

CONSORTIUM AGREEMENT, 4TU.ResearchData

9 August 2022

Stichting 4TU.Federatie
TU Delft
TU/e
UTwente
WUR

THIS CONSORTIUM AGREEMENT is laying down the rules for the participation of research centres and universities in the 4TU.ResearchData hereinafter referred to as Rules for Participation and is made on 9 August 2022 hereinafter referred to as "Effective Date"

BETWEEN:

- Stichting 4TU.Federatie, having its office in Stevinweg 1, 2628 CN Delft, hereinafter (next to "Party" as defined below also) referred to as "the Coordinator", and
- Technische Universiteit Delft, Stevinweg 1, 2628 CN Delft, hereinafter (next to "Party" as defined below also) referred to as "TU Delft", and
- Technische Universiteit Eindhoven, Groene Loper 3, 5612 AE, Eindhoven, and
- Universiteit Twente, Drienerlolaan 5, 7522 NB Enschede, and
- Wageningen University & Stichting Wageningen Research, Droevendaalsesteeg 4, 6708 PB Wageningen, The Netherlands

hereinafter, jointly or individually, referred to as "Parties" or "Party" relating to the collaboration entitled "4TU.ResearchData", hereinafter referred to as "4TU.ResearchData".

WHEREAS: The Parties, in joint co-operation having considerable experience in the field of research data management and storage in mainly short projects within the context of 4TU, wish to collaborate in a more structural way with a longer duration and with external parties, not being part of the 4TU collaboration.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Definitions

1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein.

1.2 Additional Definitions

"Background" means information, data or material which is either held by a Party prior to its accession to this Consortium Agreement or that has been developed or obtained by a Party thereafter independently from the Consortium Agreement, as well as any intellectual property rights pertaining to such information, data or material.

"Collaboration" means the joint co-operation of the parties in the collaboration entitled "4TU.ResearchData".

"Consortium" means the consortium as established between Parties under the Collaboration.

"Consortium Agreement" means this agreement.

"Consortium Body or Bodies" means any management body described in the governance structure section of this Consortium Agreement.

"Consortium Plan" means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the General Assembly.

"Consortium Budget" means the allocation of all the resources in cash or in kind for the activities as defined in Annex 1.

"Defaulting Party" means a Party which the General Assembly has identified to be in breach of this Consortium Agreement as specified in Article 4.2 of this Consortium Agreement.

"Foreground" means the results, including information, know-how and materials, whether or not they can be protected by intellectual property rights, intellectual property rights pertaining to such information, data or material, which are generated under the Consortium Agreement.

"Needed" means:

For the implementation of the Collaboration: Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources.

For Use of own Foreground: Access Rights are Needed if, without the grant of such Access Rights, the Use of own Foreground would be technically or legally impossible.

"Software" means sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression.

Section 2: Purpose

4TU.ResearchData offers researchers advice and tools for sharing and safely preserving research data and software in science, engineering and design disciplines.

The purpose of this Consortium Agreement is to specify with respect to 4TU.ResearchData the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the 4TU.ResearchData and the rights and obligations of the Parties concerning inter alia liability, Access Rights, the Third Party Service as described in article 9 and dispute resolution.

Section 3: Entry into force, duration and termination

3.1 Entry into force

An entity becomes a Party to this Consortium Agreement with approval of the General Assembly, confirmed upon signature of this Consortium Agreement by a duly authorised representative.

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

A new Party enters the Consortium with approval of the General Assembly, confirmed upon signature of the accession document Annex 2 by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

3.2 Duration and termination

This Consortium Agreement will start on the Effective Date and shall continue in full force and effect until 31 December 2025.

In mutual agreement with the General Assembly and subject to one (1) year notice, a Party may prematurely leave the Consortium. In that case this Consortium Agreement shall terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Article 3.3 of this Consortium Agreement.

