



Horizon 2020

SANDA: SUPPLYING ACCURATE NUCLEAR
DATA FOR ENERGY AND NON-ENERGY
APPLICATIONS
EU project 847552

Consortium Agreement

Enrique M. González
CIEMAT



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(www.DESCA-2020.eu)

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Iteration Process:

First version: May 6th, 2019

- Accepted by 18 partners

- Modifications suggested by 13 partners

- No answer from 3 partners

Second version: August 16th, 2019

- Accepted by 10 partners

- Modifications suggested by 8 partners

- No answer from 16 partners

Version 3: in preparation status.

Incorporated new comments from:
CSIC, JYU, NIPNE, SCK-CEN, UManch, UU

Analyzing comments from:
CERN, IRSN, JSI, KIT, TuWien, UPC

Hottest topics:

- 11.8 Settlement of disputes

Mediation/arbitration/Courts of Brussels

the wording of the settlement of disputes section has a special relevance since some partners should settle their disputes only through mediation and other partners only by arbitration.

- Status, law and obligations for CERN as international organization
- Use of Results for public missions (IRSN)
- Rights and obligations of Linked Third Parties and Affiliated Entities

Changes from version 2 (CERN status):

5.5 Injury to the personnel of a Party

Each Party is responsible for the insurance coverage of its own employees in accordance with applicable national legal requirements for occupational injuries and diseases. As a consequence, each Party must fulfil the required formalities and sustain all the costs, if any, involved in the insurance policies underwritten to cover its own employees against these risks. On the other hand, As an exception for International Organizations, CERN shall be responsible for the insurance coverage of its own employees in accordance with applicable legal requirements.



Kike
After a request from CERN

Each Party dispatching employees to another Party to work jointly on issues covered by this Consortium Agreement under premises or supervision or in installations of the receiving Party will be informed immediately on any incident or injury occurring to the dispatched employees. Information provided to the dispatching Party has to enable the dispatching Party to proceed to the formalities required by law within the prescribed time.

As an exception for International Organizations, CERN shall promptly inform another Party of any accident or injury to that other Party's personnel having occurred within its premises or installations and under its supervision with a view to permitting the other Party to proceed with any formalities required by law.



Kike
After a request from CERN

In order to respect the employee's right to data protection, the Consortium Partner must ask the employee to consent to the disclosure of personal data if there is no other legal basis for it. If the employee refuses consent, personal data must not be transmitted. Information on incidents must be anonymized accordingly.



Garcia Cuesta, Juan Carlos
After a request from KIT

Changes from version 2 (CERN status):

Section 8.2

- each of the Joint Owners shall be entitled to use their jointly owned Results for non-commercial research and development activities, educational activities and for public service mission on a royalty-free basis, and without requiring the prior consent of the other Joint Owner(s). For the needs of this Agreement, public mission service shall also cover the performance of assessments on behalf of third parties, such as national/foreign authorities or operator without any right to transfer the results to such third parties, and
- each of the Joint Owners shall be entitled to otherwise Exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other Joint Owners:
 - (a) Are given at least 45 calendar days advance notice; and
 - (b) Fair and Reasonable conditions are applied; and
 - (c) No patent or patent procedures are affected.

GC **Garcia Cuesta, Juan Carlos**
After a request from IRSN

The joint owners shall agree on all protection measures and the division of related costs in advance. In case CERN is a Joint Owner, all use or Exploitation of such jointly owned Results under this Section 8.2 shall always be for non-military purposes only.

K **Kike**
After a request from CERN

9.2.5

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

In addition, all Access Rights to Results and Background granted by CERN shall always be for non-military purposes only.

K **Kike**
After a request from CERN

Changes from version 2 (CERN status):

11.5 **Mandatory ~~national~~ law**

Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

11.6 **Language**

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

11.7 **Applicable law**

This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.

As an exception, the Agreement is governed by a different applicable law for CERN, where the applicable law will be the applicable EU law, supplemented if necessary by the law of France and, where appropriate, by the general principles governing the law of international organisations and the rules of general international law.



Kike

After a request from CERN



Kike

After a request from CERN

Changes from version 2 (CERN status): **HORIZON 2020**

determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The award of the arbitration will be final and binding upon the Parties. The place of arbitration shall be Brussels unless otherwise agreed upon. The language to be used in the arbitral proceedings shall be English unless otherwise agreed upon.

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the arbitration within 60 calendar days of the commencement of the arbitration, the courts of Brussels shall have exclusive jurisdiction.

However, should any Party (e.g. a Public Body) show that certain provisions of its national law prevents it from submitting the relevant dispute to arbitration, then the concerned Parties will submit the dispute to the Courts of Brussels.

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.

