SAMENWERKINGS-OVEREENKOMST PROGRAMMA ONTWERPKRACHT & TRANSITIES

ONTWERPKRACHT
& TRANSITIES

TKI CLICKNL

PPP-I Project

PROJECT TITLE

Consortium agreement

ONTWERPKRACHT
& TRANSITIES

CONSORTIUM AGREEMENT FOR PPP-I PROJECTS

THIS CONSORTIUM AGREEMENT FOR PPP-I PROJECTS (the "**Consortium Agreement**") is effective as of [date] (the "**Effective Date**"), by and between:

1. **[Consortium Partner 1]**, incorporated under [nationality] law, having its statutory seat [in place, country] and its address [address] and registered with the [nationality] Chamber of Commerce under number [number], hereinafter referred to as the "**Research Organisation X**" and as "[**Name Partner**]". **[Consortium Partner 1]** shall also act as the Project Coordinator;

2. **[Consortium Partner 2]**, incorporated under [nationality] law, having its statutory seat [in place, country] and its address [address] and registered with the [nationality] Chamber of Commerce under number [number], hereinafter referred to as the "**Research Organisation X**" and as "[**Name Partner**]";
3. **[Consortium Partner 3]**, incorporated under [nationality] law, having its statutory seat [in place, country] and its address [address] and registered with the [nationality] Chamber of Commerce under number [number], hereinafter referred to as the "**Industrial Partner X**" and as "[**Name Partner**]";

4. **[Project Partner 4, 5, 6, etc]**, who are not officially part of this Consortium Agreement because of the way they are funded in the Project and will also not sign this Consortium Agreement, but who are involved as equal partners in the design and implementation of the Project and will relate in the same way as the official Consortium Partners to the agreements mentioned herein, hereinafter referred to as the "**Creative Industry Partners**";

Each of the Participants hereinafter also referred as "a **Participant**" and together as "the **Participants**".

WHEREAS:

A. The Dutch Top Sector Creative Industries is represented by Stichting TKI CLICKNL tasked by the Dutch government to promote and stimulate new public-private partnerships to undertake research and development projects in the creative industries;

B. To promote such partnerships, the Minister of Economic Affairs has allocated certain funds to TKI CLICKNL, to grant subsidy to projects under the TKI-programme (each such Subsidy a "**PPP-I Subsidy**", or in Dutch "PPSi-middelen");

C. Participants desire to start a research project titled [title] (the "**Project**") within the scope of the PPP-programme of TKI CLICKNL and have submitted an application (the "**Project Application**") to the TKI for the grant of such PPP-I Subsidy to the Project;

D. In addition to the applicable conditions of the PPP-I Subsidy Grant letter (the "**Grant letter**") to be signed between the Project Coordinator and TKI CLICKNL upon approval of the Project Application, Participants desire to specify the binding commitments among themselves with regard to the Project and the work to be allocated thereunder as set out in the Project Application, all in accordance with the terms and conditions of this Consortium Agreement;

E. The Participants agree that in case TKI CLICKNL does not grant the PPP-I Subsidy as applied for, this Consortium Agreement will be terminated, except for the confidentiality provisions that will survive termination;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Article 1. Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Grant Letter.

1.1. "**Access Rights**" means any license and/or user rights to a Participant's Background or Foreground as set out in this Consortium Agreement;

1.2. "**Affiliate**" means the legal entity that is either the ultimate parent company of a Participant or that is under the direct or indirect control of a Participant, or under the same direct or indirect control as the Participant, control taking any of the following forms:

a. the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that legal entity;

b. the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

1.3. "**Background**" means all information, know-how and material, whatever its form or nature, owned or controlled by a Participant prior to its participation to this Consortium Agreement, as well as any intellectual property rights pertaining to such data, that is Needed to implement the Project or to exploit the Foreground. Participants may identify the Background in Annex 1 to this Consortium Agreement, together with any (legal) restrictions or limits to the use thereof;

1.4. "**Budget**" means the budget submitted to TKI CLICKNL in the Budget Form providing an estimate of the total cost to carry out the Project, including an overview of the contributions of each Participant to the Project;

1.5. "**Confidential Information**" shall mean any information or material, irrespective of its nature or form, disclosed by the disclosing Participant to the receiving Participant in connection with the Project (i) which is marked or indicated as being confidential by the disclosing Participant, or (ii) when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing, within thirty (30) calendar days from oral disclosure at the latest, as Confidential Information by the disclosing Participant.

1.6. **"Consortium"** means all Participants together, including Creative Industry Partners.

