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# Preamble

 The Partners have implemented a collaborative project referredas [Name to be specified] in order to jointly perform research efforts or research and development.

It is hereby specified that the Partner(s) are granted financial support by means of public funds, to complete the Project.

 The purposes that the Partners have set for themselves, under this Project, are discussed in greater details in the appendix entitled “Project Description” (taken from the submission document of the ANR).

 [Name to be specified] The Enterprise is a structure specialised in [Area of expertise to be specified]. It contributes to the Project by providing [its expertise/financial means/material resources, etc. [To be specified], as mentioned in the appendix to this Agreement entitled “Project Description”.

 [Entity] [Name to be specified] [Skills and contributions of Entity 2 to be specified]

 Etc.

 In that respect, the Partners intend to coordinate their collaboration to complete the Project, pursuant to the regulation in effect, and agree to the following :

# Definition

 Under this Agreement, the terms below shall be defined as follows:

- [DEFINITION TO ENSURE COMPATIBILITY WITH ARTICLE 28 d) AND ARTICLE 29: “The arm's length principle” means a situation where the terms of the transaction between the Contracting Parties do not differ from those required between Independent Enterprises, and do not include any element of collusion. Any transaction resulting from an open, transparent and non-discriminatory procedure shall be regarded as complying with the arm's length principle.]

* “Proprietary Knowledge” means all technical and/or scientific information and knowledge and/or any other type of information, in any form whatsoever, whether or not protectable by intellectual property right including, but not limited to, expertise, trade secrets, business secrets, data, databases, Software (in particular Basic Software), files, plans, diagrams, drawings, formulas or any other kind of information, in any form whatsoever, along with all resulting rights, necessary or potentially necessary to perform the Project, that each Partner may hold before the Effective Date, and/or develop or obtain, individually or with third parties, but without the Contribution of the other Parties, during the Project but independently of it, as may be proven, and that each Partner agrees to provide to the other Partners for the purposes of this Agreement. Proprietary Knowledge is listed in the appendix to this Agreement, entitled “Proprietary Knowledge”. This list shall be updated regularly by decision of the Steering Committee [taken unanimously] **OR** [according to usual voting rules] when Proprietary Knowledge is created.]
* Coordinator means a Partner in charge of the scientific and technical coordination of the Project, whose tasks are listed in this Agreement,
* “Consortium” means a group consisting of all the Partners [Research Institution(s) or Enterprise(s)] taking part in the Project,
* “Agreement” means this Agreement, its appendices and possible amendments,
* [DEFINITION TO ENSURE COMPATIBILITY WITH ARTICLE 28 c) AND ARTICLE 29): “Contribution[[1]](#footnote-2)” means any contribution to the Project of any kind whatsoever, particularly intellectual, human, material or financial.],
* Effective Date means the start date of the project, set on XXX.
* [DEFINITION TO ENSURE COMPATIBILITY WITH ARTICLE 28 d) AND ARTICLE 29: “Enterprise” means an entity, whatever its legal status (body governed by Public or Private Law) and its operating mode (for-profit or non-profit), pursuing an economic activity (in the form of new products or services supplied on a specific market),
* “Funder(s)” refers to the ANR [OPTION: and XXX].
* “Confidential Information” means information and data of any kind, e.g., technical, scientific, economic, financial, commercial, accounting, any plan, study, prototype, equipment, audit, experimental results and testing data, drawings, graphics, specifications, expertise, experience, software and programmes, in any form whatsoever, medium or means, including, without limitation, oral, written or fixed communications on any medium whatsoever, shared between the Partners and related directly or indirectly to the Project.

[*Optional follow-up A:* and which shall be listed in the appendix to this Agreement, entitled “Confidential Information”, and updated by the Coordinator each time new Information is disclosed]

* **AND/OR**

[*Optional follow-up B:*

*Option 1:* and referred to as confidential by the Holding Partner, by means of a stamp or caption if the aforementioned Information is written, by means of a special mention upon disclosure if the aforementioned Information is oral, confirmed in writing in a short period not exceeding 15 days.

**OR**

*Option 2:* except for those expressly mentioned as non-confidential by the Partner holding the Information].

[OPTIONAL FOLLOW-UP TO ENSURE COMPATIBILITY WITH ARTICLE 28 b) [[2]](#footnote-3) :

The Partners acknowledge that their Proprietary Results and Proprietary Knowledge constitute Confidential Information. By contrast, the Partners acknowledge and agree that Results that do not generate intellectual property rights, nor secret expertise, regardless of which Partner created them, do not constitute Confidential Information.]

[OPTIONAL FOLLOW-UP: it is agreed between the Partners that the information disclosed between them for the purposes of this Project, from the Effective Date to the last date of signature of this Agreement by the Partners, shall be regarded as Confidential Information. Each Partner certifies in writing to have kept this information strictly confidential, since it was disclosed by the other Partner.]

In addition, may not be considered as Confidential Information:

* + any information freely accessible to the public prior to its disclosure or becoming accessible after its disclosure, without any fault on the part of the Receiving Partner, and without breaching any duty of secrecy,
	+ any information that the Receiving Partner legally received from a third party, without breaching any duty of secrecy,
	+ any information developed by or for the Receiving Partner, regardless of any access to Confidential Information,
	+ any information required to be disclosed by law, regulation or court rulings, provided that the Receiving Partner informs the Disclosing Partner, and that measures have been taken to ensure the confidentiality of the information despite its disclosure.
* “Software” means a sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer, together with preparatory design material and any associated documents.
* “Basic Software” means a Software developed by a Partner before the Effective Date and/or developed without the Contribution of the other Parties, during the Project but independently of it,
* “Derivative Software” means a Software developed by a Partner, under this Agreement, from a Basic Software. There are two categories of Derivative Software: Adaptations and Extensions.
* “Adaptation” means a Derivative Software using the same algorithms as the Basic Software from which it is derived and/or rewritten in another language.
* “Extension” means a Derivative Software providing new functions or performance, compared to the Basic Software from which it was derived.

“New software” means a Software developed by one or more Partners under the Project, independently of any Basic Software. When the Software is developed by means of Contributions of two or more Partners, it is referred to as Joint New Software.

* “Necessary” means: (i) to complete the Project, Proprietary Knowledge or Result is Necessary if the efforts conducted by the Partner requesting its access would otherwise be impossible to execute, significantly delayed or would require significant additional financial or human efforts; (ii) regarding non-Project activities, Proprietary Knowledge or Result is Necessary if, without access to it, an industrial or commercial exploitation of, from or concerning the Results would be technically or legally impossible.
* [DEFINITION TO ENSURE COMPATIBILITY WITH ARTICLE 28 d) AND ARTICLE 29: “Research Institution” means an entity, whatever its legal status (body governed by Public or Private Law) and its funding method, whose primary objective is to conduct, independently, fundamental research, industrial research or experimental development, or to widely disseminate the result of such activities through teaching, publications or transfer of knowledge. Enterprises which may significantly influence such an entity, for instance in their capacity as shareholder or partner, may not benefit from privileged access to the results produced.],
* “Partners” means all Consortium participants (legal persons), signatories of the Agreement, Research Institutions or Enterprises, Partners contributing to the Project,
* “Disclosing Partner” means a Partner disclosing Confidential Information to one or more Partner(s),
* “Receiving Partner(s)” means Partner(s) receiving Confidential Information from the Disclosing Partner,
* “Share of the Work” and “Scientific Tasks” means all the tasks incumbent on a Partner to conduct the Project, the division of tasks being detailed in the appendix to this Agreement, entitled “Project Description”,
* “Project” means a collaborative research project or research and development project, as described in the scientific document on the basis of which the Project has been selected for funding by the ANR (and any amendments thereto), included in the appendix to this Agreement, entitled “Project Description”] [Option: and known as [Name to be specified]
* “Intellectual property” means all copyrights, industrial property rights, patents, trademarks, utility model, design or model, new variety certificate, software rights, chips and semiconductors, database producers’ rights, and all other intellectual property rights, including the rights regarding applications for all intellectual property titles,
* [DEFINITION TO ENSURE COMPATIBILITY WITH ARTICLE 28 c): “Principle of Proportionality[[3]](#footnote-4)” means intellectual property rights resulting from the Project, along with related access rights assigned to the different Partners in a way that reflects their respective Contributions].
* [DEFINITION TO ENSURE COMPATIBILITY WITH ARTICLE 28 d) AND ARTICLE 29: “Market Price Rule / Compensation equal to the Market Price[[4]](#footnote-5)”:

The Research Institution must receive a Compensation equal to the market price, for intellectual property rights resulting from its activities, granted to one or more Enterprises taking part in the Project or for which one or more other Enterprises taking part in the Project have an access right. The maximum amount of the compensation value for Enterprises contributing to the costs of the Research Institution’s activities, which generated the relevant intellectual property rights, may be deducted from this compensation.

