

iManageCancer

Consortium Agreement

based on DESCAs 2020 Version 1.1,

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CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon 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 **08. December 2014**, hereinafter referred to as the Effective Date

Comment [TSch1]: Date is in accordance with date of signature of GA by the Commission

BETWEEN:

Comment [TSch2]: Some addresses still missing. Please add!

1. **FRAUNHOFER GESELLSCHAFT ZUR FÖRDERUNG DER ANGEWANDTEN FORSCHUNG E.V.**, Hansastr. 27c, 80686 München, Germany
on behalf of its Fraunhofer-Institut für Biomedizinische Technik (IBMT)
the Coordinator
2. **FOUNDATION FOR RESEARCH AND TECHNOLOGY HELLAS**, Greece
3. **UNIVERSITÄT DES SAARLANDES, Campus, 66123 Saarbrücken, Germany**
4. **PHILIPS ELECTRONICS NEDERLAND B.V.**, acting through Philips Research with its principal place of business at High Tech Campus 34, 5656 AE [Eindhoven](#), the Netherlands
5. **CANCER INTELLIGENCE LTD**, [11 Alma Vale Road, Clifton, Bristol, BS8 2HL](#), United Kingdom
6. **UNIVERSITY OF BEDFORDSHIRE**, United Kingdom
7. **ISTITUTO EUROPEO DI ONCOLOGIA S.R.L.**, Italy
8. **SERIOUS GAMES SOLUTIONS GMBH**, Germany
9. **[PHILIPS ELECTRONICS U.K., Guildford Business Park, Guildford SURREY, GU2 8XH, England, for the purpose of this Agreement acting through Philips Research](#)**

Comment [TSch3]: Due to admin reasons Philips Netherlands and Philips UK have to participate in this project. Nevertheless Philips will only have 1 vote in the General Assembly.

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

relating to the Action entitled:

Empowering patients and strengthening self-management in cancer diseases

in short

iManageCancer

hereinafter referred to as “Project”

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Funding Authority as part of the Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)

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 Funding Authority (hereinafter "Grant Agreement").

The Parties are aware that this Consortium Agreement is based upon the DESCAs 2020 model consortium agreement.

NOW, THEREFORE, IT IS HEREBY 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 for Participation or in the Grant Agreement including its Annexes without the need to replicate said terms herein.

1.2 Additional Definitions

"Background Information"

Background Information means any Information, other than Results Information which is owned or controlled by a Party on the Effective Date.

"Background IPR"

Background IPR means any IPRs, other than Results IPRs which are owned or controlled by a Party on the Effective Date.

"Consortium Budget"

Consortium Budget means the allocation of all the resources in cash or in kind for the activities as defined in Annex I and II of the Grant Agreement and in the Consortium Plan thereafter.

"Consortium Plan"

Consortium Plan means the description of the action and the related agreed Consortium Budget, including the payment schedule, as first defined in the Grant Agreement and which may be updated and approved by the General Assembly.

"Contributor"

means any Party providing patient information to another Party for the performance of the activities described in Annex I of the Grant Agreement and subject to this Consortium Agreement. The contributing Parties which are Contributors are listed in Attachment 4. shall be listed in a list kept by the Coordinator.

"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 of this Consortium Agreement.

Comment [TSch4]: Some IPR related definitions had to be added following modifications made in the Access Rights section, namely 9.4.

"Funding Authority"

Funding Authority means the body awarding the grant for the Project.

"Indirect Utilisation"

Indirect Utilisation means that Access Rights for Use granted pursuant to this Consortium Agreement and the Grant Agreement shall include the right for a Party and its Affiliated Entities to whom such Access Rights are granted to have a third party make, only for the account of and for the use, sale or other disposal by the Party and such Affiliated Entities, products or services, provided that the substantial portion of the specifications of such products or services has been designed by or for such Party and such Affiliated Entities.

"Information"

Information means any non confidential, public domain or published drawings, specifications, photographs, samples, models, processes, procedures instruction, software, reports, papers, or other technical and/or commercial and/or confidential, non published information, data or documents of any kind, including oral information, other than "IPR".

"Intellectual Property Rights" or "IPR(s)"

Intellectual Property Rights or IPR(s)IPR means: patents, patent applications and other statutory rights in inventions; copyrights (including without limitation copyrights in Software); 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, but excluding rights in Confidential Information and/or trade secrets.

"Needed"

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 impossible, significantly delayed, or require significant additional financial or human resources. In particular where IPRs are concerned, Needed means that those IPRs would be infringed absent the Access Rights granted under the Grant Agreement and this Consortium Agreement, and where Confidential Information is concerned, only Confidential Information which has been disclosed during the Project may be considered as Needed, except as otherwise agreed between the Parties.

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. In particular where IPRs are concerned, Needed means that those IPRs would be infringed absent the Access Rights granted under the Grant Agreement and this Consortium Agreement, and where Confidential Information is concerned, only Confidential Information which has been disclosed during the Project may be considered as Needed, except as otherwise agreed between the Parties.

"Net Monetary Income"

Net Monetary Income means direct licensing income resulting from a licensing agreement between the Party involved and the third party, minus all cost incurred for generating this license income.

Comment [TSch5]: According to Philips these costs are 'all reasonable cost' such as transfer cost, patenting cost, further development and investigation.

