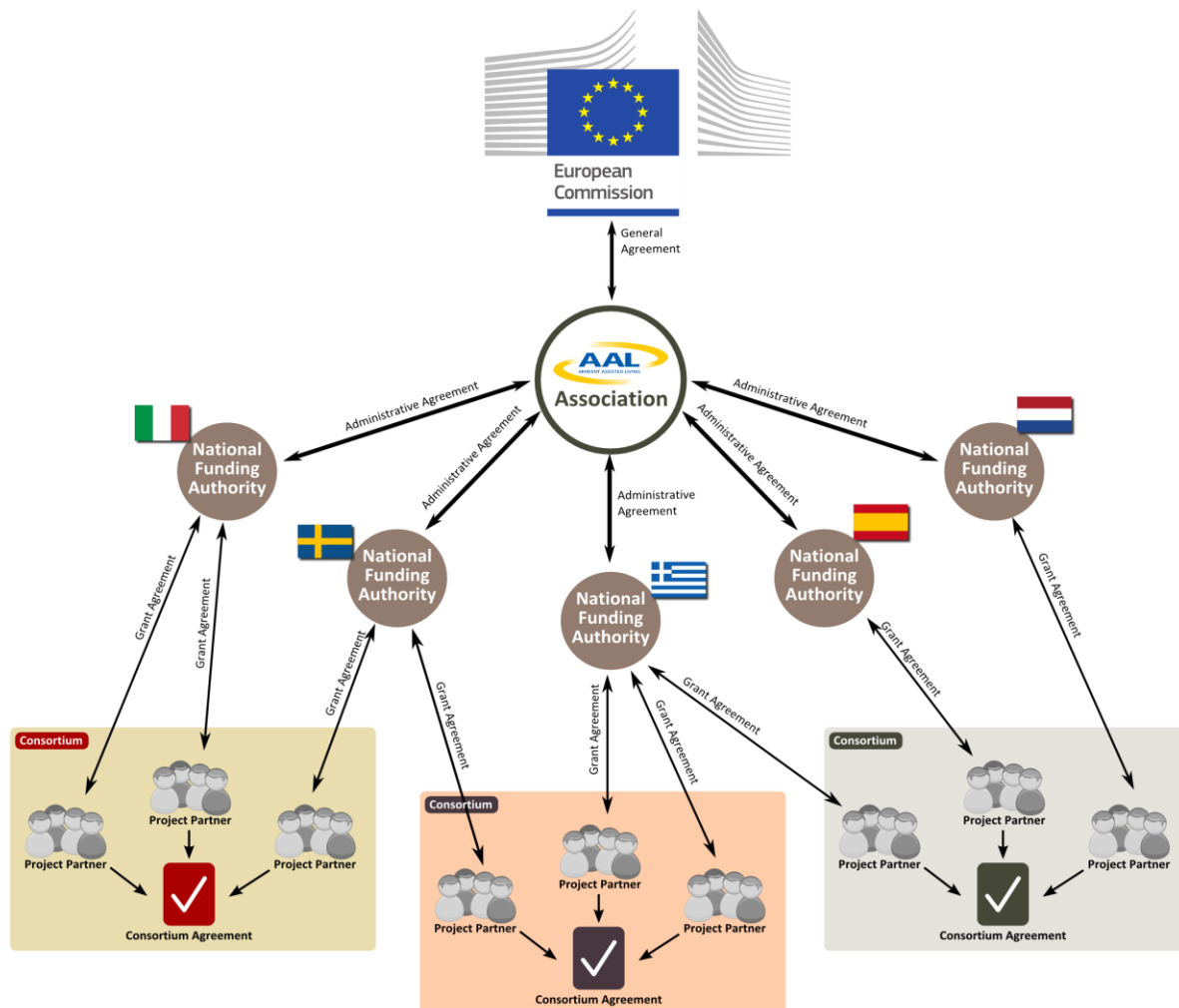
Financial provisions including Financial Plan

ATTACHMENT <THE SAME NUMBER AS IN SECTION 7.1.2

List of Third Parties to which transfer of Foreground 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 JOINT PROGRAMME



USEFUL RESOURCES (RECOMMENDED)

- Factsheet “IP rules applicable to Ambient Assisted Living Joint Programme Projects” http://www.iprhelppdesk.eu/sites/default/files/newsdocuments/IP%20rules%20applicable%20to%20Ambient%20Assisted%20Living%20Joint%20Programme%20Projects_0.pdf
- AAL Call for Proposal documents at <http://www.aal-europe.eu/calls>
- Chapter II, Articles 39-51 of Regulation No. 1906/2006 (EC) of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework

Programme and also for the dissemination of research results (2007-2013). (IPR Rules for Participation in FP7)

<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2006:391:SOM:EN:HTML>

- Checklist for a Consortium Agreement for FP7
ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-consortium-agreement-checklist-2011v2_en.pdf
- Checklist for a Consortium Agreement for ICT PSP projects
http://ec.europa.eu/information_society/activities/ict_psp/documents/consortium_agreement_checklist.pdf
- Guide to Intellectual Property Rules for FP7 projects
ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf
- DESCA model consortium agreement: www.desca-fp7.eu/
- Lambert Model Consortium Agreements (multi-party)
<http://www.ipo.gov.uk/whyuse/research/lambert/lambert-mc.htm>