

AAL Joint Programme



Consortium Agreement

Skeleton

Intellectual Property and Confidentiality sections

Please note:

- The Ambient Assisted Living Association (AAL) has established this non-binding skeleton of intellectual property section of Consortium Agreements (CAs) for The Ambient Assisted Living Joint Programme (AAL JP) projects with the aim to highlight the main provisions that may be set up concerning Intellectual Property Rights (IPRs) and the way that they can be approached by the project partners while preparing Consortium Agreement (CA).
- Examples proposed in this Skeleton exemplify only some of possible Intellectual Property (IP) approaches and do not propose all alternatives for a given situation. For this reason, you do not have to follow them strictly in all cases. The content shown should be, furthermore, adapted in order to suit the 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.¹
- In accordance with article 6 of the annex to the General Agreement No. 30-CE-00228962/00-54 AAL JP should follow the Intellectual Property regime on the basis of 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). Hence, specific provisions concerning IPRs contained in CAs under AAL JP projects shall not conflict the general IPR rulings of Regulation No. 1906/2006 (EC) (Rules for Participation in FP7)
- The basic principle to consider in drafting provisions on IPR, use and dissemination within collaborative research and development agreements 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

¹ There are too many possible variations and permutations to cover all of the situations of collaborative research and development projects. Models of Consortium Agreement are merely reference points that may be useful in building the appropriate structure to govern such kind of undertaking.

swift dissemination thereof. The CA should state a set of rules/procedures to ensure fair protection for the IPR interests of the project partners.

- Inherent to CAs is the preparation of legal arrangements or agreements to which legal or expert counselling is quite advisable.
- We strongly recommend you to use this Skeleton having in consideration the references and guidelines elaborated by the AAL Association with the support of the European IPR Helpdesk for the purpose of elaborating consortium agreement which can be found at **Guidelines for preparing Consortium Agreements in AAL JP projects**, to be found in the Resources for Project coordinators in the AAL JP website.

In case of questions, please contact **AAL CMU** at call@aal-europe.eu or **AAL National Contact Persons (AAL NCP)** <http://www.aal-europe.eu/aal-ncp>

In case of questions related to intellectual property contact the **European IPR Helpdesk** free of charge helpline service service@iprhelpdesk.eu or call to +352 25 22 33-333 or Fax to +352 25 22 33-334 or visit to <http://www.iprhelpdesk.eu>.



AAL Joint Programme

CONSORTIUM AGREEMENT

Call for Proposals

[...]

Project title

[...]

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00. INTRODUCTION

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, henceforth 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 NFAs²>, henceforth referred to as Administrative Agreements, bilateral agreements between <INSERT CORRESPONDING NFAs > and <INSERT CORRESPONDING PROJECT PARTNERS>, henceforth 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), henceforth referred to as the Rules for Participation and is made on <INSERT THE DATE>, henceforth referred to as the Effective Date.

01. PARTIES / NAME OF THE PROJECT

THIS CONSORTIUM AGREEMENT IS CONCLUDED BETWEEN:

<OFFICIAL NAME OF THE COORDINATOR>, having its registered office or based in < LEGAL ADDRESS OF THE ENTITY> henceforth referred to as THE COORDINATOR,

<OFFICIAL NAME OF PARTY 2>, having its registered office or based in <LEGAL ADDRESS OF THE ENTITY>

<OFFICIAL NAME OF PARTY 3>, having its registered office or based in <LEGAL ADDRESS OF THE ENTITY>

<OFFICIAL NAME OF PARTY n...>, having its registered office or based in <LEGAL ADDRESS OF THE ENTITY>

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

< NAME OF THE PROJECT>

so called briefly as

<ACRONYM>

henceforth referred to as the Project

² NFA: National Funding Authority.

CONSIDERING THAT,

The Parties have considerable experience in the field concerned, they have submitted a proposal for the Project to Ambient Assisted Living Joint Programme under the Call number <SPECIFY THE NUMBER OF THE CALL FOR PROPOSAL>, and wish to specify or supplement binding commitments among themselves in addition to the provisions of the Grant Agreement set out between them and their respective NFAs acting on behalf of the AAL Central Management Unit (henceforth referred to as "AAL CMU").

THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

02. DEFINITIONS³

Access Rights: means licences and user rights to Foreground or Background.

Access Rights needed: means in the case of the implementation of the Project, when without the granting of such Access Rights, the performing of the work assigned to the recipient Party would be impossible, unfeasible and unworkable, detained or retarded, or involve considerable additional or extra financial and/or human resources. In the case of use of own Foreground it means that without the granting of such Access Rights, would be technically or legally impossible to exercise such a use.

Application Programming Interface (API): means 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.

