Consortium Agreement



[Hungry EcoCities]

(Based on DESCA – Model Consortium Agreement for Horizon Europe, version 1, December 2021)

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CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon Regulation (EU) No 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation (2021-2027), laying down its rules for participation and dissemination (hereinafter referred to as “Horizon Europe Regulation”), and on the European Commission’s General Model Grant Agreement and its Annexes, and is made on September, 1st 2022, hereinafter referred to as the Effective Date

BETWEEN:

1. VYSOKE UCENI TECHNICKE V BRNE (BUT), established in ANTONINSKA 548/1, BRNO STRED

601 90, Czech Republic, VAT number: CZ00216305, the Coordinator

1. IN4ART BV (IN4ART), established ROTTERDAMSE RIJWEG 44, ROTTERDAM, 3043 BL,

Netherlands, VAT number NL855244112B01

1. KATHOLIEKE UNIVERSITEIT LEUVEN (KU LEUVEN), for the purposes of this Agreement represented by KU Leuven Research & Development, established in WAAISTRAAT 6, BOX 5105, LEUVEN 3000, Belgium VAT number BE0419.052.173
2. MENDELOVA UNIVERZITA V BRNE (MENDELU) established in ZEMEDELSKA 1665/1, Brno, 613

00 Czech Republic, VAT number CZ62156489

1. CARLO RATTI ASSOCIATI S.R.L.(CRA) established in CORSO QUINTINO SELLA 26, TORINO

101, 10131, Italy, VAT number IT10550330012

1. Stichting NethWork (NTWK) established in BEUKVAREN 5, BERGSCHENHOEK, 2661 PE, Netherlands, VAT number NL89539B01
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1. STUDIO OTHER SPACES GmbH (SOS) established in CHRISTINENSTR.18-19, HAUS 2, BERLIN,

10119, Germany, VAT number DE 296393962

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

relating to the Action entitled “**AI enabled artistic solutions for sustainable food systems”**

in short “**Hungry EcoCities”** hereinafter referred to as “Project” **WHEREAS:**

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Granting Authority as part of Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).

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

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

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

# Definitions

#### Definitions

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

#### Additional Definitions

“Consortium Body”

Consortium Body means any management body described in Section [6](#_bookmark8) (Governance Structure) of this Consortium Agreement.

“Consortium Plan”

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

“Granting Authority”

means the body awarding the grant for the Project.

“Defaulting Party”

Defaulting Party means a Party which the General Assembly has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Section [4.2](#_bookmark5) of this Consortium Agreement.

“Needed”

means:

*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.

*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.

“Software”

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

# Purpose

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

# Entry into force, duration and termination

#### Entry into force

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

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

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

#### Duration and termination

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

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

If

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

this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Section [3.3](#_bookmark3) of this Consortium Agreement.

#### Survival of rights and obligations

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

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

# Responsibilities of Parties

#### General principles

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

Each Party undertakes to notify promptly the Granting Authority and the other Parties, in accordance with the governance structure of the Project, of any significant information, fact, problem or delay likely to affect the Project.

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

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

#### Breach

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

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

#### Involvement of third parties

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

#### Specific responsibilities regarding data protection

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

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

#### Specific responsibilities regarding reporting

The Parties are obliged to submit their periodic reports with both financial and technical part according to the art. 21 and 22 of the Grant Agreement

1. to the Funding and Tenders Portal within the deadline of 60 days after end of the reporting period in the case of KU Leuven
2. to the Coordinator within the deadline of 45 days after end of the reporting period in the case of other Parties.

# Liability towards each other

#### No warranties

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

Therefore,

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

#### Limitations of contractual liability

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

A Party’s aggregate liability towards the other Parties collectively shall be limited to once the Party’s share of the total costs of the Project as identified in Annex 2 of the Grant Agreement.

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

#### Damage caused to third parties

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

#### Force Majeure

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

Each Party will notify the General Assembly of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notice, the transfer of tasks - if any - shall be decided by the General Assembly.

#### Export control

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement due to a restriction resulting from import or export laws and regulations and/or any delay of the granting or extension of the import or export license or any other governmental authorisation, provided that the Party has used its reasonable efforts to fulfil its tasks and to apply for any necessary license or authorisation properly and in time.