3.3 Survival of rights and obligations

The provisions relating to Access Rights and Confidentiality, for the time period mentioned therein, as well as for Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this Consortium Agreement. Access Rights of the leaving Party to the Background and Foreground of the other Parties are ending at the date of termination. Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the General Assembly and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

Section 4: Responsibilities of Parties

4.1 General principles

Each Party undertakes to take part in the efficient implementation of the Collaboration, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Dutch law.

Each Party undertakes to notify promptly, in accordance with the governance structure of the Collaboration, any significant information, fact, problem or delay likely to affect the Collaboration.

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.

Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

4.2 Breach

In the event a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement, the Coordinator or the Party appointed by the General Assembly if the Coordinator is in breach of its obligations under this Consortium Agreement will give written notice to such Party requiring that such breach be remedied within thirty (30) calendar days. If such breach is substantial and is not remedied within that period or is not capable of remedy, the General Assembly may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

4.3 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties in the Collaboration remains solely responsible for carrying out its relevant part of the Collaboration and for such third party's compliance with the provisions of this Consortium Agreement. 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.

Section 5: Liability towards each other

5.1 No warranties

In respect of any information or materials (incl. Foreground and Background) supplied by one Party to another under the Collaboration, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore,

- the Party who receives Background or Foreground shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party exercising its Access Rights.

5.2 Limitations of contractual liability

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 wilful act or by a breach of confidentiality.

A Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's yearly contribution to the 4TU.ResearchData as identified in Annex 1 provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability.

5.3 Damage caused to third parties

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Consortium Agreement or from its use of Foreground or Background.

5.4 Force majeure

No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure. Each Party will notify the competent Consortium Bodies of any Force Majeure without undue delay. If the consequences of Force Majeure for the Collaboration are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

Section 6: Governance structure

6.1 General structure

Consortium Bodies

The organisational structure of the Consortium shall comprise the Consortium Bodies as defined in this section. At the start the General Assembly and the Executive Board are two coinciding bodies, called "Board". If required in case of growth of the number of parties, the range of duties may be separated into a General Assembly and an Executive Board, in which case the Executive Board shall report to and be accountable to the General Assembly.

Board (= General Assembly) is the ultimate decision-making body of the Consortium as well as **(= Executive Board)** the supervisory body for the management of the 4TU.ResearchData.

The Coordinator is the legal entity acting as the representative in law of the 4TU.ResearchData. The Coordinator shall perform the tasks assigned to it as described in this Consortium Agreement. The Coordinator reports directly to the Board.

The Management Support Team assists the (Executive) Board and the Coordinator.

The Chairperson

The Chairperson shall be a member of the Board. The position will rotate on a two-yearly basis. The Chairperson will chair the Board, work with the Coordinator to prepare meetings.

The Operational Board

The Operational Board is overseeing the operational aspects of 4TU.ResearchData. The Operational Board provides review, advice, and feedback on the operations (services and policies) of 4TU.ResearchData (data repository, training, community building). The Operational Board is overseen by the Executive Board.

6.2 General operational procedures for all Consortium Bodies

6.2.1 Representation in meetings

Any member of a Consortium Body (hereinafter referred to as "Member"): should be present or represented at any meeting of such Consortium Body; may appoint a substitute or a proxy to attend and vote at any meeting; and shall participate in a cooperative manner in the meetings.

6.2.2 Preparation and organisation of meetings

6.2.2.1 Convening meetings:

The Coordinator shall convene meetings of that Consortium Body.

	Ordinary meeting	Extraordinary meeting
General Assembly	At least once a year	At any time upon written request of the Executive Board or 1/3 of the Members
(Executive) Board	At least three times a year	At any time upon written request of any Member of the Executive Board
Operational Board	At least three times a year	At any time upon written request of any Member of the Operational Board

6.2.2.2 Notice of a meeting:

In discussion with the chairperson of the board, the Coordinator shall give notice in writing of a meeting to each Member of that Consortium Body as soon as possible and no later than twenty-one (21) days preceding the meeting.

6.2.2.3 Sending the agenda:

In discussion with the chairperson of the board, the Coordinator shall prepare and send each Member of that Consortium Body a written (original) agenda no later than seven (7) days preceding the meeting.