Background: 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.

Dissemination: 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.

Direct utilization: means when the owner of the Foreground uses it in further research, commercial or industrial exploitation, namely in its own activities.

Fair and reasonable conditions: means appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for

³ Definitions are important terms to be used in the CA in order to avoid misunderstandings between Parties in respect to a clear interpretation of provisions and commitments established therein. The examples showed are some that may be used. Depending of the specificities, needs and complexity of your project you may decide to include additional terms.

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.

Foreground: 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).

Grant Agreement: means the contract signed between a Party and its NFA.

Indirect utilization: means the use of Foreground made by other Party (which is not the owner) by means of assignment of rights or granted licences.

Intellectual Property Rights (IPR): means patent, patent applications and other statutory rights in inventions; copyrights (including without limitation copyrights in Software); rights for databases, registered design rights, applications for registered design rights, unregistered design rights and other statutory rights in designs; and other similar or equivalent forms of statutory protection and undisclosed or confidential information, trade secrets and know how.

Software: 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

Use: 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.

03. PURPOSE

The purpose of this agreement is to specify the organization of Project-related work between the Parties, as regards of their roles, responsibilities, contributions and developments; to organize the management of the Project, to define the rights and obligations of the Parties in the Project, including, but not limited to, their liability and indemnification, conflict resolution procedures or mechanisms to solve it; to supplement the provisions of the GA or the rights or obligations established for the Parties but not contradicting those minimum or mandatory set out in the GA. This agreement also sets out the respective intellectual property and confidentiality provisions to be followed by the Parties.

⁴ The term software refers to programs in any form, including those which are incorporated into hardware. The copyright protection includes preparatory design work leading to the development of a computer program provided that the nature of the preparatory work is such that a computer program can result from it at a later stage.

04. MANAGERIAL PROVISIONS

4.1 CO-ORDINATION AND MANAGEMENT

[It is recommended to establish a co-ordination structure (may be called steering committee, liaison committee, management committee, and can be broken down into different sub-groups such as financial, technical, legal, etc.) with among others the following tasks:

- to define, divide and develop the tasks;
- to check the progress of the work;
- to co-ordinate the research teams;
- to co-ordinate the preparation of the reports (technical, financial, etc.);
- to advise and direct the partners on the developments necessary for the project;
- to permit formal exchanges of information between the partners.

The work of this steering committee is frequently translated into daily management and representation duties by a co-ordinator (or manager) selected from among the parties. Other committees can be created as necessary and should report to the steering or co-ordination committee. Provision should be made for the creation of ad hoc committees as and when necessary.

Joint committees can be established to deal with issues such as:

- composition;
- role (steering, management, technical, financial, IPR, etc.);
- organisational procedures (e.g. schedule and calling of exceptional meetings);
- conflict resolution (including cases of abuse of power within the project).]

Any member of a Consortium Body (hereinafter referred to as "Member"): should be present or represented at any meeting of such Consortium Body, may appoint a substitute or a proxy to attend and vote at any meeting, and shall participate in a cooperative manner in the meetings.

4.2 VOTING RULES

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

Each member of a Consortium Body present or represented in the meeting shall have one vote.

Defaulting Parties may not vote.

Decisions shall be taken by a majority of two-thirds (2/3) of the votes.

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

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

When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 days after the draft minutes of the meeting are sent. When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 days after the draft minutes of the meeting are sent.

In case of exercise of veto, the Members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its Members.

A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.

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

4.3 POWERS AND RESPONSIBILITIES

[The CA should carefully define with regard to any body which is established or any person who is entrusted with certain tasks:

- the powers and responsibilities thereof;
- the operating procedures (preparation of agenda, meetings, decisions, chairmanship, minutes, votes, etc.);
- in the case of bodies, their organisation (composition, powers of each party, decision making method possible depending on nature of issue (unanimously, majority agreement, voting and veto rights etc.);

To avoid cumbersome procedures the parties could foresee a simplified approval process depending on the nature of the decision envisaged.]

4.4 FOLLOW-UP AND SUPERVISION

Each Party undertakes to follow the production schedule and budget specified in the Description of Work and in the Grant Agreement.

[In view of the evolving character of many projects, these timetables are generally subject to change. However, the risk of uncontrolled time and cost escalation is very real in many projects. To limit this risk, it is desirable to provide for a strict and effective inspection and supervision system (possibly via input from scientific or technical committees) managed by the steering committee, including:

- frequent progress meetings (ranging from once a month to once per quarter);

- frequent technical and financial progress reports (actions completed and results obtained);
- optional extraordinary meetings as soon as agreed estimated deadlines have been overrun.]