The fee is equal to the market price when one of the following conditions is met:

* + - the compensation amount was determined through an open, transparent and non-discriminatory tender sales process,
		- an assessment carried out by an independent expert confirms that the amount of the compensation is at least equal to the market price,
		- the Research Institution, as a vendor, can prove that it has effectively negotiated the compensation on an Arm's length principle, to get a maximal economic trade-off at the end of the Agreement, while taking into account its statutory objectives,
		- when the collaboration agreement confers on the Partner Enterprise the right of first refusal with regard to IPR (Intellectual Property Rights) generated by the Research Institution participating in the collaboration Project, if these entities have a reciprocal right to seek more advantageous economical offers from third parties so that the Partner Enterprise adapts its offer accordingly.]
* “Results” means all technical and/or scientific information and knowledge, whether or not protected by intellectual property rights, including expertise, trade secrets, business secrets, data, databases, Software, files, plans, diagrams, drawings, formulas or any other kind of information, in any form whatsoever, along with all resulting rights, developed by one or more Partners under the Project. The Results may be Proprietary or Common. New Software and Joint New Software constitute Results for the purposes of this definition.
* “Proprietary Result” means a Result achieved by a sole Partner, without the Contribution[[5]](#footnote-6) of the other Partners.
* “Common Result” means a Result developed through the Contributions of at least two Partners, under the Project.

# Purpose

 The purpose of this Agreement is to coordinate the relationship between the Partners within the scope of the Project, and in particular to:

* determine their rights and obligations, in accordance with the appendix to the Agreement, entitled “Project Description”,
* determine how to manage and monitor the Results,
* coordinate the governance of the Project,
* determine the rules of ownership, use and exploitation of the Proprietary Knowledge and Results,
* determine the intellectual property rights for each of them.

# Duration

 The Agreement shall come into effect [retroactively] on the Effective Date, subject to signature by all Partners.

However, the aforementioned notwithstanding, the Agreement only comes into effect, as regards the obligations of confidentiality included in Article XXX, on the last date of signature of the Agreement by the Partners.

 [Option 1: The Agreement is entered into for a duration of [To be determined] [..months] OR [..years]. It shall end on that date, unless all or part of the Partners decide to extend the Agreement [for the same duration] OR [for a duration not exceeding [To be determined] [..months]. This extension, if any, shall be subject to an amendment to the Agreement OR [the Agreement shall be automatically extended upon receipt of an authorisation of the Funder, without requiring an amendment signed by the Partners, provided that no other terms and conditions to complete the Project are impacted.] In any case, the duration will cover the start and end dates of the Project; if relevant, in the event of an extension by one or more Funding Institution(s), the Parties shall formalise an amendment to extend the duration of this Agreement.

OR [Option 2: The Agreement is entered into for the entire duration of the Project and shall end when all the Partners - have completed their Share of the Work, in accordance with the appendix to this Agreement, entitled “Project Description”, i.e. this Agreement will come into effect on XX and end on XX (XX-month project). Where applicable, in the event of the Project being extended by Funding Institution(s), the Parties shall formalise an amendment to extend the duration of this Agreement.]

 Notwithstanding the termination of this Agreement, the Partners shall remain bound by the terms of the provisions on “Intellectual Property of the Proprietary Knowledge”, “Intellectual Property of the Results”, “Confidentiality” and “Publications and Communications” for their own remaining term.

# Governance of the consortium

 The governance of the Consortium is centered around:

* a Coordinator,
* a Steering Committee,
* Technical committees.

## The Coordinator

Partner XXX is appointed Coordinator. As of the date of signature of this Agreement, the representative of XXX, appointed to perform this role, is Mr. YYY.

 The Coordinator is responsible for ensuring the scientific and technical coordination of the Project, setting up and formalising the collaboration between the Partners, and for producing some of the documents to be provided by the Project to the Funder(s). Without prejudice to any other obligations towards the ANR which would otherwise fall to the other Partners (also funded by the ANR, by means of a grant attribution) he/she acts as the main interlocutor of the French National Research Agency and the spokesperson for the Project in terms of public communication and the promotion of scientific culture.

 In addition, the Coordinator is responsible for serving as the bridge between the Partners, between them, and between the Partners and the Steering Committee. To this end, the Coordinator:

* is responsible for communication between the Partners, and in particular for exchanging information on Proprietary Knowledge and Results,
* coordinates the efforts of the Partners on a daily basis,
* coordinates the preparation of the deliverables expected by the Funder,
* monitors the progress of the completion of all the Shares of the Work,
* calls in the members of the Steering Committee, drafts, disseminates and keeps record of the minutes and, in general, serves as the Project secretariat,
* keeps the list of Proprietary Knowledge and updates it [upon request of the Partner disclosing new Proprietary Knowledge] OR [by decision of the Steering Committee] and discloses it to the Partners.

 Subject to the prior agreement of the Funder, the Coordinator is also in charge of ensuring that any new Partner joining the Consortium during the term of this Agreement signs an amendment to the Agreement, by which it ratifies the Agreement, pursuant to the provisions of the Article “Admission of a new Partner” in this Agreement.

16. The Coordinator is in charge of:

* informing, in the event of the voluntary withdrawal of a Partner, the Funder and the members of the Steering Committee, as provided for in Article XXX,
* sending a formal notice to that Partner, in the event that one of the Partners fails to fulfil its obligations under this Agreement, by registered letter with acknowledgement of receipt, to do so, in accordance with Article XXX.

Independently of its obligations towards the ANR, the Coordinator may not act outside beyond the scope of its tasks, as defined in this Agreement. Nor is he/she authorised to make any commitment whatsoever, in the name of and on behalf of one or all of the Partners, without their prior authorisation.

## The Steering Committee

### Composition of the Steering committee

 The Steering Committee consists of one (1) representative for each Partner.

 [*Option:* The Partners’ representatives shall be listed in an appendix to the Agreement, entitled “Members of the Steering Committee”. The Steering Committee shall be informed [as soon as possible] **OR** [within 15 days] of any change in the list of representatives, in particular in case of dismissal, transfer or resignation.]

 The Steering Committee shall be presided by [the Coordinator] **OR** by one of the representatives, appointed by a [simple] **OR** [qualified] majority of votes, in accordance with the voting rules set out in this Article.

 Moreover, the Partners agree that, for some technical aspects of the Project, the Steering Committee may call upon experts, particularly in intellectual property (internal or external to the Partners), to attend one or more meetings of the Steering Committee. These experts must first have been approved by the Steering Committee by a [simple] **OR** [qualified] majority of votes, in accordance with the voting rules set out in this Article, and, with the exception of professionals subject to secrecy due to their functions, must have signed a Confidentiality Agreement. They shall play an advisory part.

### Meetings of the Steering committee

 The Steering Committee meets at least once a [..month] OR [..quarter] OR [..semester] OR [..year], upon invitation by the Coordinator.

 Extraordinary meetings of the Steering Committee may be organised by the Coordinator, upon the written request of one or more Partners , especially in case of emergency.

 Except for emergency, the Coordinator shall send the agenda to the members of the Steering Committee at least fifteen (15) days before the meeting.