"Open Source License"

Open Source License means a Software license that includes, but is not limited to, terms that: (a) permit distribution/redistribution of the Software by others without royalty or fee; (b) allow or require distribution/redistribution of the Software to include binary and source code; (c) permits modifications, compilations, and derived works to be created from the Software and distributed under the same terms as the original Software; or (d) attached to the Software and applies to all persons, entities, groups, organizations and institutions (the "Recipients") to whom the Software is distributed and/or who redistribute the Software without the need for the Recipients to execute or otherwise acquire an additional license.

"Patient Information"

Patient Information shall mean all information in electronic or paper form, including images, relating to a patient, which is disclosed pursuant to the terms of this Consortium Agreement.

"Personal Data"

Personal Data shall mean any information as defined by article 2 section (a) of the European Data Protection Directive 95/46/EC, i.e. any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

"Results Information"

Results Information shall mean any Information that is generated as a result of the activities conducted in the Project as specified in this Consortium Agreement.

"Results IPR"

Results IPR shall mean any IPRs that are generated as a result of the activities conducted in the Project as specified in this Consortium Agreement.

"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.

Section 2: 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.

Section 3: Entry into force, duration and termination

3.1 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 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.

3.2 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 and Article 50 of the Grant Agreement.

If the Grant Agreement

- is not signed by the Funding Authority or a Party, or
- is terminated,

or if 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 of this Consortium Agreement.

3.3 Survival of rights and obligations

The provisions relating to Access Rights, Publication 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 Consortium 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 input, deliverables and documents for the period of its participation.

Section 4: Responsibilities of Parties

4.1 General principles

Each Party shall undertake reasonable endeavours 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 shall undertake reasonable endeavours to notify promptly, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the Project.

Each Party shall undertake reasonable endeavours to promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.

Each Party shall undertake reasonable endeavours to ensure the accuracy of any information or materials it supplies to the other Parties and to take reasonable measures with that regard.

4.2 Breach

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

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

4.3 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains solely 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. It 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.

Section 5: Liability towards each other

The following provisions of this Section 5, excluding and limiting liability, shall apply not only to the Parties, but also to their Affiliated Entities, each of which is an intended beneficiary of this Section 5.

5.1 No warranties

In respect of information or materials (incl. Results and Background) supplied by one Party to another under this Consortium Agreement or under the Grant Agreement, the supplying Party shall be under no obligation or liability (other than as expressly stated in the Grant Agreement and/or in this Consortium Agreement), and no warranty, condition or representation of any kind is made by, given by or to be implied against the supplying Party as to the sufficiency, accuracy or fitness for purpose of such information or materials, or, subject to the obligations expressly stated in the Grant Agreement and in this Consortium Agreement, the absence of any infringement of any proprietary right (including, without limitation, IPRs, trade secret rights and rights over confidential information) of third parties by the use of such information and materials; and, subject as expressly stated to the contrary in the Grant Agreement or this Consortium Agreement, the recipient Party shall bear the entire risk of any consequences that may arise from the use to which it, or to which any person that it directly or indirectly permits or allows to use such information or materials, puts such information and materials.

Subject to the provisions of Section 5.2 below, no Party shall have any liability in respect of the infringement of any patent or other right of any third party resulting from any other Party (or any of its Affiliated Entities) exercising any of the Access Rights granted under the Grant Agreement or under this Consortium Agreement.

No Party makes any representation or warranty, express or implied, other than as expressly stated in this Consortium Agreement.

5.2 Limitations of contractual liability

No Party shall be responsible to any other Party for punitive damages, indirect or consequential loss or similar damage such as, but not limited to, loss of profit, ~~loss of~~ 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 or special loss or damage.

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, or the sum of five hundred thousand ~~Eeuro (€500,000.-)~~, whichever amount is higher.

The exclusions and limitations stated in this section 5.2 shall not apply in respect of any infringement of the intellectual property rights of any other Party or any Affiliated Entity of any other Party, which is the result of any activity or use of such Background or Results that is outside the scope of the Access Rights, as defined by the Grant Agreement or this Consortium Agreement, or that is not in compliance with the associated terms and conditions upon which the Access Rights have been granted, or in the case of any breach by a Party of its obligations under Section 10 (Confidentiality), or under Section 8 (Results).

The exclusions and limitations of liability stated above shall not apply in respect of any fraud, death, injury to natural persons or damage to real or immovable property caused by the negligence or wilful act of such Party, its directors, employees, agents and subcontractors or gross negligent or wilful breach by a Party of any obligation accepted under the Grant Agreement and this Consortium Agreement.

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 the said Party's obligations by it or on its behalf under this Consortium Agreement or from its use of Results or Background.

5.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure.

Each Party will notify the competent Consortium Bodies of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 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 particular in~~ any 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 authorization in the event that a Party uses reasonable efforts to apply for a respective license or other governmental authorization and to fulfil all its tasks related to this clause 5.4 and of its Project tasks properly and in time.

Section 6: Governance structure

6.1 General structure

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

General Assembly as the ultimate decision-making body of the consortium

Steering Committee as the supervisory body for the execution of the Project which shall report to and be accountable to the General Assembly

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 Grant Agreement and this Consortium Agreement.

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 such Consortium Body; may appoint a substitute or a proxy to attend and vote at any meeting; and shall participate in a cooperative manner in the meetings.