6.2.2.4 Adding agenda items:

Any agenda item requiring a decision by the Members of a Consortium Body must be identified as such on the agenda. Any Member of a Consortium Body may add an item to the original agenda by written notification to all of the other Members of that Consortium Body up to three (3) working days preceding the meeting.

6.2.2.5

During a meeting the Members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.

6.2.2.6

Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document or e-mail which is then agreed by the defined majority (see Article 6.2.3.) of all Members of the Consortium Body.

6.2.2.7

Meetings of each Consortium Body may also be held by videoconference or other communication means.

6.2.2.8

Decisions will only be binding once the relevant part of the Minutes has been accepted according to Article 6.2.5

6.2.3 Voting rules and quorum

6.2.3.1

Each Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).

6.2.3.2

Each Member of a Consortium Body present or represented in the meeting shall have one vote.

6.2.3.3

Defaulting Parties may not vote. While the consortium will always strive to reach unanimous decisions, decisions shall be taken by a majority vote.

6.2.4 Veto rights

6.2.4.1

A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights, open access or other legitimate interests would be severely affected by a decision of a Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.

6.2.4.2

When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting only.

6.2.4.3

When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such a decision during the meeting and within fifteen (15) days after the draft minutes of the meeting are sent.

6.2.4.4

In case of exercise of veto, the Members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its Members.

6.2.4.5

A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.

6.2.4.6

A Party requesting to leave the Consortium may not veto decisions relating thereto.

6.2.5 Minutes of meetings

6.2.5.1

The Coordinator of a Consortium Body shall be responsible for written minutes of each meeting which shall be the formal record of all decisions taken. He shall send the draft minutes to all Members within ten (10) calendar days of the meeting.

6.2.5.2

The minutes shall be considered as accepted if, within fifteen (15) calendar days from sending, no Member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes.

6.2.5.3

The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

6.3 Specific operational procedures for the Consortium Bodies

6.3.1 Board (= General Assembly)

In addition to the rules described in Article 6.2, the following rules apply:

6.3.1.1 Members

6.3.1.1.1

The Board shall consist of one (1) representative of each Party. Each Party is also entitled to invite one (1) additional member to Board meetings in an advisory capacity.

6.3.1.1.2

Each Board Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 6.3.1.2. of this Consortium Agreement.

6.3.1.1.3

The Chairperson shall chair all meetings of the Board, unless decided otherwise in a meeting of the Board.

6.3.1.1.4

The Parties agree to abide by all decisions of the Board. This does not prevent the Parties from submitting a dispute to resolution in accordance with the provisions of Settlement of disputes in Article 11.8.

6.3.1.2 Decisions

The Board shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. (In addition, all proposals made by the Executive Board shall also be considered and decided upon by the General Assembly).

The following decisions shall be taken by the Board (= General Assembly):

- Content, finances and intellectual property rights
- Proposals for changes of the Consortium Agreement (approval of each Party required)
- Changes to the Consortium Plan (including changes within the Consortium Budget).
- Yearly determine the proposal for the estimated Consortium Budget and report on the previous year based on justified data of the Parties, (approval of each Party required)
- Reviews of Policies that will have a significant effect on finances or strategy.
- Evolution of the Consortium
 - o Entry of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party (approval of each Party required)
 - o Withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal
 - o Declaration of a Party to be a Defaulting Party
 - o Remedies to be performed by a Defaulting Party
 - o Termination of a Defaulting Party's participation in the Consortium and measures relating thereto

In addition, the Board will forward yearly Plans and Budgets to the 4TU.Federation Board for approval.

6.3.2 Board (= Executive Board)

In addition to the rules in Article 6.2, the following rules shall apply:

6.3.2.1 Members

The (Executive) Board shall exist and consist of the Coordinator and of one (1) representative of each Party. Each Party is also entitled to invite one (1) additional member to Board meetings in an advisory capacity..

