

Horizon 2020

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

Consortium Agreement

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September 9 & 10, 2019





Document based on the DESCA model, Version 1.2.4, October 2017

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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

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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

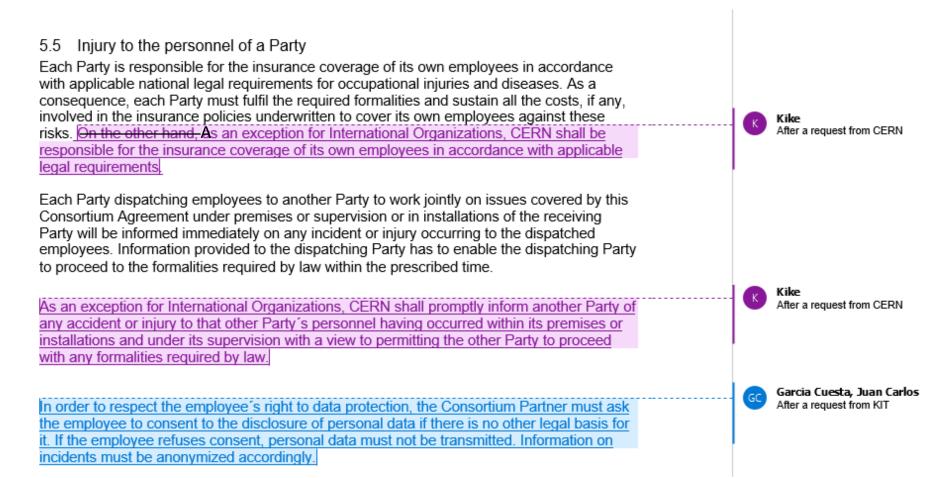
Mediation/arbitration/Courts of Brussels

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):

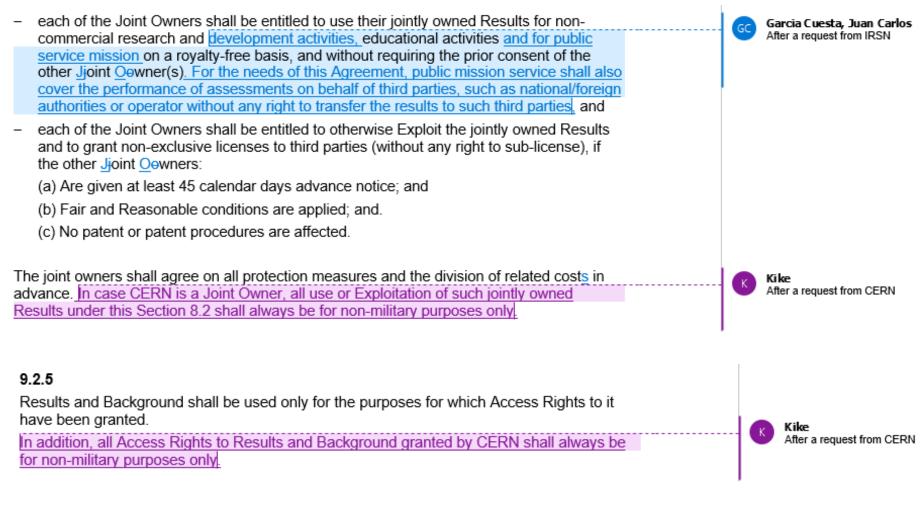






Changes from version 2 (CERN status):

Section 8.2





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.



After a request from CERN

Kike After a request from CERN

Changes from version 2 (CERN status): HORIZON 20

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 reterred 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 ake place in Brussels and the language used in the arbitral proceeding shall a English. The arbitral award will be binding on all parties and will not be subject to appeal.

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.

Kike After a request from CERN

Kike After a request from CERN



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.

SANDA kick-off meeting

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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.

SANDA kick-off meeting

September 9 & 10, 2019



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.



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).

SANDA kick-off meeting

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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.