6.2.2 Preparation and organisation of meetings

6.2.2.1 Convening meetings:

The chairperson of a Consortium Body shall convene meetings of that Consortium Body.

	Ordinary meeting	Extraordinary meeting
General Assembly	At least once a year	At any time upon written request of the Steering Committee or 1/3 of the Members of the General Assembly
Steering Committee	At least quarterly	At any time upon written request of any Member of the Steering Committee

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 below.

	Ordinary meeting	Extraordinary meeting
General Assembly	45 calendar days	15 calendar days
Steering Committee	14 calendar days	7 calendar days

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	21 calendar days, 10 calendar days for an extraordinary meeting
Steering Committee	7 calendar days

6.2.2.4 Adding agenda items:

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

Any Member of a Consortium Body may add an item to the original agenda by written notification to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.

General Assembly	14 calendar days, 7 calendar days for an extraordinary meeting
Steering Committee	2 calendar days

6.2.2.5 During a meeting the Members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.

6.2.2.6 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.) of all Members of the Consortium Body. Such document shall include the deadline for responses.

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

6.2.2.8 Decisions will only be binding once the relevant part of the Minutes has been accepted according to Section 6.2.5.

6.2.3 Voting rules and quorum

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

If the quorum is not reached, the chairperson of the Consortium Body 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 are present or represented.

6.2.3.2 Each Member of a Consortium Body present or represented in the meeting shall have one vote. [Philips Electronics Nederland and Philips Electronics U.K. have together one vote.](#)

6.2.3.3 Defaulting Parties may not vote.

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

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

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

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

6.2.4.5 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.

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

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. He shall send the draft minutes to all Members within 10 calendar days of the meeting.

6.2.5.2 The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes.

6.2.5.3 The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Coordinator, who shall safeguard them.
If requested the Coordinator shall provide authenticated duplicates to 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, the following rules apply:

6.3.1.1 Members

6.3.1.1.1 The General Assembly shall consist of one representative of each Party (hereinafter General Assembly Member).

6.3.1.1.2 Each General Assembly Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.1.2. of this Consortium Agreement.

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.

6.3.1.1.4 The Parties agree to abide by all decisions of the General Assembly.
This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 11.8.

6.3.1.2 Decisions

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. In addition, all proposals made by the Steering Committee shall also be considered and decided upon by the General Assembly.

The following decisions shall be taken by the General Assembly:

Content, finances and intellectual property rights

- Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Funding Authority
- Changes to the Consortium Plan
- Modifications to Attachment 1 (Background Included)
- Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.2.2)
- [Modifications to Attachment 4 \(List of Contributors\)](#)

Evolution of the consortium

- Entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the consortium 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 Funding Authority for a change of the Coordinator
- Proposal to the Funding Authority for suspension of all or part of the Project
- Proposal to the Funding Authority for termination of the Project and the Consortium Agreement

Appointments

On the basis of the Grant Agreement, the appointment if necessary of:

Steering Committee Members

6.3.2 Steering Committee

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

6.3.2.1 Members

The Steering Committee shall consist of the Coordinator and [all of](#) the Parties [as](#) appointed by the General Assembly (hereinafter Executive Members).

Any Member may resign by delivering written notice to the chairperson. Such resignation shall be effective upon receipt unless otherwise indicated. Any Member having resigned shall hold office until a successor has been appointed in accordance with the procedure here forementioned.

The **Coordinator** shall chair all meetings of the Steering Committee, unless decided otherwise by a majority of two-thirds of the Executive Members.

6.3.2.2 Minutes of meetings

Minutes of Steering Committee meetings, once accepted, shall be sent by the Coordinator to the General Assembly Members for information.

6.3.2.3 Tasks

6.3.2.3.1 The Steering Committee shall prepare the meetings, propose decisions and prepare the agenda of the General Assembly according to Section 6.3.1.2.

6.3.2.3.2 It shall seek a consensus among the Parties.

6.3.2.3.3 The Steering Committee shall be responsible for the proper execution and implementation of the decisions of the General Assembly.

6.3.2.3.4 The Steering Committee shall monitor the effective and efficient implementation of the Project.

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

6.3.2.3.6 The Steering Committee shall:

- support the Coordinator in preparing meetings with the Funding Authority and in preparing related data and deliverables
- prepare the content and timing of press releases and joint publications by the consortium or proposed by the Funding Authority in respect of the procedures of the Grant Agreement Article 29.
-

6.3.2.3.7 In the case of abolished tasks as a result of a decision of the General Assembly, the Steering Committee 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, which cannot be cancelled.

6.4 Coordinator

6.4.1 The Coordinator shall be the intermediary between the Parties and the Funding 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
- 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 certifications) and specific requested documents to the Funding Authority
- transmitting documents and information connected with the Project to any other Parties concerned
- administering the financial contribution of the Funding Authority and fulfilling the financial tasks described in Section 7.3
- providing, 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 present claims.

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 Funding Authority in time.

6.4.3 If the Coordinator fails in its coordination tasks, the General Assembly may propose to the Funding 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.

Section 7: Financial provisions

7.1 General Principles

7.1.1 Distribution of Financial Contribution

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

- the Consortium Plan
- the approval of reports by the Funding Authority, and
- the provisions of payment in Section 7.3.

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

7.1.2 Justifying Costs

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the Funding 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 Funding Authority.

7.1.3 Funding Principles

A Party which 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 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.