 Minutes of the Steering Committee meetings shall be drawn by the Coordinator and send to each of the Parties within fifteen (15) days of the date of the meeting.

 The meetings minutes report on the updates of the Results and the Contribution by the Partners. They include a chart identifying the Results with the Results achieved on the day of the meeting, their assessment (patentable or not), their classification (Proprietary Results or Common Results) and the Partner ownership[[6]](#footnote-7).

 Such minutes shall be regarded as approved by the Partners if, no objection or claim has been made in writing to the Coordinator by the Partners, within fifteen (15) days from their reception.

### Rules for decision-making within the Steering Committee

 The Steering Committee is duly convened if three quarters (3/4) of its members are present or represented. If the quorum is not reached at a meeting, the Steering Committee is called upon a second time, within a period which may not exceed [3] weeks from the date of the initial meeting. Following this second notice of meeting, the Steering Committee is duly convened, even if the quorum is not reached.

 Each member of the Steering Committee may receive, for a specific meeting, the power to represent another member, within the limit of one replacement per meeting.

 [Option 1: Each member of the Steering Committee has one vote.]

 Except in cases expressly provided for in the Agreement, in which decisions must be unanimous, the Steering Committee shall decide by a [qualified majority of three quarters (3/4)] OR a [simple majority] of the votes of the members present or represented.

### Role of the Steering committee

 The Steering Committee appoints the directors of the Technical Committees.

 Without prejudice to funding rules and decisions made by the ANR regarding the Project, the Steering Committee makes decisions regarding the overall management of the Project, by:

* deciding on the strategic and scientific orientation of the Project,
* possibly deciding on any changes regarding the financial estimate and/or the timetable, subject to the approval of the Funder; any budget increase, as set out in the appendix to the Agreement, entitled “Budget”, is subject to a unanimous decision of the Steering Committee (a Party may not have an increase in expenditure imposed without its consent),
* deciding on possible adjustments to be made to the Shares of the Work, [Option: even on the discontinuity of all or part of some Shares of the Work if these do not bring the expected technical and/or economic benefits, as defined in the appendix entitled “Project Description”],
* deciding on the progress of the completion of the Shares of the Work,
* approving the deliverables expected by the Funder (scientific reports, DMP, any due diligence statements, etc.),
* deciding on the admission of a new Partner in the Consortium, under the conditions of the Article “Admission of a new Partner”,
* deciding on the withdrawal or exclusion of a Partner, under the conditions of Article “Withdrawal or exclusion of a Partner”,
* controlling the compliance with confidentiality rules as defined in Article “Confidentiality”,
* controlling that the intellectual property rights of each Partner are respected, as defined in Articles “Intellectual property of the Proprietary Knowledge” and “Intellectual Property of the Results”,
* deciding on the principle and content of publications and communications regarding the Project as a whole and/or the Results, under the conditions of Article “Publications and Communications”,
* approving the subcontractors (in compliance with the regulation in effect regarding subcontracting) suggested by the Partners for the completion of technical services inherent to a part of their Shares of the Project, under the conditions of Article “Subcontracting”,
* making proposals and arbitrating the issues on Joint Intellectual property with one or more Partners, in particular regarding the appropriate protection, possible filings (patent, Soleau envelope, APP, etc.), the geographic territory of protection of rights and consequent budgets,
* acting as a mediator, in the event of a breach, by one of the Partners, of its contractual obligations, and shall rule on the consequences of such breach.

##  Technical Committees

 Technical Committees may be established [by technical area] OR [by level in the Project], depending on how the Project is coordinated, as described in the appendix entitled “Project Description”.

### composition of the Technical committees

 Technical Committees consist of a representative for each Partner involved in [technical field] OR [the level of the Project] considered.

 The Chair of each Technical Committee is appointed by the Steering Committee and is in charge of calling upon meetings of the Committee, writing the minutes and disclosing them to the members of the Technical Committee, Steering Committee and Coordinator.

### Meetings of Technical committees

 Each Technical Committee shall meet at least once a [month] **OR** [quarter], as convened by its Chair.

 Extraordinary meetings may be convened by the Chair of a Technical Committee, in cases of emergency, upon written and reasoned request by one or more Partners, members of the Technical Committee involved.

 Except in cases of emergency, the Chair sends the agenda to the members of the Technical Committee at least fifteen (15) days before the meeting.

### Rules for decision-making within Technical Committees

38. Technical Committees are duly convened if three quarters (3/4) of its members are present or represented. If the quorum is not reached at a meeting, the Technical Committee is called upon a second time, within a period which may not exceed [2] weeks from the date of the initial meeting. Following this second notice of meeting, the Technical Committee is duly convened, even if the quorum is not reached.

39. Each member of the Technical Committee may receive, for a specific meeting, the power to represent another member, within the limit of one replacement per meeting.

40. Each member of the Technical Committee member has one vote.

41. Decisions are taken by simple majority.

### Role of Technical committees

42. Without prejudice to possible financing rules and decisions made by the ANR or any other Funding Institutions in effect (in the context of financing all or part of the Project through public funds), Technical Committees are in charge of:

* monitoring the implementation of each Partner’s Share of the Work,
* submitting proposals to adjust the Project to the Steering Committee,
* implementing the scientific guidelines decided by the Steering Committee,
* informing the Coordinator and the Steering Committee of the failure of one of the Partners to conduct its Share of the Work.

# Commitments of the partners

## Obligations of the Partners towards the Coordinator

Independently of its own possible obligations towards the ANR, each Party certifies to the Coordinator that it shall:

* provide the elements necessary for the Coordinator to respond to any request made by the ANR,
* update the Coordinator on the progress of the efforts and the Results achieved, at appropriate intervals to be defined by mutual agreement within the Steering Committee,
* send interim minutes intended for the ANR to the Coordinator , along with the elements necessary to establish a single final report,
* inform the Coordinator, without delay, of any difficulty that may compromise the normal execution of the Project.

## Technical commitments

43. Partners agree to complete their Share of the Work, as set out in the appendix entitled “Project Description”. Their Share of the Work may be altered during the course of the Project by unanimous decision of the Steering Committee, without prejudice to their obligations to the Funder.

44. Moreover, the Partners agree to establish a traceability of their efforts and achievements under the Project, in accordance with the appendix entitled “Project Description”.

45. In general, the Partners agree to use all necessary means to conduct their Share of the Work within the time limits set.

## Other commitments

46. Each Partner declares that it owns all the rights required for its Proprietary Knowledges, to be able to disclose and license them to the other Partners, subject to the rights of third parties.

47. While conducting its Share of the Work, each Partner agrees to respect the rights of third parties, in particular intellectual property rights.

48. In this respect, each Partner is personally responsible for the rights that employees or third parties may claim on the Results it owns or jointly owns. It commits to get the authorisations or transfers of rights necessary for to the exploitation of the aforementioned Results.

49. Each Partner also agrees to comply with public policy provisions of the French Intellectual Property Code regarding moral, personal and property rights of authors and inventors, and in particular those regarding the right to a name and right of compensation.

50. In addition, assuming that the Partner is experiencing a change in control, within the meaning of Article L.233-3 of the French Commercial Code, the latter must inform the other Parties within 30 days of the effective nature of this change in control, in addition to, where applicable, its Funding Institution.

51. Overall, each Partner agrees to comply with the regulation in effect, within the framework of its activities and research efforts (if need be, the Nagoya protocol, cohort authorisations, personal data, labour law and right to social security, work and facility safety, etc.) and good practices applicable in sciences.

## Financial commitments

52. [REGULAR OPTION: [Regardless of possible support through public funds, each Partner must bear its own costs regarding the Project.

53. Each Partner agrees to invest and commit to the Project the financial resources set out in appendices “Project Description” and “Budget”.]]

# Responsibility

54. Each Partner is solely responsible for its own Share of the Work and shall bear all consequences thereof.

55. However, by a mutual agreement, the Partners agree that they may be liable to the other Partners, for the consequences of direct damages, with the exception of compensation for indirect damages. In this context, the Partners agree that indirect damages include loss of profits, turnover, margins, earnings, orders, clients, exploitation, business operations, or damage to the brand image or actions of third parties.