1.7. "**Consortium Agreement**" means this consortium agreement as well as the pre-amble and all annexes hereto;

1.8. "**Defaulting Participant**" means a Participant which the Project Coordinator has declared to be in substantial breach of this Consortium Agreement or the Grant letter in accordance with Section 3.5 of this Consortium Agreement;

1.9. "**Effective Date**" means the date first written in the pre-amble;

1.10. "**Foreground**" means any output such as information, know-how and material - whatever its form or nature, and whether it can be protected or not - that is generated by or on behalf of a Participant (alone or together with other Participants) under the Project, as well as any rights attached to it, including intellectual property rights;

1.11. "**Needed**" means:

a. for the implementation of the Project, that Access Rights are needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Participant would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources; and

b. for exploitation of a Participant's own or jointly owned Foreground, that Access Rights are needed if, without the grant of such Access Rights, the exploitation of a Participant's own or jointly owned Foreground would be technically or legally impossible.

1.12. "**Option**" has the meaning assigned to it in Section 8.5 of this Consortium Agreement;

1.13. "**Grant letter**" means the PPP-I Subsidy Grant letter (to be) signed between the Project Coordinator and Stichting TKI CLICKNL, under which agreement Stichting TKI CLICKNL grants the PPP-I Subsidy to the Project Coordinator subject to the terms and conditions set out in the Grant letter;

1.14. **"Project Coordinator"** means the Participant coordinating and managing the Project as well as representing the Consortium before TKI CLICKNL. Participants appoint [Participant] as Project Coordinator and authorize Mr/Mrs ……….. to carry out the tasks set forth under this Consortium Agreement.

1.15. "**Project Share**" means the value of a Participant's total share in the Project, in cash and in kind, as identified in the Budget.

1.16. Stichting TKI CLICKNL means the TKI CLICKNL, also acting under its trade name CLICKNL, having its statutory seat in Den Hoorn, the Netherlands and its address at Oude Veiling 53, 2635 GK, Den Hoorn and registered with the Dutch Chamber of Commerce under number 55937446.

Article 2. Purpose

2.1. Purpose. The purpose of this Consortium Agreement is to specify, with respect to the Project, the relationship among the Participants. This includes in particular the management of the Project as set out in the Project Application and in accordance with the Budget, and the rights and obligations of the Participants with respect to the Background and Foreground.

2.2. Conflict. The Participants acknowledge and agree that if there is any conflict between the terms of this Consortium Agreement and the Grant letter, the terms of the Grant letter will prevail with regard to the PPP-I Subsidy and the obligations of the Participants towards TKI CLICKNL In any other event, the terms of the Consortium Agreement shall prevail.

Article 3. Entry into force, duration and termination

3.1. Entry into force. This Consortium Agreement shall enter into force on the Effective Date and shall continue in full force and effect until all obligations undertaken by the Participants under the Grant letter and under this Consortium Agreement are completed, unless this Consortium Agreement or the participation of one or more Participants is terminated in accordance with the terms of this Consortium Agreement.

3.2. New Participant. A new entity becomes a Participant to the Consortium Agreement upon signature of the accession document attached as Annex 2 to this Consortium Agreement, by the new Participant and the Project Coordinator. Such accession shall have effect from the date identified in the accession document.

3.3. Termination of the Consortium Agreement. This Consortium Agreement shall terminate automatically upon rejection of the Project Application by the TKI CLICKNL. Furthermore, in the event that the Grant letter is terminated, the Consortium Agreement may be terminated by the Participants upon mutual written agreement and the prior written approval of TKI CLICKNL

3.4. Termination of a Participant's participation. The Project Coordinator is entitled to terminate a Participant's participation to the Consortium Agreement with immediate effect upon written notice to that Participant by the Project Coordinator or, if the Project Coordinator is the subject of termination, the Participant appointed by the Consortium, in the following events:

3.4.1. Insolvency. If a Participant is declared insolvent or granted suspension of payments, or a insolvency / winding-up petition has been filed in respect of such Participant to that end or its business is liquidated, dissolved or discontinued;

3.4.2. Breach. If a Participant is in substantial breach of any of its obligations under the Consortium Agreement or the Grant letter, which is not caused by Force Majeure, and cannot be remedied or has not been remedied pursuant to Section 3.5;

3.4.3. Force Majeure. If circumstances beyond the control of the Participants or investigator make it unreasonable to require the Project's continuation or a Participant is in a situation of Force Majeure which has continued for a period longer than ninety (90) calendar days as described in Article 5.7.