In case a Party spends less than its allocated share of the Consortium Budget, the residual amount can be distributed to the Parties that have spent more than their allocated share of the Consortium Budget, provided that the surplus is included in the eligible costs accepted by the European Commission.

7.1.4 Financial Consequences of the termination of the participation of a Party

A Party leaving the consortium shall refund all payments it has received except the amount of contribution accepted by the Funding Authority or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Section 5.2 of this Consortium Agreement, bear any

reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks.

7.2 Budgeting

The budget set out in the Consortium Plan shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

7.3 Payments

7.3.1 Payments to Parties are the exclusive tasks 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 Community 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 Articles 21.2 and 21.3.2 of the Grant Agreement, no Party shall before the end of the Project 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.
-

7.3.2

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 included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority without undue delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the Funding Authority will be paid to the Party concerned taking into account the amounts already paid for the reporting period concerned.

The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body 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. The Coordinator is equally entitled to withhold payments to a Party when this is ~~suggested by or~~ agreed with the Funding Authority.

Section 8: Results

8.0 Ownership of Results

Results are owned by the Party who carried out the work generating the Results or on whose behalf such work was carried out by subcontractors.

8.1 Joint ownership

Where Results are generated from work carried out jointly by two or more Parties and it is not possible to separate such joint invention, design or work for the purpose of applying for, obtaining

and/or maintaining the relevant patent protection or any other intellectual property right, the Parties shall have joint ownership of this work. The joint owners shall, within a six (6) month period as from the date of the generation of such Results, negotiate in good faith to establish a written separate joint ownership agreement regarding the allocation of ownership and terms of exercising, protecting, the division of related costs and exploiting such jointly owned Results on a case by case basis. However, until the time a joint ownership agreement has been or could have been concluded and as long as such rights are in force:

~~such Results shall be jointly owned in equal shares according to their share of contribution (such share to be determined by taking into account in particular, but not limited to, the contribution of a joint owner to an inventive step, the person months or costs spent on the respective work etc.) to the Results by the joint owners concerned unless a joint owner has explicitly opposed.~~

~~Unless otherwise agreed:~~

- each of the joint owners shall be entitled to Exploit their jointly owned Results on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and
- each of the joint owners shall be entitled to grant non-exclusive, non-transferable licenses to third parties, without obtaining any consent from, or providing prior notice to the other joint owners and without any right to sub-license, under the jointly owned Results and under any IPRs protecting such Results.

~~If however in case such joint owner receives Net Monetary Income from granting such non-exclusive license, a Fair and Reasonable compensation must be provided to the other joint owners. The joint owners shall agree on all protection measures and the division of related cost in advance.~~

Comment [TSch6]: According to the request of Philips the following is proposed as compromise: equal shares apply 1) if no joint ownership has been concluded or 2) if no joint ownership can be concluded and 3) if no joint owner has explicitly opposed to the equal share. This way it is not possible for a Party to simply not agree on a Joint Ownership Agreement in bad faith so that the equal share rule applies. The equal share rule would also not apply if the joint owners cannot agree with each other and the shares are significantly not equal.

8.2 Transfer of Results

8.2.1 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 it) following the procedures of the Grant Agreement Article 30.

8.2.2 In the case of assignment to any of its Affiliated Entities, to any assignee of the assignor's relevant business or a substantial part thereof no prior notification is required.

However:

- any such assignment shall be made subject to the Access Rights, the rights to obtain Access Rights and the right to disseminate Results that are granted to the other Parties and their Affiliated Entities in the Grant Agreement and/or this Consortium Agreement. Therefore, each assignor shall ensure that such assignment does not prejudice such rights of the other Parties or their Affiliated Entities. This may be done, for example, (i) by effecting such assignment subject to a licence back to the assigning Party that is sufficient for the assigning Party to grant to the other Parties and their Affiliated Entities such Access Rights, or (ii) by the assigning Party obtaining from the assignee of the Results legally binding undertakings (that can be enforced by the other Parties and their Affiliated Entities) to grant such Access Rights; and the assignor shall pass on its obligations regarding the assigned Results to the assignee, including the obligation to pass them on to any subsequent assignee. It may also identify specific third parties it intends to transfer the ownership of its Results to in Attachment (3) to this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to a transfer to listed third parties according to the Grant Agreement Article 30.1.

8.2.3 The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment (3) after signature of this Agreement requires a decision of the General Assembly.

8.2.4 The Parties recognize 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 the full 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.

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

8.3 Dissemination

8.3.1 Dissemination of own Results

8.3.1.1 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 29.1 of the Grant Agreement subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties at least 45-30 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement in writing to the Coordinator and to the Party or Parties proposing the dissemination within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

8.3.1.2 An objection is justified if

- (a) the protection of the objecting Party's Results or Background would be adversely affected
- (b) the objecting Party's legitimate academic or commercial interests in relation to the Results or Background would be significantly harmed.

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

8.3.1.3 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.

The objecting Party can request a publication delay of a maximum of 6 (six) months from the time it raises such an objection. The Parties concerned shall however endeavour to solve the issue with reasonable efforts in a reasonable timeframe. After 6 (six) months the publication is permitted, provided that Confidential Information of the objecting Party has been removed from the Publication as indicated by the objecting Party.

