

## CONSORTIUM AGREEMENT FOR RESEARCH, DEVELOPMENT AND INNOVATION ACTIONS FUNDED BY THE ECSEL JOINT UNDERTAKING

### BETWEEN:

- 1 Teknologian tutkimuskeskus VTT Oy, the Coordinator
- 2 ACORDE TECHNOLOGIES SA
- 3 AITEK SPA
- 4 BENETE OY
- 5 ROBERT BOSCH GMBH
- 6 VYSOKE UCENI TECHNICKE V BRNE
- 7 CAMEA, spol. s r.o.
- 8 consider it GmbH
- 9 COMmeto
- 10 AGENCIA ESTATAL CONSEJO SUPERIOR DE INVESTIGACIONES CIENTIFICAS, M.P.
- 11 ELIVE ECOSYSTEM OY
- 12 EMOJ
- 13 EVALAN BV
- 14 EVOTEL INFORMATICA SL
- 15 FLIR Systems Trading Belgium FSTB BVBA
- 16 HI IBERIA INGENIERIA Y PROYECTOS SL
- 17 INSTITUT MIKROELEKTRONICKYCH APLIKACI S.R.O.
- 18 STICHTING IMEC NEDERLAND
- 19 INTERUNIVERSITAIR MICRO-ELECTRONICA CENTRUM vzw
- 20 INSTITUT DE RECERCA BIOMEDICA DE LLEIDA FUNDACIO PRIVADA DOCTOR PIFARRE
- 21 STICHTING KEMPENHAEGHE
- 22 KATHOLIEKE UNIVERSITEIT LEUVEN for the purposes of this Agreement represented by KU Leuven Research & Development
- 23 MACQ SA
- 24 MODULIGHT OY
- 25 NXP SEMICONDUCTORS GERMANY GMBH
- 26 NXP SEMICONDUCTORS NETHERLANDS BV
- 27 POZYX LABS
- 28 RE:LAB S.R.L.
- 29 RULEX INNOVATION LABS SRL
- 30 SEVEN SOLUTIONS SL
- 31 S.M.S, SMART MICROWAVE SENSORS GMBH
- 32 SMART ROBOTICS BV
- 33 TELEVIC HEALTHCARE NV
- 34 NEDERLANDSE ORGANISATIE VOOR TOEGEPAST NATUURWETENSCHAPPELIJK ONDERZOEK TNO
- 35 TTS KEHITYS OY
- 36 TECHNISCHE UNIVERSITAET DRESDEN
- 37 TECHNISCHE UNIVERSITEIT EINDHOVEN
- 38 ALMA MATER STUDIORUM - UNIVERSITA DI BOLOGNA
- 39 UNIVERSITAET BREMEN
- 40 UNIVERSITA DEGLI STUDI DI PARMA
- 41 UNIVERSITA DEGLI STUDI SUOR ORSOLA BENINCASA
- 42 UNIVERSITA DEGLI STUDI DI TORINO
- 43 UNIVERSIDAD DE VIGO

hereinafter, jointly or individually, referred to as “Parties” or “Party” relating to the research project entitled:  
**Next generation smart perception sensors and distributed intelligence for proactive human monitoring in health, wellbeing, and automotive systems**

in short: **NextPerception**

hereinafter referred to as the “Action”

## WHEREAS

The ECSEL Joint Undertaking is a partnership between the private and the public sectors for electronic components and systems. It is established within the meaning of Article 187 of the Treaty on the Functioning of the European Union for the implementation of the Joint Technology Initiative on 'Electronic Components and Systems for European Leadership' for a period up to 31 December 2024. The ECSEL Joint Undertaking has been established by COUNCIL REGULATION (EU) No 561/2014 of 6 May 2014 (the "**Council Regulation**"). With a view to ECSEL rules for participation and dissemination, Art. 17 of said Regulation stipulates that Regulation (EU) No 1290/2013 shall apply to the actions funded by the ECSEL Joint Undertaking.

Consequently, this Project Consortium Agreement is based upon REGULATION (EU) No 561/2014 establishing the ECSEL Joint Undertaking in connection with REGULATION (EU) No 1290/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 laying down the rules for the participation and dissemination in "Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)" (hereinafter referred to as "**the Rules**"), and the European Commission Multi-beneficiary General Model Grant Agreement and its Annexes, and is made on 1<sup>st</sup> May 2020 (hereinafter referred to as the "**Effective Date**").

The Parties have submitted a proposal for the Action to the ECSEL Joint Undertaking acting as the Funding Authority. The Parties receive also national funding (hereinafter referred to as the "**National Funding**") in addition to the funding provided by the Funding Authority.

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the Rules, as well as of the specific Grant Agreement to be signed by the Parties and the Funding Authority.

## IT IS NOW AGREED AS FOLLOWS:

### Section 1: Definitions

#### 1.1 Definitions

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

#### 1.2 Additional Definitions

**Accession Date** means the date of the signature of the Declaration of Accession by a Legal Entity joining the Action in accordance with the provisions of the GA and this PCA.

**Action Plan** means the description of the Action and the related estimated costs as first defined in Annex 1 and Annex 2 of the GA.

**Action Share** means, for each Party, that Party's share of the total cost of the Action as set out in the GA.

An **Affiliated Entity** of a Party means any Legal Entity directly or indirectly Controlling, Controlled by, or under common Control with that Party, for so long as such Control lasts.

For the above purposes, "**Control**" of any Legal Entity shall exist through the direct or indirect:

- ownership of more than 50% of the nominal value of the issued share capital of the Legal Entity or of more than 50% of the issued share capital entitling the holders to vote for the election of directors or persons performing similar functions, or
- right by any other means to elect or appoint directors of the Legal Entity (or persons performing similar functions) who have a majority vote.

Common Control through government does not, in itself, create Affiliated Entity status.

**Applicable Law** means the law applicable to this PCA as determined in Section 11.7

**Application Programming Interface** or **API** means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.

**“Background”** means any and all, data, information, know-how and/or IPRs that is/are:

- (i) owned or held by a Party prior to the Effective Date; or
  - (ii) developed or acquired by a Party independently from the work in the Action even if in parallel with the performance of the Action;
- but in either way i) and/or ii) solely to the extent that such data, information, know-how and/or IPRs: a) are Needed as defined below; and b) are introduced into the Action by the owning Party; and c) to which the owning Party is legally able to grant Access Rights identified in this PCA.

**Confidential Information** has the meaning given in Section 10.1 of this PCA.

**Consortium** means the Parties to this Agreement at any point in time.

**Consortium Bodies** means the bodies which are constituted in accordance with Section 6 of this PCA.

**Coordinator** means the Party first mentioned above and identified as such.

**Council Regulation** has the meaning attributed to it in the second preamble.

**Declaration of Accession** means a declaration, in the form provided for in Attachment 1 to this PCA, signed by a new Legal Entity in order to join the Action and this PCA as a Party.

**Defaulting Party** means a Party which the General Assembly has identified to be in breach of this PCA and/or the GA as specified in Section 4.2 of this PCA.

**Dissemination** means the public disclosure of the Results by any appropriate means (other than resulting from protecting or exploiting the results), including by scientific publications in any medium.