3.5. Defaulting Participant. In the event that the Project Coordinator identifies a breach by a Participant of its obligations under this Consortium Agreement or the Grant Letter (*e.g.* improper implementation of the project), the Project Coordinator or, if the Project Coordinator is in breach of its obligations, the Consortium, will give written notice to such Participant requiring that such breach will be remedied within 30 (thirty) calendar days from the date of receipt of the written notice by the Participant. If such breach is substantial and is not remedied within that period or is not capable of remedy, the Project Coordinator may decide to declare the Participant to be a Defaulting Participant and may terminate its participation in accordance with Section 3.4.2, unless such termination is not in reasonable proportion to the consequences for the Project.

3.6. Voluntary termination by a Participant. A non-Defaulting Participant may request the Project Coordinator to terminate its participation in the Project and to this Consortium Agreement. Any Participant leaving the Project shall continue to grant Access Rights pursuant to this Consortium Agreement as if it had remained a Participant for the whole duration of the Project and such Participant shall repay any payments already received by this Participant until the effective date of the termination.

3.7. Consequences of termination.

3.7.1. *Termination of a Participant's participation pursuant to Section 3.4.1 and 3.4.3.* In the event that the Project Coordinator terminates the Participant's participation to the Consortium Agreement in accordance with Section 3.4.1. or Sections 3.4.3, the Participant(s) shall per the effective date of termination have no right to receive further payments (including the payment of PPP-I Subsidy) and shall repay any payments it has received for work not implemented.

3.7.2. *Termination of a Participant's participation pursuant to Section 3.4.2 or pursuant to Section 3.6.* In the event that the Project Coordinator terminates the Participant's participation to the Consortium Agreement in accordance with Section 3.4.2. or a Participant voluntarily terminates its participation pursuant to Section 3.6, the Project Coordinator may require that Participant repays all payments it has received, including the amount of PPP-I Subsidy, to the Project Coordinator.

Furthermore such a Participant shall, within the limits specified in Section 5.5 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Participants in order to perform its and their tasks.

3.8. Legal conditions. In the event that the (voluntary) termination of the participation of one or more Participants to the Consortium Agreement results in the Project no longer satisfying the conditions set in the Grant letter or the applicable law (including the PPP-I Subsidy Regulation) and TKI CLICKNL requires a repayment of all or part of the PPP-I Subsidy, the Participant(s) whose termination has resulted herein, shall repay the PPP-I Subsidy required by the TKI CLICKNL under the Grant letter. This obligation shall be subject to the limits specified in Section 5.5 of this Consortium Agreement. Any excess amount shall be apportioned to the remaining Participants pro rata to their share in the total costs of the Project as identified in the Budget.

3.9. Survival. The following Sections 2.2, 3.7 – 3.9, 4.4.- 4.5, 7.4-7.5, 11.2 - 11.3 and Articles 5, 8, 9, 10 and 12 shall survive termination of this Consortium Agreement. Termination shall not affect any rights or obligations of a Participant whose participation to the Consortium Agreement has terminated and that are incurred prior to the date of termination, unless otherwise agreed between the Project Coordinator and such Participant. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

Article 4. Responsibilities of the Participants

4.1. General principles. Each Participant agrees to take part in the efficient implementation of the Project, in accordance with the Project Application, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under this Consortium Agreement and the Grant letter as may be reasonably required from it.

4.2. PPP-I Subsidy Regulation. The Participants agree to act in accordance with the applicable laws and regulations, and in particular to adhere to the terms and conditions of the PPP-I Subsidy Regulation as applicable.

4.3. Information obligations. Each Participant undertakes to promptly notify the Project Coordinator of any significant information, fact, problem or delay likely to affect the Project. Each Participant shall promptly provide all information reasonably required by the Project Coordinator to carry out its tasks. Each Participant shall take reasonable measures to ensure the accuracy of any information (including Background and Foreground) or material it supplies to the other Participants.

4.4. Involvement of Affiliates or third parties. A Participant is only allowed to involve its Affiliates or third parties in the execution of its work under the Project upon prior approval thereof by the other Participants. A Participant that involves its Affiliates or third parties in the Project shall at all times remain responsible for the implementation of its allocated part of the Project and for such Affiliate or third party's compliance with the provisions of this Consortium Agreement. Such Participant shall ensure that the involvement of Affiliates or third parties does not affect the rights and obligations of the other Participants under this Consortium Agreement.

4.5. Reporting. In connection with the conditions and reporting requirements as set out in the Grant letter and with regard to the Foreground as referred to in Section 8.3 below, Participants shall provide the Project Coordinator with financial, scientific and progress reports with regard to the Project.

Article 5. Warranties and Liability

5.1. Warranties. Each Participant represents and warrants to the other Participants that it has full power, authority and legal capacity to execute and to perform its obligation(s) under this Consortium Agreement, and the conclusion of this Consortium Agreement does not violate any of its contractual or other obligations.