56. Each Partner shall remain liable for the damages it caused to third parties.

Each Party shall be liable, under the conditions of Common Law, for direct damages of any kind caused by its personnel to the one of any other Party, and for direct damages caused to movable or immovable property belonging to any other Party.

# Force majeure

No Partner may be held responsible for the total or partial non-performance of its obligations due to *force majeure*.

57. To start with, cases of *force majeure* shall suspend the execution of this Agreement.

58. If the case of *force majeure* last longer than two months, this Agreement may be terminated in writing by any Party not directly impacted, without liability.

59. Expressly, cases considered as *force majeure* meet the definition of Article 1218 of the French Civil Code, along with those usually retained by the decisions of French Courts and Tribunals.

# Changes within the Consortium

## Admission of a new partner

60. The admission of a new Partner into the Consortium is subject to the unanimous agreement of the members of the Steering Committee members and the Funder. It shall come into effect the day the new Partner and all the Partners sign an amendment to ratify this Agreement. This amendment will be appended to the Agreement.

61. From that date, the new Partner shall be bound [*Option 1:* by all the terms of the Agreement] **OR** [*Option 2:* by the requirements set in the amendment of the Agreement which he will have signed in order to join the Consortium which shall in any event comply with:

[Continuation of option 2 COMPLIANT WITH ARTICLE 28 b): “The principle that Results not producing intellectual property rights or secret expertise may be widely disclosed, and all intellectual property rights resulting from the activities of the Research Institution are attributed in full to these entities”.]

[Continuation of option 2 COMPLIAN WITH ARTICLE 28 c) and ARTICLE 28 d): “The Principle of Proportionality and Market Price Rule”].

62. The Share of the Work of the new Partner will be described in a new appendix to the Agreement.

63. [Option 1: The new Partner, like other Partners, shall benefit from the rights defined in this Agreement.]

**OR** [*Option 2:* The rights of the new Partner shall be different, according to the level of the Project when it joins the Consortium. Its rights shall be defined in the amendment of the Agreement it signed to join the Consortium,], which will respect

[Continuation of option 2 IN ACCORDANCE WITH ARTICLE 28 b): “The principle that Results not producing intellectual property rights or secret expertise may be widely disclosed, and all intellectual property rights resulting from the activities of the Research Institution are attributed in full to these entities”.]

 [Continuation of option 2 COMPLIANT WITH ARTICLE 28 c) and ARTICLE 28 d): “The Principle of Proportionality and Market Price Rule”].

## Withdrawal and expulsion of a partner

### Withdrawal of a partner

64. Any Partner may decide to terminate its involvement with the Consortium, provided that it notifies beforehand its decision to the Coordinator by means of a registered letter with acknowledgement of receipt, indicating the reasons of his withdrawal.

65. Within two months following the mailing of this letter, the Steering Committee shall call in a meeting in order to acknowledge the withdrawal and determine the consequences for the continuation of the Project, by suggesting a possible new coordination (for instance, proposal of remaining Part of Works resumption).

66. In case of the withdrawal of a Partner, the fulfilment of its Share of the Work may, by decision of the other Partners taken within the Steering Committee, be conducted by one or more other Partner(s) or by a new Partner identified by the Steering Committee. The withdrawal of the Partner and the terms to re-coordinate the Project shall be formalised by the signature of an amendment.

67. The withdrawing Partner agrees to freely provide, free of charge, to the other Partners or the substituted third party, all the information necessary to continue its Efforts on their behalf .

68. Exercising this right of termination does not exempt the withdrawing Partner from fulfilling its contractual obligations until the effective date of termination set out in the aforementioned amendment.

69. Changes are presented to the Funder(s), at the initiative of the Coordinator or the Partners, as these changes may imply implementing procedures or decisions by the implementation of procedures or decisions on their side.

### Exclusion of a partner

70.Without prejudice to any regulation in effect, with regard to a partial or entire funding of the Project by the Funder, in the event of a sufficiently serious default by one of the Partners to fulfil its contractual obligations , and, in particular, in conducting its Share of the work, the Coordinator shall send a formal notice to fulfil its obligations, by registered letter with acknowledgment of receipt. If the Partner fails to remedy his non-performance within thirty (30) days as of the date the formal notice was received, the Partner shall be regarded as defaulting.

71. From this date, its rights will be suspended and it shall no longer be disclosed Confidential Information. Moreover, within the limits provided for in Article “Responsibility”, it may be held liable for the damages suffered by the other Partners.

72. The Steering Committee shall meet within thirty (30) days to determine the consequences of the Partner being at fault. The Steering Committee may decide, by means of unanimous decision, to exclude the defaulting Partner, in which case the defaulting Partner shall not take part in the vote. This exclusion shall be formalised by the Coordinator sending a notification to the defaulting Partner.

In the event of the Coordinating Partner being at fault, non-defaulting Partners shall suggest a reorganisation of the consortium, and, in agreement with the Funder, shall appoint a Partner, either one of the non-defaulting Partners or a new Partner, to take over the tasks of the Coordinating Partner until the end of the Project.

In addition, assuming that the Partner is experiencing a change in control, within the meaning of Article L. 233-3 of the French Commercial Code, the Steering Committee may intervene or be referred to by one or more Partners (regardless of any regulation and obligations applicable with regard to funding agencies) to decide whether to allow a Partner experiencing a change in control to remain as a member of the Consortium. The Steering Committee shall decide unanimously, in which case the Partner involved shall not take part in the vote.

### Rights of the Withdrawing Partner

[OPTION COMPATIBLE WITH ARTICLE 28 c) and ARTICLE 28 d) (to be adjusted according to the options selected for Articles 10 and 11):

73. The Withdrawing Partner shall retain its ownership rights on the Results it has developed. Upon becoming its sole owner, the Partner may continue to exploit them as it sees fit. Upon becoming a joint owner with other Partners, the Partner may continue to exploit them in compliance with the joint ownership agreements entered into, which shall respect the Principle of Proportionality and the Market Price Rule.

74. [optional follow-up compatible with Article 28 c) and d): The Withdrawing Partner shall retain the right to continue to exploit [Proprietary Knowledge] and [Results] belonging to another Partner, in accordance with the terms and for the term of the licenses granted, pursuant to the Agreement, if using [this Proprietary Knowledge] [and] [these Results] is strictly Necessary for the industrial [and/or] commercial exploitation of the Results it owns or jointly owns. Licenses under this Agreement are granted for a Compensation equal to the Market Price]].

75. [optional follow-up compatible with Article 28 c) and d): The Withdrawing Partner shall retain the right to continue to use Proprietary Knowledge and Results, that he was granted by means of a license for a Compensation equal to the Market Price, from other Partners, for its own research needs and within the framework of research collaborations with third parties, without any use, direct and/or indirect, or any industrial and/or commercial exploitation.]

### Obligations of the Withdrawing Partner

[OPTION COMPATIBLE WITH ARTICLE 28 c) and ARTICLE 28d)(to be adjusted according to the options selected for Articles 10 and 11):

76. The rights granted by the Withdrawing Partner to the other Partners, prior to its exit from the Consortium, on its Proprietary Knowledge and/or its Results, in performance of this Agreement shall remain in force until initial licenses expire.

77. The Withdrawing Partner shall be required to return or destroy any Confidential Information provided by another Partner, at the request of the Disclosing Partner.

78. The Withdrawing Partner shall remain bound by its commitment to confidentiality with respect to Confidential Information, as set out in Article “Confidentiality”, as long as such requirements remain in effect.

# Intellectual property of the Proprietary Knowledge

## Ownership of Proprietary Knowledge

79. Each Partner is and remains the owner of its Proprietary Knowledge, listed in the appendix entitled “Proprietary Knowledge”[[7]](#footnote-8).

80. Any disclosure of Proprietary Knowledge to other Partner shall only be interpreted as a transfer of ownership.

## Protection of Proprietary Knowledge

81. Each Partner is free to protect its Proprietary Knowledge. In particular, it shall decide on its own whether or not to protect its Proprietary Knowledge and, if relevant, what protection is appropriate.