8.3.2 Publication of another Party's unpublished Results or Background

For the avoidance of doubt, a Party shall not include in any publication or other dissemination activity another Party's Results or Background of another Party, even if such Results or Background is amalgamated with the Party's Results, without obtaining the owning Party's prior written approval, unless Background and Results in question are already published. For the avoidance of doubt, the mere absence of an objection according to 8.3.1 is not considered as an approval.

8.3.3 Cooperation obligations

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

8.3.4 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.

Section 9: Access Rights

9.1 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. Each Party however agrees:

- (a) not to use, in the execution of the Project, any Background held by any other Party which is not listed as included in Attachment 1 to this Consortium Agreement; and
- (b) not to use, in the execution of the Project, any Background held by it which is not listed, if such use of Background held by it would result in such excluded non-listed Background being Needed by any other Party for the [Use-Exploitation](#) of any Results. If a Party has not listed as included in Attachment 1 any Background held by it that it has committed in Annex I to the Grant Agreement to provide to the Project, then Annex I to the Grant Agreement shall override Attachment 1 and such Background shall be deemed to be listed in Attachment 1 and not to be excluded from obligations to grant Access Rights in accordance with the Grant Agreement and this Consortium Agreement. Further, if a Party breaches this paragraph (b) and as a consequence thereof, such Background held by it becomes Needed by any other Party for the [Exploitation](#) of any Results, then such Background shall be deemed listed in Attachment 1 and not to be excluded from obligations to grant Access Rights in accordance with the Grant Agreement and this Consortium Agreement.

9.1.2 Any Party can propose to the General Assembly to modify its Background in Attachment 1.

9.2 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. As provided in the Grant Agreement Parties shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Project). If the General Assembly considers that the restrictions have such impact, which is not foreseen in the Consortium Plan, it may decide to update the Consortium Plan accordingly.

9.2.2 Any Access Rights granted expressly 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 and non-transferable basis. They are granted worldwide if not otherwise agreed between the Parties concerned.

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 As far as Access Rights are deemed granted, Access Rights are hereby requested. In all other cases 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.

9.3 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.

9.4 Access Rights for Exploitation

9.4.1 Access Rights to Results Information for Exploitation are hereby requested, and shall be deemed granted, as of the Effective Date, on a royalty-free basis, to and by all Parties.

With regard to its Results IPR each of the Parties shall grant Access Rights for Exploitation except if and to the extent otherwise provided for in this Consortium Agreement:

Access Rights to Results ~~IPR if~~ Needed for Exploitation ~~of a Party's own Results~~ shall be granted on Fair and Reasonable conditions but only under the condition that notification about the existence of ~~IPR in~~ Results IPR is sent to the other Parties including sufficient details/references to enable the Parties to trace the IPR (e.g. application number, title, priority date, and filing office).

Said notification shall be provided within a reasonable period following application, but in no event more than twelve (12) months after the end of the Project. The inclusion of Results IPR in Project reports (e.g. periodic, final, technical) serves as sufficient notification. Access Rights to Results IPR Needed for Exploitation where said notification is absent will instead be granted on a royalty-free basis.

Access Rights to Results for internal research activities or non-commercial use such as education purpose (excluding for third party research but including research in national and European funded subsidy projects) shall be deemed granted on a royalty-free basis. Upon request of the granting Party the granting Party may be informed of the non-commercial use of its Results subject to the legitimate interests of the Party using the Results.

9.4.2 Access Rights to Background if Needed for Exploitation of a Party's own Results, ~~including for research on behalf of a third party,~~ shall be granted on Fair and Reasonable conditions subject to the following:

- a) The Party requiring the granting of such Access Rights (the "Requesting Party") shall make a written request to the Party (the "Granting Party") from which it requires the Access Rights.
- b) The written request shall identify the Results and the Background concerned and shall provide reasons why Access Rights to such Background are Needed for the Exploitation of such Results.
- c) Any such Access Rights shall only be granted upon the signature of a written agreement between the Granting Party and the Receiving Party.

Comment [TSch7]: Following a compromise with Philips a difference is made between exploitation of Results "Information" and Results "IPR" (see respective definitions)

d) Any such Access Rights granted shall be limited to those strictly Needed for the Exploitation of the relevant Results as such.

9.4.3 A request for Access Rights may be made up to ~~twelve~~[twenty-four \(24\)](#) months after the end of the Project or, in the case of Section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

9.5 Access Rights for Affiliated Entities

~~Affiliated Entities have Access Rights under the conditions of the Grant Agreement Articles 25.4 and 31.4.~~

Each Party grants Access Rights to any Affiliated Entity of any other Party as if such Affiliated Entity was a Party, and subject to the condition that such Affiliated Entity shall undertake to grant licences and user rights, on terms identical to Access Rights, to its Background and Results that is Needed to Exploit Results ~~to all Parties and their Affiliated Entities~~ (subject to such Affiliated Entity also having given such undertaking) and (without prejudice to the Parties' obligations to carry out the Project and to provide Project deliverables) to fulfil all confidentiality and other obligations towards the Commission and the other Parties accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such Affiliated Entity was a Party. Access Rights granted to any Affiliated Entity are subject to the 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.

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

9.6 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.

9.7 Access Rights for Parties entering or leaving the consortium

9.7.1 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.

9.7.2 Parties leaving the consortium

9.7.2.1 Access Rights granted to a leaving Party

9.7.2.1.1 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.