5.2. No further warranties. In respect of information or materials, Background and Foreground supplied by or on behalf of one Participant to another Participant under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency, accuracy or fitness for purpose of such information, nor as to the absence of any infringement of any proprietary rights of third parties. The receiving Participant shall be entirely and solely liable for its use of the information and materials, Background and Foreground provided by or on behalf of another Participant under this Consortium Agreement.

Each Participant shall be fully liable for the implementation of any part of its part of the Project as set out in the Project Application, including such part that may be implemented by its Affiliate or third party in accordance with Section 4.4.

5.3. Liability to third parties. Subject to such other undertakings as are provided for in this Consortium Agreement, each Participant shall be solely liable for any loss, damage or injury to third parties resulting from the performance (or non-performance) of the said Participant's obligations by it or on its behalf under this Consortium Agreement, the Grant letter or from its use of the Background and Foreground.

5.4. Liability to other Participants. Subject to the limitations set out in Section 5.5 and Section 5.6 below, each Participant shall only be liable towards each of the other Participants for damages resulting from or arising out of (i) the gross negligence or wilful misconduct by the Participant (including its employees, agents or subcontractors); or (ii) the breach or default of the Participant (including its employees, agents or subcontractors) of its representations, warranties or other obligations under this Consortium Agreement, except to the extent that such damages arise as a result of the gross negligence or wilful misconduct of the Participant claiming such damages (including its employees, agents or subcontractors).

5.5. No indirect damages. No Participant shall be liable to any other Participant 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, regardless of whether such liability arises from a claim based in contract, warranty, tort or otherwise, provided such damage was not caused by a wilful act, gross negligence or by a breach of confidentiality.

5.6. Limitation of liability. A Participant's aggregate liability towards the other Participants collectively for direct damages (i.e. such damages other than set out in Section 5.5.) shall be limited to the Participant's Project Share with a minimum of [amount] and a maximum of [amount] and provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall further not be construed to amend or limit any Participant's statutory liability.

5.7. Force Majeure. No Participant shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure. Each Participant will promptly notify the Project Coordinator of any Force Majeure. If the consequences of Force Majeure for the Project are not overcome within 90 (ninety) calendar days after such notification, the Project Coordinator may decide on transfer of tasks of the Participant concerned or to terminate the Participant's participation in accordance with Section 3.4.

Article 6. Project Management and Project Coordinator

6.1. Project Management. It is the responsibility of the Project Coordinator to decide how the strategic and scientific management of the Project should take place

6.2. Authorisation. Each Participant's representative shall be deemed to be duly authorised by the Participant it represents to deliberate, negotiate and decide on all managerial matters.

6.3. Informing TKI CLICKNL. The Project Coordinator shall inform TKI CLICKNL on any decisions regarding:

- changes to the Project Application;
- changes to the Budget;
- entry of a new Participant to the Project and approval of the settlement on the conditions of the accession of such a new Participant;
- withdrawal of a Participant from the Project and the approval of the settlement on the conditions of the withdrawal;
- declaration of a Participant to be a Defaulting Participant;
- termination of a Defaulting Participant's participation in the Project and measures relating thereto;
- change or replacement of the Project Coordinator.

within 1 (one) week after such decisions have become final.

6.4. Project Coordinator. The Project Coordinator coordinates and manages the Project and represents the Participants before TKI CLICKNL. Participants appoint [Participant] as Project Coordinator and authorize Mr/Mrs ……….. to carry out the tasks set forth under this Section 6.5 and Section 6.6.

6.5. In particular, the Project Coordinator shall be responsible for:

a. monitoring compliance by the Participants with their obligations;
b. collecting and reviewing information on the progress of the Project and submitting outline scientific reports and other deliverables (including financial statements and related certification), if required, to TKI CLICKNL and other Participants;
c. administration of the Budget and fulfilling the financial tasks, all as described in Article 7;

The Project Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Participant.

6.6. Replacement of the Project Coordinator. If the Project Coordinator is changed or fails in its coordination tasks and the Consortium has decided to replace the Project Coordinator in accordance with Section 6.6, the Consortium shall inform TKI CLICKNL promptly in writing of the change or replacement of the Project Coordinator.

Article 7. Financial provisions

7.1. Contribution. The contribution in cash or in kind (other than the Background) provided by each Participant is set out in the Budget. The Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Participants.

7.2. Obligations of the Project Coordinator. Participants acknowledge that any PPP-I Subsidy by TKI CLICKNL will be allocated to the Project Coordinator and the Project Coordinator shall distribute the PPP-I Subsidy between the Participants, if applicable, as set out in the Budget. The Project Coordinator shall undertake to keep the PPP-I Subsidy for the Project separated from its normal business accounts, its own assets and property. The Project Coordinator shall perform diligently its tasks in the proper administration and distribution of the Project Budget and in maintaining financial accounts.