Each Party will notify the General Assembly of any such restriction without undue delay. If the consequences of such restriction for the Project are not overcome within 6 weeks after such notice, the transfer of tasks - if any - shall be decided by the General Assembly.

# Governance structure

#### General structure

The organisational structure of the consortium shall comprise the following Consortium Bodies: The **General Assembly** is the decision-making body of the consortium.

The **Coordinator** is the legal entity acting as the intermediary between the Parties and the Granting Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

#### Members

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

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section [6.3.7](#_bookmark11) of this Consortium Agreement.

For the avoidance of doubt, any change to the Consortium Agreement or any budget-related change to Annex 1 to the Grant Agreement shall only be legally binding between the Parties if agreed in writing and executed by the duly authorised signatories of each Party. This provision however doesn ´t apply in cases of changes of the Consortium Agreement or budget affecting only several parties of the consortium; such a changes can be contracted only among parties affected, provided that remaining parties of the Consortium are not affected.

The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise by the General Assembly.

The Parties agree to abide by all decisions of the General Assembly.

This does not prevent the Parties from exercising their veto rights, according to Section [6.3.5,](#_bookmark9) or from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Section

11.8 of this Consortium Agreement.

#### Operational procedures for the General Assembly:

* + 1. Representation in meetings

Any Member:

* should be present or represented at any meeting;
* may appoint a substitute or a proxy to attend and vote at any meeting;
* and shall participate in a cooperative manner in the meetings.
	+ 1. Preparation and organisation of meetings
			1. Convening meetings:

The chairperson shall convene ordinary meetings of the General Assembly at least once every six months and shall also convene extraordinary meetings at any time upon written request of any Member.

* + - 1. Notice of a meeting

The chairperson shall give written notice of a meeting to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

* + - 1. Sending the agenda:

The chairperson shall prepare and send each Member an agenda no later than 14 calendar days preceding the meeting, or 7 calendar days before an extraordinary meeting.

* + - 1. Adding agenda items:

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

Any Member may add an item to the original agenda by written notice to all of the other Members no later than 7 calendar days preceding the meeting and 2 days preceding an extraordinary meeting.

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

Meetings of the General Assembly may also be held by tele- or videoconference or other telecommunication means.

Decisions will only be binding once the relevant part of the minutes has been accepted according to Section [6.3.6.2.](#_bookmark10)

* + 1. Decisions without a meeting

Any decision may also be taken without a meeting if

1. the Coordinator circulates to all Members of the General Assembly a suggested decision with a deadline for responses of at least 10 calendar days after receipt by a Party and
2. the decision is agreed by at least 2/3 of all Parties.

The Coordinator shall inform all the Members of the outcome of the vote.

A veto according to Section [6.3.5](#_bookmark9) may be submitted up to 15 calendar days after receipt of this information.

The decision will be binding after the Coordinator sends a notification to all Members. The Coordinator will keep records of the votes and make them available to the Parties on request.

* + 1. Voting rules and quorum

6.3.4.1

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

If the quorum is not reached, the chairperson of the General Assembly shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members is present or represented.

6.3.4.2

Each Member present or represented in the meeting shall have one vote. 6.3.4.3

A Party which the General Assembly has declared according to Section [4.2 t](#_bookmark5)o be a Defaulting Party may not vote.

6.3.4.4

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

* + 1. Veto rights

6.3.5.1

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 the General Assembly may exercise a veto with respect to the corresponding decision or relevant part of the decision.

6.3.5.2

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

6.3.5.3

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

6.3.5.4

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

6.3.5.5

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

6.3.5.6

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

6.3.5.7

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

* + 1. Minutes of meetings

6.3.6.1

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

6.3.6.2

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

6.3.6.3

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

* + 1. Decisions of the General Assembly

The General Assembly, shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein.

The following decisions shall be taken by the General Assembly:

Content, finances and information flow and intellectual property rights

* Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Granting Authority
* Changes to the Consortium Plan
* Modifications or withdrawal of Background in Attachment 1 (Background Included)
* Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section [8.3.2)](#_bookmark17)
* Additions to Attachment 4 (Identified entities under the same control)
* Development and the changes to Rules of information flow: dissemination on results and scientific procedures. marking confidential parts and following the compliance.

