

# ZonMw - consortium agreement skeleton - with elucidations

Version 1<sup>st</sup> February 2017

## **ZonMw – Consortium agreement skeleton**

This consortium agreement skeleton is provided for your convenience. It includes guidelines, explanations and example provisions<sup>1</sup>. The provisions do not cover all situations in a collaborative research project and the parties may have to adapt or replace them in order to suit the specific needs of the parties and the envisaged research.

This non-binding consortium agreement skeleton is provided by ZonMw (The Netherlands Organisation for Health Research and Development) without assuming any warranty or responsibility. The use of this skeleton is at the user's own risk and does not release the user from legal examination to cover its interests and protect its rights.

---

<sup>1</sup> Further example provisions can be found in the DESCA Horizon2020 model consortium agreement: <http://www.desca-2020.eu/>. Please be aware that the DESCA is supplementary to the EU Rules of Participation and the EU Grant Agreement and should always be read in combination with the latter two documents.

## Introduction

The ZonMw Terms and Conditions Governing Grants of ZonMw, applicable as from 1<sup>st</sup> July 2013 (hereafter referred to as the “*ZonMw Terms and Conditions Governing Grants of ZonMw*”) govern all ZonMw grants, regardless of the programme, the principal or the public-private collaboration. The English version of these terms and conditions contains the following disclaimer: “*This is an English translation of the original Dutch text, furnished for convenience only. In case of any conflict between this translation and the original text, the latter shall prevail.*”

## ZonMw policy regarding project results

ZonMw funds health research and stimulates the use of the results to help improve health and healthcare in the Netherlands. The ZonMw open-access policy aims to ensure that publicly financed results of its projects are freely available to be shared and reused in particular for new scientific research.

ZonMw can, at its own discretion, make an exception to this rule in the event that knowledge valorisation is the purpose of the ZonMw programme or in the event that there is a collaboration with commercial parties. Please see article 11, section 4 of the ZonMw Terms and Conditions Governing Grants of ZonMw.

In order to effectuate its open-access policy, ZonMw may request the grant recipient to submit the consortium agreement to ZonMw. The agreement will be assessed on conformity with the European state aid rules and regulations and the ZonMw General Terms and Conditions Governing Grants of ZonMw. ZonMw will focus on the provisions with regard to the project results (ownership, access rights, transfer), the publication rights and -procedures (protection of the academic freedom to publish) and confidentiality and non-use.

The involvement of an IP specialist of your organisation is mandatory, this can either be a representative of the legal department or a representative of the department of technology transfer and valorisation (e.g. TTO office).

## Provisions with regard to the project results

With regard to the project results (hereafter referred to as results), the consortium agreement should minimally contain provisions regarding (joint) ownership, transfer, access rights and dissemination. The default ZonMw arrangement is based on the principle of “*inventor is owner*”. If the ZonMw call text allows for valorisation of the results and a ‘*Research organisation*’<sup>2</sup> (“*Onderzoeksorganisatie*”) collaborates with an *Undertaking*<sup>3</sup> (“*Onderneming*”), parties may decide that the Undertaking is best suited to take on the exploitation of the results. The Research organisation may grant a licence or transfer its results to the Undertaking provided that the applicable European state aid rules and regulations are not evaded or violated.

Please also see article 19 and 21 of the ZonMw Terms and Conditions Governing Grants of ZonMw. ZonMw will not accept a consortium agreement that determines the market value of the results up front as the value of the results can only be established after they have been generated (more likely towards the end of the project).

## Roles and responsibilities<sup>4</sup>

During the grant application process and after award of the grant, ZonMw distinguishes various roles and responsibilities. Please take these roles and responsibilities into account when drafting a consortium agreement.

- The party that is responsible for administrative purposes (“*Bestuurlijk Verantwoordelijke*”): the person who is legally entitled to represent the legal entity in accordance with the law, the articles of association or the by-laws.

---

<sup>2</sup> A EU State Aid definition. Please see Commission Regulation (EU) N° 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

<sup>3</sup> A EU State Aid definition. Undertakings: entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. A not-for-profit entity can also qualify as an Undertaking.

<sup>4</sup> Article 1 ZonMw General Terms and Conditions Governing Grants of ZonMw

- Main Applicant (“*Hoofdaanvrager*”): the party that is ultimately responsible for the application of the grant. This term is used during the application stage. After award of the grant, the Main Applicant is called the Grant Recipient (“*Subsidieontvanger*”).
- Project Leader (“*Projectleider*” or “*Penvoerder*”): the person who is responsible for carrying out the project on a day to day basis.

#### Main Applicant and Project Leader

Please consider the legal implications in case the main applicant and or the project leader is/are not employed by the legal entity that is responsible for administrative purposes. Article 8, section 7 of the ZonMw terms and Conditions Governing Grants of ZonMw requires that these parties conclude a collaboration agreement with respect to the implementation of the application for the grant in question.

#### Project leader

It should be clear from the consortium agreement to what extent the project leader is authorised to act on behalf of the legal entity that is responsible for the (application and use of) the grant and on behalf of the other consortium parties.

#### **Definitions**

The terms used in the example provisions have the same meaning as the terms used in the General Terms and Conditions Governing Grants of ZonMw. The below terms are also used in the *example provisions* and have the following meaning:

- **Full Project Proposal** (“*Uitgewerkte Aanvraag*”) the description of the research activities, including the milestones, the deliverables and the budget (“**Project Budget**”) as attached to this agreement as Schedule [ • ];
- **Funding Agency**: Netherlands Organisation for Health Research and Development, also referred to as ‘**ZonMw**’;
- **Grant Letter**: the ZonMw letter that contains the Decision<sup>5</sup> with respect to the award of the Grant<sup>6</sup> for this Project;
- **In Cash Contribution**: the in cash contribution of a Party to this Project according to the Project Budget as attached to this agreement in Schedule [ • ];
- **In-Kind Contribution**: the in-kind contribution of a Party to this Project according to the Project Budget as attached to this agreement in Schedule [ • ];
- **ZonMw Funding Conditions**: the General Terms and Conditions Governing Grants of ZonMw, applicable as from 1<sup>st</sup> July 2013 and the ZonMw Decision to award the Grant for this Project;

---

<sup>5</sup> ZonMw definition of **Decision**: “A decision is a written decision rendered by ZonMw, which comprises a legal act in accordance with public law (Article 1:3(1) of the General Administrative Law Act).”

<sup>6</sup> Please see article 1 of the ZonMw Terms and Conditions Governing Grants of ZonMw: “A grant is an entitlement to financial resources that are provided by ZonMw with a view to particular activities of the applicant’s, other than as payment for goods delivered or services provided to ZonMw (Article 4:21 of the General Administrative Law Act).”

