

This model Consortium Agreement is provided as a draft without assuming any warranty or responsibility. The use of the text in total or in part is at the user's own risk and does not release users from legal examination to cover their interests and protect their rights.

Consortium Agreement

Title VInnovate project

Date

CONSORTIUM AGREEMENT – Example

This consortium agreement is made on **date**

BETWEEN: [to be signed by organisations that are to take part in the project]

- Party 1, represented by name, function;
- Party 2, represented by name, function;
- Party 3, represented by name, function;
- ...

Hereinafter, jointly or individually, referred to as parties or party

WHEREAS:

- (A) The parties have submitted a project proposal in response to a call published in the framework of VInnovate Call 2024 entitled: "**Title of VInnovate project**".
- (B) The involved Agencies/Ministries (**Agency 1 – Region/country 1, Agency 2 – Region/Country 2, Agency 3 – Region/Country 3, ...**) have selected the proposal "Title of VInnovate project" for funding.
- (C) The parties wish to supplement between themselves the provisions of the contract.

THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. This CONSORTIUM AGREEMENT shall come into force as of the date of its signature by the parties.
2. **The consortium will take all necessary and reasonable measures to ensure that the project will be carried out in accordance with Attachments 1 and 2, and in a timely manner.**
3. This CONSORTIUM AGREEMENT is concluded subject to the condition that the contract between the parties and their respective funding agency is signed. Consequently, in the event that this is not the case this CONSORTIUM AGREEMENT shall automatically become null and void in its entirety and shall be deemed to have produced no effect and obligation, except the confidentiality clause which shall remain in full force for all information disclosed during the proposal and for the duration indicated in the confidentiality clause.
4. This CONSORTIUM AGREEMENT complies with the European and national/regional rules applicable in the various participating countries and regions.
5. The coordinator for the project is **NAME COORDINATOR**

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AS WITNESS the Parties have caused this CONSORTIUM AGREEMENT to be duly signed by the undersigned authorised representatives the day and year first above written.

Authorised to sign on behalf of "NAME of Party 1"

Name and position Date Signature

Authorised to sign on behalf of "NAME of Party 2"

Name and position Date Signature

Authorised to sign on behalf of "NAME of Party 3"

Name and position Date Signature

etc.....

1 DEFINITIONS

'Funding agency contract' or 'Regional grant agreement' refer to the contract a particular partner has with its funding agency.

Project deliverables mean the deliverables required under the project proposals in Attachment 1 and this CONSORTIUM AGREEMENT.

Project work plan describes (eventually through Work-Packages) the main activities of the project in Attachment.

Vinnovate member region/country means the region/country, which funds the project parties through the funding agency.

2 RESPONSIBILITIES OF EACH PARTY

2.1 General responsibilities

2.1.1 Each party undertakes to each other party to use reasonable endeavours to perform and fulfil, promptly, actively and on time, all of its obligations under the respective funding agency contract and this CONSORTIUM AGREEMENT. All tasks and responsibilities of all

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project partners are described in the project plan (in Attachments 1 and 2). The project plan is an integral part of this agreement. The most important activities for each project partner are listed below.

[Name of party 1] carries out the following activities for the project:

-

[Name of party 2] carries out the following activities for the project:

-

[Name of party 3] carries out the following activities for the project:

-

[Participant's Name..] carries out the following activities for the project:

-

- 2.1.2 Each party will contribute to the efficient flow of information and access to relevant data, according to the agreed access rights and confidentiality rules to ensure the efficient execution of this project.

2.2 Responsibilities towards each other

- 2.2.1 Each party undertakes to use reasonable endeavours:
 - a. to notify each of the parties, in the project, promptly of any significant delay in performance; and
 - b. to inform other parties in the project, of relevant communications it receives from third parties in relation to the project.
- 2.2.2 Each party shall use reasonable endeavours to ensure the accuracy of any information or materials it supplies hereunder and promptly to correct any error therein of which it is notified. The recipient party shall be entirely responsible for the use to which it puts such information and materials.
- 2.2.3 Each party shall be fully responsible for the supervision of its subcontractors and shall enter into appropriate arrangements for such purpose with its subcontractors.