Evolution of the consortium

* Entry of a new Party to the Project and approval of the settlement on the conditions of the accession of such a new Party
* Withdrawal of a Party from the Project and the approval of the settlement on the conditions of the withdrawal
* Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement
* Declaration of a Party to be a Defaulting Party
* Remedies to be performed by a Defaulting Party
* Termination of a Defaulting Party’s participation in the consortium and measures relating thereto
* Proposal to the Granting Authority for a change of the Coordinator
* Proposal to the Granting Authority for suspension of all or part of the Project
* Proposal to the Granting Authority for termination of the Project and the Consortium Agreement

In the case of abolished tasks as a result of a decision of the General Assembly, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration any prior legitimate commitments which cannot be cancelled.

#### Coordinator

6.4.1

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

6.4.2

In particular, the Coordinator shall be responsible for:

* monitoring compliance by the Parties with their obligations under this Consortium Agreement and the Grant Agreement
* keeping the address list of Members and other contact persons updated and available
* collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certification) and specific requested documents to the Granting Authority
* preparing the meetings, proposing decisions and preparing the agenda of General Assembly meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings
* transmitting promptly documents and information connected with the Project to any other Party concerned
* administering the financial contribution of the Granting Authority and fulfilling the financial tasks described in Section [7.2](#_bookmark14)
* providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims
* Arranging any necessary amendments, decided upon by the General Assembly, to the Grant Agreement with the Granting Authority. Before sending any proposal for amendment to Grant Agreement to the Granting Authority on behalf of the Parties, the Coordinator will present the documents in question to the Parties and receive their explicit agreement, which shall not be unreasonably withheld. The terms and conditions of the signed documents are only binding for the Parties if their explicit acceptance have been given prior to the time of the signature.

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

6.4.3

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

6.4.4

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

6.4.5

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

####  Selection Committee

The Selection Committee (SC) will be appointed and steered by the General Assembly. The SC shall be responsible for:

* Approving the Open Call Package of Documents
* Validating all the decisions taken during the Selection Process
* Selecting the best proposals in the Consensus Meeting and Jury Day
* Validating the grantees’ performance in the Milestones Review.
* Authorise all FSTP Payments done to grantees by the partner in charge of the FSTP management. The Coordinator shall write the minutes of the SC meetings and submit them to the General Assembly.

#### Mandate

By way of exception to Section [6.4.4](#_bookmark12) above, the Parties, hereby mandate

1. the FBA to execute, in their name and on their behalf, a non-disclosure agreement set out in the Attachment 5 (hereafter “NDA”) with persons involved in the Open Calls in order to protect Confidential Information disclosed by any of the above specified Parties. The mandate of the FBA comprises solely the execution of this NDA.
2. the Coordinator to execute, in their name and on their behalf, a NDA with eventual other persons involved in the Open Calls or other activities in the project, in order to protect Confidential Information

disclosed by any of the above specified Parties. The mandate of the Coordinator comprises solely the execution of the NDA.

# Financial provisions

#### General Principles

* + 1. Distribution of Financial Contribution

The financial contribution of the Granting Authority to the Project shall be distributed by the Coordinator according to:

* + - * the Consortium Plan
			* the approval of reports by the Granting Authority, and
			* the provisions of payment in Section [7.2.](#_bookmark14)

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

* + 1. Justifying Costs

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

* + 1. Funding Principles

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

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

* + 1. Excess payments

A Party has received excess payment if the payment received from the Coordinator exceeds the amount declared and accepted by the Funding Authority.

In case a Party has received excess payment, the Party will be requested by the Coordinator to return the relevant amount without undue delay.

* + 1. Revenue

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

* + 1. Financial Consequences of the termination of the participation of a Party

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

In addition, a Defaulting Party shall, within the limits specified in Section [5.2](#_bookmark7) of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform the leaving Party´s task and necessary additional efforts to fulfil them as a consequence of the Party leaving the consortium. The General Assembly should agree on a procedure regarding additional costs which are not covered by the Defaulting Party or the Mutual Insurance Mechanism.