82. Whatever the circumstances, each Partner agrees to keep a record of its Proprietary Knowledge, by means of deposits or procedures of its own choosing, both in date and content.

## Use and exploitation of the Proprietary Knowledge

[TO BE INCLUDED IN ORDER TO BE COMPATIBLE WITH ARTICLE 28c AND ARTICLE 28d]

83. Each Partner shall exploit freely, directly or indirectly, its Proprietary Knowledge, subject to the following rights granted to other Partners.

84. Each Partner grants each of the other Partners, upon request, [without financial contribution] OR [for a Compensation equal to the Market Price], a user license to enjoy its Proprietary Knowledge when the requesting Partner deems such knowledge Necessary to conduct its Share of the work within the scope of the Project.

85. This license is non-transferable, non-exclusive, and granted for the term of the Agreement.

86. [Option: When the Proprietary Knowledge is a software, and unless otherwise provided in a License Agreement between the Parties involved, the Receiving Partner may only exploit them on its own equipment and is only authorized to reproduce them strictly for loading, displaying, executing, transferring, and storing this software solely for the purposes of conducting its Share of the work by the aforementioned Partner, along with making a back-up copy.

87. The Receiving Partner shall refrain from any other act of use of this software and, in particular, any loan or disclosure to third parties (unless these acts are required for the execution of the Project, and after being granted a prior written authorisation by the Holding Partner, e.g., making the software available to a subcontractor) and any exploitation. Thus, the right of use conferred does not entail the access to the source codes of the software unless prior authorisation is given by the Partner holding the rights of the aforementioned software. Furthermore, the Receiving Partner shall refrain from any act of decompilation or reverse engineering of the aforementioned software].

88. [Option: In addition, each Partner grants, upon request from any Partner and for a Compensation equal to the Market Price, a user license to enjoy its Proprietary Knowledge, if the use of the Proprietary Knowledge is deemed strictly Necessary by the Licensed Partner owning or jointly owning the Results.

89. The license shall be non-transferable and non-exclusive.

90. It shall be subject to the signature of a prior written Agreement between the Parties involved specifying the rights granted, the scope, destination, location, period of validity of the license, and financial terms. It is agreed that the license shall refer to and apply the Market Price Rule.

91. It is already agreed that when the license focuses on a software, it shall be limited to its source code.

92. It is also hereby agreed that the Licensed Partner shall be responsible for completing all formalities that may be required to enforce the license against third parties.

93. [OPTIONAL FOLLOW-UP COMPATIBLE WITH ARTICLE 28 c) and ARTICLE 28 d): [Each Partner, upon request and for a Compensation equal to the Market Price, may be granted a right to use the Proprietary Knowledge of other Partners, for internal research purposes and as part of research collaborations with third parties, without any use, direct or indirect, or for industrial and/or commercial exploitation. The request must be made during the term of this Agreement or within twelve (12) months of its expiry at the latest. This user license shall be subject to the signature of a prior written agreement between the Partners involved, the rights granted, the scope, destination, location, period of validity of the license, and financial terms. It is agreed that the license shall refer to and apply the Market Price Rule.]

OR

94. [Each Research Institution, may be granted upon request and without financial contribution, a right to use the Proprietary Knowledge of other Research Institutions for internal research purposes and as part of research collaborations with third parties, without any use, direct and/or indirect, or for industrial and/or commercial exploitation. The request must be made during the term of this Agreement or within twelve (12) months of its expiry at the latest. This user license shall be subject to the signature of a prior written agreement between the Partners involved, specifying the rights granted, the scope, location and period of validity of the license.]

# Intellectual property of the results

## Ownership of the results

[TO BE INCLUDED IN ORDER TO BE COMPATIBLE WITH ARTICLE 28c AND ARTICLE 28d]

### Ownership of Proprietary Results

95. Proprietary Results are owned by the Partner who created them alone[[8]](#footnote-9).

### Ownership of Common Results (excluding Software)

96. Common Results are jointly owned by the Partners in charge of their development, hereinafter referred to as “Joint-Owning Parties”, proportionally to their respective contributions[[9]](#footnote-10), unless the aforementioned Partners formally agree on a different distribution.

97. In the event of a different contractual distribution, the Market Price Rule shall apply[[10]](#footnote-11).

### Ownership of Patentable Common Results

98. Subject to the provisions hereinabove, Joint-Owning Partners of Patentable Common Results shall decide whether these Results may be subject to patent applications filed in their joint names and shall appoint among them a person who will be responsible for completing all submission and maintenance procedures (hereinafter referred to as “IP Manager”).

99. The expenses involved in filing, obtaining, and maintaining new, co-owned patents will be paid by the Joint-Owning Partners according to their Joint-Owning shares as defined hereinabove.

However, the aforementioned notwithstanding, the expenses involved in filing, obtaining, and maintaining new, co-owned patents shall be paid by the Enterprises when they are co-owners with a Research Institution.

100. If one of the Joint-Owning Partners waives the right to file, continue the grant procedure or maintain one or more new patents in France or abroad, it shall inform the other Joint-Owning Partners in due time so that they may file, continue the grant procedure or maintain the aforementioned new patents at their own expense and on their own behalf. The Partner who has withdrawn agrees to sign or submit for signature all the documents required to allow other Joint-Owning Partners to become the only joint owners of the new patent(s) for the country or countries involved.

101. A Joint-Owning Partner shall be deemed to have abandoned its rights on a new patent sixty (60) days after having received a registered letter with acknowledgement of receipt, addressed by the Joint-Owning Partner in charge of completing the filing and maintenance formalities for the patents, as listed in accordance with the first paragraph of this Article requesting that it make its decision on this matter known,

102. Each Joint-Owning Partner is responsible for the potential remuneration of its inventors.

103. In addition, the Partners agree that:

* the names of the inventors shall be cited in patent applications, unless they object in writing, pursuant to applicable legal provisions,
* they shall ensure that their respective personnel, cited as inventors, will provide all signatures and complete all formalities necessary to file, maintain and defend the patents submitted by the Partners.

104. In all circumstances, the Partner transferring or waiving its rights shall receive a compensation proportional to a Compensation equal to the Market Price[[11]](#footnote-12).

### Software ownership

105. The Basic software remains the property of the Partner responsible for its development.

106. Under this Agreement, any Adaptations, whoever the author, are the property of the Partner that owns the Basic software.

107. If the Adaptations give rise to a copyright for the Partner responsible for its development, it shall be entitled to a Compensation equal to the Market Price for the transfer from the Partner that owns the Basic software.

108. Without prejudice to previous provisions, any Extensions developed by each Partner, under this Agreement, remain the sole property of that Partner. Extensions developed jointly by two or more Partners are owned jointly by these Partners, in proportion to their Contributions, regardless of which Partner owns the Basic software to which these Extensions were derived.

109. New Software being developed within the framework of this Agreement is the property of that Party. New Joint Software is owned jointly by the Partners responsible for their procurement, in proportion to their Contributions.

Joint-Owning Parties shall take all contractual provisions (e.g., transferring Joint-Owning shares) required to comply with the balance provided for in this Article, in compliance with the Principle of Proportionality.

110. The Partners shall refrain from incorporating Free or Open-Source Software to the Project without the prior written and unanimous authorisation of the Partners.

111. In addition, the Partners shall refrain from using Free Open-Source Software within the scope of conducting their Part of the work or in any other way whatsoever, with regard to the execution of this Agreement if such use would undermine the rights of the Partners on the Project Results.

112. The use and/or integration of Free or Open-Source Software, as part of the Project, shall be decided during a meeting of the Steering Committee.

113. Out of principle, it is agreed between the Parties that each shall abstain from using an Open-Source Software benefiting from a contaminating Open-Source License[[12]](#footnote-13).