**Effective Date** has the meaning attributed to it in the third preamble.

**Exploitation** or **Exploit** means the use of Results in i) further research activities other than those covered by the Action, or ii) in developing, creating and marketing a product, or process, or iii) in creating and providing a service, or iv) in standardization activities.

**Force Majeure** means any one or more events beyond the reasonable control of the relevant Party which occur after the Effective Date, were not reasonably foreseeable at the Effective Date, and the effects of which are not capable of being overcome without unreasonable expense and/or unreasonable loss of time to the Party concerned. Events of Force Majeure may include (without limitation) war, civil unrest, acts of government, natural disasters, exceptional weather conditions, breakdown or general unavailability of transport facilities, accidents, fire, explosions, epidemics or pandemics and general shortages of energy.

**Funding Authority** means the ECSEL Joint Undertaking.

**General Assembly** means the Consortium Body established in accordance with Section 6.3.1 of this PCA.

**General Assembly Member** means a representative of a Party in the General Assembly.

**Grant Agreement** or **GA** means the written agreement between the Parties and the ECSEL Joint Undertaking for the carrying out of the Action, including any agreed amendment to such written agreement that may from time to time be in force.

**Intellectual Property Rights** or **IPR(s)** means: patents, patent applications and other statutory rights in inventions; copyrights (including without limitation copyrights in Software); database rights, 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, wherever in the world arising or available, including but not limited to rights in Confidential Information and/or trade secrets.

**Legal Entity** means any natural person, or any legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations.

**Member** means any Party that is a member of a Consortium Body.

**National Funding Authority** or **NFA** means any public authority of a country, that co-funds one or more of the Parties hereto in the Action,

**National Grant Agreement** means an agreement or other legally binding arrangement, in force and applicable between an NFA and one or more Parties hereto, in which funding for the Action is granted to this Party, or these Parties, by such NFA.

**Needed** means

i) For the implementation of the Project:

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

ii) For Exploitation of own Results:

Access Rights are Needed if, without the grant of such Access Rights, the Exploitation of own Results would be technically or legally impossible. Where Confidential Information is concerned, only Confidential Information which has been disclosed during the Action may be considered as Needed for Exploitation of own Results, except as otherwise agreed between the Parties.

**Object Code** means Software in machine-readable compiled and/or executable form including, but not limited to, binary code form and in form of machine-readable libraries used for linking procedures and functions to other Software.

**Controlled Open Source Software** refers to Software subject to licence terms that require that the use, copying, modification and/or distribution of Software or another copyright work ("**Work**") and/or of any copyright work that is a modified version of or is a derivative work of such Work (in each case, "**Derivative Work**") be subject, in whole or in part, to one or more of the following:

- a) (where the Work or Derivative Work is Software) that the Source Code be made available as of right to any third party on request, whether royalty-free or not;
- b) that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
- c) that a royalty-free license relating to the Work or Derivative Work be granted to any third party.

For the sake of clarity, Software subject to a license that merely permits (but does not require any of) these things is not Controlled Open Source Software, examples of licenses that are **not** regarded as Controlled Open Source Software are Apache, BSD and MIT licenses.

**Project Board** means the Consortium Body established in accordance with Section 6.3.2 of this PCA.

**Project Board Member** has the meaning attributed to it in Section 6.3.2.1.

**Project Consortium Agreement or PCA** means this agreement, including all Annexes attached hereto.

**Result(s)** shall have the meaning given to it in the Rules, meaning any tangible or intangible output of the Action, such as data, knowledge and information whatever their form or nature, whether or not they can be protected, which are generated in the Action as well as any rights attached to them, including Intellectual Property Rights.

**Rules** has the meaning attributed to it in the third preamble.

**Subcontractor** means any third party engaged by a Party to carry out any of that Party's tasks in relation to the Action.

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

**Source Code** means Software in human-readable form normally used to make modifications to it, including but not limited to comments and procedural code such as job control language and scripts to control compilation and installation.

## Section 2: Purpose

The purpose of this PCA is to specify with respect to the Action the relationship among the Parties, in particular concerning the organization of the work in the Action between the Parties, the management of the Action and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.

## Section 3: Entry into force, duration and termination

### 3.1 Entry into force

- (a) A Legal Entity becomes a Party to this PCA upon signature of this PCA by one or more duly authorized representative(s) of such Legal Entity.
- (b) This PCA shall have effect from the Effective Date.
- (c) After the Effective Date an entity becomes a Party to the PCA, subject to the approval of the General Assembly, upon signature of the Declaration of Accession in Attachment 1 by one or more authorized representative(s) of the new Party and the Coordinator. Such accession shall have effect from the date identified in the Declaration of Accession.

### 3.2 Duration and termination

This PCA shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the GA, except in the case of early termination in accordance with this PCA.

However, this PCA or the participation of one or more Parties may be terminated (a) by a non-Defaulting Party by the mutual written consent of the Parties and subject without limitation to Sections 3.3, 4.1 and 9.9.2.1 of this PCA; (b) for a Defaulting Party upon a decision by the General Assembly in accordance with Section 4.2 and 6.3.1.2 subject, and without limitation to, Sections 3.3, 4.2 and 9.9.2.2 of this CA and (c) by the mutual written consent of all of the Parties on the termination of this PCA for all Parties, on terms to be agreed and subject to consent of the Funding Authority. All terminations are subject to and without prejudice to the necessary consent and rights of the Funding Authority pursuant to the GA.

If the GA:

- is not signed by the Funding Authority or a Party, or
- is terminated,
- or if a Party's participation in the GA is terminated,

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

However, this PCA is concluded subject to the condition that the national funding is granted to the Parties by their respective national funding authority. Consequently, in the event that this is not the case, the Parties shall accept the termination of this PCA with regard to the Party concerned and the process for termination of the GA with regard to the Party concerned shall be commenced towards the Funding Authority. Despite termination, the confidentiality clause which shall remain in full force for all information disclosed during the proposal and for the duration indicated in the confidential clause.

The termination of the participation of a Party shall not affect this PCA for the remaining Parties. The consortium and the Action continue in such case.

### 3.3 Survival of rights and obligations

All provisions of this PCA which by nature should survive the termination of this PCA shall so survive such termination. This shall include without limitation the provisions relating to Definitions (Section 1), Results (Section 8), Access Rights (Section 9) and Confidentiality (Section 10), for the time period mentioned therein, as well as for Liability (Section 5), Applicable law and Miscellaneous (Section 11).

Termination shall not affect any rights or obligations of a Party leaving the Consortium that have incurred prior to the date of termination, unless otherwise agreed by the General Assembly and the leaving Party.

## Section 4: Responsibilities of Parties

### 4.1 General principles

Each Party undertakes to take part in the efficient implementation of the Action, and to co-operate, perform and fulfil, in a timely manner, all of its obligations under the GA and this CA as may be reasonably required from it and in a manner of good faith as prescribed by Applicable Law.

Each Party undertakes to notify in a timely manner, in accordance with the governance structure of the Action, any significant information, fact, problem or delay likely to affect the Action.

Each Party shall, in a timely manner, provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.