**Table of content**

I.	THIS AGREEMENT .....	5
II.	EFFECTIVE DATE .....	5
III.	THE CONSORTIUM AGREEMENT PARTIES .....	5
IV.	REFERENCE TO THE PARTIES .....	6
V.	WHEREAS .....	6
VI.	MAIN BODY OF THE AGREEMENT .....	6
1.	<b>Terms and their definitions</b> .....	6
2.	<b>Purpose of the agreement</b> .....	8
3.	<b>Entry into force and duration</b> .....	8
4.	<b>Responsibilities</b> .....	9
5.	<b>Project governance</b> .....	10
6.	<b>Involvement of third parties</b> .....	13
7.	<b>Termination for breach of contract</b> .....	13
8.	<b>Force Majeure</b> .....	14
9.	<b>Financial provisions</b> .....	14
10.	<b>Liabilities of the parties</b> .....	14
11.	<b>Results</b> .....	15
ii.	Ownership of Results .....	15
iii.	Joint ownership of Results .....	16
iv.	Access to Results .....	17
v.	Use of the Results by Affiliates .....	17
vi.	Transfer of Results .....	17
12.	<b>Access to background for implementation of the project</b> .....	18
13.	<b>Access to background for exploitation of one's own results</b> .....	18
14.	<b>Publication procedure</b> .....	19
15.	<b>Confidentiality</b> .....	19
16.	<b>Survival of rights and obligations</b> .....	20
17.	<b>Applicable law</b> .....	20
18.	<b>Inconsistencies</b> .....	20
19.	<b>Notices</b> .....	21
20.	<b>Assignment</b> .....	21
21.	<b>Amendment</b> .....	21
22.	<b>Signatures</b> .....	22

## CONSORTIUM AGREEMENT

Project title: [ • ]

ZonMw file N<sup>o</sup>: [ • ]

Date: DD/MM/YYYY

### I. THIS AGREEMENT

*Example:*

*THIS CONSORTIUM AGREEMENT is based on the General Terms and Conditions Governing Grants of ZonMw, version 1<sup>st</sup> July 2013 and the Decision of ZonMw to award the Grant for this Project as communicated to the Main Applicant in a Grant Letter dated [DD/MM/YYYY], with ZonMw file number [ • ] and*

### II. EFFECTIVE DATE

*Example:*

*is signed on [DD/MM/YYYY] (the “Effective Date”)*

### III. THE CONSORTIUM AGREEMENT PARTIES

Under this heading all contributing parties and their official representatives are listed as follows:

#### **Full legal name of the signing party**

- If you as a natural person own the business, your full name will be sufficient;
- If your business is a general partnership you will have a written partnership agreement that gives a name to the partnership. If you have not agreed on a name for the partnership then list the full names of the partners;
- For private legal persons: mention the type of legal person such as a foundation, an association, an open corporation or closed corporation;
- For public legal persons: mention the type of organisation such as province or municipality and the name of the organisation.

#### **The registered address**

In the Netherlands registration in the Business Register is compulsory for every company and almost every legal entity. For further explanation, please see the website of the Dutch Chamber of Commerce: <https://www.kvk.nl/>

#### **Principal place of business**

If the registered address is not the principal place of business then also insert the address of the principal place of business. This is not compulsory but will provide more clarity to the other parties as to where the business activities take place.

#### **Legal representation**

The person inserted here will be the person authorised to sign the consortium agreement.

#### **An abbreviation**

For each of the signing parties an abbreviation is inserted for further use in the consortium agreement. This is not compulsory but is intended for ease of reading.

*Example:*

#### **BY AND BETWEEN:**

1. **[name] University Medical Center**, an institution, organised in accordance with public law of the Netherlands (section 1.13.2 Dutch Act on Higher Education and Scientific Research), having its registered office at [ • ] and its principal place of business at [ • ], the Netherlands, in this matter duly represented by [full name], Head of the Department of [ • ], hereinafter referred to as **["insert an abbreviation"]**;
2. **Foundation [name]**, a health fund, established under the laws of The Netherlands, having its registered office at [ • ], The Netherlands, in this matter duly represented by [full name],

*Managing Director, hereinafter referred to as [“insert an **abbreviation**”];*

3. *[name] B.V., a limited liability company established under the laws of The Netherlands, having its registered office at [ • ], The Netherlands and its principal place of business at [ • ] The Netherlands, in this matter duly represented by [full name], Managing Director, hereinafter referred to as [“insert an **abbreviation**”];*

#### IV. **REFERENCE TO THE PARTIES**

Clauses in the consortium agreement that apply to all parties refer to the listed entities as party or parties.

*Example:*

*Hereinafter referred to, individually or jointly, as “Party” or “Parties”.*

#### V. **WHEREAS**

This section contains a short (in bullets) introductory statement of the parties. It describes the reasons for the parties to come together and execute the project. It mentions the objectives and the scope of the project and the specific expertise that each of the parties will contribute. Although this statement can be used to interpret the agreement, it is not one of the operative provisions.

##### **Reference to the ZonMw grant**

Reference is made to the ZonMw decision (“Beschikking”) to award the grant for this project as communicated to the main applicant in the grant letter. Please see the list of definitions in the ZonMw General Terms and Conditions Governing Grants of ZonMw for the definition of ‘decision’.

*Example:*

##### **WHEREAS:**

- *The Parties, having considerable experience in the field concerned, have submitted a Full Project Proposal for the Project to ZonMw as part of the ZonMw call [“ • ”];*
- *This consortium agreement is based upon the Decision of ZonMw to award the Grant for this Project as communicated to the Main Applicant in a Grant Letter with ZonMw file number [ • ] and dated [DD/MM/YYYY];*
- *The Parties intend to execute the Project as detailed in the Full Project Proposal and in accordance with the with the General Terms and Conditions Governing the Grants of ZonMw, version 1<sup>st</sup> July 2013 and the specific conditions of the ZonMw Decision to award the Grant;*
- *The Parties wish to specify their respective rights and obligations in relation to the Project and wish to lay down general rules concerning the organisation of the work, the management of the Project, and the use and dissemination of the Results;*
- *The Parties are aware that this consortium agreement is based in part on the DESCA Horizon2020 model consortium agreement.*

#### VI. **MAIN BODY OF THE AGREEMENT**

##### **1. Terms and their definitions**

The ZonMw Terms and Conditions Governing Grants of ZonMw stipulate that its terms and conditions relate to every party involved in the project. To optimise the synergy between these terms and conditions and the consortium agreement, the parties may opt to use the definitions of the ZonMw terms and conditions in the consortium agreement.