#### Payments

* + 1. Payments 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

undertake to keep the Granting Authority’s financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

With reference to Article 22 of the Grant Agreement, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount less the amounts retained by the Granting Authority for the Mutual Insurance Mechanism and for the final payment.

7.2.2

The transfer of the initial pre-financing, the additional pre-financings (if any) and interim payments to Parties will be handled in accordance with Article 22.1. and Article 7 of the Grant Agreement following this payment schedule:

Funding of costs included in the Consortium Plan will be paid by the Coordinator to the Parties after receipt of payments from the Granting Authority without undue delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the Granting Authority will be paid to the Party concerned.

The Parties agree to hold back an amount from interim payments to ensure endurable financial conditions to the Third Parties within Financial Support to the Third Parties activities. Hold back share is set as followed:

1. first interim payment: 25% of the transferred amount
2. second interim payment: 11,38 of the transferred amount.

Both interim payments are reduced by above quantified shares before transfers to the Parties. For the avoidance of doubt, the initial prefinancing and the final payment are not reduced by hold back amount.

The Coordinator is entitled to withhold any payments due to a Party identified by the General Assembly to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or to a Beneficiary which has not yet signed this Consortium Agreement.

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

# Results

#### Ownership of Results

Results are owned by the Party that generates them.

#### Joint ownership

Joint ownership is governed by Grant Agreement Article 16.4 and its Annex 5, Section Ownership of results, with the following additions:

Unless otherwise agreed:

* each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research and teaching activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s).
* each of the joint owners shall be entitled to otherwise Exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given: (a) at least 45 calendar days advance notice; and (b) fair and reasonable compensation.

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

#### Transfer of Results

8.3.1

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

8.3.2

Each Party may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (3) of this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to such a transfer to listed third parties according to the Grant Agreement Article

16.4 and its Annex 5, Section Transfer of licensing of results, sub-section “Transfer of ownership”, 3rd paragraph.

8.3.3

The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties under the Consortium Agreement and the Grant

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

8.3.4

The Parties recognise that in the framework of a merger or an acquisition of an important part of its assets, it may be impossible under applicable EU and national laws on mergers and acquisitions for a Party to give at least 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.

8.3.5

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

#### Dissemination

8.4.1

For the avoidance of doubt, the confidentiality obligations set out in Section [10](#_bookmark24) apply to all dissemination activities described in this Section [8.4](#_bookmark18) as far as Confidential Information is involved.

* + 1. Dissemination of own (including jointly owned) Results

8.4.2.1

During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 17.4 of the Grant Agreement and its Annex 5, Section Dissemination, subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties at least 30 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement by written notice to the Coordinator and to the Party or Parties proposing the dissemination within 15 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

8.4.2.2

An objection is justified if

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

The objection has to include a precise request for necessary modifications. 8.4.2.3

If an objection has been raised the involved Parties 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 information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

8.4.2.4

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

* + 1. Dissemination of another Party’s unpublished Results orBackground

A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published.

* + 1. Cooperation obligations

The Parties undertake to cooperate to allow the timely submission, examination, publication and defense of any dissertation or thesis for a degree that includes their Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

* + 1. Use of names, logos or trademarks

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

# Access Rights

#### Background included

9.1.1

In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.

Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.

9.1.2

Any Party may add additional Background to Attachment 1 during the Project provided they give written notice to the other Parties. However, approval of the General Assembly is needed should a Party wish to modify or withdraw its Background in Attachment 1.

**General Principles**

9.2.1

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

9.2.2

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

9.2.3

Access Rights shall be free of any administrative transfer costs.

9.2.4

Access Rights are granted on a non-exclusive basis.

9.2.5

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

9.2.6

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

9.2.7

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

#### Access Rights for implementation

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

#### Access Rights for Exploitation

9.4.1 Access Rights to Results

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

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

9.4.2

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

9.4.3

A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Section [9.7.2.1.2,](#_bookmark23) after the termination of the requesting Party’s participation in the Project.