2.3 Coordinator

- 2.3.1 Name of the Coordinator. **NAME OF COORDINATOR** is the coordinator of the project for the day-to-day management of the project.
- 2.3.2 Responsibilities of the Coordinator. The coordinator shall have the following functions:
 - resolving conflicts between partners;
 - day-to-day management of the project
 - The coordinator is responsible for transmitting reports/information to the funding agency funding the coordinator activities BUT the

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coordinator is not responsible for transmitting the information/reports requested by agencies funding other project partners.

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

3 RESULTS

3.1 Ownership of Results

Results are owned by the Party that generates them.

3.2 Joint ownership

Two or more parties own results jointly if:

- they have jointly generated them and
- it is not possible to:
 - establish the respective contribution of each party, or
 - separate them for the purpose of applying for, obtaining or maintaining their protection.

The joint owners must agree —in writing —on the allocation and terms of exercise of their joint ownership ('joint ownership agreement'), to ensure compliance with their obligations under this Agreement.

[Option 1:]

Unless otherwise agreed:

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

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

[end of option 1]

[Option 2:]

In case of joint ownership, each of the joint owners shall be entitled to Exploit the joint Results as it sees fit, and to grant non-exclusive licenses, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

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

[End of Option 2]

3.3 Transfer of Results

3.3.1

Each Party may transfer ownership of its own Results, including its share in jointly owned Results, provided this does not affect compliance with their obligations under the grants Agreements with respective regional agencies. The beneficiaries must ensure that their obligations under the grants agreements regarding their results are passed on to the new owner and that this new owner has the obligation to pass them on in any subsequent transfer.

3.3.2

Each Party may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (4) of this Consortium Agreement. They must inform the other parties with access rights of the transfer at least 45 days in advance (or less if agreed in writing), unless agreed otherwise in writing for specifically identified third parties including affiliated entities or unless impossible under the applicable law. This notification must include sufficient information on the new owner to enable the beneficiaries concerned to assess the effects on their access rights. The beneficiaries may object within 30 days of receiving notification (or less if agreed in writing), if they can show that the transfer would adversely affect their access rights. In this case, the transfer may not take place until agreement has been reached between the beneficiaries concerned.

The other Parties hereby waive their right to prior notice and their right to object to such a transfer to listed third parties.

3.3.3

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

3.3.4

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

3.4 Dissemination

3.4.1

For the avoidance of doubt, the confidentiality obligations set out in Section 5 apply to all dissemination activities described in this Section 3.4 as far as Confidential Information is involved.

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3.4.2 Dissemination of own (including jointly owned) Results

3.4.2.1

During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the possible procedure as set out in the respective regional/national grants agreements and the applicable state aid rules.

Prior notice of any planned publication shall be given to the other Parties at least 45 calendar days before the publication. Any objection to the planned publication shall be made 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.

3.4.2.2

An objection is justified if

- a) the protection of the objecting Party's Results or Background would be adversely affected, or
- b) the objecting Party's legitimate interests in relation to its Results or Background would be significantly harmed, or
- c) the proposed publication includes Confidential Information of the objecting Party.

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

3.4.2.3

If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

3.4.2.4

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

3.4.3 Dissemination of another Party's unpublished Results or Background

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

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3.4.4 Cooperation obligations

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

3.4.5 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.

4 Access Rights

4.1 Background included

4.1.1

In Attachment 3, 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 3 shall not be the object of Access Right obligations regarding Background.

4.1.2

Any Party may add additional Background to Attachment 3 during the Project provided they give written notice to the other Parties. However, approval of the General Assembly is needed should a Party wish to modify or withdraw its Background in Attachment 3.

4.2 General Principles

4.2.1

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.