*Example:*

*The definitions in the ZonMw General Terms and Conditions Governing Grants of ZonMw, applicable as from 1<sup>st</sup> July 2013 and attached to this agreement in Schedule [ • ] (hereinafter “**General Terms and Conditions Governing Grants of ZonMw**”), apply to this agreement unless stated otherwise.*

##### **Additional definitions**

In addition to the definitions of the ZonMw Terms and Conditions Governing Grants of ZonMw, the parties may need to introduce definitions for terms specifically relating to their project and their

contractual relationship. The below terms are used in the *example provisions* and have the following meaning:

- **Contribution:** *the total In Cash Contribution and the monetary equivalent of the total In-Kind Contribution of a Party according to the Project Budget of the Full Project Proposal as attached to this agreement in Schedule [ • ]*
- **Full Project Proposal (“Uitgewerkte Aanvraag”)** *the description of the research activities, including the milestones, the deliverables and the budget (“Project Budget”) as attached to this agreement as Schedule [ • ];*
- **Funding Agency:** *Netherlands Organisation for Health Research and Development, also referred to as ‘ZonMw’;*
- **Grant Letter:** *the ZonMw letter that contains the Decision<sup>7</sup> with respect to the award of the Grant for this Project;*
- **In Cash Contribution:** *the in cash contribution of a Party to this Project according to the Project Budget as attached to this agreement in Schedule [ • ];*
- **In-Kind Contribution:** *the in-kind contribution of a Party to this Project according to the Project Budget as attached to this agreement in Schedule [ • ];*
- **Project:** *the project described in the Full Project Proposal as attached to this agreement in Schedule [ • ];*
- **ZonMw Funding Conditions:** *the General Terms and Conditions Governing Grants of ZonMw, applicable as from 1<sup>st</sup> July 2013 and the ZonMw Decision to award the Grant for this Project;*

### **Definitions in relation to pre-existing knowledge and the project results**

It is essential to pay close attention to the definition relating to specific knowledge made available by a party for the purpose of the project (pre-existing knowledge, also known as ‘background’) and the definition of the results (all project outcome). The scope of these definitions will affect the (ownership and access)rights of the parties in relation to such knowledge.

### **Background**

The ZonMw Terms and Conditions Governing Grants of ZonMw uses the term ‘Results’ for all project outcome but does not provide a term for specific pre-existing knowledge made available by a party for use in the project. A definition for pre-existing knowledge will need to be introduced.

*Example:*

*Background: all data, know-how, knowledge, techniques, methods, models, discoveries, designs, software, trade secrets and other information, which is held by a Party prior to its accession to this agreement or generated by that Party independently of the Project and made available by that Party for use in the Project in accordance with the terms and conditions of this agreement and listed in Schedule [ • ] of this agreement which may be amended from time to time*

Intellectual property rights are afforded by law and offer protection for a certain period. However, not all pre-existing knowledge will qualify for protection by law and parties need to consider protecting this category by inserting a provision that designates pre-existing knowledge (in the above example provision referred to as “Background”) as confidential, proprietary information.

*Example:*

*Background will be considered Confidential Information and the terms of article [ • ] of this agreement (“Confidentiality”) will apply to it.*

### **Results**

The parties can opt to define results in accordance with the ZonMw Terms and Conditions Governing Grants of ZonMw.

*Example:*

*Results are all the outcomes, materials, methods, processes, products, software, discoveries, inventions and data that are generated in the context of this Project.*

---

<sup>7</sup> ZonMw definition of **Decision**: a written decision rendered by ZonMw, which comprises a legal act in accordance with public law (Article 1:3(1) of the General Administrative Law Act).



Alternatively, the parties can differentiate between results that can be protected in (the limited) ways the Dutch law provides for (e.g. patent, design or trademark) and all other results. This requires two definitions and subsequently two types of provisions with regard to ownership and access rights.

*Example:*

1. *Intellectual Property Right(s): any form of protection afforded by Dutch law to inventions, discoveries, models, designs, trade secrets, technical information, know-how, software, or other works, such as patents, registered and unregistered (Community)<sup>8</sup> industrial designs, copyrights as well as applications for any such intellectual property rights;*
2. *Know-How: any unpatented technical information, including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions that is not in the public domain.*

## **2. Purpose of the agreement**

Parties can insert a provision with regard to the purpose of the consortium agreement.

Such a provision sums up the main issues the agreement addresses, such as the management of the project and the rights and obligations of the parties in relation to the results. However, this provision does not clarify why the parties have decided to jointly undertake the project or what the specific objectives of the project are. These subjects are addressed elsewhere.

*Example:*

*The purpose of this agreement is to specify the relationship among the Parties in relation to the Project in particular concerning the organisation of the research activities as outlined in the Full Project Proposal, the management of the Project and the rights and obligations of the Parties in relation to the Results.*

## **3. Entry into force and duration**

It is essential to determine when the consortium agreement takes effect. For example, any confidential information shared with the other parties before the effective date (e.g. during the consortium agreement negotiations) is not protected under the confidentiality clauses of the consortium agreement.

*Example:*

*This agreement will go into effect on the effective date (“**Effective Date**”) and will continue in effect up and until [DD/MM/YYYY].*

*Example:*

*This agreement will go into effect on the effective date (“**Effective Date**”) and will continue in effect until the termination or completion of the Project, that is until the ZonMw Decision determining the amount of the Grant.*

Likewise it is important to state when the consortium agreement will terminate. The end date of the agreement is in most cases the end date of a party's right to use the other party's pre-existing knowledge or its results.

In case the consortium partners have concluded a consortium agreement before the ZonMw decision with regard to the grant application was rendered, the partners may want to include a provision that terminates the consortium agreement when the ZonMw decision is negative<sup>9</sup>.

*Example*

*This agreement will terminate in the event that ZonMw does not award the Grant as applied for by the Main Applicant on [DD/MM/YYYY] and with ZonMw file number [ • ]. The termination will be effective*

---

<sup>8</sup> Registered and unregistered Community designs available under EU Regulation 6/2002

<sup>9</sup> Please be reminded of article 6:24 of the Dutch Civil Code requiring the 'undoing' of each performance after the fulfilment of the condition subsequent (in this case the negative Decision of ZonMw). After the fulfilment of a condition subsequent, the parties must undo the performances which they have already received on the basis of the conditional obligation, unless something else results from the content of the consortium agreement.



*on the date the ZonMw Decision is rendered.*

#### **4. Responsibilities**

##### **Responsibilities of the project leader**

The ZonMw Terms and Conditions Governing Grants of ZonMw stipulate that the project leader (“*Projectleider*”) is the person who is responsible for carrying out the project and acts as an intermediary between the consortium parties and ZonMw (“*Penvoerder*”). Other responsibilities of the project leader will have to be made explicit in the consortium agreement. Please see section 5 (project governance) for an example provision.

##### **Responsibilities of all parties**

###### General provision

Parties can insert a general provision requiring each party to execute the project according to the terms and conditions of the consortium agreement.

###### *Example:*

*Each Party will take part in the efficient implementation of the Project, and will cooperate, perform and fulfil, promptly and on time, all of its obligations under the ZonMw Funding Conditions and this agreement as may be reasonably required from it and in a manner of good faith as prescribed by Dutch law.*

###### ZonMw funding conditions

In order to ensure the cooperation of all parties in fulfilling the obligations towards ZonMw resulting from the ZonMw General Terms and Conditions Governing Grants of ZonMw and the ZonMw decision to award the grant for the project (in the example provisions together referred to as “Funding Conditions”), the parties may opt to attach both documents to the consortium agreement and refer to the obligations resulting from these documents in the main body of the agreement.

###### *Example:*

*The Parties will execute the Project in accordance with this agreement and the ZonMw Funding Conditions, attached to this agreement as [Schedule \[ • \]](#).*

###### Standard of behavior

A consortium agreement for a collaborative research project often contains a provision that requires parties to make “*reasonable efforts*” e.g. in relation to the accuracy of any information they provide to the other parties.