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

In the event that any of the Parties is terminating or requests termination of its participation in the Action, the Parties shall use reasonable endeavors to reach agreement on either (a) or (b) below:

- a) reallocation of the requesting Party's work and contribution in order that the aims and objectives of the Action can still be met after the proposed withdrawal, and submitting details of it to the Funding Authority; or
- b) the drafting of a restructured Action Plan and submitting it to the Funding Authority.

### 4.2 Breach

In the event that a responsible Consortium Body identifies a substantial breach by a Party of its obligations under this PCA or the GA (e.g. the improper implementation of the Action), the Coordinator or, if the Coordinator is in substantial breach of its obligations, the Party appointed by the General Assembly to that purpose, will, unless the breach is not capable of remedy, give formal notice to such Party in breach requiring that such substantial breach must be remedied within 30 calendar days from the date of receipt of the written notice by the Party.

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

The foregoing subparagraphs of this Section 4.2 shall always be subject to Section 5.4 of this PCA.

### 4.3 Involvement of third parties

A Party that enters into a subcontract with a Subcontractor or otherwise involves third parties in the Action (such as Affiliated Entities or Linked Third Parties) remains responsible for carrying out its relevant part of the Action and for such third party's compliance with the provisions of this CA and of the GA. Such Party shall further be liable to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this PCA and the GA.

### 4.4 Access Rights by Affiliated Entities

In case an Affiliated Entity of a Party owns Background or, in accordance with Section 8.3.1, owns Results, the relevant Party shall ensure that such Affiliated Entity will grant Access Rights to such Background or Results to the other Parties, as if it were a Party to this PCA.

## Section 5: Liability towards each other

## 5.1 No warranties

In respect of any information or materials (including Results and Background) supplied by one Party to another under the Action, no warranty or representation of any kind is made, given or implied, and in particular not as to the absence of technical defects, sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. All such information and materials are supplied by a Party “as is” and used by the other Party at its own risk.

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials,
- no Party granting Access Rights shall be liable vis-à-vis any of the other Parties in case of infringement of proprietary rights, including but not limited to IPRs, of a third party resulting from any other Party (or its Affiliated Entities) exercising its Access Rights;
- the recipient Party shall in all cases be liable for and hold harmless the supplying Party from any claims from third parties arising out of the recipient Party’s use of the information or materials, regardless whether such claims arise out of the infringement of rights of such parties, product liability or otherwise.

## 5.2 Limitations of contractual liability

### 5.2.1 Liability: general

Subject to the following provisions of this Section 5.2, the general provisions of the Applicable Law governing liability shall apply to any claim between the Parties for loss or damage caused by a Party, its employees, agents and Subcontractors to the other Party and arising in connection with the Action.

Each Party undertakes to perform its work at its own risk and under its sole liability. In particular, each Party shall individually be liable to comply with the terms and conditions of this PCA and with the Grant Agreement.

### 5.2.2 Excluded liabilities

To the extent permissible under applicable legislation and except as otherwise provided specifically below in Section 5.2.4, and except in case of any breach by willful misconduct, willful breach or gross negligence by a Party of its obligations under Section 10 (Confidentiality), no Party shall be liable towards another Party hereto in connection with this PCA or the GA for any of the following, however caused or arising, on any theory of liability, and even if such Party was informed or aware of the possibility thereof:

- loss of profits, revenue, income, interest, savings, shelf-space, production and business opportunities;
- lost contracts, goodwill, and anticipated savings;
- loss of or damage to reputation or to data;
- costs of recall of products; or
- any type of indirect, incidental, punitive, special or consequential loss or damage.

### 5.2.3 Financial limit on liability

Subject to the provisions of Section 5.2.4 of this PCA, the aggregate liability of each Party under this PCA towards the other Parties collectively in respect of any and all such claims shall not exceed once that Party’s Action Share. This limitation does not apply to the indemnification obligation of the recipient Party set forth in section 5.1 with regard to third parties.

### 5.2.4 Other exceptions

The exclusions and limitations stated in Sections 5.2.2 and 5.2.3 above shall not apply in respect of any: (i) fraud; (ii) death, injury to natural persons or damage to real or immovable property caused by willful act of a Party, its directors, employees, agents and Subcontractors; (iii) willful misconduct or willful breach by a Party of any

obligation accepted under the GA and this PCA; or (iv) otherwise in so far as mandatory applicable legislation overrides such exclusions and limitations.

In addition, the exclusions and limitations stated in Section 5.2.3 above shall not apply in respect of a breach caused by gross negligence of a Party of any of its obligations accepted under the GA and this PCA.

### 5.3 Damage caused to third parties

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of said Party's activities within the Action, either by itself or on its behalf under this PCA or from its use of Results or Background.

### 5.4 Force Majeure

No Party shall be considered to be in breach of this PCA if it is prevented from fulfilling its obligations under the PCA by Force Majeure provided that the Party meets the obligations of this Section 5.4.

The Parties hereby acknowledge and agree that as of the Effective Date there is an ongoing global event related to a coronavirus pandemic (commonly referred to as COVID-19) and that, notwithstanding any occurrence of such ongoing event prior to the Effective Date, such ongoing event or expansion thereof is a Force Majeure event even when at the Effective Date this is reasonable foreseeable, provided that such event otherwise qualifies as a Force Majeure event in accordance with the terms of this Agreement.

Each Party will notify the competent Consortium Bodies in writing of any Force Majeure without undue delay, describing the Force Majeure event, its anticipated duration and use reasonable efforts to resume performance as soon as possible. If the consequences of Force Majeure for the Action are not overcome within 12 weeks after such notification, the transfer of tasks – if any – shall be decided by the competent Consortium Bodies.

Compensation claims shall be excluded in case of Force Majeure or in case of any restriction resulting from import or export laws and regulations and/or in case of any delay in the granting or extension of an import or export license or of any other governmental authorization on the condition that the Party suffering from Force Majeure or governmental restriction or delay can give evidence that it uses reasonable efforts to fulfil its tasks properly and in time.

## Section 6: Governance structure

### 6.1 General structure

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

- General Assembly as the ultimate decision-making Consortium Body.
- Project Board as the supervisory Consortium Body for the implementation of the Action which shall report to and be accountable to the General Assembly.

6.1.2 The Coordinator is the Legal Entity acting as the intermediary between the Parties and the Funding Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the GA and this CA.

### 6.2 General operational procedures for all Consortium Bodies

#### 6.2.1 Representation in meetings

Any Party which is a member of a Consortium Body (hereinafter referred to as “Member”):

- should be represented at any meeting of the Consortium Body
- may appoint a substitute or a proxy to attend and vote at any meeting on the Member's behalf; and
- shall participate in a co-operative manner in the meetings.

The Parties shall use reasonable endeavors to maintain their representation in the Project Board.

#### 6.2.2 Preparation and organization of meetings



### 6.2.2.1 Convening meetings

The chairperson of a Consortium Body shall convene meetings of that Consortium Body in accordance with the following:

	Ordinary meeting	Extraordinary meeting
General Assembly	At least once a year	At any time upon written request of the Project Board or 1/3 of the General Assembly Members
Project Board	At least twice per reporting period	At any time upon written request of any Project Board Member

### 6.2.2.2 Notice of a meeting

The chairperson of a Consortium Body shall give notice in writing of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated in Section 6.2.2.3 below.

