

Implementing a Cross-regional Support scheme within the Alpine Region

- Consortium Agreement -

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List of acronyms and definitions

Programme Owner	Ministries and/or other bodies, that are legally entitled to design, publish and fund calls. They can also decide on funding scope, budgeting and funding rules.
Participating Regions:	Transregional initiatives bundle a certain number of regions that are ready participate in such an initiative. These regions can be represented by Ministries (Programme Owners) or respective Funding Agencies
Funding Agencies:	Funding Agencies, often also called management authority, have the mandate to implement and operate dedicated funding programmes. They are normally in charge with operation aspects for programme implementation, like timing of calls, selection process of proposals or the financial management. They often work an operational arm of the Programme Owner.
Collaborative Proposal	Collaborative Proposals contain sub-proposals from various participating regions.
Multi-Level Governance	A multi-level governance scheme contains mechanisms for cross-regional cooperation of interested parties. It defines rules on policy (programme owner) level, how to align policies to meet common objectives. It also contains procedures how funding of cross-regional activities is provided and managed. Finally, it sets framework conditions under which industry or academia can collaborate across borders.

1. INTRODUCTION

Alpine Space Macro Region was adopted to strengthen innovation and competitiveness by transforming economic structures through the identification of local excellence and by the development of new combinations of existing capacities. Recent experience gained in Interreg-projects like S3-4AlpClusters, CirCulAlps or TRANSALP show that on one side multi-national governance structures for focused cooperation among Alpine Regions are critically missing. There is a persistent funding gap for cross-regional research, development and innovation (RDI) projects within the Alpine Region targeting regional priorities of particular relevance. On the other side, Alpine Regions must inter-link their local assets and individual excellent capacities to address grand challenges in future European RDI. Dynamic areas with significant impact are related to megatrends in circular-bioeconomy and health-economy (CBH) that will tremendously impact the way of our status-quo economy¹.

Nevertheless, there is an increasing understanding that cross-regional cooperation would advance regional competitiveness while bundling critical mass and competences on one side, but also minimising duplication and fragmentation of publicly funded activities across the Alpine Region. In fact, increasing cooperation in innovation investments across regions is supported by the so-called outward-looking dimension that is generally expected to be present in upcoming smart specialisation strategy (RIS3). This dimension calls for possible complementarities with other regions, inside and outside the Alpine Region. However, what sounds rational and easy in theory causes significant issues in day-to-day practice. Currently, funding schemes and related governance structures are not prepared to encourage cross-regional cooperation.

Concerning cross-national funding schemes, Alpine Regions do not have many possibilities to influence the programme design and consequently the scope of the call. Furthermore, the current INTERREG Alpine Space support scheme is coming to an end. Consequently, there is no modality currently in place where a group of Alpine Regions' entities can decide to support R&D or innovation in Bioeconomy or Health-economy across regions. Analysis and recent experiences show that one of the main reason for this funding gap are missing multi-regional governance structures for cross-regional cooperation in S3-implementation that could serve as facilitator for cross-regional cooperation².

That is where ARDIA-Net comes into play, which aims to develop a multi-level, multi-national, coherent RDI area for the Alpine Region. ARDIA shall contribute to improve the framework conditions for cross-regional and cross-sectoral cooperation addressing common economic opportunities. ARDIA shall help regions to jointly design and implement a cross-regional funding framework and adjacent demonstrator projects targeting the development of the Alpine Region for future cross-border implementation of regional strategies, providing crucial solutions to macro-regional governance in support of sustainable development, knowledge transfer and innovation in the Alpine Region.

While none of the consortium partners of ARDIA-Net are public funding parties, ARDIA-Net's approach needs to rely on resources and motivation of the authorities (programme owners) of the regions and nations, and those agencies that fund Research, Development and Innovation (RDI) in the respective regions.

However, ARDIA-Net is determined to promote a process that evolves into cross-regional research and innovation calls and projects. The proposed descriptive analysis and assessment shall support ARDIA-NET in its considerations about a feasible approach to facilitate cross-regional funding.