The Chair Person shall chair all meetings of the (Executive) Board, unless decided otherwise.

6.3.2.2 Minutes of meetings

If applicable, minutes of Executive Board meetings, once accepted, shall be sent by the Coordinator to the General Assembly Members for information.

6.3.2.3 Tasks

6.3.2.3.1 If applicable, the Executive Board shall prepare the meetings, propose decisions and prepare the agenda of the General Assembly according to Article 6.3.1.2.

6.3.2.3.2 It shall seek a consensus among the Parties.

6.3.2.3.3 The (Executive) Board shall be responsible for the proper execution and implementation of the decisions (of the General Assembly).

6.3.2.3.4 The (Executive) Board shall monitor the effective and efficient implementation of the 4TU.ResearchData.

6.3.2.3.5 In addition, the (Executive) Board shall collect Information at least every four (4) months on the progress of the 4TU.ResearchData. In collaboration with the Coordinator, they examine that information to assess the compliance of the 4TU.ResearchData with the Consortium Plan and Consortium Budget, and if necessary, the Board will propose modifications of the Consortium Plan (to the General Assembly).

6.3.2.3.6 In collaboration with the (Executive) Board, the Coordinator shall once a year draw up an estimate of the Consortium Budget for the coming four (4) years and prepare a financial report of the past year based on justified data of each Party.

6.3.2.3.7 The (Executive) Board shall:

- Agree on the Members of the Management Support Team, upon a proposal by the Coordinator
- Support the Coordinator in preparing meetings and in preparing related data and deliverables
- Prepare the content and timing of press releases and joint publications by the Consortium
- Decide on any matter not covered by this Consortium Agreement.

6.3.2.3.8

When the General Assembly and the Executive Board are not coinciding bodies and a decision of the General Assembly results in an abolished task, the Executive Board shall advise the General Assembly on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

6.4 Coordinator

6.4.1

On behalf of the Stichting 4TU.Federatie, the Coordinator shall be the representative in law of the 4TU.ResearchData and shall perform all tasks assigned to it as described in this Consortium Agreement.

6.4.2

In particular, the Coordinator shall be responsible for:

- Creating the Consortium Plan and Budget
- Executing the Consortium Plan within the constraints of the budget
- Monitoring risks, particularly of a financial nature
- Preparing the relevant meetings as described in this Consortium Agreement
- Monitoring compliance by the Parties with their obligations
- Keeping the address list of the Parties and other contact persons updated and available
- Collecting, reviewing to verify consistency and submitting reports and other deliverables
- Transmitting documents and information connected with the 4TU.ResearchData to any other parties concerned
- Administering the financial contribution of the Parties and fulfilling the financial tasks described in Article 7.3
- Providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

6.4.3

If the Coordinator fails in its coordination tasks, the Board (= General Assembly) has to take decisions how to proceed.

6.4.4

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

6.4.5

The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement.

6.5 Management Support Team

The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the (Executive) Board and shall assist and facilitate the work of the (Executive) Board and the Coordinator for executing (the decisions of the General Assembly as well as) the day-to-day management of the 4TU.ResearchData.

Section 7: Financial provisions

7.1 General Principles

7.1.1 Distribution of Financial Contribution

The financial contribution of the Parties to the 4TU.ResearchData shall be distributed by the Coordinator according to the Consortium Budget as included Annex 1.

A Party shall be funded only for its tasks carried out in accordance with Annex 1.

7.1.2 Justifying Costs

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the 4TU.ResearchData.

7.1.3 Funding Principles

Each Party shall contribute funding to the collaboration according to the Funding Principles as included in Annex 1.

7.1.4 Financial Consequences of the termination of the participation of a Party

A Defaulting Party shall, within the limits specified in Article 5.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks. Any additional costs which are not covered by the Defaulting Party shall in principle be apportioned to the remaining Parties pro rata to their share in the total costs of the Collaboration as identified in the Consortium Budget.