9.7.2.1.2 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.

9.7.2.2 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.

9.8 Specific Provisions for Access Rights to Software

9.8.1 Definitions relating to Software

“Application Programming Interface”

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 Licence Terms" means terms in any licence 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:

- (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;
- that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
- that a royalty-free licence relating to the Work or Derivative Work be granted to any third party.

For the avoidance of doubt, any Software licence that merely permits (but does not require any of) the things mentioned in (a) to (c) is not a Controlled Licence (and so is an Uncontrolled Licence).

“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, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.

9.8.2. General principles

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

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 intended introduction of Intellectual Property (including, but not limited to Software) under Controlled Licence Terms in the Project requires the approval of the General Assembly to implement such introduction into the Consortium Plan.

9.8.3. Access to Software

Access Rights to Software which is Results shall comprise:

Access to the Object Code; and,

where normal use of such an Object Code requires an Application Programming Interface (hereafter API), Access 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 to the Source Code, Access to the Source Code to the extent necessary.

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

9.8.4. Software licence and sublicensing rights

9.8.4.1 Object Code

9.8.4.1.1 Results- Rights of a Party

Where a Party has Access Rights to Object Code and/or API which is Results for Exploitation, such Access shall, in addition to the Access for Exploitation foreseen in Section 9.4, as far as Needed for the Exploitation of the Party's own Results, comprise the right:

to make an unlimited number of copies of Object Code and API; and
to distribute, make available, market, sell and offer for sale such Object Code and API 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.

If it is intended to use the services of a third party for the purposes of this Section 9.8.4.1.1, the Parties concerned 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 of this Consortium Agreement.

9.8.4.1.2 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 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

9.8.4.1.3 Background

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

9.8.4.2 Source Code

9.8.4.2.1 Results - Rights of a Party

Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code which 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 9.8.4.2.1, 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 of this Consortium Agreement.

9.8.4.2.2 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.

9.8.4.2.3 Background

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

9.8.5 Specific formalities

Each sublicense granted according to the provisions of Section 9.8.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.

Section 10: Non-disclosure of information

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 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".

10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of 4 years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information to any third party 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 on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. 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.

10.3 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.

10.4 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 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 confidence by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidence 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; or
- 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 hereunder.

10.5 The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.

10.6 Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

10.7 If any Party 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.

10.8 The confidentiality obligations under this Consortium Agreement and the Grant Agreement shall not prevent the communication of Confidential Information to the European Commission.

10.9 For the avoidance of doubt, the confidentiality obligations under the Grant Agreement and this Consortium Agreement shall not be interpreted so as to prevent the communication of any information:

- (a) to any Affiliated Entity or to any other third party (including any other Party), insofar as strictly required for the proper carrying out of the GA and/or this CA; or
- (b) to any third party (including the public), insofar as strictly required for (i) technical reasons and (ii) permitted Exploitation of Results

With respect to any permitted disclosure of any of the Confidential Information referred to in this Section above by a Receiving Party to a third party (including but not limited to its Affiliated Entities and subcontractors), the Receiving Party will: (i) ensure that appropriate arrangements are in place prior to any such disclosure, to protect the Confidential Information to a similar degree as provided in this Section; and (ii) use reasonable endeavours to ensure compliance with such arrangements.

10.10 Patient Information

10.10.1 Any part of the Project involving Patient Information will be outlined in a Protocol based on the objectives of the Project and shall be agreed in writing between the Contributor and the respective Parties participating in the performance of such Protocol (the "Protocol").

Comment [TSch8]: Whole paragraph updated together with Philips and Uni Saarland.

10.10.2 Each Contributor warrants that:

(a) it has obtained the Patient Information, if any, with due observance of the rights of the patients involved and in compliance with all applicable laws and regulations, including without limitation, privacy and medical secrecy laws, laws and regulations applicable to the activities of the Institution, and, to the extent applicable, the Declaration of Helsinki as revised by the World Medical Assembly, as well as the applicable procedures and the internal guidelines of Institution (hereinafter "Applicable Regulations");

(b) it has the authority to disclose the Patient Information, if any, to the Parties under this Consortium Agreement, and that where legally required and relevant, it has obtained appropriate informed consents from all the patients involved, or approval from the applicable ethical review board has been obtained, all in compliance with Applicable Regulations; and there is no restriction in place that may prevent a Party to use the Patient Information for the purpose of the Agreement;

10.10.3 Contributor shall ensure that the Patient Information transferred to a Party is of adequate quality as to serve the purposes as described in the applicable Protocol.

10.10.4 Contributor hereby authorizes and allows Parties to use the Patient Information for the purpose of research and development (including submission to regulatory bodies) and further scientific purposes and publication purposes regarding the Project unless (i) such use is directly and clearly conflicting the objectives of the Project; or (ii) the Parties expressly agree otherwise in writing; or (iii) such use conflicts with the relevant requirements under applicable mandatory laws and regulations, in particular those on data protection.

10.10.5. Privacy of Personal Data

Contributor shall not disclose any Personal Data to a recipient Party in connection with the supply of Patient Information pursuant to this Agreement. To this end, Contributor shall take all necessary steps to ensure that all Personal Data is removed from the Patient Information, made illegible, or otherwise made inaccessible to the Parties (i.e. de-identify) prior to providing the Patient Information to Parties. Should a Party come in contact with Personal Data during the performance of the Project, Contributor hereby instructs that Party to de-identify such information on Contributor's behalf and authorizes the Party to process the information containing Personal Data in accordance with its obligations as a data processor under applicable data protection laws. The Party undertakes to keep the Patient Information containing Personal Data confidential and secure until the information has been de-identified.