### 6.2.2.3 Sending the agenda

The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body a written (original) agenda no later than the minimum number of days preceding the meeting as indicated below:

General Assembly	14 calendar days, 7 calendar days for an extraordinary meeting
Project Board	7 calendar days

### 6.2.2.4 Adding agenda items

Any Member of a Consortium Body may, during the meeting, add an item to the original agenda provided all Members of a Consortium Body are present or represented and a majority of two-thirds of the Members agree to add an agenda item

**6.2.2.5** Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document which is then agreed by the defined majority (see Section 6.2.3. below) of all Members of the Consortium Body. Such document shall include the deadline for responses by any Members of any Consortium Body. The Coordinator shall send out a written document containing the outcome of the voting and the corresponding decision (hereinafter referred to as a "Written Resolution") within 21 calendar days after expiration of the deadline.

**6.2.2.6** Meetings of each Consortium Body may also be held by teleconference or other telecommunication means.

## 6.2.3. Voting rules and quorum

**6.2.3.1** A Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of the Members of that Consortium Body are present or represented (quorum).

If the quorum is not reached, the chairperson of the Consortium Body shall promptly convene another meeting within 14 calendar days. If in this second meeting the quorum is not reached, the second meeting shall be entitled to decide even if less than the quorum of Members is present or represented.

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

**6.2.3.3** Defaulting Parties may not vote.

**6.2.3.4** Decisions in the General Assembly shall be taken by a majority of two-thirds (2/3) of the votes cast. Decisions in the Project Board shall be taken by a majority of two-thirds (2/3) of the votes cast.

## 6.2.4 Veto rights

**6.2.4.1** A Party which can show that its amount of own work, costs or liabilities would be increased or its time for performance would be decreased, or its Intellectual Property Rights, Access 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.

**6.2.4.2** A Party may veto such decision within 21 calendar days after (i) the draft minutes of the meeting where such decision was taken; or, (ii) in the cases foreseen in section 6.2.2.5 above, a copy of the Consortium Body's Written Resolution, have been sent to such Party. In case of exercise of veto, the Members of the related Consortium Body shall make every reasonable effort to resolve the matter which occasioned the veto to the general satisfaction of all Parties. A Party that is not a Member of a particular Consortium Body but can sufficiently show its legitimate interests would be severely affected by a decision may veto a decision within the same number of calendar days after the draft minutes of the meeting are sent to all Parties.

**6.2.4.3** 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.

### **6.2.5 Minutes of meetings**

**6.2.5.1.** The chairperson of a Consortium Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. The chairperson shall send the draft minutes to all Members within 21 calendar days counting from the date on which the meeting was held.

**6.2.5.2** Each Member of a Consortium Body that has attended the meeting, shall have the right to request that a factual inaccuracy be corrected. The minutes shall be considered as accepted if, within 21 calendar days from sending, no Member has sent an objection in writing to the chairperson with respect to the accuracy of the draft of the minutes. The Coordinator shall provide authenticated duplicates of the minutes to all Parties.

## **6.3 Specific operational procedures for the Consortium Bodies**

### **6.3.1 General Assembly**

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

#### **6.3.1.1 General Assembly Members**

**6.3.1.1.1** The General Assembly shall consist of one representative of each Party (hereinafter referred to as "General Assembly Member" or "Member").

**6.3.1.1.2** Each General Assembly Member is authorized to deliberate and decide on all matters listed in Section 6.3.1.2. of this PCA.

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

#### **6.3.1.2. Decisions**

The following decisions can only be taken by the General Assembly upon its own initiative or upon proposal made by the Project Board:

- review of Annex 1 and Annex 2 of the GA, including budget reallocations, and proposal thereof to the Funding Authority;
- proposals to the Parties for the review and/or amendment of the terms of the PCA;
- decisions upon material changes to the Action Plan;
- decisions on the accession of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Legal Entity;
- decisions on the withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal;
- identification of a substantial breach by a Party of its obligations under this PCA or the GA;

- declaration, remedies and termination of the participation of a Defaulting Party;
- proposals to the Funding Authority for a change of the Coordinator if made a Defaulting Party; proposals to the Funding Authority for suspension or termination of all or part of the Action; and
- the appointment - if necessary of any vacancy to the Project Board.

## 6.3.2. Project Board

### 6.3.2.1 Project Board Members

The Project Board shall consist of the Coordinator (Project Manager as its representative), Technical Coordinator, Work Package Leaders, Use Case Owners and Country coordinators (hereinafter referred to as “**Project Board Members**” or “**Members**”). Any changes to the membership structure of the Project Board shall be subject to approval by the General Assembly.

The Coordinator shall chair all meetings of the Project Board, unless decided otherwise by a majority of two-thirds of the Project Board Members.

### 6.3.2.2 Minutes of meetings

Minutes of Project Board meetings shall be sent by the Coordinator to the General Assembly Members for information.

### 6.3.2.3 Tasks

**6.3.2.3.1** The chairperson of the Project Board shall prepare the meetings, propose decisions and prepare the proposals for the General Assembly decisions under Section 6.3.1.2 above.

**6.3.2.3.2** It shall seek a consensus among the Project Board Members and shall decide by a majority identified in Section 6.2.3.4 above.

**6.3.2.3.3** The Project Board shall be responsible for the preparation, execution and implementation of the decisions of the General Assembly.

**6.3.2.3.4** The Project Board shall monitor the effective and efficient implementation of the Action.

**6.3.2.3.5** In addition, the Project Board shall collect information at least every 6 months on the progress of the Action, examine that information to assess the compliance of the Action with the Action Plan and, if necessary, propose modifications of the Action Plan to the General Assembly.

**6.3.2.3.6** The Project Board shall:

- make proposals to the General Assembly for review of Annex 1 and Annex 2 of the GA, including budget reallocations;
- make other proposals for General Assembly decisions under Section 6.3.1.2;
- technically manage the Action, including drafting the roadmaps, plans, policies, handbooks and guidelines required for the proper implementation of the Action;
- make proposals to the General Assembly that the General Assembly should serve notice on a Defaulting Party and that the General Assembly should decide to assign the Defaulting Party's tasks to one or more specific Legal Entity(ies) (preferably chosen from the remaining Parties);
- support the Coordinator in preparing meetings with the Funding Authority and in preparing related data and deliverables; and
- prepare and implement the content and timing of press releases, joint publications and other actions of dissemination by the Consortium or proposed by the Funding Authority in respect of the procedures for Article 29 of the Grant Agreement.

In the case of abandoned or revised tasks as a result of a decision of the General Assembly, the Project Board shall advise the General Assembly on ways to rearrange tasks and budgets of the Parties concerned. Such

rearrangement shall take into consideration the legitimate commitments taken prior to the decisions that cannot be cancelled.

#### 6.4. Coordinator

**6.4.1** The Coordinator is the Legal Entity acting as the intermediary for efficient and correct communication between the Parties and the Funding Authority and shall, in addition to its responsibilities as a Party, perform all tasks assigned to it as described in the GA and in this PCA.