#### Access Rights for entities under the same control

Entities under the same control have Access Rights under the conditions of the Grant Agreement Article

16.4 and its Annex 5, Section "Access rights to results and background”, sub-section “Access rights for entities under the same control” if they are identified in Attachment 4 to this Consortium Agreement.

Such Access Rights must be requested by the entity under the same control from the Party that holds the Background or Results. Alternatively, the Party granting the Access Rights may individually agree with the Party requesting the Access Rights to have the Access Rights include the right to sublicense to the latter's entity under the same control listed in Attachment 4. Access Rights to an entity under the same control shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.

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

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

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

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

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

#### Additional Access Rights

For the avoidance of doubt any grant of Access Rights not covered by the Grant Agreement or this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

#### Access Rights for Parties entering or leaving the consortium

* + 1. New Parties entering the consortium

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

* + 1. Parties leaving the consortium
			1. Access Rights granted to a leaving Party
				1. Defaulting Party

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

* + - * 1. Non-defaulting Party

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

It may request Access Rights within the period of time specified in Section [9.4.3.](#_bookmark22)

* + - 1. Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

#### Specific Provisions for Access Rights to Software

* + 1. Definitions relating to Software

**“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.

"**Controlled License Terms**" means terms in any license that require that the use, copying, modification and/or distribution of Software or another work (“Work”) and/or of any work that is a modified version of or is a derivative work of such Work (in each case, “Derivative Work”) be subject, in whole or in part, to one or more of the following:

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

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

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

**“Software Documentation”** means Software information, being technical information used, or useful in, or relating to the design, development, use or maintenance of any version of a Software programme.

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

* + 1. General principles

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section [9](#_bookmark19) are applicable also to Software as far as not modified by this Section.

Parties’ Access Rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

The introduction of Software under Controlled License Terms in the Project requires the prior approval of the General Assembly to implement such introduction into the Consortium Plan.

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

* + 1. Access to Software

Access Rights to Softwarethat is Results shall comprise:

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

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

* + 1. Software license and sublicensing rights
			1. Object Code
				1. Results - Rights of a Party

Where a Party has Access Rights to Object Code and/or API that is Results for Exploitation, such Access shall, in addition to the Access for Exploitation foreseen in Section [9.4,](#_bookmark21) as far as Needed for the Exploitation of the Party’s own Results, comprise the right:

to make an agreed number of copies of Object Code and API; and

to distribute, make available, market, sell and offer for sale such Object Code and API alone or as part of or in connection with products or services of the Party having the Access Rights;

provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to exploit Object Code and API for its own Results.

* + - * 1. Results - Rights to grant sublicenses to end-users

In addition, Access Rights to Object Code shall, as far as Needed for the Exploitation of the Party’s own Results, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code alone or as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:

to maintain such product/service;

to create for its own end-use interacting interoperable Software in accordance with the Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs.

* + - * 1. Background

For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

* + - 1. Source Code
				1. Results - Rights of a Party

Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code that is Results for Exploitation, Access Rights to such Source Code, as far as Needed for the Exploitation of the Party’s own Results, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service.

If it is intended to use the services of a third party for the purposes of this Section, the Parties shall agree on the terms thereof, with due observance of the interests of the Party granting the Access Rights as set out in Section [9.2](#_bookmark20) of this Consortium Agreement.

* + - * 1. Results – Rights to grant sublicenses to end-users

In addition, Access Rights, as far as Needed for the Exploitation of the Party’s own Results, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.

Further sublicensing of Source Code is explicitly excluded.

* + - * 1. Background

For the avoidance of doubt, where a Party has Access Rights to Source Code that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

* + 1. Specific formalities

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

# Non-disclosure of information



All information in whatever form or mode of communication, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with the Project during its implementation and which has been explicitly marked as “confidential” at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and

designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.



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

* not to use Confidential Information otherwise than for the purpose for which it was disclosed;
* not to disclose Confidential Information without the prior written consent by the Disclosing Party;
* to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
* to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in a machine-readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient complies with the confidentiality obligations herein contained with respect to such copy.



The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees 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 and/or after the termination of the contractual relationship with the employee or third party.