10.10.6 Clinical investigations and clinical trials after the start of the Project

When a clinical investigation, clinical trial or any other trials involving human volunteers becomes necessary in the frame of the Project, the relevant Parties involved in the execution of such activities will arrange for a separate bilateral agreement between themselves concerning the roles and responsibilities of the relevant Parties in such trial activity.

Section 11: Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and Attachment 1 (Background included)

iManageCancer Consortium Agreement, version 4, 2015-06-19

Attachment 2 (Accession document)

Attachment 3 (List of Third Parties for simplified transfer according to Section 8.2.2)

[Attachment 4 \(List of Contributors\)](#)

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 which fulfils the purpose of the original provision.

11.2 No representation, partnership or agency

Except as otherwise provided in Section 6.4.4, 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.

11.3 Notices and other communication

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

Formal notices:

If it is required in this Consortium Agreement (Sections 4.2, 9.7.2.1.1, and 11.4) 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 or telefax with receipt acknowledgement.

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 otherwise provided under this Consortium Agreement or the Grant Agreement, no Party shall, without the prior written consent of the other Parties, assign or otherwise transfer partially or totally any of its rights and obligations under this Consortium Agreement. Such consent shall not be unreasonably conditioned, withheld or delayed when such assignment or transfer is in favour of another Party or an Affiliated Entity of the assigning Party or one of the other Parties. Any Party may require reasonable conditions for giving such consent to prevent such transfer from adversely affecting its or its Affiliated Entities' Access Rights.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Section 6.3.1.2 require a separate written agreement to be signed between all Parties.

11.5 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.

11.6 Language

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

11.7 Applicable law

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

11.8 Settlement of disputes

The Parties shall endeavour to settle their disputes amicably.

Disputes or differences directly arising in connection with this Consortium Agreement, (other than disputes relating to the infringement and/or validity of IPR, which shall be the exclusive jurisdiction of the competent court), including any dispute in which a Party alleges that another Party has abused its power, which cannot be settled amicably, shall be subject to the jurisdiction of the competent court in Brussels. Such court shall have jurisdiction in the event of a counterclaim made by the defendant in the legal action.

The Parties concerned may instead elect unanimously to seek to resolve by mediation any dispute or difference arising in connection with this Consortium Agreement and which cannot be settled amicably by them.

Notwithstanding the foregoing, any Party shall be free to seek interim injunctive relief or any other temporary measures before any applicable competent court or tribunal, wherever located, in order to seek to prevent or restrain any (i) infringement of its or their IPRs and/or (ii) unauthorised disclosure of Confidential Information.

Section 12: 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.

Comment [TSch9]: Every Party will sign on a different signature page. Please add the names of the person(s) authorised to sign.

| iManageCancer Consortium Agreement, version 4, 2015-06-19

Authorised to sign on behalf of FRAUNHOFER GESELLSCHAFT ZUR FÖRDERUNG DER ANGEWANDTEN FORSCHUNG E.V. for this Consortium Agreement for the Project entitled iManageCancer

Signature(s)

Name(s) Rüdiger Dorner Tanja Schöpke

Title(s) Head of EU Department Legal Counsel

Date

iManageCancer Consortium Agreement, version 4, 2015-06-19

Authorised to sign on behalf of Philips Electronics Nederland B.V. for this Consortium Agreement for the Project entitled iManageCancer

Signature(s)

Name(s) Henk van Houten

Title(s) General Manager Philips Research

Signature(s)

Name(s) Carel-Jan van Driel

Title(s) Division Head I&C

Date

| iManageCancer Consortium Agreement, version [4](#), 2015-06-19

[Authorised to sign on behalf of ISTITUTO EUROPEO DI ONCOLOGIA S.R.L for this Consortium Agreement for the Project entitled iManageCancer](#)

[Signature\(s\)](#)

[Name\(s\) Mr. Mauro Melis](#)

[Title\(s\) Chief Executive Officer](#)

[Date](#)

iManageCancer Consortium Agreement, version 4, 2015-06-19

Authorised to sign on behalf of **Philips Electronics UK** for this Consortium Agreement for the Project entitled iManageCancer

Signature(s)

Name: Brian Lugg

Title: Controller Philips Electronics U.K.

| iManageCancer Consortium Agreement, version [4](#), 2015-06-19

| [Authorised to sign on behalf of PARTY for this Consortium Agreement for the Project entitled iManageCancer](#)

| **[INSERT NAME OF PARTY]**

Signature(s)

Name(s)

Title(s)

Date

[Attachment 1: Background included]

According to the Grant Agreement (Article 24) Background is defined as “data, know-how or information (...) that is needed to implement the action or exploit the results”. Because of this need, Access Rights have to be granted in principle, but Parties must identify and agree amongst them on the Background for the Project. This is the purpose of this Attachment 1.

Comment [KW10]:
Each Party please provide your feedback on Attachment 1 (either, indicate you choose Option 1, and give your input for the table; or, indicate you choose Option 2).