**6.4.2** In particular, the Coordinator shall

- monitor compliance by the Parties with their obligations;
- keep the address list of the Parties and other contact persons updated and available;
- collect, review to verify consistency and submit reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Funding Authority;
- administer, prepare the minutes and provide the chair of the General Assembly and the Project Board (in respect of providing the chair of the General Assembly and the Project Board, solely if nothing is decided otherwise in accordance with this PCA, respectively), follow-up the decisions of the General Assembly and the Project Board, and transmitting amendments and documents based on the decisions of the General Assembly and the Project Board to the Funding Authority;
- administer the financial contribution of the Funding Authority and fulfil the financial tasks described in Section 7.2 of this PCA;
- verify whether the Parties identified in the GA complete the necessary formalities for accession to the GA in accordance with the GA;
- promptly provide, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to pursue their legitimate rights;

If one or more of the Parties is late in submission of any Action deliverable, the Coordinator may nevertheless submit the other Parties' Action deliverables and all other documents required by the GA to the Funding Authority in time.

**6.4.3** The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium unless stated in this PCA or explicitly authorized by such other Party.

**6.4.4** The Coordinator shall have no other functions unless otherwise agreed upon by the General Assembly.

**6.4.5** If the Coordinator fails in its coordination tasks, the General Assembly may propose a new Coordinator to the Funding Authority.

### Section 7: Financial provisions

#### 7.1. General Principles

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

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 Action towards the Funding Authority and NFA. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Funding Authority or the NFA.

A Party that spends less than its allocated share of the budget as set out in the Action Plan or – in case of reimbursement via unit costs - implements less units than foreseen in the Action Plan will be funded in accordance with its actual duly justified eligible costs only.

A Party that spends more than its allocated share of the budget as set out in the Action Plan will be funded only in respect of duly justified eligible costs up to an amount not exceeding the "Max grant/€ (J) in Annex 2 of the GA.

In any case of a Party having received excess payments, the Party has to return the relevant amount to the Coordinator without undue delay.

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

A Party leaving the Consortium shall refund all payments it has received from the Funding Authority except the amount of contribution accepted by the Funding Authority and remaining within the budget allocated to the Party leaving the Consortium.

## 7.2. Payments and Variable Contribution

**7.2.1** Payments of funding from the Funding Authority to Parties are the exclusive task of the Coordinator.

In particular, the Coordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references;
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts;
- keep the records and financial accounts relevant for the Funding Authority financial contribution and to inform the Funding Authority of its distribution thereof; and
- undertake to keep the financial contribution of the other Parties separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

**7.2.2** With reference to Articles 21.2 and 21.3.2 of the Grant Agreement, no Party shall before the end of the Action receive more than its allocated share of the maximum grant amount from which the amounts retained by the Funding Authority for the Guarantee Fund and for the final payment have been deducted.

**7.2.3** The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following:

Funding of costs will be included in the Action Plan and will be paid to the Parties after receipt from the Funding Authority without undue delay and in conformity with the provisions of the GA and this PCA. Costs accepted by the Funding Authority will be paid to the Party concerned.

The Coordinator is entitled to withhold any excess payments, any payments due to a Defaulting Party except the amount of contribution that the Funding Authority, after acceptance of the reporting, decides to be provided to the Defaulting Party, provided it remains within the budget allocated to the Defaulting Party, or to a beneficiary which has not yet signed this PCA.

**7.2.4** The Coordinator is entitled to recover any excess payments already paid to a Defaulting Party, except for payments which have been effectively used in the Action, have been accepted by the Funding Authority and remain within the budget allocated to the Defaulting Party. The Coordinator is equally entitled to withhold or recover payments to a Party when this is required by or agreed with the Funding Authority.

**7.2.5.** Each Party shall individually be liable for the payment of the Variable Contribution of the ECSEL-JU industry association levied over the maximum funding of that Parties participation in the Action. If the Party is not a member of any ECSEL-JU industry association (AENEAS, ARTEMIS Industry Association or EPoSS), the Party will sign a Declaration of Acceptance as to be found on the website of AENEAS, ARTEMIS-IA and EPoSS respectively at the URLs indicated below and pay the Variable Contribution directly to one of the ECSEL-JU industry associations.

*AENEAS, ARTEMIS-IA or EPoSS - Declaration of Acceptance:*

For AENEAS: <https://aeneas-office.org/official-documents/>

For ARTEMIS-IA: <https://artemis-ia.eu/regulations.html>

For EPOSS: <https://www.smart-systems-integration.org/publications>

### 7.3. National Funding

**7.3.1** Each Party may receive additional funding relating to its share of the Project directly from its NFAs.

**7.3.2** The Parties shall, if necessary, individually provide the additional funding from the NFAs required to carry-out their own share of the work as specified in the GA, and not exceeding each Party's requested national funding stated in Annex 2 of the GA.

**7.3.3** Each Party shall be individually and solely responsible towards its NFA for compliance with the requirements of its NFA. Each Party is responsible for ensuring that the GA and this PCA are in compliance with its NFA requirements. Neither the Coordinator nor any of the other Parties shall be in any way liable towards the NFA of a Party, for any justification of costs or otherwise by such Party.

## Section 8: Results

### 8.1. Ownership of Results

Results shall be owned by the Party that generates the Results. The Parties have the responsibility to obtain rights from third parties (including personnel) in accordance with Grant Agreement Article 26.3.

### 8.2. Joint ownership

Joint ownership is governed by Grant Agreement Article 26.2, and joint owners will separately negotiate in good faith the terms and conditions of their joint ownership in a separate joint ownership agreement. Each joint owner shall comply with the provisions of this article 8.2.

Each joint owner shall have an undivided interest in and to a joint Result as well as in and to resulting Intellectual Property Rights in all countries.

The joint owners shall agree on all protection measures and the division of related costs in advance of any such protection measures being undertaken by any of the joint owners. In case a joint owner decides to relinquish its share in an IPR arising out of the joint Results, regardless of this being prior to filing for the statutory protection or later, in one or more jurisdictions, the relinquishing joint owner shall offer its share in the joint IPR to the other joint owners, provided that in any case the relinquishing owner retains a non-exclusive, sub-licensable right in the jurisdiction concerned to directly or indirectly exploit the joint Result.

### 8.3. Transfer of Results

**8.3.1** Each Party may transfer ownership of its own Results (including without limitation its share in Results that it owns jointly with another Party or Parties and all rights and obligations attached to such Results) to any of its Affiliated Entities, or third parties specifically identified below, without separate notification to any other Party and right to object to any transfer to such Affiliated Entity, provided it in other respects follows Grant Agreement Article 30 and ensures the other Parties retain the Access Rights granted hereunder.

*Specifically identified third parties:*

For IMEC: Universiteit Gent

**8.3.2** The Parties hereby agree that in the framework of a merger or an acquisition, which, for the sake of clarity, shall mean to include any assignment of ownership of any of the Parties' Results, no notification of intended transfer of ownership need be given, due to confidentiality obligations arising from national and/or community laws or regulations, for as long as such confidentiality obligations are in effect and/or for as long as such notice is prohibited under applicable EU and/or national laws on mergers and acquisitions. Each Party hereby waives any right to prior notification and to object to any transfer that is made in compliance with this Section 8.3.2.