## Protection of the results

114. The Partners agree to ensure the traceability of their Proprietary Results, by implementing one or more measures specified in the technical specifications attached to the “Project Description”. The Partners involved, the Coordinator and the Technical Committee ensure the successful execution of these traceability requirements.

115. The decisions regarding the traceability of Common Results are made by the Steering Committee and executed by the Coordinator.

116. When a Result is the property of a sole Partner, the latter alone ensures its protection and shall decide alone which means of protection are appropriate.

117. When a Result is jointly owned by several Partners, the decisions regarding its protection shall be made by the Joint-Owning Partners in accordance with the joint ownership agreement entered into, subject to provisions regarding Joint Patentable Results set out above.

In the event that at least two (2) Joint-Owning Partners of a Joint Result are legal persons with a research mission, and pursuant to the provisions of Decree No. 2020-24 of January 13, 2020, relating to the management of joint ownership of research results, the method of appointment and the missions of the sole agent, provided for in Article L. 533-1 of the French Research Code, these Partners shall appoint , among themselves, a sole representative (hereinafter referred to as the “Sole Representative”) for each Joint Result at hand. The Sole Representative will act as a spokesperson for the IP Manager, if he and the Sole Representative are two separate Parties.

The expenses involved in filing, obtaining, and maintaining new patents owned jointly between legal persons for each Partner invested with a research mission, shall be paid by the Sole Representative subject to Agreements entered into between them.

## Use and exploitation of the results

[OPTION 3 COMPATIBLE WITH ARTICLE 28 c) AND ARTICLE 28 d):

### Use and exploitation of the results by the (JOINT)-owning Partner(s)

118. The Partner who owns a Proprietary Result shall use and/or exploit it freely, directly or indirectly, subject to the rights granted by the Agreement and the other Partners.

119. The Partners jointly owning a Common Result shall exploit it, pursuant to the terms of the Joint Ownership Agreement entered into. It is agreed that this Joint Ownership Agreement shall respect and refer to the Principle of Proportionality and the Market Price Rule[[13]](#footnote-14).

120. It is already agreed between the Parties that any direct and/or indirect exploitation by a Partner jointly owning Common Results shall imply a Compensation equal to the Market Price in favour of other Joint-Owning Partners[[14]](#footnote-15).

### Use and exploitation of the results (proprietary or common) by Non-owning Partners

121. [Each Owning Partner grants each of the other Partners, [without financial compensation] OR [for a Compensation equal to the Market Price], a user license to enjoy a user license to enjoy its Results when the requesting Partner deems such results Necessary to conduct its Share of the work within the scope of the Project.

This license is non-transferable, non-exclusive, and granted for the term of the Agreement].

122. [Option: In addition, throughout the term of this Agreement and for XXX months after is expiry, Each Partner shall grant an operating license, upon request from any Partner, to enjoy these Results if they are Necessary, by the licensed Partner owning or jointly owning the Results, without financial contribution, This license is non-transferable, non-exclusive, and granted for a Compensation equal to the Market Price[[15]](#footnote-16). In the absence of a request made within the aforementioned period, the Partner(s) granting the right of use shall once again be free to exploit or entrust the exploitation of its(their) Results, including by means of an exclusive license.]

123. [Option: [Each Partner may be granted, upon request and for a Compensation equal to the Market Price, the right to use Proprietary and/or Common Results from other Partners for its internal research needs and within the framework of research collaborations with third parties, without any use, direct and/or indirect, or for industrial and/or commercial exploitation. The request must be made throughout the term of this Agreement or for X months of its expiry at the latest. This user license shall be subject to the signature of a prior written agreement between the Partners involved, specifying the rights granted, the scope, location and period of validity of the license. It is understood that the license shall refer to and apply the Market Price Rule. In the absence of a request made within the aforementioned period, the Partner(s) granting the right of use shall once again be free to exploit or entrust the exploitation of its(their) Results, including by means of an exclusive license.]OR

Each Research Institution may use, upon request and without financial compensation, Proprietary and/or Common Results belonging to other Research organisations for internal research purposes and as part of partnerships with third parties, without any use, direct and/or indirect, for industrial and/or commercial purposes.] OR

[Each Partner may use freely and without charge, upon request, Proprietary and/or Common Results belonging to the other Partners for its own internal research needs and as part of research collaborations with third parties, without any use, direct and/or indirect, for industrial and/or commercial purposes. Access to Proprietary and/or Common Results shall take place according to the terms and conditions specified in a prior written agreement signed between the Partner wishing to use Proprietary and/or Joint Results and the Partners owning the aforementioned Results.]

If the Results consist of Software, their submission is subject to a written agreement between the Parties concerned, specifying the terms and conditions of use, being understood that the rights of use thus conferred do not entail the access to the source codes, unless prior authorisation is given by the Owning/Joint-Owning Partner.

### Use and exploitation of derivative software

124. The use and exploitation of Software constituting Adaptations shall be governed by the provisions applicable to the Proprietary Knowledge of the Partners.

125. Without prejudice to the provisions in Article 11 of this Agreement, the industrial and/or commercial exploitation of a software constituting an Extension, by the Partner(s) owning the rights to the aforementioned Extension, shall be subject to prior agreement from the Partner owning the rights of the Basic Software from which the Extension is derived.

126. The Partners involved shall specify the terms and conditions of such an exploitation, within the framework of a Valuation Agreement negotiated before any industrial and/or commercial exploitation. The Partners agree to ensure that the Valuation Agreement complies with the Principle of Proportionality and the Market Price Rule.[[16]](#footnote-17)

# Confidentiality

127. The Partners commit to fulfil and ensure the fulfilment of strict confidentiality with regard to Confidential Information, and to take all measures necessary to protect its confidentiality, in particular with regard to their permanent or temporary personnel and subcontractors who may have knowledge of such Confidential Information.

128. For this purpose, the Partners agree:

* to ensure that the Confidential information will be protected and kept strictly confidential,
* to ensure that the Confidential Information received will be processed with the same degree of care and protection as that afforded to their own Confidential Information,
* not to use Confidential Information for any purpose other than the execution of the Project, unless prior written agreement of the Holding Partner(s),
* to disclose Confidential Information only to members of their personnel involved in the execution of the Project,
* to disclose Confidential Information to third parties involved in the execution of the Project, in particular to subcontractors, without the prior written agreement of the Partner,
* to take all necessary steps to ensure that all members of their personnel and all third parties involved in the execution of the Project, who will be provided with Confidential Information, agree, [Option: by a separate document, prior to any disclosure], to process the Information with the same degree of confidentiality as that resulting from this Agreement,
* to inform members of their personnel and all third parties involved in the execution of the Project of the confidential nature of the Confidential Information as soon as it is disclosed,
* to recall the confidential nature of the Confidential Information before any meeting where Confidential Information shall be disclosed,
* to maintain the copyright, confidentiality, no-copying or other proprietary or confidentiality notices appearing on the different elements disclosed, whether they are originals or copies.

129. Furthermore, the Partners abstain from:

* any disclosure whatsoever of the Confidential Information to any third party whatsoever, without prior written agreement of the Holding Partner(s),
* filing, on their own behalf, a patent application regarding Confidential Information they do not own, and more generally any industrial property title whatsoever,
* copying, reproducing or duplicating all or part of the Confidential Information, unless prior written agreement of the Holding Partner(s),
* taking action, due to the disclosure of Confidential Information, any transfer, licensing or prior right of possession, as defined by the French Intellectual Property Code, over Confidential Information.

[OPTIONAL FOLLOW-UP TO ENSURE COMPATIBILITY WITH ARTICLE 28b)[[17]](#footnote-18):

The Partners acknowledge and agree that the Results not producing any intellectual property rights or secret expertise, regardless of which Partner developed them, shall be intended to be widely disseminated and shall not constitute Confidential Information, provided that such elements have been considered as such by the Parties within governance bodies set up under this Agreement.]

130. The Partners agree to ensure the compliance with these commitments by any person, natural or legal, to whom they have disclosed the Confidential Information.