1. FRAUNHOFER-GESELLSCHAFT:

As to Fraunhofer-Gesellschaft, it is agreed between the Parties that, to the best of their knowledge,

The following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Comment [KW11]: Please list Background here.

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for exploitation (Article 25.3 Grant Agreement)
Personal Health Manager and Care Flow Engine for the management of patients with chronic diseases	Must be in compliance with EU-FP7-Project d-LIVER Grant Agreement and Consortium Agreement	Must be in compliance with EU-FP7-Project d-LIVER Grant Agreement and Consortium Agreement

This represents the status at the time of signature of this Consortium Agreement.

2. FOUNDATION FOR RESEARCH AND TECHNOLOGY HELLAS

As to FOUNDATION FOR RESEARCH AND TECHNOLOGY HELLAS, it is agreed between the Parties that, to the best of their knowledge:

No Background of FOUNDATION FOR RESEARCH AND TECHNOLOGY HELLAS shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

3. UNIVERSITÄT DES SAARLANDES

As to UNIVERSITÄT DES SAARLANDES, it is agreed between the Parties that, to the best of their knowledge:

The following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for exploitation (Article 25.3 Grant Agreement)
ObTiMA	Must be in compliance with the EU-FP6 Project ACGT	Must be in compliance with the EU-FP6 Project ACGT

	and the EU-FP7-Projects EURECA, CHIC und p-medicine Grant Agreement and Consortium Agreement .	and the EU-FP7-Projects EURECA, CHIC und p-medicine Grant Agreement and Consortium Agreement .

4. Philips Electronics Nederland B.V.and9. Philips Electronics U.K.PARTY

As to Philips Electronics Nederland B.V.and Philips Electronics U.K.[NAME OF THE PARTY], it is agreed between the Pparties that, to the best of their knowledge (~~please choose~~):

Option 1:-The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for exploitation (Article 25.3 Grant Agreement)
<u>Any and all Needed Background</u>	<p><u>any and all Background that is necessarily infringed by implementing a standard;</u></p> <ul style="list-style-type: none"> <u>any and all Background for which the grant of a license would require the consent of or compensation to a third party;</u> <u>any and all Background that is jointly owned with a third party to the extent that the participant has no free right to grant licenses to third parties;</u> <u>any and all background that is part of one of Philips' licensing programmes. Philips may provide Access Rights to said any and all Background that is part of one of Philips' licensing programmes, however, on the conditions of the respective Philips' licensing program;</u> <p><u>Philips explicitly excludes from its obligation to grant Access Rights, information other than Foreground developed or otherwise acquired after entering into the GA, as well as copyright or other IPRs pertaining to such information.</u></p>	<p><u>any and all Background that is necessarily infringed by implementing a standard;</u></p> <ul style="list-style-type: none"> <u>any and all Background for which the grant of a license would require the consent of or compensation to a third party;</u> <u>any and all Background that is jointly owned with a third party to the extent that the participant has no free right to grant licenses to third parties;</u> <u>any and all Background that is part of one of Philips' licensing programmes. Philips may provide Access Rights to said any and all background that is part of one of Philips' licensing programmes, however, on the conditions of the respective Philips' licensing program;</u> <p><u>Philips explicitly excludes from its obligation to grant Access Rights, information other than Foreground developed or otherwise acquired after entering into the GA, as well as copyright or other IPRs pertaining to such information.</u></p>

Etc.

This represents the status at the time of signature of this Consortium Agreement.

7. ISTITUTO EUROPEO DI ONCOLOGIA S.R.L

As to Istituto Europeo di Oncologia S.r.L., it is agreed between the Parties that, to the best of their knowledge :

The following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for exploitation (Article 25.3 Grant Agreement)
ALGA questionnaire	Must be in compliance with EU-FP7-PMedicine Grant Agreement and Consortium Agreement .	Must be in compliance with EU-FP7-PMedicine Grant Agreement and Consortium Agreement .

[Attachment 2: Accession document]

ACCESSION

of a new Party to

[Acronym of the Project] Consortium Agreement, version [..., YYYY-MM-DD]

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE Grant Agreement]

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE Grant Agreement]

hereby certifies that the consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the consortium starting [date].

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

Signature(s)

Name(s)

Title(s)

| iManageCancer Consortium Agreement, version 4, 2015-06-19

| **[Attachment 3: List of Third Parties for simplified transfer according to Section 8.2.2.]**

iManageCancer Consortium Agreement, version 4, 2015-06-19

[Attachment 4: List of Contributor]

The following Parties are Contributors according to the definition of this Consortium Agreement:

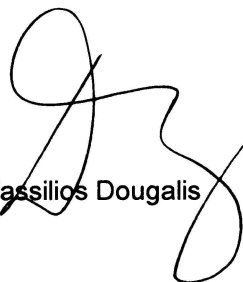
3. UNIVERSITÄT DES SAARLANDES

5. CANCER INTELLIGENCE LTD

7. ISTITUTO EUROPEO DI ONCOLOGIA S.R.L

Authorised to sign on behalf of FOUNDATION FOR RESEARCH AND TECHNOLOGY HELLAS
for this Consortium Agreement for the Project entitled iManageCancer

Signature:



Name: Prof. Vassilios Dougalis

Title:



Date: 26/8/2015

V. DOUGALIS

Vice Chairman of the Board of Directors of F.O.R.T.H &
Vice Director of the Central Administration of the F.O.R.T.H