Please be reminded that although this document was drawn up in English, it is based on Dutch law. The legal term “*reasonable efforts*” does not have a fixed meaning in the Dutch legal system (depends on the person it is addressing and the circumstances of the case). To introduce more objective criteria for the required standard of behavior, the parties can refer to an (internationally) accepted code of conduct for ethical and professional research.

###### *Example*

*The Parties will conduct the research activities in accordance with the Netherlands Code of Conduct for Scientific Practice, Principles of good scientific teaching and research, 2004, revision 2012 Association of Universities in the Netherlands.*

###### Notification

The obligation to notify the other parties of any information that is likely to affect the (proper and timely) execution of the project, is not only of importance in the relation between the parties but also in the relation between the grant recipient and ZonMw.

Parties can insert an obligation for each of the parties to provide such information to the project leader thus enabling him to fulfill this obligation on behalf of the grant recipient. Please see article 4 of the ZonMw General Terms and Conditions Governing Grants of ZonMw. Any material changes (e.g. termination of a defaulting party) to the consortium agreement will need the prior approval of ZonMw. Failure to notify ZonMw can affect the ZonMw decision with respect to the continuation of the project and the amount of the grant to be determined.

###### *Example*

- a. Each Party will notify the Project Leader promptly and in accordance with the governance structure of the Project, of any significant information, fact, problem or delay likely to affect the Project;
- b. Each Party will, at the Project Leader's first request, promptly provide all information needed by the Project Leader to fulfil its obligations towards ZonMw.

#### Cooperation

The parties can insert a general obligation of the parties to use reasonable efforts to cooperate with and assist the project leader in his<sup>10</sup> efforts to fulfill his obligations towards ZonMw in a timely and proper fashion.

*Example:*

*Each Party will cooperate in good faith<sup>11</sup> with the Project Leader in his efforts to fulfil his obligations resulting from this agreement and the ZonMw Funding Conditions in a timely and proper manner.*

#### Accuracy of information and materials

*Example:*

*Each Party will take reasonable measures to ensure the accuracy of any information (including Background and Foreground) or material it supplies to the other Parties.*

### **5. Project governance**

The governance provisions should provide a solid structure for managing the project with regard to the execution, monitoring and reporting of the scientific work and the financial and other relevant aspects. The framework of a governance model will consist of governance bodies such as a Project Leader and a General Assembly (all parties are represented), their various responsibilities (e.g. organise meetings, submit scientific and financial reports to ZonMw, host a ZonMw site visit) and the relevant procedures (voting procedures, termination of a defaulting party).

For most of the projects funded by ZonMw, a governance structure for small projects, consisting of a Project Leader and a General Assembly, will be sufficient.

*Example*

*The organisational structure of the consortium shall comprise the following consortium bodies:*

- a. *The general assembly ("General Assembly");*
- b. *The project leader ("Project Leader").*

However, for larger projects, the parties may decide to have a two tier governance with a General Assembly and an Executive Board.

The detail in which the governance of the project is set up greatly depends on the complexity of the project, the number of work packages and the number of project partners.

#### **DESCA Horizon 2020 model consortium agreement**

For an example of a project governance model, please see the DESCA Horizon2020 model consortium agreement: <http://www.desca-2020.eu/>.<sup>12</sup>

DESCA	ZonMw
General Assembly	General Assembly
Executive Board	Executive Board
Coördinator	Project Leader
-	Principal Investigator

<sup>10</sup> Where the term "his" is used in this document, please also read "her".

<sup>11</sup> Please see the DESCA explanation of 'good faith' in the continental legal system.

<sup>12</sup> The DESCA Horizon 2020 Model Consortium Agreement was specifically designed for Horizon 2020 "Research and Innovation Actions" and "Innovation Actions". As stated before in the introduction to this skeleton agreement, the DESCA is supplementary to the European Rules of Participation and the European Grant Agreement and should always be read in combination with the latter two documents.

**General Assembly: the decision making body**

The General Assembly is the decision-making body and the Project Leader will (most likely) be the chair. The consortium agreement should specify the issues that the General Assembly can decide on, e.g. changes to the full project proposal, additions to the list of background as set out in schedule [•], entry of a new party, withdrawal of a party, the termination of the participation of a defaulting party and any other subjects related to the execution of the project and the consortium agreement the parties wish to add to the below list.

*Example*

*The General Assembly is responsible for strategic and scientific management of the Project and will review, discuss and decide on:*

- a. Changes to the Full Project Proposal;*
- b. [ ];*
- c. Etc.*

**Voting procedure:**

Each Party is represented by its principal investigator and each party has one vote. The parties have to agree on:

- The quorum: number of parties present or represented at the General Assembly meeting necessary for valid decision making;
- What constitutes a majority of votes (simple majority or a qualified majority e.g. 2/3) under this agreement for a binding decision;
- When should a decision be unanimous (e.g. change in Full Project Proposal or funding)

**The right to veto**

As a decision taken by the General Assembly can greatly affect the scientific, financial or other interests of a specific consortium partner, the parties can insert a provision that allows the affected party to veto the decision under certain conditions. To provide the other parties with legal certainty regarding the validity of the relevant decision, it is common practice to limit the time to exercise the right to veto a decision of the General Assembly.

**The Project Leader**

The Project Leader (“Project Leider”/ “Penvoerder”) is responsible for the day-to-day management of the project. The Project Leader also acts as an intermediary between the parties and ZonMw; all communications between ZonMw and the consortium will be through the Project Leader. The parties can formally authorise the Project Leader to act on their behalf in relation to ZonMw when this is required by the ZonMw Funding Conditions.

*Example*

- 1. The Parties appoint [Full name, capacity and affiliation] as Project Leader of this Project for the term of this agreement;*
- 2. The Project Leader will, in addition to its responsibilities as a Party, act on behalf of the Parties in relation to ZonMw when this is required by the ZonMw Funding Conditions;*
- 3. The Project Leader is furthermore tasked with:<sup>13</sup>*
  - a. Keeping accounts of the funds distributed to the Project by ZonMw and any other funding organisation and the distribution of these funds to the Parties;*
  - b. Keeping accounts of the In-Kind Contributions and the In Cash Contributions of the Parties for the purpose of the Project;*
  - c. Notifying the Parties of any official notifications from ZonMw in relation to the Project;*
  - d. [ ];*
  - e. Etc.*

To keep the Project Leader fully informed, the parties can insert the below provisions:

*Example*

---

<sup>13</sup> Please see DESCA Horizon 2020 model consortium agreement for example provisions.

1. All relevant email, letter and fax communication between the Parties will also be sent to the Project Leader.
2. The minutes of additional meetings between some or all of the Parties will be sent to the Project Leader.

### **The Principal Investigator**

Each party appoints its lead scientist on the project as principal investigator. The principal investigator is responsible for the supervision and direction of the project at his organisation.

#### *Example*

1. Each Party appoints its lead scientist on the Project as principal investigator ("**Principal Investigator**").
2. The Principal Investigator of each Party is responsible for supervision and direction of the Project at the Party's organisation.
3. The Principal Investigator is responsible for:
  - a. Communication with the other Principal Investigators and the Project Leader;
  - b. Reporting the progress of the research to the Project Leader on a [monthly, three monthly] basis and at the General Assembly;
  - c. The timely and proper preparing of the ZonMw progress reports and final report;
  - d. Hosting the ZonMw site visit;

### **Voting procedure regarding a defaulting party**

The Parties may opt to include a procedure for dealing with a defaulting party<sup>14</sup>. The General Assembly will identify a defaulting party. It will formally notify the defaulting party (served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement) of its failure to perform its obligations under the consortium agreement and give it a reasonable term to cure the breach.