4.2.2

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

4.2.3

Access Rights shall be free of any administrative transfer costs.

4.2.4

Access Rights are granted on a non-exclusive basis.

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4.2.5

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

4.2.6

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

4.2.7

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

4.3 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 3.

4.4 Access Rights for Exploitation

4.4.1 Access Rights to Results

[Option 1:]

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

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

[end of option 1]

[Option 2:]

Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on a royalty-free basis.

[end of option 2]

4.4.2

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

4.4.3

A request for Access Rights may be made up to **twelve** months after the end of the Project or, in the case of Section 4.7.2.1.2, after the termination of the requesting Party's participation in the Project.

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4.5 Access Rights for entities under the same control

Such Access Rights must be requested by the entity under the same control from the Party that holds the Background or Results. Alternatively, the Party granting the Access Rights may individually agree with the Party requesting the Access Rights to have the Access Rights include the right to sublicense to the latter's entity under the same control [listed in Attachment 5]. Access Rights to an entity under the same control shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.

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

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

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

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

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

4.6 Additional Access Rights

[Option 1:]

For the avoidance of doubt any grant of Access Rights not covered by the regional Grant Agreements 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.

[Option 2:]

The Parties agree to negotiate in good faith any additional Access Rights to Results as might be asked for by any Party, upon adequate financial conditions to be agreed.

4.7 Access Rights for Parties entering or leaving the consortium

4.7.1 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.

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4.7.2 Parties leaving the consortium

4.7.2.1 *Access Rights granted to a leaving Party*

4.7.2.1.1 *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.

4.7.2.1.2 *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 4.4.3.

4.7.2.2 *Access Rights to be granted by any leaving Party*

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

4.8 Specific Provisions for Access Rights to Software

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 4 are applicable also to Software.

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 respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

5 NON-DISCLOSURE OF INFORMATION

5.1

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" or "sensitive" 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".

5.2

The Recipient hereby undertakes in addition and without prejudice to any commitment on non-disclosure under the regional Grant Agreements, for a period of 5 years after the final payment of the Granting Authority:

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

5.3

The Recipient shall be responsible for the fulfilment of the above obligations on the part of its 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.

5.4

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 has become or becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the regional Grant Agreements;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
- the Confidential Information was already known to the Recipient prior to disclosure, or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 5.7 hereunder.

5.5

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.

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5.6

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

5.7

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

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

6 FORCE MAJEURE

- Force majeure shall mean any unforeseeable and exceptional event affecting the contract and the implementation of the project by one or more parties, which is beyond their control, is unforeseeable and insuperable and cannot be overcome despite their reasonable endeavours. Any default of a product or service or delays in making them available (unless due to force majeure) for the purpose of performing this contract and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute force majeure.
- If any of the party is subject to force majeure liable to affect the fulfilment of its contractual obligations, it will notify the project steering committee and its work package parties in writing of any "Force Majeure" event as soon as possible stating the nature, likely duration and foreseeable effects. The parties shall discuss in good faith the possibilities of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably possible. If such Force Majeure event is not overcome within six weeks after such notification, the transfer of tasks shall be carried out.
- Notwithstanding any provisions on Force Majeure provided for in the regional grant agreements contract, no party shall be considered to be in breach of its obligation to execute the project if it has been prevented from complying by force majeure. All necessary measures shall be taken to limit damage to the minimum.
-

7 MISCELLANEOUS

7.1 No partnership or agency

- Nothing in this CONSORTIUM AGREEMENT shall create a partnership or agency between the parties or any of them.