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

* the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations;
* the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
* the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
* the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
* the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
* the Confidential Information was already known to the Recipient prior to disclosure, or
* the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section [10.7](#_bookmark25) hereunder.

The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed with Disclosing Party in no case less than reasonable care



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



If any Recipient becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

* notify the Disclosing Party, and
* comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.

# Miscellaneous

#### Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and:

* + Attachment 1 (Background included)
	+ Attachment 2 (Accession document)
	+ Attachment 3 (List of third parties for simplified transfer according to Section [8.3.2](#_bookmark17))
	+ Attachment 4 (Identified entities under the same control )
	+ Attachment 5 (NDA under Section [6](#_bookmark8))

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

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

#### No representation, partnership or agency

Except as otherwise provided in Section [6.4.4,](#_bookmark12) no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

#### Formal and written notices

Any notice to be given under this Consortium Agreement shall be addressed to the recipients as listed in the most current address list kept by the Coordinator.

Any change of persons or contact details shall be immediately communicated to the Coordinator by written notice. The address list shall be accessible to all Parties.

Formal notices:

If it is required in this Consortium Agreement (Sections [4.2,](#_bookmark5) [9.7.2.1.1,](#_bookmark5) and [11.4](#_bookmark27)) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery with acknowledgementof receipt.

Written notice:

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

#### Assignment and amendments

Except as set out in Section [8.3,](#_bookmark16) no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties’ prior formal approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in [6.3.7](#_bookmark11) require an agreement approved and signed by the duly authorised signatories of all Parties.

#### Mandatory national law

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

#### Language

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

#### Applicable law

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

#### Settlement of disputes

The Parties shall endeavour to settle their disputes amicably.

The Parties shall try to solve amicably any dispute, controversy or claim arising under, out of or relating to this Consortium Agreement and any subsequent amendments thereof, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non- contractual claims.

If the concerned Parties are unable to reach an agreement within 30 calendar days after a Party has notified the Coordinator of the issue, such Parties will refer the matter to their higher management (executive level: CEO, President, Rector or authorized proxy) who are at least authorised representatives to execute the Consortium or Grant Agreement and who will meet and negotiate in good faith in an effort to resolve the dispute, controversy or claim within 30 calendar days after the referral.

If the matter has not been resolved within such period, each Party is entitled to submit the dispute, controversy or claim to the sole competent courts of Brussels. Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.

# Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

VYSOKE UCENI TECHNICKE V BRNE (BRNO UNIVERSITY OF TECHNOLOGY)

Signature:

Name: doc. Ing. Ladislav Janíček, Ph.D., MBA, L.L.M. Title: rector of Brno University of Technology

Date

DocuSign Envelope ID: EB18E0A6-C8A7-426A-9905-9ED7A23FAE9C

##### IN4ART BV

##### Signature:

##### Name: Rodolfo Groenewoud can Vliet Title: Business Director

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KATHOLIEKE UNIVERSITEIT LEUVEN (KU LEUVEN)

Signature:

Name: Paul Van Dun Title: General Manager

Date:

Signature:

Name: Elke Lammertyn

Title: Head of European and International Projects Date:

For internal approval:

Name: Prof. Adalberto Simeone Signature:

For internal approval:

Name: Prof. Valeria Pulignano Signature:

For internal approval: Name: Prof. Robert Boute Signature:

For internal approval Name: Prof. Katrien Verbert

For internal approval Prof Luc De Raedt

MENDEL UNIVERSITY IN BRNO

Signature:

Name: prof. Dr. Ing. Jan Mareš

Title: rector of Mendel University in Brno

Date:

CARLORATTIASSOCIATI SRL

Signature:

Project Manager, Carlo Ratti Associati

Name: Emanuele Rossetti

Title: CEO

Date:

**Title(s)**

**Date**

FUNDING BOX ACCELERATOR SP. z.o.o.

Name: Anna Ewa Dymowska

Title: CEO Date:

STUDIO OTHER SPACES

Signature(s)

Name(s): Sebastian Behmann Title(s) director

Date

# Attachment 1: XXXXX

# Attachment 2: XXXXX

# Attachment 3: XXXXX

# Attachment 4: XXXXX

# Attachment 5: XXXXX