7.3. Rights of the Project Coordinator. The Project Coordinator is entitled to withhold any payments due to a Participant to be in substantial breach of its obligations under this Consortium Agreement or the Grant letter. The Project Coordinator is further entitled to recover any payments already paid to a Defaulting Participant. The Coordinator is equally entitled to withhold payments to a Participant when this is suggested by or agreed with TKI CLICKNL.

7.4. Share Budget. A Participant that spends less than its allocated share of the Budget will receive any payment in accordance with its actual duly justified eligible costs only. In any case of a Participant having received excess payments, the Participant has to return the relevant amount to the Project Coordinator without undue delay.

A Participant that spends more than its allocated share of the Budget shall be responsible for the additional cost and will not receive additional payments, unless expressly agreed otherwise between the Participants.

7.5. Accounting. Each Participant is solely responsible for the administration and accounting of the cost incurred with respect to the Project. In the event that an audit certificate is required, such certificate by an independent auditor shall be provided at the Participant's own cost.

Article 8. Foreground

8.1. Ownership. Any Foreground that is generated solely by or on behalf of one Participant shall be exclusively owned by that Participant and that Participant shall be responsible for securing ownership of such Foreground from its employees, students and other agents.

8.2. Joint ownership. Any Foreground generated by or on behalf of more than one Participant and for which Foreground it is not possible to (i) establish the respective contribution of each Participant, or (ii) separate their contribution for the purpose of applying for, obtaining or maintaining protection of the Foreground, shall be jointly owned by such Participants. Each such Participant shall have an equal and undivided interest in such joint Foreground.

8.3. Disclosing the Foreground. Each Participant shall promptly disclose in confidence to the Project Coordinator all Foreground generated by it during the term of this Consortium Agreement. The Project Coordinator shall further disclose such Foreground in confidence to the other Participants by providing a [monthly] report on generated Foreground.

8.4. Exploitation of Foreground. Subject to Sections 8.5 and 8.6, each Participant shall have the right to exploit such Foreground solely owned by it.

Further subject to Sections 8.5 and 8.6, each Participant that owns joint Foreground shall be entitled to use the jointly owned Foreground, unless otherwise agreed in a joint ownership agreement to be concluded between the joint owners before any exploitation of Foreground takes place, for the following purposes:

8.4.1. for non-commercial purposes such as academic research and third party research, as well as training and teaching activities, on a royalty-free basis, and without requiring the prior consent of the other joint owner(s); and

8.4.2. to grant nonexclusive licenses to third parties (without any right to sublicense) for commercial purposes, if the other joint owners are given (i) at least 45 (forty-five) calendar days advance notice and (ii) fair and reasonable compensation taking into account each joint owner's relative intellectual contribution to the joint Foreground.

8.5. Option. In the event that Foreground is owned by the Research Organisation, the Research Organisation shall grant the Industrial Partner that has contributed substantially to the Research Organisation's activities under the Project an option to negotiate an exclusive license or transfer of ownership of such Foreground (the "**Option**"). A contribution in cash or in kind at least 5% (five percent) of the cost budgeted in the Budget for the activities of the Research Organisation under the Project shall be considered 'substantial'.

In the event that the Foreground is owned jointly by the Research Organisation receiving a substantial contribution and an Industrial Partner and/or Research Organisation not receiving a substantial contribution, the Option shall concern the share of the Research Organisation in such joint Foreground.

If more than one Industrial Partner has made a substantial contribution, the Option shall be exclusively granted to the Industrial Partner that has contributed the Background to which the Foreground constitutes an improvement. If (i) such Industrial Partner informs the Research Organisation in accordance with Section 8.6, that it declines the Option, or if (ii) the Foreground does not constitute such improvement or if (iii) there is more than one Industrial Partner that has provided such Background, the Option shall exclusively be granted to the Industrial Partner that has made the actual, substantial contribution of the highest value in cash or in kind. If such Industrial Partner informs the Research Organisation in accordance with Section 8.6, that it declines the Option, or if (ii) the value of the substantial contribution by the Industrial Partners is equal, the Industrial Partners may jointly exercise the Option, unless otherwise agreed between these Industrial Partners.