05. FINANCIAL PROVISIONS

5.1 FINANCIAL PLAN

[It is recommended to include in the financial plan:

- a detailed estimate of the total cost per party and overall total;
- the expected financial contribution from the European Union and Partner States to each party and distribution thereof;
- each Party's own contribution;
- outside third party (financial) resources (from authorities, banks, venture capital, etc.);
- an expenses and financing plan;
- annual budgeting.

If necessary more detailed financial issues can be included in annexes.]

5.2 JUSTIFYING COSTS

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards its NFA and the AAL CMU. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs.

The Consortium Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

5.3 FUNDING PRINCIPLES

A Party which spends less than its allocated share of the Consortium Budget will be funded in accordance with its actual duly justified eligible costs only.

A Party that spends more than its allocated share of the Consortium Budget will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

5.4 FINANCIAL CONSEQUENCES OF THE TERMINATION OF THE PARTICIPATION OF A PARTY

A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by its NFA. Furthermore a Defaulting Party shall bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks. Any additional costs which are not covered by the Defaulting

Party shall in principle be apportioned to the remaining Parties pro rata to their share in the total costs of the Project as identified in the Consortium Budget.

06. INTELLECTUAL PROPERTY RIGHTS, USE AND DISSEMINATION

6.1 OWNERSHIP OF FOREGROUND

Foreground resulting from the project is owned by the project Party generating it.⁵

In order to accomplish with the obligations resulting from the CA, Parties shall reach an agreement with their employees and other personnel as soon as the latter may be entitled to claim rights to Foreground (subcontractors, students, 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.⁶

6.2 JOINT OWNERSHIP OF FOREGROUND

When Foreground is generated jointly by Parties and their respective share cannot be ascertained they shall have jointly ownership on such Foreground, unless the Parties agree on a different solution.⁷

[In case of joint ownership, the joint owners may set out a suitable ownership regime and may consider among others the following suggested two possibilities:]

Option 1:

[The joint owners include a default regime as the provided in Article 40.2 of Rules for Participation and incorporate it into the CA as follows:]

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:

⁵ 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, e.g. IPR. For instance "Laboratory Notes" are used by scientists in research activities to document their development of studies. It may serve as a primary record of research. Therefore laboratory notebooks are especially useful in protecting IP rights coming from research, as they constitute a proof of the date of developing an invention.

This clause is quite important in the case that the applicable national law have a specific type of "professor's privilege" regime.

⁶ Where any third party such as a researcher or sub-contractor is involved in the Project, the Party engaged with them, shall ensure that those assign or license to it any Intellectual Property they may have in the Foreground in order to be able to give effect to the provisions established in this CA.

⁷ 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 beneficiaries that transferred their ownership share). It is recommended to avoid joint ownership where possible.

If it is decided or necessary to remain in Joint Ownership it is important that the CA sets out what rights each joint owner has to exploit the Intellectual Property.

- 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).

Option 2:

[In case of joint ownership, the joint owners shall establish an agreement regarding the allocation and terms of exercise of that joint ownership. 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 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.]

It is quite recommended that specific provisions and rules of joint ownership are subject to a separate agreement, according to the nature or type of each Foreground concerned – redirect negotiation and creation of specific rules to further agreements].

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.

6.3 PROTECTION OF FOREGROUND

Foreground capable of industrial or commercial application, shall be protected by adequate and effective means by its owner having due regard to its legitimate interest and of the other Parties, particularly those commercial.

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

6.4 TRANSFER OF FOREGROUND

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

(i) 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;⁸

(ii) Subject to its obligations concerning confidentiality, as in the context of a merger or an acquisition of a large part of its assets, if 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

⁸ Transfers of ownership of Foreground are allowed, but 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)

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;

(iii) the Parties recognise, at the same time, that in the contest of a merger or an acquisition of an important part of its assets, a Party may be subject to confidentiality obligations which do not permit it to give the full established prior notice for the transfer;

(iv) following notification in accordance with the previous paragraph (ii), 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. If 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;

(v) each Party, nonetheless, may 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 hereby waive their right to object to a transfer to the listed third parties.⁹

6.5 USE¹⁰

The project partners should use the Foreground which they own, or ensure that it is used.

6.6 DISSEMINATION¹¹

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.

⁹ Parties 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 Party no longer has to give prior notice to the other Parties 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 access rights could be properly exercised in case the transfer takes place.

¹⁰ Foreground can be used directly or indirectly in further research activities other than those covered by the Project, or in developing, creating and marketing a product or process, or in creating and providing a service.

¹¹ Do not forget, furthermore, to establish such rules for publication as validation process, use of logos, publicity obligations, content standards of publications, etc.

The objection should include 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 objection is made within the time limit stated above, the publication is permitted.