If the breach is not cured within that term or if the breach cannot be cured or the defaulting party notifies the General Assembly that it cannot or will not cure the breach, the General Assembly will vote on termination of the defaulting party. A party cannot vote if the voting relates to its identification as a defaulting party, its participation or termination in the consortium.

### **Procedure regarding a party requesting to leave the consortium**

A procedure can be set up regarding a party requesting to leave the consortium. The requesting party cannot veto decisions relating this request.<sup>15</sup> The decision of the General Assembly will include the financial and other terms for termination.

#### *Example*

*A Party leaving the consortium will, upon request of the Project Leader, promptly transfer any unspent and uncommitted part of the Grant to the Party that is ultimately responsible for the application and use of the Grant.*

A party terminating the agreement will still be bound to the provisions regarding confidentiality and non-use. Also, the terminating party will have to continue to grant access to its pre-existing knowledge/ background made available for the project.

#### *Example*

*Termination or voluntary withdrawal by a Party will not affect any rights or obligations of that Party incurred prior to the date of termination or withdrawal. This includes the obligation of that Party to make its Background and, if applicable, its Results, available to the Project.*

### **Scientific Meeting**

---

<sup>14</sup> Please also see item 7, termination for breach.

<sup>15</sup> Please see DESCA Horizon2020 model consortium agreement for example provisions.

ZonMw encourages the consortium partners to organise a yearly scientific meeting for all research personnel to attend. The purpose of such a meeting is to report and discuss the progress the research.

*Example*

- 1. The Project Leader will organise a yearly scientific meeting for all research staff with the purpose to report and discuss the progress of the Project.*
- 2. The first meeting will take place no earlier than 10 months and no later than fourteen (14) months after the Effective date.*
- 3. All research staff will take reasonable efforts to attend the meeting.*

## **6. Involvement of third parties**

Article 19 section 2 of the ZonMw General Terms and Conditions Governing Grants of ZonMw, explicitly warrants that in the event the project is carried out in part or in whole by persons who do not have an employment relationship with the grant recipient, the grant recipient has to ensure that, prior to the start of the project, these persons waive their rights with regard to the results. If a grant recipient fails to do so, it cannot comply with the ZonMw Terms and Conditions Governing Grants of ZonMw regarding dissemination or exploitation of the results.

The same applies to the other consortium partners. When a consortium partner engages a third party, the third party should assign all rights to the results it has generated to this consortium partner. If a consortium partner fails to negotiate the transfer of rights, it cannot fulfill its obligations of dissemination or exploitation of those specific results.

It is important for the consortium partners to decide if they want to know (and approve) in advance which third parties will be involved in the execution of the project.

*Example*

- a. Parties may not sub-contract any part of their research activities under the Full Project Proposal except with the prior written approval of the other Parties.*
- b. The Party engaging a third party in the execution of its share of the research activities under the Full Project Proposal is responsible for the execution of those activities by the third party and for the third party's compliance with the provisions of this agreement and the obligations of the parties resulting from the ZonMw Funding Conditions.*
- c. The Party engaging a third party in the execution of its share of the research activities under the Full Project Proposal will ensure that the third party will assign any rights to the Results it has generated.*

## **7. Termination for breach of contract**

1. The consequences of failing to fulfil an obligation (breach of contract) are governed by the Dutch Civil Code. The Dutch Civil Code contains provisions which determine when a failure is attributable and under which conditions the creditor(s) is (are) entitled to compensation. If parties do not include provisions regarding termination for breach, the provisions in the Dutch Civil Code will apply.

Please bear in mind that article 6:265 of the Dutch Civil Code allows the rescission of a mutual agreement (e.g. a consortium agreement) in full or in part for every failure of a party in the performance of one of his obligations, unless the failure, given its specific nature or minor importance, does not justify this rescission and its legal effects.

2. However, as this section of the Dutch Civil Code is (mostly) permissive law, it is possible to derogate from the articles of this section of the Civil Code. The consortium agreement can set out circumstances in which a party can be terminated, e.g. if a party fails to perform on time or according to the full project proposal or does not perform at all. The provisions should include a **formal notification procedure** (e.g. a Notice of default) and a reasonable term for repairing the alleged breach. If after the reasonable term, the party has not complied, default arises and the other parties can terminate the defaulting party and demand compensation (unless the defaulting party can claim Force Majeure). With regard to the compensation the remaining parties are

entitled to, please take into account the provisions with regard to the limitation of contractual liabilities.

3. If the fulfilment of a party's obligations under the consortium agreement is permanently or temporarily impossible, this procedure need not be followed and the obligation of the party that is in breach to pay a compensation arises automatically (unless that party can claim Force Majeure).

*Example*

*The Parties may terminate a Party with immediate effect by giving written Notice to the other Party if: the other Party is in breach of any provision of this agreement and (if it is capable of remedy) the breach has not been remedied within [30][60][90] days after receipt of the written Notice specifying the breach and requiring its remedy.*

## **8. Force Majeure**

Article 6:75 of the Dutch Civil Code contains a provision for Force Majeure<sup>16</sup>. It provides for a legal excuse for a non-performance if the non-performance was beyond the control of the party and not within his sphere of risk.

Parties can refer to article 6:75 of the Code Civil or draw up a provision themselves. They can include specific circumstances as 'Force Majeure' or decide on a term for termination of the non-performing party.

*Example:*

1. *If the performance by either Party of any of its obligations under this agreement (except a payment obligation) is delayed or prevented by circumstances not reasonably foreseeable at the time of the signing of this agreement and beyond its reasonable control, that Party will not be in breach of this agreement because of that delay in performance.*
2. *The Party concerned will give written Notice to the other Parties without undue delay, describing the Force Majeure event(s), its anticipated duration and use of reasonable efforts to resume performance as soon as possible.*
3. *If the delay in performance is more than [•] months, the other Parties may terminate this agreement with immediate effect by giving written Notice to the other Party.*

## **9. Financial provisions**

The party ultimately responsible for the application and use of the Grant will make the funds available to the parties in accordance with the project budget in the Full Project Proposal. Please take into account that the receipt of the funds is conditional on the approval of ZonMw of the reporting of the scientific progress of the project.

*Example*

*The Party responsible for the application and use of the Grant will make the funds available for the Project upon receipt from ZonMw.*

Parties may also include a provision with regard to the justification of the costs.

*Example*

1. *Each Party is responsible for justifying its costs in accordance with generally accepted accounting and management principles and practices.*
2. *Each Party will be refunded based on actual and duly justified costs.*

## **10. Liabilities of the parties**

No warranties

Research collaboration agreements typically contain a 'fit for purpose' provision. This provision should include the specific reason why the material, information or advice made available under this agreement is made available 'as is', meaning without any warranty or representation (factual

---

<sup>16</sup> "A non-performance cannot be attributed to the non-performing party if he is not to blame for it nor accountable for it by virtue of law, a juridical act or generally accepted principles."



statements). In case of a research collaboration, the reason would be the experimental nature of the work done under the project.