8.6. Exercise of the Option. Each Research Organisation receiving a substantial contribution as referred to under Section 8.5 shall promptly disclose in confidence to the Project Coordinator any Foreground conceived by it in connection with its Activities under the Project. The Project Coordinator shall notify the Industrial Partner(s) with an Option on the Foreground conceived. The Industrial Partner(s) may exercise the Option at any time until the earlier of (i) [1 (one) month] after the date of disclosure by the Project Coordinator or (ii) the completion of the Project, after which period the Option will lapse. An Option may be exercised on one or more occasions in respect of the Foreground that is subject to a separate Option.

The Option shall be deemed to be declined in respect of the Industrial Partner that has not informed the Research Organisation owning (part of) such Foreground within the aforesaid term. If the Option is exercised, the Industrial Partner(s) and Research Organisation shall negotiate in good faith for a period of up to 90 (ninety) calendar days, or such longer period as may be agreed upon between the Participants, all necessary commercial arrangements taking into account the stage of development and the relative contribution of the Research Organisation to the Foreground and subject to the minimum conditions set out in Section 8.7. If the Participants fail to reach agreement, the Option shall lapse, and the Research Organisation shall be free to exploit the Foreground.

8.7. Minimum conditions. Any transfer or license agreement as referred to in Section 8.5 shall at a minimum contain the following conditions:

a. the Industrial Partner(s) shall pay the Research Organisation a fair and reasonable market price in respect of access to or assignment of ownership of the (joint) Foreground. The Industrial Partner(s) is entitled to deduct an amount from the fair market price equal to the value of its contribution under the Project as set out in the Budget;
b. in the case of a license, an anti-shelving clause for the Industrial Partner (*i.e.* use of

commercially reasonable efforts to effectively commercialise or apply the Foreground);

c. a non-exclusive license for the Research Organisation for the use of the Foreground for academic research and teaching purposes;
d. an indemnification obligation by the Industrial Partner to the Research Organisation against any third Participant claims for damages resulting from the use of the Foreground;
e. a warranty from the Industrial Partner(s) to respect the Access Rights of the other Participants granted under this Consortium Agreement with respect to the Foreground pursuant to Section 9.3, including a warranty that these Access Rights will not be affected by a subsequent transfer or license of the Foreground.

8.8. Maintenance and prosecution. Each Participant is responsible for any protection of the Foreground it owns pursuant to this Consortium Agreement and shall have to file patent applications for such Foreground in their own name(s) and at their own expense. Joint owners of Foreground shall agree between them on who shall be responsible for the timely prosecution and maintenance of all such Foreground and the Participant that is nominated to be so responsible shall be entitled to charge the other joint owners with a percentage of the costs of so doing as agreed between the joint owners. In the absence of any agreement to the contrary between joint owners such costs shall be equally shared.

8.9. Publication. Pursuant to the publication obligations set out in the Grant letter, the Participants must ensure open access (free of charge, online access for any user) to all scientific publications relating to its Foreground under the Project subject to the conditions hereunder. In particular, the Participants shall ensure open access to the deposited publication at the latest: (i) on publication, if an electronic version is available for free via the publisher, or (ii) within six months of publication in any other case.

A Participant or Participants that intend to publish on the Foreground (jointly) owned by it shall provide the other Participants with the draft publication at least 30 (thirty) calendar days before publication. Any objection to the planned publication shall be made in writing to the Coordinator and the Participant or Participants proposing the publication within 25 (twenty-five) calendar days upon receipt of the draft publication. If no objection is made within the time limit stated above, the Publication is permitted.

For the avoidance of doubt, a Participant shall **not** publish Foreground or Background of another Participant, even if such Foreground or Background is amalgamated with the Participant's own Foreground, without the other Participant's prior written approval.

8.10. Objections to publication. An objection has to include a precise request for necessary modifications and shall be considered justified only, if:

a. the proposed publication includes another Participant's Background, Foreground or other Confidential Information; or
b. the objecting Participant's legitimate academic or commercial interests are harmed by the publication; or
c. the proposed publication includes patentable Foreground and the objecting Participant anticipates that it wishes to exercise the Option.

Upon receipt of an objection, the Participants involved shall discuss a solution in good faith. The objecting Participant can request a publication delay of an additional period of 150 (hundred fifty) calendar days (following the 30 (thirty) day period referred to in Section 8.9). Upon expiration of the term, the publishing Participant will be entitled to publish the proposed publication, provided that Confidential Information of the objecting Participant has been removed from the publication as indicated by the objecting Participant.

8.11. 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 Participants or any of their logos or trademarks without their prior written approval.