¹ For more information regarding the project under <https://www.alpine-space.eu/projects/ardia-net/en/about/objectives/specific-objectives>.

² Dermastia, M. and Osvald, D. (2018), Study to Prepare A Synchronised Funding Scheme For Bioeconomy Development In The Alpine Region. Interreg AlpGov.

2. SAMPLE CONSORTIUM AGREEMENT

The intention of such Consortium Agreement is to illustrate structure and the key agreement items. This sample is based on several good practices collected over the recent years. Text marked in yellow has to be adapted according to the specific circumstance.

CONSORTIUM AGREEMENT

The Parties agree to realise the PAN_ALPS Joint Call 1³, as laid down in the Implementation Plan, dated

This agreement is supplementing this plan with regard to the governance of the Consortium Partners.

BETWEEN:

xxxxx, the Coordinator,

established in xxxxxxxx

and the Consortium Partners

yyyyy,zzzzz,.....

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

relating to the Project entitled

xxxPS Joint Call 1

hereinafter also referred to as "Project"

WHEREAS:

The Parties, having considerable experience in the field concerned, have jointly elaborated and agreed on the implementation Plan for PAN-ALPS Call 1.

The Parties wish to specify or supplement binding commitments among themselves in relation to this plan.

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 including its Annexes without the need to replicate said terms herein.

³ Working title of the potential first cross-regional support scheme

1.2 Additional Definitions

“Implementation Plan”

Implementation Plan means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the Steering Board.

“Consortium Budget”

Consortium Budget means the allocation of all the resources in cash or in kind for the activities as defined in the Implementation Plan (“Efforts, Payment – and Contribution Plan”), and its financing as laid out there. It excludes the indicative budgets committed to the financing of the research projects succeeding a successful PAN-ALPS Joint Call 1.

“Defaulting Party”

Defaulting Party means a Party, which a responsible Consortium Body has identified to be in breach of this Consortium Agreement as specified in Article 4.2 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 impossible, significantly delayed, or require significant additional financial or human resources.

For Use of own Foreground:

Access Rights are Needed if, without the grant of such Access Rights, the Use of own Foreground 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.

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 financing and 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.

A new Party enters the Consortium upon signature of the accession document Attachment 3 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 according to the Implementation Plan 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.

3.3 Survival of rights and obligations

The provisions relating to Access Rights 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 Steering Board 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 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 Implementation Plan 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, in accordance with the governance structure of the Project, 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.

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

4.2 Breach

In the event a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement (e.g.: a partner producing poor quality work), the Coordinator will give 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 Steering Board 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.

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. 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.

4.3. Conflict management

In order to prevent any potential conflicts best efforts will be undertaken to achieve well accepted common targets. This could arise e.g. during the execution of the PAN-ALPS Call 1, e.g. in the case of severe discrepancies between committed budgets for funding transnational research projects and actual demand.

If for some reason, a unanimous understanding is not possible any further proceeding will be based on majority vote.

Section 5: Liability towards each other

5.1 No warranties

In respect of any information or materials (incl. Foreground 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 Affiliates) exercising its Access Rights.

5.2 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, provided such damage was not caused by a wilful act or by a 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 the Implementation Plan provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's non-contractual liability.

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 Foreground 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 as soon as possible. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the competent Consortium Bodies shall decide the transfer of tasks - if any -.

Section 6: Governance structure

6.1 General structure

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

- Steering Committee (i.e. funding programme owners, committing funds for innovation projects) – the ultimate supervisory decision-making body of the Consortium
- Working Group (i.e. representatives of entities carrying out the implementation plan, or representing the funding programmes on the working level) – as the coordination body for the execution of the Project which shall report to and be accountable to the Steering Committee

The Coordinator is the legal entity acting as the coordinator and intermediary between the Parties.