131. The Partners acknowledge that all Confidential Information, without exceptions, shall remain secret as defined by Article 226-13 of the French Criminal Code, which sentences to one (1) year of imprisonment and a fine of 15,000 euros anyone who discloses secret information.

132. [Option 1: These confidentiality commitments shall be binding on the Partners for the term of this Agreement and for as long as these requirements remain in effect.]

OR [Option 2: These confidentiality commitments shall be binding on the Partners for the term of this Contract and for a duration of [To be determined] [months] OR [years] after its termination.]

133. [depending on the selection for this option: To ensure the traceability of the Confidential Information traded, the list of Confidential Information attached to this Agreement will be updated by the Coordinator each time Confidential Information is disclosed to a Partner. The list shall include, in particular, Holding Partner(s), Receiving Partner(s), the date and purpose of the disclosure of the Confidential Information.]50. The Steering Committee and the Technical Committee shall ensure that these confidentiality commitments are respected. Any breach by a Partner may lead, to the initiation of an investigation, at the initiative of one or more Partner(s), and may constitute grounds for the exclusion of this Partner, pursuant to the provisions in Article “Excluding a Partner”. In all circumstances, as a precautionary measure, the Defaulting Partner will no longer receive any Confidential Information from the time its breach is observed, and until a decision has been made on the matter.]

134. The Holding Partner may require, at any time, the Receiving Partner to return or destroy, without delay, all or part of the Confidential Information disclosed.

135. The same shall apply, even at the end of the Agreement, including in the event that a Partner withdraws or is excluded from the Consortium.

136. These confidentiality commitments replace the confidentiality commitments that the Partners may have had to take mutually, regarding the Project, before signing the Agreement.

# Publications and communications

137. [REGULAR OPTION: [The Partners agree that any publication or communication regarding the Project must respect the requirements of confidentiality and the intellectual property rights of the Partners.

138. With that provision, each Partner is free to make any publication or communication it sees fit on its Proprietary Knowledge and Results.

139. Any draft publication or communication drawn up by a Partner, regarding all or part of the Project and/or the Results of which the interested Partner is not the sole owner, must be submitted for prior authorisation of the Steering Committee.

140. To this end, the draft publication or communication, or a summary thereof, must be sent to the members of the Steering Committee by registered letter with acknowledgement of receipt or by e-mail with acknowledgement of receipt. From the date of receipt of the aforementioned draft, the Steering Committee must reach a decision within [To be determined] months; in the absence of a response within this period, the draft publication or communication shall be regarded as approved.

141. The Steering Committee may ask, within the time allowed, the interested Partner:

* to make changes to its project if some information is likely to compromise the commercial and industrial exploitation of the Results, provided that these changes do not alter the scientific value of the project,
* to make changes to its project if it includes Confidential Information from one of the Parties,
* to postpone the planned publication or communication for a period to be specified, in particular if the publication or communication is related to Results that are subject to intellectual property protection.

142. However, the prior authorisation of the Steering Committee shall not prevent:

* the usual rules to defend a thesis, provided that the examiners are subject to confidentiality requirements,
* the obligation that a Partner may have to submit an annual report to the French State or to the administration it belongs to or to which it has obligations (e.g., funding institution), as this is not public disclosure.

143. These commitments shall be binding on the Partners for the term of this Agreement, and for a period of [To be determined] [months] OR [years] after it ends.]

144. The Partners agree and acknowledge that the Results generating intellectual property rights, and/or involving secret expertise, must be disseminated in compliance with confidentiality requirements and intellectual property rights belonging to the Partners, according to the aforementioned procedure involving the Steering Committee.

145. By contrast, the partners agree not to hinder or stand in the way of a publication or communication regarding Results that do not generate intellectual property rights and/or do not involve secret expertise.

146. Any draft publication or communication drawn up by a Partner, regarding all or part of the Project of which the interested Partner is not the sole owner, must be submitted to the Steering Committee for prior authorisation.

147. To this end, the draft publication or communication, or a summary thereof, must be sent to the members of the Steering Committee by registered letter with acknowledgement of receipt. From that date, the Steering Committee must reach a decision within [To be determined] months; in the absence of a response within this period, the project for publication or communication will be considered as accepted.

148. The Steering Committee may ask, within the time allowed, the interested Partner:

* to make changes to its project if some information is likely to compromise the commercial and industrial exploitation of the Results, provided that these changes do not alter the scientific value of the project,
* to postpone the planned publication or communication for a period to be specified, in particular if the publication or communication is related to Results that are subject to intellectual property protection.

149. However, the prior authorisation of the Steering Committee shall not prevent:

* the usual rules to defend a thesis, provided that the examiners are subject to confidentiality requirements,
* the obligation that a Partner may have to submit an annual report to the French State or to the administration it belongs to, as this is internal communication and not public disclosure.

150. These commitments shall be binding on the Partners for the term of this Agreement, and for a period of [To be determined] [months] OR [years] after it ends.]

# Intuitu personae

151. The Agreement is entered into on an *intuitu personae* basis, out of consideration for the person of the Partners.

152. No Partner shall transfer or assign all or part of its rights and obligations to a third party, pursuant to this Agreement, without the prior authorisation of the Steering Committee, who decides unanimously on the matter, with the interested Partner not taking part in the vote.

153. However, in the event where the transfer or assignment should be made as part of a universal transfer of assets, the approval of the Steering Committee may not be unreasonably withheld. In such a case, only the competition made by the new Partner will be able to justify the refusal of a transfer or assignment, or yet for another reason not depending on the Partners but another organisation or administration, such as a funding institution or a regulatory authority.

154. From the transfer or assignment, the new Partner will be assigned the rights and obligations of the assigning Partner.

155. It is also recalled here that the change of control is governed by the provisions of this Agreement.

# Subcontracting

156. Each Partner may call upon one or more subcontractor(s) to conduct the technical parts of its Contributions to the Project.

157. However, the subcontracting project must be subject to the prior authorisation of the Steering Committee, which must approve the subcontractor itself. The subcontractors presented in the detailed proposal submitted to the ANR shall be regarded as approved by the Parties. Without prejudice to the regulation in effect regarding subcontracting or any constraints imposed by funding institutions, the subcontract shall be regarded as valid if it is subject to the prior signature of a non-disclosure agreement between the interested Partner and the subcontractor, and if it includes a provision by which the subcontractor waives all intellectual property rights on the services provided within the framework of the Project.

158. The interested Partner shall not take part in the Steering Committee vote.

# Ensuring quiet use and enjoyment

159. Each Partner shall secure the other Partners against any action for infringement brought against them, as a result of the Proprietary Knowledge or Results of which it is the owner.

160. In connection therewith, each Partner agrees to intervene in any action for copyright, patent, trademark, design and model infringement brought against another Partner, resulting from Proprietary Knowledge or Results he owns, provided that:

* the Partner has used Proprietary Knowledge and Results in accordance with this Agreement,
* the Partner being sued for infringement notifies, promptly and in writing, the action for infringement or the declaration preceding it,
* that is it put in a position, by the Partner sued for infringement, to ensure the defence of its own interests and those of the Partner sued for infringement and, to this end, that the aforementioned Partner fairly collaborates with the defence by providing all elements, information and assistance necessary for the successful completion of this defence.

161. Each Partner agrees to bear the cost, within the limits of the stipulations of this Agreement, any damages that another Partner may be ordered to pay, under the infringement and due to the Proprietary Knowledge or Results of which it is the owner.

# Compliance with social obligations

162. The Partners certify and hereby declare on their honour that they are employing personnel for whom they are complying with all legal and regulatory obligations incumbent on them in their capacity as employer, in particular as regards pre-recruitment declarations, working hours, compliance with legal provisions on rest periods and provisions regarding working conditions, hygiene and safety.

163. Consequently, each Partner ensures the other Partners against any action arising from a third party and/or an administration, resulting from the non-compliance with the obligations mentioned above.

# Termination

164. Without prejudice to the provisions of this Agreement regarding the withdrawal or exclusion of a Partner, the Agreement may be terminated as a whole, for whatever reason, by a decision from the Steering Committee taken [unanimously] OR [by a qualified majority].