Article 9. Ownership Background and Access Rights

9.1. Background identification. Each Participant has identified in Annex 1 to this Consortium Agreement certain of its Background that it is willing to grant Access Rights to, if any, and has also indicated, where relevant, whether the Access Rights to specific Background are subject to legal restrictions or limits. Anything not identified in Annex 1 shall not be the object of Access Right obligations with respect to the Background. Background remains the sole property of the Participant disclosing Background under the Project. Unless expressly agreed otherwise in writing, the disclosure of any Background does not imply the grant of Access Rights by the disclosing Participant. Each Participant will have the right to add Background to Annex 1 by written notice to the Project Coordinator, who will be responsible to inform the other Participants of such addition. In the event that a Participant desires to withdraw or modify any Background or restrict the Access Rights provided under this Agreement, such Participant will request the Project Coordinator to do so by written notice.

9.1.1. Request for additional Background. A Participant (or Participants) is entitled to request another Participant to add certain Background to Annex 1 if such Access Rights are Needed. The Participant (or Participants) receiving such request may decide to add such Background in its sole discretion.

9.2. Standard Access Rights. Each Participant hereby grants to the other Participants such non-exclusive Access Rights if Needed for the implementation of the Project and for this purpose only, for the term of this Consortium Agreement and subject to the restrictions set out in Annex 1 with regard to the Access Rights to a Participant's Background. Any Access Rights granted under Section 9.3 shall exclude any obligation to pay royalties and/or the right to sublicense.

If a Participant Needs Access Rights for the purpose of the implementation of the Project, such Participant shall request the relevant Participant in writing to make such Background or Foreground under the Access Rights available. The Participant receiving such request shall provide the requesting Participant with the relevant Background and/or Foreground within [5 (five)] calendar days of the receipt of such notice. If the Participant receiving such request disagrees with the requesting Participant that the requested Background or Foreground is Needed, the requesting Participant shall have to show its Need for such Access Rights. Access Rights shall be free of any administrative transfer costs.

In the event that Participants disagree on whether the requested Background and/or Foreground is Needed in accordance with Section 9.3, each of the Participants may request the Project Coordinator to decide the matter in accordance with Article 6.5.

9.3. Access Rights for use or exploitation. Each Participant shall have the right to request Access Rights to a Participant's Background and/or Foreground in addition to the Access Rights granted under Section 9.2, from another Participant for (i) internal research purposes, or (ii) if such Access Rights are Needed or (iii) for the commercial exploitation of a Participant's (or other Participants') own or jointly owned Foreground.

A request for Access Rights shall be made in writing ultimately within six (6) months after expiration or termination of this Consortium Agreement. The granting of Access Rights will be at a Participant's own discretion and may be made conditional on the acceptance of specific conditions aiming at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place. Any Access Rights under Section 9.4 under (i) shall be granted on a royalty-free basis and under (ii) and (iii) shall be granted on fair and reasonable market conform conditions.

9.4. Use of Access Rights. Background and Foreground shall be used only for the purposes for which Access Rights to it have been granted.

9.5. New Participants entering the Consortium Agreement. All Foreground developed before the accession of the new Participant shall be considered to be Background listed in Annex 1 with regard to said new Participant.

9.6. Participants leaving the Consortium Agreement. Access Rights granted to a Defaulting Participant and such Participant's right to request Access Rights shall cease immediately upon receipt by the Defaulting Participant of the formal notice of the decision of the Project Coordinator to terminate its participation in the Project.

A Defaulting Participant or a Participant voluntarily leaving shall continue to grant Access Rights pursuant to this Consortium Agreement in respect of its Background; and Foreground existing at the time of such termination as prescribed in this Consortium Agreement, for the term of this Consortium Agreement.

Article 10. Non-disclosure of Confidential Information

10.1. Non-disclosure of information. All information in whatever form or mode of communication, which is disclosed by a Participant (the "**Disclosing Participant**") to any other Participant (the "**Receiving Participant**") in connection with the Project during its implementation and (i) which has been explicitly marked as "confidential" at the time of disclosure, or (ii) when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 (fifteen) calendar days from oral disclosure at the latest as confidential information by the Disclosing Participant or (iii) when the confidential or proprietary character is or should reasonably have been known to the Receiving Participant is "**Confidential Information**".

Notwithstanding the foregoing, Confidential Information of a Participant shall not include information that the other Participant can establish by written documentation:

a. to have been publicly known prior to disclosure of such information by the Disclosing Participant to the Receiving Participant;

b. to have become publicly known, without the fault of the Receiving Participant, subsequent to disclosure of such information by the Disclosing Participant to the Receiving Participant;

c. to have been received by the Receiving Participant at any time from a source, other than the Disclosing Participant, rightfully having possession of and the right to disclose such information;

d. to have been otherwise known by the Receiving Participant prior to disclosure of such information by the Disclosing Participant to the Receiving Participant; or

e. to have been independently developed by employees and/or agents of the Receiving Participant, on its behalf, without access to or use of such information disclosed by the Disclosing Participant to the Receiving Participant.