*Example*

*No warranties*

- 1. Any material, information or advice, including Confidential Information, Background and Results, made available for the Project under this agreement, is made available “as is”, and each Party understands and agrees that such material, information or advice is experimental in nature and is made available without any representation or warranty, express or implied, including any implied warranty as to the merchantability, satisfactory quality or fitness for any particular purpose, or, except as expressly provided for herein, any warranty that the use of the same will not infringe or violate any patent or other proprietary rights of any party.*
- 2. The recipient Party is solely responsible for the use of material, information or advice, including Confidential Information, Background and Results, made available by another Party for the Project and for its reliance on any Background or Results, and its reliance on advice or information given in connection with that Background or those Results.*
- 3. No Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party exercising its Access Rights*

Limitation of contractual liability

This provision deals with the liability of the parties towards each other and was taken from the DESCA Horizon2020 model consortium agreement.

*Example*

- 1. No Party will 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 willful act.*
- 2. A Party’s aggregate liability towards the other Parties collectively will be limited to [once/twice] the Party’s share of the total costs of the Project as identified in the Full Project Proposal, attached to this agreement as identified in Schedule [ • ] of this agreement, provided such damage was not caused by a willful act or gross negligence.*

Damage to third Parties

*Example*

*Each Party will 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 behalf of it under this agreement or from its use of Results or background.*

**11. Results.**

This section was written under the assumption that the parties use the ZonMw definition of ‘results’, covering both the intellectual property rights afforded by Dutch law as well as all other results from the project.

ZonMw will assess the provisions regarding results on conformity with EU state aid rules, the ZonMw General Terms and Conditions Governing Grant Grants, applicable as from 1<sup>st</sup> July 2013, the ZonMw Call text for this project and the ZonMw decision pertaining to the award of the grant for the project. If valorisation and (future) exploitation are the purpose of this collaboration then this can be made explicit in this section of the agreement (and the “whereas” section). Parties can include provisions regarding a patent application and IP management strategy and provisions regarding reasonable efforts towards valorisation and exploitation (including anti-shelving provisions). This can also include a provision stipulating the right of parties to seek protection of valuable results in case the owner of the results fails to do so.

*ii. Ownership of Results*

*The default situation*

*The default situation is that the legal entity that employs the scientist that generated the results is entitled to the rights to these results. This is known as : ‘Inventor = owner’.*



Article 19, section 2 (“ownership” of Results) in conjunction with article 21, section 4 (exploitation rights of Results) of the General Terms and Conditions Governing Grants of ZonMw, applicable as from 1<sup>st</sup> July 2013, result in the parties each having full right and title (“ownership” and use) to the results they generated or were generated on behalf of them.

*Example*

*Results shall be owned by the Party whose employee(s) generated such Results, or on whose behalf such Results have been generated.*

Contractual division of ownership

If parties jointly generate results and they do not wish to own the results jointly, they can agree that one party will own the results (e.g. the party that contributed the background IP or the party that generated the greater part of the results) and the other party will be granted a perpetual, worldwide, non-exclusive, fully paid-up license. If one of the parties is an Undertaking, the EU state aid rules have to be taken into account.

*iii. Joint ownership of Results*

Joint ownership arises by Dutch law when the results are jointly developed by more than one consortium partner and their respective contribution to the final result cannot be ascertained, or the result is by nature indivisible (article 13 of the Rijksoctrooiwet 1995).

For results that do not lead to joint ownership by law (results for which Dutch law does not afford intellectual property rights), parties need to make contractual arrangements. As the ZonMw definition of results not only relates to intellectual property rights that are afforded by Dutch law, but also to all other results, such a provision will need to be inserted.

*Example*

*Two or more Parties shall own Results jointly if:*

- a. they have jointly generated them; and*
- b. it is not possible to:*
  - i. establish the respective contribution of each Party; or*
  - ii. separate them for the purpose of applying for, obtaining or maintaining their protection.*

*The Results will be jointly owned by the Parties in accordance with their relative contribution to the Results.*

There are various options regarding the use of the jointly owned results

*Example 1:*

*Results generated jointly by two or more Parties will be jointly owned by these Parties. Each Party will retain its right to practice and exploit its undivided interest in any jointly owned Results without the consent of and without accounting to its co-owner(s).*

*Example 2:*

- 1. Ownership of Results generated by two or more Parties (“**Joint Results**”) will be determined in good faith, taking into account each Party’s relative intellectual contribution to the Joint Results.*
- 2. The Parties jointly owning the Results (“**Joint Owners**”) will use reasonable commercial efforts to conclude a joint ownership agreement that includes clauses with regard to:*
  - a. a procedure for determining the respective ownership percentages of the respective Joint Owners;*
  - b. arrangements for protection of Joint Results, including -if applicable- filing, prosecution and maintenance of patent(application) for any Joint Results;*
  - c. action taken with respect to any alleged or actual infringement of intellectual property rights relating to any Joint Results;*
- 3. If one or more of the Joint Owners do not wish to protect the Joint Results, the other Joint Owners may do so at their own expense. The Party not participating in the protection of the Joint Results will provide –at the expense of the requesting Party– assistance to the Joint Owners that wish to protect the Joint Results.*

iv. Access to Results

For implementation of the project

The default situation is that parties grant one another access to their results on a non-exclusive, royalty free basis for the purpose and the term of the project. However, parties are free to negotiate different terms and conditions or even draw up a separate licence agreement. Such an agreement must be concluded before the start of the project. In most cases it will not be allowed to grant a sub-licence to a third party in relation to another party's results. Parties can decide that their affiliates are not considered a third party.

For exploitation of own Results

If a party wishes to have access to another parties results for exploitation purposes, this will need to be negotiated separately. The consortium agreement may include a provision that parties will negotiate such a licence on fair and reasonable conditions. Please note that ZonMw requires that a Research Institution<sup>17</sup> negotiates at arms' lengths terms with a consortium partner that qualifies as an Undertaking<sup>18</sup> under EU state aid rules, to obtain the maximum economic value at the time of negotiations.

Access rights to Results for internal research activities, research and normal patient care (if applicable) will be granted on a royalty-free basis.

v. Use of the Results by Affiliates

Whether or not parties will allow affiliates of other parties to have access to their background or their results has to do with 'control'. Especially when it concerns valuable knowledge (patentable or not), it can be of strategic importance to limit the access to one's background or results.

The parties have several options regarding access for affiliates:

1. An unconditional 'yes';
2. A conditional 'yes'. The party that wants to give its affiliates access to another party's background or results needs the prior written approval of that party. Fair and reasonable compensation can be a condition for the approval of such request;
3. Pre-approved affiliates are listed in a schedule attached to the consortium agreement and the conditions for access are inserted in the body of the agreement;
4. No.