6.2 General operational procedures for all Consortium Bodies

6.2.1 Representation in meetings

Any member of a Consortium Body (hereinafter referred to as "Member"):

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

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
Steering Committee	At least 4 meetings (2 prior, one for project endorsements, one for sustainability dialogue)	At any time upon written request of at least 3 Members of the Steering Committee

Working Group	At least 4 meetings, each preceding the Steering Board Meetings	At any time upon written request of the Steering Board or 1/3 of the Members of the Working Group
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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
Steering Committee	45 calendar days	15 calendar days
Working Group	10 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.

Steering Committee	21 calendar days, 10 calendar days for an extraordinary meeting
Working Group	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.

Steering Committee	14 calendar days, 7 calendar days for an extraordinary meeting
Working Group	2 working 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 signed by the defined majority (see Article 6.2.3.) of all Members of the Consortium Body.

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 Article 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).

6.2.3.2 Each Member of a Consortium Body present or represented in the meeting shall have one vote. If the Coordinator is not representing a funding programme, it has no vote in the Steering Committee.

6.2.3.3 Defaulting Parties may not vote. Decisions shall be taken by a majority of two-thirds (2/3) of the votes.

6.2.3.4 Voting Rules of the Steering Committee

The Steering Committee will take decisions with a 2/3 majority.

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 days after the draft minutes of the meeting have been 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 the Parties.

6.3 Specific operational procedures for the Consortium Bodies

6.3.1 Steering Committee (Board of Programme Owners)

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

6.3.1.1 Members

6.3.1.1.1 The Steering Committee shall consist of one representative from all funding programme owners, one from each participating programme.

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

6.3.1.1.3 The Coordinator shall chair all meetings of the Steering Committee, unless decided otherwise in a meeting of the Steering Committee.

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

6.3.1.2 Decisions

The Steering Committee 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 Working Group shall also be considered and decided upon by the Steering Committee.

The following decisions shall be taken by the Steering Committee:

Content, finances and intellectual property rights

- Changes to the Implementation Plan (including the Efforts, Payment – and Contribution Plan)
- Withdrawals from Attachment 1 (Background included)
- Additions to Attachment 2 (Background excluded)
- Additions to Attachment 5 (List of Third Parties)
- Taking of strategic decisions concerning the future direction of the project after the Call (exit, sustainability)

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
- 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
- Termination of the project – in accordance with a modified Implementation Plan.

Appointments

- Change of Coordinator (in accordance with a modified Implementation Plan)
- Accession/Default of Working Group members

6.3.2 Working Group

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

6.3.2.1 Members

The Working Group shall consist of

- Representatives of the implementing agencies of the local funding programmes
- All Parties, that act as Work Package or Task Leaders, except they are subcontracted.

6.3.2.2 Tasks

6.3.2.3.1 The Working Group member tasked with the Network Coordination office is the Coordinator. It shall prepare the meetings, propose decisions and prepare the agenda of the Steering Committee according to Article 6.3.1.2.

6.3.2.3.2 It shall seek a consensus among the Parties.

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

6.3.2.3.4 The Working Group shall realise or monitor the effective and efficient implementation of the Project.

The Working Group shall:

- realise tasks and functions as laid down in the Implementation Plan,
- coordinate the daily operation of the Implementation Plan with the local/regional funding programmes activities where relevant
- support the Coordinator in preparing meetings (where applicable)
- prepare the content and timing of press releases and joint publications (as proposed by the Communication Office)

The Working Group shall manage the day-to-day work, in particular with regard to:

- the timely delivery of major Work Package results to the Coordinator
- alerting the Coordinator in case of delay in the performance of the Work Package or in case of breach of responsibilities of any Party under said Work Package
- analysing and documenting, at the request of the Steering Board or Coordinator, a presumed breach of responsibilities of a Party under the Work Package and preparing a proposal of remedies
- deciding upon any exchange of tasks and related budgets between the Parties in a Work Package when such exchange has no impact beyond the scope of the Work Package and its budget.