10.2. Non-disclosure. During the term of this Consortium Agreement, and for a period of ten (10) years following the expiration or termination of this Consortium Agreement, each Participant shall maintain in confidence all Confidential Information disclosed by the other Participants, and agrees:

- **a.** not to use the Confidential Information for any other purpose than the purpose for which it was disclosed;
- **b.** not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Participant;
- **c.** to ensure that internal distribution of Confidential Information by a Receiving Participant shall take place on a strict need-to-know basis; and
- **d.** to return to the Disclosing Participant on demand all Confidential Information which has been supplied to or acquired by such Recipient including all copies thereof. If needed for the recording of on-going obligations, such Recipient may however keep a copy for archival purposes only.

Each Receiving Participant shall apply the same degree of care with regard to the Confidential Information disclosed under this Consortium Agreement as with its own confidential and/or proprietary information, but in no case less than reasonable care.

10.3. Mandatory disclosure. If any Participant is required to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, nothing herein shall restrict the Receiving Participant from disclosing Confidential Information, but only to the extent of such order, law or regulation and it shall, to the extent it is lawfully able to do so, prior to any such disclosure (i) promptly notify the Disclosing Participant, and (ii) comply with the Disclosing Participant's reasonable instructions to maximally protect the confidentiality of the information.

10.4. Obligations Recipient. Notwithstanding Section 10.2 (c), Participants will have the right to disclose Confidential Information of another Participant to any of its Affiliates, provided that prior consent of the Disclosing Participant is obtained and such Affiliates are bound by confidentiality obligations not less stringent than the ones of the Consortium Agreement. Each Receiving Participant shall further be responsible for the fulfilment of the above obligations on the part of its employees and its Affiliate employees and shall ensure that its employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.

10.5. Unauthorized disclosure. Each Participant shall promptly advise the other Participant in writing of any unauthorized disclosure, misappropriation or misuse by any person of Confidential Information as soon as practicable after it becomes aware of such unauthorized disclosure, misappropriation or misuse.

Article 11. Miscellaneous

11.1. No representation, partnership or agency. The Participants shall not be entitled to act or to make legally binding declarations on behalf of any other Participant. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, an offer by, or creating any obligation of either Participant to enter into any form of agreement other than stated in this Consortium Agreement or interest grouping or any other kind of formal business grouping or entity between the Participants.

11.2. Assignment. Except as allowed under this Consortium Agreement, no rights or obligations of the Participants arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Participants' prior formal approval.

11.3. Amendment. Pursuant to the Grant letter, any amendments or modifications of the text of this Consortium Agreement approved by all Participants require the prior written approval of TKI CLICKNL if, and to the extent that the Grant letter is still in effect. For the avoidance of doubt, any amendment of the Consortium Agreement without the prior written consent of TKI CLICKNL is null and void, if and to the extent that the Grant letter is still in effect.

Article 12. Governing Law and Dispute Resolution

12.1. Governing law. This Agreement is governed by, and is to be construed exclusively in accordance with the laws of the Netherlands without regard to the conflict of law provisions thereof.

12.2. Dispute resolution. In the event of any disputes arising out of or in connection with this Agreement, including disputes concerning the existence and validity thereof, the Participants shall first make reasonable efforts to settle the dispute between themselves. Any legal actions or proceedings arising out of this Agreement which cannot be settled by good faith efforts and shall be brought exclusively to the court of The Hague, the Netherlands.

IN WITNESS WHEREOF, the Participants hereto have signed this Consortium Agreement in ……. fold by their authorized representatives.

On behalf of partner	On behalf of partner
Place	Place
Date	Date
Name	Name
Position	Position

On behalf of partner	On behalf of partner
Place	Place
Date	Date

Name

Position

Name

Position

Annex 1 – Background

<insert background of participants or indicate as not applicable>

Annex 2 – Accession document

ACCESSION of a new Participant to [name of the Project] Consortium Agreement, as signed on [date].

[Name of the new Participant, and details] hereby consents to become a Participant to the Consortium Agreement identified above and accepts all the rights and obligations of a Participant starting [date].

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

The Project Coordinator is to inform TKI CLICKNL of the modified Budget due to [new Participant] becoming a Participant to the Consortium Agreement.

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

IN WITNESS WHEREOF, this Accession document is signed by the [new Participant] and [the Project Coordinator] by their authorized representatives.

On behalf of partner

Place

Date

Name

Position

On behalf of partner

Place

Date

Name

Position

On behalf of partner

Place

Date

Name

Position

On behalf of partner

Place

Date

Name

Position