Either one of these options require a definition of the term 'affiliate'

*Example:*

1. *An affiliate of a Party ("**Affiliate**") means any one or more legal entities, which is (are) directly or indirectly: (i) owned or controlled by a Party, (ii) owning or controlling a Party, or (iii) owned or controlled by the legal entity owning or controlling a Party, at the relevant time.*
2. *For the purposes of this definition, a legal entity shall be deemed to own and/or to control another entity if more than 50% (fifty percent) of the voting stock of the latter business entity, ordinarily entitled to vote in the election of directors (or, if there is no such stock, more than 50% (fifty per cent) of the ownership of or control in the latter legal entity) is held by and consolidated in the annual accounts of the owning and/or controlling legal entity. Common Control through government does not, in itself, create Affiliate status.*

vi. Transfer of Results

The 'owner' of the results can transfer the rights to those results to one of the consortium partners or to a third party. If a party intends to transfer its results to a third party, it may be required to inform the consortium partners first and give them the opportunity to negotiate first (1<sup>st</sup> option right).

If a Research Institution transfers its rights to its results, ZonMw requires this transfer to be subject to a non-exclusive, perpetual, fully paid up, worldwide, irrevocable licence for non-commercial research,

<sup>17</sup> Research Organisation: a Research and knowledge dissemination organisation under the EU state aid rules.

<sup>18</sup> European State Aid term. An Undertaking is considered to be any entity engaged in an economic activity, irrespective of its legal form. A not-for-profit organization can also qualify as an Undertaking. The classification of an entity as an Undertaking is always relative to a specific activity.

educational purposes, and if applicable, for normal patient care. Transfer of results from a Research Institution to an Undertaking will always be negotiated at arm's lengths terms and on market conditions and in full conformity with EU state aid regulations.

*Example:*

*If a Party that constitutes a Research Organisation under the definition of the EU state aid regulations, transfers its rights to Results, this transfer will be subject to a non-exclusive, perpetual, fully paid-up, worldwide, irrevocable licence for non-commercial research, educational purposes and normal patient care.*

The parties can decide to give the party that made the background available for the project a first option right to negotiate an assignment of the non-severable improvement of such background.

*Example*

*For the purpose of this agreement, non-severable improvement (“**Non-Severable Improvement**”) means Results generated by a Party during the execution of the Project under the terms and conditions of this agreement that cannot be used without infringing the Background of another Party.*

When a party transfers its results, the transfer will not affect the rights of the other parties in relation to these results.

*Example*

*The transferring Party will ensure that the other Parties' rights in relation to the Results will not be affected by the transfer.*

## **12. Access to background for implementation of the project**

The default situation is that a party will grant access to its background to all parties. However, a party may decide to only grant access to a party that “needs” the background for the execution of his part of the research. Also, access by affiliates can be made conditional of approval by the owner of the background or can be excluded.

*Example*

- 1. Each Party grants the other Parties a royalty-free, non-exclusive licence to use its Background for the term of this agreement and to the extent Needed for the execution of the Project.*
- 2. No Party may grant a sub-licence to another Party's Background without the prior written permission of that Party.*

Please note that this provision requires a definition of “Needed”.<sup>19</sup>

*Example:*

- 1. For the implementation of the Project, “**Needed**” means:  
A licence to another Party's Background is Needed if, without the grant of such licence, carrying out the requesting Party's share of the Full Project Proposal would be impossible, significantly delayed, or require significant additional financial or human resources.*
- 2. The requesting Party must show that such a licence is Needed.*

## **13. Access to background for exploitation of one's own results**

Access to background of another party for exploitation of one's own results after the term of the agreement will be negotiated separately. Parties can include a provision in the consortium agreement that the owner of the background will negotiate with the owner of the results on fair and reasonable terms.

*Example*

*During twelve (12) months after the end date of this agreement, each Party can request any of the other Parties to negotiate on fair and reasonable conditions a licence agreement with regard to the other Party's Results*

---

<sup>19</sup> Please see the DESCA Horizon2020 model consortium agreement: <http://www.desca-2020.eu/>

Alternatively, the parties can include a provision in the consortium agreement that each party will grant a requesting party a licence to its background if the requesting party cannot exploits its own results without such a licence.

*Example 2.*

1. *Each Party will grant a requesting Party a licence to its Background if the requesting Party can show that the licence is Needed for the exploitation of its own Results.*
2. *Such licence will be granted on fair and reasonable terms.*

*For exploitation of own Results, “Needed” means:*

1. *A licence is Needed, if without such a licence the exploitation of own Results would be technically or legally impossible.*

#### **14. Publication procedure**

The default arrangement is “assumed permission”. If the publishing party does not receive a written objection from the reviewing party within [45]/[60]/[90] days of submission of notification of publication then permission to publish will be deemed to have been given. The ZonMw Terms and Conditions Governing Grants of ZonMw allows for a maximum period of 90 days.

*Example*

1. *A Party wishing to publish in written form, oral presentation or make public in any other form, information relating to the Background, Results or any other information regarding the Project – confidential or not– will submit in writing to the Project Leader the intended publication 45 days before the intended publication date or before the date of submission for disclosure to review the publication.*
2. *The intended publication will clearly state the intended publication date.*
3. *The Project Leader will promptly make the intended publication available to the other Parties.*
4. *The intended publication is Confidential Information and as such protected in the manner this agreement provides for.*
5. *The Parties will have 45 days to review the intended publication.*
6. *The Parties can, by giving written Notice to the Project Leader, raise an objection with regard to the inclusion of their Confidential Information or may request a delay for a maximum of 90 days after receipt of the written Notice by the Project Leader, in order to seek patent or similar protection for the Results that are proposed to be published.*
7. *The publishing party will remove any Confidential Information. Any other comments will be considered by the author(s) in good faith. The author is under no obligation to incorporate such comments.*

#### **15. Confidentiality**

*Example*

1. *For the purpose of this agreement, confidential information (“**Confidential Information**”) means:*
  - a. *any information disclosed in writing or other tangible form by one Party (“**Disclosing Party**”) to another Party (“**Receiving Party**”) for use in the Project and marked as CONFIDENTIAL,*
  - b. *or, any information initially disclosed orally and then summarized and confirmed in writing as CONFIDENTIAL within 30 days after the date of oral disclosure.*
2. *The Receiving Party may not disclose the Confidential Information to any of the other Parties or to a third Party, except with explicit written consent of the Disclosing Party.*
3. *The Confidential Information includes, without limitation:*
  - a. *the Full Project Proposal as attached to this agreement in Schedule [•];*
  - b. *any and all Background listed in Schedule [•] of this agreement and made available by a Disclosing Party to a Receiving Party for use in this Project;*
  - c. *the Results of the Parties;*
4. *Exclusions.*

*Confidential Information does not include information that:*

  - a. *is known or open to the public or otherwise in the public domain at the time of disclosure;*
  - b. *becomes part of the public domain by any means other than breach of this agreement by a Receiving Party;*

- c. *is already known to the Receiving Party at the time of disclosure and is free of any obligations of confidentiality;*
        - d. *is obtained by the Receiving Party, free of any obligations of confidentiality, from a third party that has a lawful right to disclose it.*
5. *Disclosure Required by Law.*

*If disclosure of Confidential Information other than as expressly permitted under this agreement is required by law, that disclosure does not constitute a breach of this agreement so long as the Receiving Party:*