165. In the event of a breach by one of the Partners of its obligations regarding this Agreement which is not remedied within thirty (30) days from receipt of a registered letter with acknowledgement of receipt notifying the breach in question and referring to this defeasance clause, the other Partners may terminate this Agreement *ipso jure*, within the framework of the Steering Committee, without prejudice to any damages to which they may be entitled under the terms of this Agreement.

# General provisions

## Entire agreement

166. This Agreement expresses the full obligations of the Partners.

## Nullity

167. If one or more provisions of this Agreement are held to be invalid or declared contrary to law in effect, a regulation or following a final decision of a competent court, the other provisions shall retain their force and scope.

## Titles

168. In the event of difficulty of interpretation between any of the titles appearing at the beginning of each provision, and for any provision whatsoever, the provisions shall prevail.

## Accuracy

169. The Partners declare that the present commitments are sincere.

170. In connection therewith, they declare that they are not aware of any element which, if disclosed, would have changed the consent of the other Partners.

## Independence of the Partners

171. Each Partners is independent and acts in his own name and under its sole responsibility. Thus, each Partner refrains from making financial engagements in the name and on behalf of another, and remains fully responsible for its personnel, services and products.

## Non-solicitation of the personnel

172. The Partners agree not to poach or hire the personnel of another Partner for the term of this Agreement, and for a period of [two] OR [other] years from the end of this Agreement, unless express agreement from the Partner involved.

## Full performance

173. The Partners agree to perform their obligations in good faith.

## Tolerance

174. The Partners mutually agree that the fact that one of them tolerates a situation would not have the effect of granting the others acquired rights. Such tolerance shall not be construed as a waiver of the rights in question.

## Applicable law

175. This Agreement is governed by French Law. This applies to both rules of substance and formal rules.

## Resolution of conflicts

176. The Partners shall conduct themselves in such a way as to make an amicable settlement of any dispute that may arise from the interpretation or execution of this Agreement, in particular by means of the Steering Committee.

177. In the event of a disagreement persisting beyond a period of XXX from the date of occurrence, the dispute will be settled, as a last resort, by the competent French Courts.

## Physical address

178. The Partners shall take up residence at their registered offices.

## Notification

179. To be valid, all notifications must be made to the registered physical address.

# Appendices

Appendix 1: Project Description (scientific documents such as selected for funding by the ANR)

Appendix 2: Proprietary Knowledge

[Option: Appendix 3: Confidential Information]

Appendix 4: Budget

[Option: Appendix 4: Members of the Steering Committee]

# Signature

|  |  |
| --- | --- |
| For  | For  |
|  |  |
| Name | Name |
| Acting as | Acting as |
| Date | Date |
| Signature | Signature |

1. The addition of the definition referring to “contribution” is compliant with Article 28 c) of the Guidelines, which provides for the assignment of intellectual property rights resulting from the Project to the different collaborating partners, in a way that reflects their respective interests, the extent of their participation in the work and their contributions to the project. [↑](#footnote-ref-2)
2. Pursuant with the provisions of Article 28 b) of the Guidelines, results that do not generate intellectual property rights are intended to be widely disseminated. Thus, the provision stating that these results are Confidential Information, without further clarification, is not in line with Article 28b). it is therefore recommended to specify that those results, which may be confidential, shall be subject to wide dissemination, in accordance with Article 28b.

The compliance of the Agreement with Articles 28 c) and 28 d) renders the added provision optional. [↑](#footnote-ref-3)
3. The addition of the definition regarding the Principle of Proportionality ensures the compliance with Article 28 c) of the RDI Guidelines, which provides for the assignment of intellectual property rights resulting from the project to the different collaborating partners in a way that appropriately reflects their respective interests, the extent of their work contributions and project contributions. [↑](#footnote-ref-4)
4. The addition of the definition regarding the market price rule ensures the compliance with Articles 28 c) and 29 of the RDI Guidelines, requiring the payment of a market price fee to the research institution for its intellectual property rights granted to enterprises

There are several options for the implementation of the market price rule:

a) free of charge, only for Research Institutions and market price for the Enterprise,

b) cross licenses if this option is more favourable to Research Institutions, provided that there is evidence that this option is more advantageous to them,

c) free of charge for all, provided that there is evidence that this option is more advantageous to Research Institutions,

d) market price to be paid only by the Enterprise (so Research Institutions can pay less),

e) market price for everyone. [↑](#footnote-ref-5)
5. It is recommended to use the term “contribution” to ensure compliance with Article 28 c) of the Guidelines. [↑](#footnote-ref-6)
6. This provision avoids subsequent disputes by establishing a process to identify and assess Common Results and the respective contributions of the Parties to these Common Results, as part of this governance. [↑](#footnote-ref-7)
7. A reference to an appendix listing all Proprietary Knowledge for each of the Parties, to be used as part of the Project, limits the risk of subsequent dispute over the ownership of the rights resulting from the aforementioned Proprietary Knowledge. [↑](#footnote-ref-8)
8. Article 28 c) of the Guidelines provides for the ownership of the results to be distributed proportionally to the respective contributions of the Parties.

Applying the requirement to own Proprietary Results, defined as results developed by a Party without the contribution of another party, necessarily implies that the original ownership is attributed entirely to the Party who created them alone. [↑](#footnote-ref-9)
9. Article 28 c) of the Guidelines requires that the initial ownership of the results be distributed proportionally to the respective contributions of the parties.

While the parties may subsequently derogate from this rule, in return for a Compensation equal to the Market Price to the Party/Parties transferring their rights, the original distribution must respect the Principle of Proportionality. [↑](#footnote-ref-10)
10. The Parties may consider, as an alternative, to derogate from the general principle, which may lead to a different distribution of rights between co-owners, and even assigning all the rights to one sole Party.

This is not prohibited, in principle, but on the condition that the Party waiving all or part of the rights receives compensation equal to the Market Price, as it is recalled that the rights of each person must be originally assigned and assessed according to Principle of Proportionality. [↑](#footnote-ref-11)
11. A Party may waive or assign its rights, provided that it receives compensation equal to the Market Price for the rights it has waived or transferred.

Otherwise, there is a risk of indirect aid, pursuant to the provisions of Article 28 d) of the Guidelines. [↑](#footnote-ref-12)
12. The incorporation of a software subject to a contaminating licence will have the effect of subjecting the software result by contamination to the provisions of the license at hand, thus impacting the exploitation of the results, which is constrained by the terms of the open license. [↑](#footnote-ref-13)
13. Ideally, the agreement should already be implemented, at least in its basic principles. Under any and all circumstances, this agreement must be such as to ensure the respect of the principle of proportionality for the rights to the respective contributions and the market price rule, in the event of a transfer. [↑](#footnote-ref-14)
14. Article 28 c) of the Guidelines implies a Compensation, to be paid to the Research Institution, equal to the market price, for the transfer of its intellectual property rights to enterprises, or for which these enterprises have a right of access.

Thus, if this provision is allowed, it does not exempt the requirement to calculate the rights of each party according to the Principle of Proportionality, and to pay to the Party waiving its rights a Compensation equal to the Market Price. [↑](#footnote-ref-15)
15. Article 28 c) of the Guidelines implies a Compensation, to be paid to the Research Institution, equal to the market price, for the transfer of its intellectual property rights assigned to enterprises, or for which these enterprises have a right of access.

When the formula used is not the Market Price, this may result in a risk of indirect aid. [↑](#footnote-ref-16)
16. Ideally, the agreement should already be implemented, at least in its basic principles. Under any and all circumstances, this agreement must be such as to ensure the respect of the principle of proportionality for the rights to the respective contributions and the market price rule, in the event of a transfer. [↑](#footnote-ref-17)
17. Pursuant to the provisions in Article 28b of the Guidelines, the results that do not generate intellectual property rights must be widely disseminated. Thus, the provision stating that these results are Confidential Information goes against the regulation.

However, complying with Articles 28c) and 28d) of this agreement makes the inserted provision optional. [↑](#footnote-ref-18)