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

In case of objection, the Parties involved should discuss how to overcome the grounds for 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.

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

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 other Party's Foreground.

6.7 ACCESS RIGHTS

Option 1:¹²

The Parties define in the <ATTACHMENT 1> the Background which may be subject to Access Rights of other Parties.

For the avoidance of doubt, all Background not listed in <ATTACHMENT 1> shall be, accordingly, excluded from Access Rights.

The Party which owns the Background may expand at anytime the existing list by adding further Background to the <ATTACHMENT 1>.

However, any limitation to <ATTACHMENT 1> after signature of this CA requires an acceptance of the <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM>.

All requests for Access Rights needed shall be made in writing.

The granting of Access Rights shall be made conditional on the acceptance of specific conditions aimed at ensuring that these rights shall be used only for the intended purpose, subject to appropriate confidentiality obligations and with the respectful and safeguard of the legitimate interests of the granting Party.

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.

¹² In Option 1: only the Background defined and listed in the CA may be subject to access rights for other project partners. All other Background is, thus, excluded from such access.

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.¹³

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.

Option 2:¹⁴

If Parties want to define specific Background as excluded from Access Rights they should list it in <ATTACHMENT 2>.

For the avoidance of doubt, all Background not listed in <ATTACHMENT 2> shall be available for the granting of Access Rights in accordance with the provisions of this CA.

The Party which owns the Background may limit at anytime the existing list by removing Background from the <ATTACHMENT 2>.

However, any expansion to <ATTACHMENT 2> after signature of this CA requires an acceptance of the <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM>.¹⁵

All requests for Access Rights needed shall be made in writing.

The granting of Access Rights shall be made conditional on the acceptance of specific conditions aimed at ensuring that these rights shall be used only for the intended purpose, subject to appropriate confidentiality obligations and with the respectful and safeguard of the legitimate interests of the granting Party.

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.

¹³ Project partners may, however, decide between them to permit full or partial sublicensing and include appropriate provisions in the CA.

¹⁴ In Option 2: 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).

¹⁵ You may set rules regarding expansion and limitation of the negative list 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.

6.8 ACCESS RIGHTS FOR IMPLEMENTATION

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

Access Rights needed to Background for the performance of the own work of a Party under the Project shall be granted on a <ROYALTY-FREE BASIS or ON FAIR AND REASONABLE CONDITIONS or OTHER – TO SPECIFY– >.

6.9 ACCESS RIGHTS FOR USE

Access Rights to Foreground if Needed for Use of a Participant's own Foreground shall be granted on <A ROYALTY-FREE BASIS or ON FAIR AND REASONABLE CONDITIONS>.

Access Rights to Background if Needed for Use of a Participant's own Foreground shall be granted on <A ROYALTY-FREE BASIS or 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 Participant's participation in the Project.

6.10 ACCESS RIGHTS FOR AFFILIATES

Option 1:

According to this CA no grant of Access Rights to affiliated entities established in a Member State or Associated Country is foreseen.

Option 2:

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.

Access Rights require that access is needed to use own Foreground, the above paragraph only applies to the extent that ownership of Foreground was transferred to an affiliate entity established in a Member State or Associated country.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

6.11 ACCESS RIGHTS CONCERNING PROJECT PARTNERS LEAVING THE CONSORTIUM

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.

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 avoidance of doubt, Defaulting Party according to this Consortium Agreement means a Party which <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM> has identified to be guilty of irregularity specified in this Consortium Agreement.

6.12 PROVISIONS FOR ACCESS RIGHTS TO SOFTWARE

For the avoidance of doubt, the general provisions for Access Rights provided for in Sections “ACCESS RIGHTS”, ACCESS RIGHTS FOR IMPLEMENTATION, ACCESS RIGHTS FOR USE, ACCESS RIGHTS FOR AFFILIATES and ACCESS RIGHTS CONCERNING PROJECT PARTNERS LEAVING THE CONSORTIUM are applicable also to Software.¹⁶

6.13 ADDITIONAL ACCESS RIGHTS

Grant of additional Access Rights to those covered by this Consortium Agreement should be negotiated separately and be subject to separate agreements.

07. NON-DISCLOSURE OF INFORMATION / CONFIDENTIALITY / PRIVACY

During the Project and for a period of <NUMBER> 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 <NUMBER> days after disclosure.

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;

¹⁶ Specific terms and conditions to protect or provide Access Rights to Software (Foreground or Background) according to the legitimate interests of the Parties and due to accomplish satisfactorily the Project shall be set out in case the software may be the core element or target of the Project.

- 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 Grand Agreement(s);
- the confidential information was developed by the receiving Party independently of any such disclosure by the disclosing Party;

08. 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

[...]