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7.2 Assignment

- No Party shall, without the prior written consent of the other parties, as applicable, assign or otherwise transfer partially or totally any of its rights and obligations under this CONSORTIUM AGREEMENT. Such consent shall not be unreasonably withheld or delayed when such assignment or transfer is in favour of an affiliate of that party.
-

7.3 Term and termination

- This CONSORTIUM AGREEMENT shall come into force as of the date of its signature by the parties
- This CONSORTIUM AGREEMENT is concluded subject to the condition that the funding contract between the parties and their respective funding agency is signed. Consequently, in the event that this is not the case this CONSORTIUM AGREEMENT shall automatically become null and void in its entirety and shall be deemed to have produced no effect and obligation, except the confidentiality clause which shall remain in full force for all information disclosed during the proposal and for the duration indicated in the confidentiality clause.
- This CONSORTIUM AGREEMENT shall continue in full force and effect until complete discharge of all obligations for the carrying out of the project undertaken by the parties under the contracts with respective funding agencies and under this CONSORTIUM AGREEMENT, whichever is the earlier.

7.4 Settlement of Disputes

- In the case of disputes or differences arising in connection with this CONSORTIUM AGREEMENT the parties will first try to solve the dispute amicably. If this fails the disputes or differences shall either be set by mediation or be finally settled by arbitration.
- The parties concerned may instead elect to resolve by mediation a dispute or difference arising in connection with this CONSORTIUM AGREEMENT, which cannot be settled amicably.
-

7.5 Settlement of disputes and differences by mediation

- The parties hereby undertake to apply the CEPANI rules of mediation to all disputes arising out or in relation with this agreement.
- The seat of mediation shall be location
- The proceedings shall be conducted in English language
- Should the mediation fail the dispute shall be finally settled under the CEPANI rules of arbitration.
-

7.6 Settlement of disputes and differences by arbitration

- The parties hereby undertake to apply the CEPANI rules of arbitration to all disputes arising out or in relation with this agreement.
- The seat of arbitration shall be ...location

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- The proceedings shall be conducted in English language
- The award of the arbitration will be final and binding upon the parties concerned.

7.7 Language

- This CONSORTIUM AGREEMENT is drawn up in English which language shall govern all documents, notices and meetings for its application and/or extension or in any other way relative thereto.

7.8 Applicable Law

- This CONSORTIUM AGREEMENT shall be construed according to and governed by the "location" law.

7.9 Amendments

- Amendments or changes to this CONSORTIUM AGREEMENT shall be valid only if made in writing and signed by an authorized signatory of each of the parties

7.10 COUNTERPARTS

- This CONSORTIUM AGREEMENT shall be executed in (number of parties, 2x) counterparts, all of which together shall constitute one and the same instrument. The coordinator and every party shall each initial and sign (number of parties, 2x) two counterparts.
-
- The coordinator has an obligation to send copies of all signed counterparts to each Party within sixty (60) days of receipt of the signed counterpart.
-

8 ATTACHMENTS

The attachments to this Consortium Agreement, which are an integral part thereof, are:

- (compulsory) Attachment 1: Project proposals
- (compulsory) Attachment 2: Interregional Project Work Plan
- (option) Attachment 3 : Background included
- Attachment 4: List of third parties for simplified transfer according to Section 3.3.2.
- [Option: Attachment 5: Identified entities under the same control according to Section 5.5]

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Attachment 2 – Interregional Project Work Plan overview

Work Package (or alternative term)	Contributors/Parties	Timeframe	Associated Deliverables, contributors and due date
WP1 -			
WP2 -			
Etc.			

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Attachment 3: Background included

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.

PARTY 1

As to [NAME OF THE PARTY], it is agreed between the Parties that, to the best of their knowledge, [insert the relevant option here].

[Option 1 start]

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 restrictions and/or conditions for implementation	Specific restrictions and/or conditions for Exploitation

[Option 1 end]

[Option 2 start]

Option 2: No data, know-how or information of [NAME OF THE PARTY] is Needed by another Party for implementation of the Project or Exploitation of that other Party's Results.

[Option 2 end]

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

[Same for PARTY 2, PARTY 3, etc]

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Attachment 4: List of third parties for simplified transfer according to Section 4.3.2.

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[Option: Attachment 5: Identified entities under the same control according to Section 5.5]

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Party or Parties concerned.

Example