7.1.5

Parties shall bear any and all agreed, reasonable and justifiable costs for long term contracts, such as the licence agreement with Third Party Service as defined hereinafter in Section 9, also in case a Party is leaving the consortium prematurely as described in Article 3.2.

7.2 Budgeting

The Consortium Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

7.3 Payments

7.3.1

Payments to Parties are the exclusive tasks of the Coordinator. In particular, the Coordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references; and
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts undertake to keep the Community financial contribution to the Collaboration separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

7.3.2

The payment schedule, which contains the transfer of pre-financing and interim payments from the Parties to the 4TU.ResearchData, will be handled according to Annex 1.

Section 8: Intellectual Property, dissemination and public manifestations

8.1 Intellectual property and dissemination

8.1.1 Issues of intellectual property rights, access rights and dissemination of knowledge shall be reigned by separated agreements per project by the regarded participants, in respect of the provisions of this Consortium Agreement.

8.1.2 Each Party shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts within the purpose of this Consortium Agreement do not knowingly infringe third party property rights.

8.1.3 Foreground and Background shall remain the ownership of the contributing Party and shall be used only for the purposes for which Access Rights to it have been granted.

8.1.4 The Parties shall identify in writing the Background to which they are ready to grant Access Rights, subject to the provisions of this Consortium Agreement.

8.1.5 Access Rights to the Foreground and the Background are granted on a non-exclusive basis without the right of sublicense, free of charge and royalties, universal currency and for the purpose of this agreement only, unless otherwise agreed in writing by all the Parties.

8.1.6 Access Rights to Foreground if Needed for use of a Party's own Foreground including for third-party research or for Party's own commercial purposes shall be granted on Fair and Reasonable conditions.

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

8.1.7 Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on Fair and Reasonable conditions and in writing only.

8.1.8 In case of joint ownership, the joint owners shall in mutual agreement conclude that one of them shall be entitled to protect the joint Foreground and to grant non-exclusive licences to third parties without obtaining any consent from or otherwise accounting to any other joint owner, taking into account article 8.1.5, unless otherwise agreed between the joint owners. The joint owners shall agree on all protection measures and the division of related cost and earnings in advance.

8.2 Use of names, logos or trademarks

Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

8.3 Transfer of Foreground

8.3.1 Each Party may transfer ownership of its own Foreground.

8.3.2 The transferring Party shall, however, notify in advance the other Parties of such transfer to ensure that the rights of the other Parties will not be affected by such transfer.

Section 9: Third Party Service

9.1 TU Delft-licence Third party service

9.1.1 TU Delft will undertake its best efforts to conclude a licence agreement with a third party service (hereinafter referred to as "Third Party Service") for the purpose of procuring a service that contributes to the management and curation of research data on behalf of 4TU.Research Data. The other Parties agree with the execution of such licence agreement and recognise the value of such licence for the collaboration "4TU.ResearchData". The other Parties will therefore do their utmost to enable TU Delft to comply, perform and fulfil promptly and on time all of its possible obligations as may be required from such licence agreement.

9.1.2 In case additional agreements between the Parties regarding the Third Party Service are necessary, Parties will enter in negotiation in good faith to agree on such terms.

9.2 Services of Third Party and data repository

The services of the Third Party relate to the 4TU.ResearchData data repository. The 4TU.ResearchData data repository is accessible for all possible users and depositors worldwide under the conditions as set out in the "General terms of use" and "Deposit Licence Agreement".

9.3 Liability and Indemnification

9.3.1 TU Delft will not be responsible or liable for any damages or losses resulting from the unavailability of the 4TU.ResearchData data repository and the loss of datasets, caused by an act or omission of a Third Party Service or circumstances which prevent fulfilment of the obligation and for which TU Delft cannot be held responsible.

9.3.2 The intention is that TU Delft will make 4TU.ResearchData available as a long-term commitment. However TU Delft is not obliged (besides during the period of the license agreement with the Third Party Service) to maintain 4TU.ResearchData in perpetuity and has the right (with one year's notice), without any liability, to cease the repository on reasonable grounds, for example in case of changed circumstances. In case TU Delft decides to stop with its activities for 4TU.ResearchData data, Parties will discuss how to proceed with the 4TU.ResearchData data repository, for example transferring the datasets to another repository that executes a similar function and following an agreed exit strategy.