**8.3.3** Any transfer of ownership of Results made under this Section 8.3 shall be made subject to the Access Rights to be granted, the rights to obtain Access Rights and the right to Disseminate Results as defined in the GA and/or this PCA. Therefore, each transferor shall ensure that such transfer does not prejudice such rights of the other Parties or their Affiliated Entities, and the transferor shall pass on its obligations regarding the transferred Results

to the transferee, including the obligation to pass them on to any subsequent transferee. The obligations under this Section 8.3 apply for as long as other Parties have - or may request - Access Rights to Results, as provided in Section 9 of this PCA.

## **8.4 Dissemination**

### **8.4.1 Dissemination of Results**

During the Action and for the period of time 1 (one) year after the end of the Project, the Dissemination of their own Results by one or several Parties including but not restricted to publications of whatever form (excluding patent applications(s) and other registrations of IPRs), shall be governed by the procedure of Article 29.1 of the Grant Agreement subject to the following provisions:

Any publication planned by a Party shall be given to the other Parties by e-mail at least twenty-one (21) days before the planned publication submission date. Any objection to the planned publication shall be made in writing to all Parties within fourteen (14) calendar days after receipt of the written notice. If no objection is made within the time limit stated above, the publication is permitted.

An objection to a planned publication by a Party is justified if:

- (a) the protection of the objecting Party's Results or Background is significantly affected; or
- (b) the proposed publication includes Confidential Information of the objecting Party (irrespective of its nature as Results or Background); or
- (c) the objecting Party's legitimate interests in relation to its Background and Results would be significantly harmed.

Any and all objection(s) shall include, to the extent possible, a precise request for necessary modifications.

If an objection has been raised on one or more of the above mentioned grounds, the objecting Party and the publishing Party shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting Confidential Information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion. In all cases, the objecting Party may continue the opposition for as long as information under 8.4.1 (b) has not been removed from the publication. With regard to opposition made on the grounds under 8.4.1 (a) and (c), the objecting Party can request a publication delay of not more than three (3) months from the time it raises such an objection whereby the objecting Party will inform the requesting Party within this delay whether or not it wishes to file for intellectual property rights protection. If the objecting Party informs the requesting Party of its intention to file for intellectual property rights protection, the delay for dissemination will be extended with an additional period of three (3) months. If however the objecting Party informs the requesting Party that it is not intending to file for intellectual rights protection, then dissemination is permitted, provided that the justified objections of the objecting Party have been addressed and, if necessary, have led to an adjustment of the dissemination acceptable for the Parties involved and if the objections have been duly addressed consent to the publication is not further withheld.

### **8.4.2 Intentional dissemination of another Party's Confidential Information**

In case a Party wishes to intentionally include in a Dissemination activity another Party's Confidential Information, irrespective of its nature as Results (which are not publicly available), or Background (which is not publicly available), it needs to first obtain that Party's prior written approval.

The mere absence of an objection according to Section 8.4.1 of this PCA is not considered as an approval for such intentional dissemination, and the Party concerned will be liable in accordance with this PCA towards the other Party for any Dissemination activity without explicit, prior approval of the other Party.

### **8.4.3 Co-operation obligations**

- (i) The Parties undertake to co-operate to allow the timely submission, examination, publication and defense of any dissertation or thesis for a degree which includes their Results, Background and/or Confidential Information, subject to the confidentiality and publication provisions agreed in this PCA.
- (ii) In accordance with Section 8.4.1 of this PCA, prior to notifying any planned publication and/or any planned Dissemination activity of Results, Parties shall undertake reasonable efforts to refrain from including in such planned publication and/or such planned Dissemination activity of any other Party's Confidential Information.

#### **8.4.4 Use of names, logos or trademarks**

Nothing in this PCA shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

#### **8.5 Contributions to Standards**

Except as explicitly provided in Annex 1 (Description of the Action) of the GA, no Party shall have any obligation pursuant to this PCA to make any contribution for incorporation of its own Result, in any European or other standard. The publication procedure identified above in Section 8.4.1. shall be applied to contributions to standards.

#### **8.6**

Section 8.4 does not imply any obligation to submit documentation such as marketing materials, data-sheets or product manuals to the approval of the other Parties, as long as such documentation does not include the Results of other Parties, Confidential Information of other Parties or Background of other Parties.

### **Section 9: Access Rights**

#### **9.1. General Principles**

**9.1.1** Parties shall in response to receiving a request for Access Rights inform each other as soon as possible of any restriction which might substantially affect the granting of Access Rights. If the Consortium Body considers that such restrictions have a significant impact on the implementation of the Action, and such restrictions are not foreseen in the Action Plan, it may decide to update the Action Plan accordingly to respect the restrictions.

**9.1.2** For the sake of clarity, any Access Rights granted under this Agreement expressly exclude any rights to grant sub-licenses, unless expressly stated otherwise in this PCA or agreed in writing between the Parties concerned.

**9.1.3** Save in exceptional circumstances, the granting of Access Rights shall be free of any administrative transfer costs. Any and all Access Rights granted under this PCA shall be granted on a non-exclusive and non-transferable basis, if not otherwise agreed in writing by the Parties concerned.

**9.1.4** Any request for receiving Access Rights to be granted under this PCA shall be subject to Grant Agreement Article 25.3 third paragraph and Article 31.3 second paragraph.

**9.1.5** Results and/or Background shall be used by the non-owning Party only for the purposes for which Access Rights to such Results and/or such Background have been granted and are subject to the conditions set forth in this PCA.

**9.1.6** All requests for Access Rights shall be made in writing. Results and/or Background shall be used by the non-owning Party only for the purposes for which Access Rights to such Results and/or such Background have been granted and are subject to the conditions set forth in this PCA. The requesting Party must show that the Access Rights are Needed.

**9.1.7** The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.



**9.1.8** In addition to the obligations pursuant to the GA, each Party shall, to the fullest extent it can lawfully do so, ensure that it can grant Access Rights and fulfil the obligations under the GA and this PCA in Results created by its employees, or third parties involved in the implementation of the Action.

**9.1.9.** Any obligation to grant Access Rights under this PCA is limited to Background or Results for which (a) a Party is legally entitled to grant the Access Rights (b) the granting of Access Rights is free of any payments to third parties by the Party, and (c) the granting of such Access Rights is not in conflict with any rights of third parties.

**9.1.10** For the avoidance of doubt: any obligation to grant Access Rights does not apply where Background is implemented by a Party in components or software which are, or which the Party is willing to make, commercially available to the Party Needing Access Rights, and where purchasing of such components or software allows the Party Needing Access Rights to meet the Need. Nothing in this PCA shall be interpreted as a right to the Party Needing Access Rights to obtain such components or software at other terms than those commercially offered by the Party.