6.3.2.3.5 In addition, the Working Group shall collect information at major milestones on the progress of the Project (call time table, call documentation endorsed, Call Secretariat operational, results of phase 1 and 2 evaluations, funding and research project start), examine that information to assess the compliance of the Project with the Implementation Plan and, if necessary, propose modifications of the Implementation Plan to the Steering Committee.

6.3.2.3.6 In the case of abolished tasks because of a decision of the Steering Committee, the Working Group shall advise the Steering Committee 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 is the Work Package Leader of WP1 and shall be the intermediary between the Parties

The core tasks of the Project Coordinator (and Secretariat) are laid down in the Implementation Plan.

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 and other deliverables (including financial statements and related certifications)
- transmitting documents and information connected with the Project to and between Work Package Leaders, as appropriate, and any other Parties concerned
- 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.

6.4.3 If the Coordinator fails in its coordination tasks, the Steering Committee may decide 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.

Section 7: Financial provisions

7.1 General Principles

7.1.1 Collection and Distribution of Financial Contribution

Financial Provisions only regard the work for the implementation of the Call. The financing of the research and innovation projects is exclusively subject to the respective local/regional funding programme provisions.

The Parties financial contribution to the Project shall be monitored and/or distributed by the Coordinator according to:

- the Consortium Budget as included in the Implementation Plan (Efforts, Payment – and Contribution Plan, incl. payments)
- the provisions of payment in Article 7.3.

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

7.1.3 Financing Principles

A Party, which spends less than its share allocated for the Work Packages/Tasks, will be funded in accordance with its actual duly justified eligible costs only.

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

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 Steering Committee. Furthermore, a Defaulting Party shall, within the limits specified in Article 5.2 of this Consortium Agreement, bear any additional costs occurring to the other Parties in order to perform its and their tasks.

7.2 Budgeting

The Consortium Budget 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 payments to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body.

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:

- budgeted costs for future work included in the Implementation Plan will be paid to Parties in separate instalments in conformity with the decisions of the Project Working Group,

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 to a Party, which has not yet signed this Consortium Agreement.

The Coordinator is entitled to recover any payments already paid to a Defaulting Party.

Section 8: Non-disclosure of information

8.1 All information in whatever form or mode of transmission, 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”, or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

8.2 The Recipients hereby undertake, for a period of 5 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. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only.

8.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.

8.4 The above shall not apply for disclosure or use of Confidential Information, if and as 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 in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- 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.

8.5 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.

8.6 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.

8.7 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.

Section 9: Miscellaneous

9.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and

Attachment 1 (Background included)

Attachment 2 (Background excluded)

Attachment 3 (Accession document)

Attachment 4 (initial list of Members and other contact persons)

In case the terms of this Consortium Agreement are in conflict with national legislation of the Parties 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.

9.2 No representation, partnership or agency

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. 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.

9.3 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 based on the initial list of Members and other contact persons in Attachment 4.

Formal notices:

If it is required in this Consortium Agreement (Article. 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.

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

9.4 Assignment and amendments

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 Article 6.3.6 require a separate agreement between all Parties.

9.5 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.

9.6 Language

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

9.7 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium.

9.8 Settlement of disputes

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties.

The award of the arbitration will be final and binding upon the Parties.

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief or to enforce an arbitration award in any applicable competent court of law.

Section 10: 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.

The Coordinator,

Date

Signature

Party 2,

Attachment 1: Background included

Access Rights to Background made available to the Parties:

- a) Party 1
- b) Party 2.
- c) ...

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

Attachment 2: Background excluded

Background excluded from Access Rights:

- a. b.
- b. ...

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

Attachment 3: 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 Implementation Plan]

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

[OFFICIAL NAME OF THE COORDINATOR]

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

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

Signature(s)

Name(s)

Title(s)

Attachment 4: Initial list of Members and other contact persons

Recipients for Notices

Party 1

Party 2

Party 3

ARDIA-Net Partners