9.3.4 The Party/Parties shall indemnify, defend and hold TU Delft harmless from and against any and all claims, demands, suits, losses, damages and liabilities, including without limitation interest and reasonable attorney fees, arising out of, relating to, or resulting from its (non-)performance of activities related to the licence agreement unless such claims, demands, suits, losses, damages and liabilities are based on gross negligence or wilful misconduct of TU Delft.

Section 10 Non-disclosure of information

10.1

All information in whatever form or mode of transmission, which is disclosed by a Party (the Disclosing Party") to any other Party (the "Recipient") in connection with the Collaboration which has been explicitly marked as "confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within fifteen (15) days from oral disclosure at the latest as confidential information by the Disclosing Party's "Confidential Information".

10.2

The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Collaboration as with its own confidential and/or proprietary information, but in no case less than reasonable care.

10.3

The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

- the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
- the Confidential Information was already known to the Recipient prior to disclosure, or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.4 hereunder.

10.4

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

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

Section 11: Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and Annex 1 (Financial arrangement) and Annex 2 (Accession document).

In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.

Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

11.2 No representation, partnership or agency

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

11.3 Notices and other communication

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator.

Formal notices: If it is required in this Consortium Agreement that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

Other communication: Other communication between the Parties may also be affected by other means such as e--mail with acknowledgement of receipt, which fulfils the conditions of written form.

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all concerned.

11.4 Assignment and amendments

No rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Article 6.3.1.2 require a separate agreement between all Parties.

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. Dutch language is allowed if parties agree so.

11.7 Applicable law

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

11.8 Settlement of disputes

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be The Hague unless otherwise agreed upon. The language to be used in the mediation shall be Dutch unless otherwise agreed upon. If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 calendar days of the commencement of the mediation, the court of The Hague shall have exclusive jurisdiction.

Section 12: Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives.

[Annex 1: Financial arrangements]

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

A1.1 Activities

Going concern for:

- Data-repository
- Data-services including training and community building

Matching to external funding for projects in any of the above mentioned activities.

A1.2 Funding Principles

Shared consortium costs and matching costs will be covered by yearly contributions from Consortium Parties. Storage costs for data-repository will be covered by data-depositing organisations depending on storage requirements.

A1.3 Distribution of funds

The distribution of funds will be specified in the Consortium Budget. Estimates for the Consortium Budget for the next four (4) calendar years will be presented to the senior management of every Party for approval yearly.

A1.4 Yearly contribution

Yearly contribution consists of two parts:

- Contribution to shared costs of the consortium. Fees are determined in the Consortium Budget and depend on the Party's yearly budget according to the latest available annual report of the Party.
- Contribution to storage costs of data collection. Fees, budget limits and alert thresholds are determined in the Consortium Budget and depend on the size of the data collection by the Party.

NB. Organisations which are not a member of the consortium will not pay a yearly contribution to the shared costs but will contribute to the storage costs of the data collection. Fees for these contributions will also be specified in the consortium estimates.

A 1.5 Payment schedule

Yearly contribution is paid at the start of each calendar year. Storage costs for every calendar year are paid in full within thirty (30) days after invoice date. Payment schedules related to projects are specified in separate documents.

[Annex 2: Accession document]

ACCESSION of a new Party to

4TU.ResearchData Consortium Agreement, version [..., YYYY-MM-DD]

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THIS CONSORTIUM AGREEMENT]

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THIS CONSORTIUM AGREEMENT]

hereby certifies that the Consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the Consortium starting [date].

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

[Date and Place]

[INSERT NAME OF THE NEW PARTY] Signature(s) Name(s) Title(s) (Date and Place)

[INSERT NAME OF THE COORDINATOR] Signature(s) Name(s) Title(s)