Any disputes involving CERN must — if they cannot be settled amicably — be referred to arbitration. Each party must formally notify to the other party its intention of resorting to arbitration and the identity of the arbitrator. The Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of entry into force of the Agreement will apply. The appointing authority will be the Secretary-General of the Permanent Court of Arbitration following a written request submitted by either party. The arbitration proceedings shall take place in Brussels and the language used in the arbitral proceedings shall be English. The arbitral award will be binding on all parties and will not be subject to appeal.

K

Kike
After a request from CERN

11.9 Personal Data

In the event of personal data processing, within the framework of this agreement, the Parties undertake to fulfill their obligations in accordance with the respective applicable legal frameworks, that for all partners except CERN includes regulations and, especially, the regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 applicable since 25 May 2018.

K

Kike
After a request from CERN

Changes from version 2 (others):

After a request from KIT

4.3 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the Grant Agreement **and for the consequences arising from such third party's non-compliance**. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the Grant Agreement.

After a request from JYU (Finnish legal system) + IRSN

5.2.2 Notwithstanding the foregoing, no Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, **provided such damage was not caused by a willful act or gross negligence**.

After a request from CERN

5.4 Force Majeure

No Party **(neither its Affiliated Entities)** shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure.

Changes from version 2 (others):

After a request from UPC

6.3.2.1 The Executive Committee shall consist of the Coordinator and the Work Package leaders. The Coordinator shall chair all meetings of the Executive Committee, unless decided otherwise by a majority of two-thirds of those present and represented (provided that the quorum established in Section 6.2.3.1 is satisfied).

Note that 6.3.2.3.8 indicates: The Executive Committee may invite international experts to its meetings, in particular from **IAEA**, **JEFF** and **NEA**. They will only participate in an advisory function without voting rights.

After a request from UPC

8.5 The objecting Party can request a publication delay of not more than 45 calendar days from the time it raises such an objection. After 45 calendar days the publication is permitted. For the avoidance of doubt, the publication is permitted subject to provisions of Section 8.5.1. “Dissemination of another Party’s unpublished Results or Background” and Section 10 “Non-disclosure of information”. If the objections are not appropriately addressed, publication will not be authorized.

After a request from KIT

8.5.2 Cooperation obligations

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

Changes from version 2 (others):

After a request from IRSN and KIT

9.4.1 Access Rights to Results

Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable conditions, subject to a separate written agreement between the parties concerned.

Access rights to Results for non-commercial internal research and development activities, teaching and public service mission, shall be granted on a royalty-free basis

After a request from CNRS (equivalent documents already available)

Remove the Attachment 5: Declaration Form by Linked Third Parties - SANDA Consortium Agreement.

Changes from version 2 (others):

After a request from IRSN and CERN

11.10 Export control

In case export control license is required for exchange of any information in the frame of this Consortium Agreement according to Regulation CE n°428/2009 the party(ies) to whom the information has to be transferred shall signed an End-User Certificate or any similar mandatory document under each national law of the exporter Party for the use of the information. No information shall be transferred or use before the appropriate export control licence had been issued by the competent national authority.

All Parties are obliged to execute their obligations under this Agreement in accordance with all the applicable international- and national laws and regulations. This also includes all applicable laws and regulations on export control. When parties shall provide items (goods, software or technology), then the Parties shall where necessary take care of the timely and complete submission of the export license application. The other Parties shall timely provide all information that is reasonably relevant for the license submission, including information regarding any possible intention to re-export to other countries. If and when one or more export licenses are not obtained or not timely obtained, without this being attributable to the exporting Party, then the consequences thereof are not attributable to the exporting Party and neither shall such lead to any entitlement to compensation for damages.

(From previous section 12: Dual Use in the Consortium Agreement).

Chairing the Governing Board Meetings

- Chairing the Governing Board:

Coordinator or an elected Chairperson of the Governing Board

- Options for 6.3.1.1.3
- The coordinator shall chair all meetings of the Governing Board, unless decided otherwise in a meeting of the Governing Board.(www.DESCA-2020.eu)
- A chairperson will be elected during the kick-off meeting with the following responsibilities:
 - Calling for meetings and setting the agenda for meetings of the Governing Board following the requests of the Coordinator;
 - Chairing the meetings of the Governing Board. In case of absence of the chairperson, the Governing Board will appoint an acting chairperson.

The Coordinator shall not stand for election as the chairperson of the Governing Board

Missing Background Declarations (Attachment 1):

CEA (draft version proposed)	CVREZ
IST-ID	NPI
Sofia	UB
USC	

Several partners used the following formula, that might be used by some of the partners pending:

As to *PARTNER full name*, *PARTNER_acronym*, it is agreed between the Parties that, to the best of their knowledge no data, know-how or information of *PARTNER_acronym* shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

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