## **9.2. Agreement on Background and Access Rights to Background**

During the implementation of the Action, the Parties will assess their Need for Access Rights to the other Parties' Background. In case a Party identifies that it Needs Background of another Party to perform its tasks in the Action or for Exploitation, such Parties shall agree separately on a case by case basis on the scope, the limitations and the conditions of such Access Rights, subject always to the acceptance by the owning Party. In case granted, such Access Rights (i) shall be granted subject to the restrictions set out in this Consortium Agreement and the Grant Agreement and (ii) with respect to Access Rights Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless explicitly otherwise decided by the owning Party.

## **9.3 Access Rights to Results Needed for implementation**

Access Rights to Results Needed for the implementation of the Action are hereby requested (in accordance with the requirements of the GA), and shall be deemed granted, as of the date of the GA entering into force, on a royalty-free basis to and by all Parties, and shall either terminate automatically upon completion of the Action or upon termination of a Party's participation in accordance with Section 9.9.2 of this PCA.

## **9.4 Access Rights to Results Needed for Exploitation**

Access Rights to Results Needed for Exploitation of a Party's own Results shall be negotiated in good faith between the respective Parties and granted on Fair and Reasonable Conditions.

## **9.5 Access Rights for Affiliated Entities**

### **9.5.1 Sub-Licensing for Affiliated Entities**

When granting any Access Rights under this PCA, each Party shall grant, or shall cause any Affiliated Entities owning any Background and/or Results to grant, to any other Party the right to sub-license the same to such other Party's Affiliated Entities participating in the implementation of the Action. In sub-licensing any Access Rights to its Affiliated Entities, each Party shall ensure that its Affiliated Entities are bound by the relevant and applicable rights and obligations provided in this PCA, including without limitation appropriate undertaking as to Confidentiality.

Access Rights granted to any Affiliated Entity are subject to the conditions attached to the Party granting such sub-licence (if any) and subject to continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

For the avoidance of doubt, this Section 9.5 of this PCA is not intended to confer a third party beneficiary status to Affiliated Entities of the Parties, and does not confer to Affiliated Entities any standing to enforce any provisions of this PCA.

### **9.5.2 Cessation of Affiliated Entities status**

#### **a) Rights granted to Affiliated Entities**

Upon any Legal Entity ceasing to be an Affiliated Entity of a Party, any Access Rights granted to such Legal Entity shall lapse.

#### **b) Rights granted by Affiliated Entities**

Upon any Legal Entity ceasing to be an Affiliated Entity of a Party, the licenses or user rights previously granted by such Legal Entity to any Party and/or its Affiliated Entities under or in respect of Background, or Results shall continue in full force and effect.

### **9.6 Additional Access Rights**

For the avoidance of doubt, any grant of Access Rights not covered by the GA or this PCA shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be negotiated and ultimately agreed between the owning and the receiving Party(ies).

### **9.7 Inability to grant Access Rights due to third party rights**

When a Party is unable, because of third party rights, to grant Access Rights, it will notify the other Parties as set out in Section 9.1.1 of this PCA.

### **9.8 Specific provisions on Software**

**9.8.1** For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 of this PCA are applicable also to Software as far as not modified by this Section 9.8.

**9.8.2** Parties' Access Rights to Software do not include any right to receive i) Source Code, or ii) Object Code ported to a certain hardware platform, or iii) any right to receive Source Code, Object Code or respective Software Documentation in any particular form or detail, other than the form Needed for the implementation of the Action and only as made available in the Action by the Party granting the Access Rights. Terms and conditions of such Access Rights to Source Code must be agreed upon in a separate license agreement.

**9.8.3** A Party or Parties that intend to introduce Controlled Open Source Software in the implementation of the Action or any Party or Parties planning on disseminating its or their Results as Controlled Open Source Software shall make a proposal on it to the Project Board. The Project Board shall coordinate and decide on policies relating to such introduction or dissemination.

For the avoidance of doubt: this provision shall not apply to the use of Controlled Open Source Software by a Party as a tool in the Action, or to Controlled Open Source Software embedded in the Parties Background or Results where such Background or Results themselves are not Controlled Open Source Software, or where the Controlled Open Source Software is a platform on which the other Parties can run higher layer Software without the higher layer software being subject to the license terms of the platform, or other Controlled Open Source Software which the recipient Party can use through an API without the Background or the Results of the recipient Party becoming subject to the licence terms of the Controlled Open Source Software.

### **9.9 Access Rights for Parties entering or leaving the Consortium**

#### **9.9.1 New Parties entering the Consortium**

New Party entering the Consortium will be granted Access Rights to Results and Background as of the Accession Date under the same terms and condition as any other Party to this PCA.

#### **9.9.2 Parties leaving the Consortium**

##### **9.9.2.1 Access Rights granted to and by a leaving Non-Defaulting Party**

The obligations contained in this PCA on Access Rights to Results and Background Needed for the Exploitation of a Party's Results, granted or to be granted by Parties shall apply in respect of a leaving Party up and until the effective date of the termination of such leaving Party's participation in this PCA and the Access Rights shall continue in full effect.

A leaving Non-Defaulting Party is entitled to request and shall grant Access Rights up and until the end of the period of time referred to in Article 9.1.4 calculated as from such effective date of the termination of such leaving Party's participation in the Action.

#### 9.9.2.2 Access Rights granted to and by a leaving Defaulting Party

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

A Defaulting Party shall continue to grant Access Rights pursuant to the GA and this PCA in respect of its Background and Results existing at the time of such termination.

A Defaulting Party shall immediately return any and all other Party's materials, equipment, and any other element that can be requested by a Party (including without limitation Confidential Information capable of being returned) in its possession at its own cost.

### Section 10: Confidentiality and Personal Data

**10.1** All information in whatever form or mode of communication, which is disclosed by a Party (the "**Disclosing Party**") to any other Party (the "**Recipient**") in connection with the Action during its implementation and which has been explicitly marked as "confidential" or "secret" or similarly marked at the time of disclosure, or when disclosed orally or in intangible form has been identified as confidential at the time of disclosure or due to circumstances should have been understood to be of confidential nature is "**Confidential Information**".

**10.2** The Recipient hereby undertakes during the term of the Action for a period of 4 years after the end of the Action:

- a) not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- b) not to disclose Confidential Information to any third party other than its Affiliated Entities, and/or Subcontractors and/or Linked Third Parties on a need-to-know basis without the prior written consent by the Disclosing Party, wherein the Recipient must ensure that an arrangement is in place prior to such disclosure that subjects the Affiliated Entities, and/or Subcontractors and/or Linked Third Parties to provisions at least as strict as provided in this Section 10;
- c) not analyse, (de)compile, modify, edit, format, improve, reproduce, derive from, reverse engineer, transfer, distribute, market and/or sell, in whole or in part, the Confidential Information or any tangible object containing such information unless required for the implementation of the Action or agreed upon separately;
- d) to apply for the security of Confidential Information at least the same degree of care as it applies for the security of its own Confidential Information (but in any case not less than reasonable care); and
- e) to ensure that internal distribution of Confidential Information by a Recipient, its Affiliated Entities, Subcontractors and Linked Third Parties shall take place on a need-to-know basis; and
- f) insofar as reasonably possible, to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipient including all copies thereof, and to delete all such Confidential Information stored in a machine-readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations, for the proof of on-going obligations or to the extent the Confidential Information is archived (such as by Recipient's automated back-up archiving practices), provided that the Recipient complies with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

**10.3** The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can prove that:

- (a) the Confidential Information becomes or has become publicly available by means other than a breach of the Recipient's confidentiality obligations;

- (b) the Disclosing Party has informed the Recipient that the Confidential Information is no longer confidential;
- (c) the Confidential Information has been communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
- (d) the Confidential Information was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
- (e) the Confidential Information was already known to the Recipient prior to disclosure without any obligation of confidentiality to the Disclosing Party or
- (f) the Recipient is required to disclose the Confidential Information in order to comply with the GA or applicable laws or regulations or with a court or administrative order, subject to the provisions of Section 10.5 hereunder. This obligation does not alter the status of the information as a Confidential Information and it is still to be treated as confidential in regards to any other Party.