  - a. *notifies the Disclosing Party in writing at the earliest possible date of the disclosure so as to allow the Disclosing Party to take legal action to protect its Confidential Information,*
  - b. *discloses only that Confidential Information required to comply with the legal requirement, and*
  - c. *continues to maintain the confidentiality of this Confidential Information with respect to the other Parties and third Parties.*
6. *Survival of Obligations.*

*These obligations of non-use and non-disclosure of Confidential Information survive termination of this agreement and continue for a period of [•] years after termination.*

## **16. Survival of rights and obligations**

Parties may want certain rights or obligations (e.g. confidentiality obligations, access rights or publication procedure) to continue after the agreement terminates. There are two options:

1. State in each applicable provision that a specific right or obligation will apply during the term of this agreement and thereafter or for the term of [•] years.
2. Use one clause to list the provisions which will survive termination of the agreement;

*Example 1:*

*Survival of Obligations.*

*These obligations of non-use and non-disclosure of Confidential Information survive termination of this agreement and continue for a period of [•] years after termination.*

*Example2:*

*Clauses [• and •] will survive the completion or termination of the Project, the expiry of this agreement, or the withdrawal of any Party for any reason and will continue in force indefinitely.*

## **17. Applicable law**

*Example*

1. *This agreement affecting the rights and obligations between the Parties will be construed in accordance with and governed by Dutch Law.*
2. *Any dispute that may arise from this agreement will be submitted to the competent court in [•], the Netherlands.*

## **18. Inconsistencies**

The parties may opt to:

1. Determine the hierarchy between the ZonMw Funding Conditions and the consortium agreement.

*Example:*

*In case of an ambiguity or inconsistency between the General Terms and Conditions Governing Grants of ZonMw and the Grant Letter on the one hand and this agreement on the other hand, the General Terms and Conditions Governing Grants of ZonMw and the Grant Letter will take precedence of this agreement.*

2. Determine the hierarchy between the body of the consortium agreement and its Schedules.

*Example:*

*In case of conflicts between the Schedules and the core text of this agreement, the core text will take precedence of the Schedules, with the exception of the Schedule containing the General Terms and Conditions Governing Grants of ZonMw and the Grant Letter.*



## 19. Notices

- Article 4 of the General Terms and Conditions Governing Grants of ZonMw requires the grant recipient to “*immediately give substantiated notice, in writing, of any intention to deviate from an application for a grant*”. Any such change must be approved in advance by ZonMw. Any changes made without ZonMw's prior approval can affect the ZonMw decision with respect to the continuation of the project and the amount of the grant to be determined.
- The consortium agreement can contain specific clauses that require a party to inform the project leader or all parties of a certain fact or event (e.g. patentable invention, serious delay in the project) by means of a written notice (“Notice”). The consortium agreement will specify by what means a written notice can be sent (e.g. registered mail, email with confirmed receipt) and to whom it has to be sent. The latter requires a list containing the names and addresses of each partner's contact person and will be attached to the consortium agreement as a Schedule. The list of contact persons has to be up to date during the term of the consortium agreement.

### *Example*

*All notices (“Notices”) given by one Party to another Party pursuant to this agreement will be in writing and will be delivered to the Contact Person of the other Party by (i) personal delivery, (ii) registered mail, (iii) registered courier, (iv) fax or (v) electronic mail, and in the latter two confirmed by mail, at the Party's address specified in this agreement as listed in [Schedule \[•\]](#).*

## 20. Assignment

It may prove to be necessary for a consortium partner to transfer its rights and obligations under this agreement to a third party (e.g. when the lead scientist moves to another university). Because the other consortium partners have carefully selected the initial collaborating partner, it is essential that this transfer is pre-approved by all consortium partners. The transfer will be formalised by means of an amendment to the consortium agreement. Needless to say that the Project Leader will notify ZonMw of this. Each amendment to the consortium agreement requires the approval of ZonMw. Please see article 4 of the General Terms and Conditions Governing Grants of ZonMw.

Please note that in the below example provision, the affiliates of the consortium partners are considered to be ‘*third parties*’.

### *Example*

*Except as specifically provided for in this agreement, the rights and obligations arising from this agreement shall not be assigned to third parties, other than Affiliates, without the prior written approval of the other Parties.*

If the parties have not defined their affiliates as third parties, the reference to affiliates can be deleted from this provision.

### *Example*

*Except as specifically provided for in this agreement, the rights and obligations arising from this agreement shall not be assigned to third parties without the prior written approval of the other Parties.*

Parties can opt to specify when the exception applies.

### *Example*

*Except as set out in article [•] of this agreement (Assignment of Results), no rights or obligations of the Parties arising from this agreement may be assigned or transferred, in whole or in part, to any third party [other than to Affiliated Entities,] without the other Parties' prior formal approval.*

## 21. Amendment

A consortium evolves during the term of the project. It is not unlikely that a project partner will be added to the consortium or the full project proposal needs to be adjusted. This will require an amendment. It is important to correctly date the amendments and keep track of all the additional provisions, especially when they concern the rights and obligations with regard to background (pre-existing knowledge made available by the project partners for the purpose of the project) or results.

### *Example*

*Amendments and modifications to the text of this agreement require a separate written agreement to be signed between all Parties.*

If the project partners foresee multiple amendments, then a template amendment can be added to the consortium agreement in one of the Schedules.

## **22. Signatures**

Please make sure that the parties listed on the signing pages are the same as the parties listed on the first page of the consortium agreement. ZonMw will not accept a Holding signing on behalf of a daughter.

## **Schedules**

A Schedule typically refers to content that could also be inserted in the main body of the consortium agreement but (for practical reasons) is instead moved to the end. Referring to lengthy documents rather than inserting them provides more clarity and brevity in the main body of the agreement. Parties can include a provision in the main body of the consortium agreement stipulating that the agreement consists of the main body and all its Schedules, but it will be more precise to refer to each specific Schedule in a relevant provision. That reference makes the Schedule part of the consortium agreement.

### *Example*

*The Parties will conduct the Project named ["xxx"], as outlined in [Schedule 1](#) to this agreement in accordance with the ZonMw Funding Conditions.*

If multiple versions of a document have been exchanged between the parties, parties can opt to sign the final, attached version.

Recommended Schedules:

- I. The full project proposal and the project budget as submitted to and approved by ZonMw;
- II. Background made available by the Parties for execution of the Project  
A description of the Background and any relevant restrictions and encumbrances associated with the Background;
- III. General Terms and Conditions Governing Grants of ZonMw, version July 1<sup>st</sup> 2013 and the relevant ZonMw Grant Letter;
- IV. Identified Affiliated Entities;
- V. A Model Term Sheet for the licence to be negotiated under the 1st Option Right which contains provisions for:
  - The identified Results
  - Start- and end date
  - Exclusive or non-exclusive (royalty free or cost-bearing)
  - Sublicensing allowed yes/no
  - Field of Use
  - Territory of Use
  - Payment (lump sum and/or percentage of turn-over)
  - Other payment terms
  - Indemnity
- VI. A list of contact persons and addresses for official Notices.