**10.4** Each Recipient shall promptly advise the Disclosing Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware thereof.

**10.5** If any Recipient becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure (i) notify the Disclosing Party, and (ii) comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the Confidential Information.

**10.6.** Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees, other staff members or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project, for the period identified in Section 10.2, and/or after the termination of the contractual relationship with the employee or third party.

### **10.7 Personal data**

It is foreseen, that using and sharing personal data will be necessary to implement the Action. In the event personal data is processed in the framework of this PCA (hereinafter referred to as "Processing"), the Parties undertake to respect their obligations in application of regulations in force and, especially, the regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data (hereinafter referred to as "GDPR"). The Parties agree that they will not disclose to each other personal data without first entering into a separate written agreement for such purpose to be concluded between the respective Parties, except for the necessary personal data of persons participating the Action or conclusion of this PCA which the Party is legally entitled to disclose. For cases in which the respective Parties act as joint controllers, attachment 2 contains a template for a Joint Controller Agreement, which can be used as the basis for negotiating such agreement.

In addition to personal data, the Action will also entail natural persons and health related trials. The Parties undertake to respect their obligations in application of regulations and laws relating to such trials, including but not limited to the approval processes and processing of sensitive personal data. If necessary, the Parties involved in such trials shall make separate written agreements with regard to the trials.

## **Section 11: Miscellaneous**

### **11.1 Attachments, inconsistencies and severability**

This CA consists of this core text and:

- Attachment 1 (Template for a Declaration of Accession)
- Attachment 2 (Template for a Joint Controller Agreement)

In case the terms of this PCA are in conflict with the mandatory terms of the GA, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this PCA, the latter shall prevail. In case

the terms of any National Grant Agreement are in conflict with the terms of this PCA or the GA, the terms of the latter shall prevail.

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

### **11.2 No representation, partnership or agency**

No Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium without a separate consent by the other Party(ies). Nothing in this PCA shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

### **11.3 Notices and other communication**

Any notice to be given under this CA shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator.

#### **(a) Formal notices:**

If it is required in this PCA (Sections 4.2 and 11.4 of this CA) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorized representative of a Party and shall either be served personally or sent by mail with recorded delivery with receipt acknowledgement.

#### **(b) Other communication:**

Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all concerned.

### **11.4 Assignment and amendments**

Except as set out in Section 8.3 of this PCA, no rights or obligations of the Parties arising from this PCA may be assigned or transferred, in whole or in part, to any third party, other than to Affiliated Entities, without the other Parties' prior formal approval.

Amendments and modifications to the text of this PCA requires a separate written agreement to be signed between all Parties.

### **11.5 Mandatory national law**

Nothing in this PCA shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

### **11.6 Language**

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

### **11.7 Applicable law**

This PCA shall be construed in accordance with and governed by the laws of Belgium ("the **Applicable Law**") excluding its conflict of law provisions.

### **11.8 Settlement of disputes**

**11.8.1** The Parties shall use reasonable endeavors to settle their disputes amicably. If no settlement of the dispute under this PCA has been achieved within 30 calendar days after a Party has notified the dispute to the Coordinator, such Parties will refer the matter to their higher management to negotiate in good faith in an effort to resolve the dispute, controversy or claim within 30 calendar days after the referral. If despite this, no settlement

of any dispute under this PCA has been possible to achieve the following shall be applicable to any such dispute's settlement.

All disputes directly arising under this PCA (other than disputes relating to the infringement and/or validity of IPR which shall be to the exclusive jurisdiction of the court competent in accordance with Applicable Law), which cannot be settled amicably, shall be subject to the jurisdiction of the competent court in Brussels, Belgium.

The foregoing shall be without prejudice to the right of any Party to seek injunctive relief before any court in any place where any unauthorized use of its Intellectual Property Rights or Confidential Information occurs or threatens to occur, as well the right by any Party to seek a declaratory judgement of non-infringement or other appropriate defence and remedies against accusations of unauthorized use of Intellectual Property Rights or Confidential Information before such court.

### **11.9 Parties having National Funding**

Any Party, having National Funding, is individually and solely liable for complying with National Grant Agreement and the provisions relating to such National Funding. There shall be no joint and several liability of the other Parties hereto, for any obligations under any such National Funding. The definition of "Grant Agreement" in this PCA does not include any grant agreements relating to such National Funding. No National Funding shall affect the obligations of any Party hereunder.

### **11.10 Compliance and export control**

It is understood by the Parties that the supply, export or transfer of goods, technologies, software, Results, services and information under this PCA may be subject to import or export laws and regulations or any other governmental authorization.

The Parties do not warrant that if any import or export license or any other governmental authorization is required for the fulfilment of any of its contractual obligations, such license or authorization shall be issued or extended or shall be issued or extended in due time. The Parties undertake to notify the other party without undue delay of any significant information with regard to any import or export license or any other governmental authorization that may be required for the fulfilment of any of its contractual obligations in particular an information regarding issue, refusal, extension, amendment or lapse of import or export license or any other governmental authorization which is known or becomes known to the respective Party.

If the delivery of items (products, software, incl. source codes, technology or technical services) under the PCA are subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, the delivering Party may suspend its obligations and receiving Party's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and the delivering Party may even not deliver such item, without incurring any liability towards the receiving Party.

Furthermore, if an end-user statement is required, the delivering Party shall inform the receiving Party immediately thereof and the delivering Party shall provide the receiving Party with such document upon delivering Party's first written request; if an import license is required, the receiving Party shall inform the delivering Party immediately thereof and the receiving Party shall provide the delivering Party with such document as soon as it is available.

## Section 12: Signatures

### AS WITNESS:

The Parties have caused this PCA to be duly signed by the undersigned authorised representatives in separate signature pages. The signature of a Party via a scanned or digitized image of a handwritten signature (e.g. scan in PDF format) or an electronic signature (e.g. via DocuSign), shall have the same force and effect as an original handwritten signature for the purposes of validity, enforceability and admissibility. Each Party receives a fully executed copy of the PCA. Delivery of the fully executed copy via e-mail or via an electronic signature system shall have the same force and effect as delivery of an original hard copy. The original signature pages shall be kept by the Coordinator and the Coordinator will send all Parties electronic copies of the signature pages.