

H2020 Launch of the DIGITALEUROPE Model Consortium Agreement

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DIGITALEUROPE



General Clauses

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Overall Approach

- ▶ To achieve clarity and promote focus on the IP provisions and options
- ▶ Allows a fuller understanding without having to consult RfP and MGA too often
- ▶ Comprehensive, tempered by practice : Options are highlighted and embedded in the text
- ▶ Aligns language to RfP and MGA – simply formatted and without table of contents
- ▶ Continues the strengths of the IPCA both in the detail and to influence
- ▶ Allow readers and users the comfort of industry insight
- ▶ Provides a balance of the varying views of the members – removes barriers in negotiation
- ▶ Simplification but not at the expense of the expected and right level of legal drafting

Negotiating Style

- ▶ More aligned in the ability of moving between clauses of different model CAs
- ▶ Definitions : Completeness to avoid confusion
 - ▶ Affiliated Entities
 - ▶ Reflects the imperative of industry structures and agility of commerce : imparts nature of corporate governance and practices
 - ▶ Software & Controlled Licence Provisions
 - ▶ Preserves and refines the established IPCA hallmark definitions that others have adopted and recognise
 - ▶ Background
 - ▶ Developed a flexible model that allows ongoing introduction that is both well known under IPCA but also reflects the ambitions of the MGA

Finances : Limitation of Liability

- ▶ As such matters are of continual focus, all carefully reviewed to ensure consensus
 - ▶ Pre-Financing and Payment of Claims – in full to partners
 - ▶ Coordinator has limited entitlement to withhold or reduce payments
 - ▶ A belief that the Guarantee Fund suffices – no additional contingency needed or preferred
- ▶ Principal of once Action Share or Euros 500m whichever is the greater
- ▶ Double liability for breaches of confidentiality or Section 8 (Results)
 - ▶ Standard exceptions for personal injury, damage to immovable property by negligence, wilful negligence and wilful breach

Breach, Effective Date, Survival, Timely Manner

▶ Breach

- ▶ To reinforce that materiality and substantive breaches are the ambit of concern
- ▶ To minimise partners using the machinery regardless of the impact

▶ Effective Date

- ▶ As the mechanism for commencing and binding the partners to the MGA differs from FP7 we recognise that Actions need to be diligent in completing the CA no later than the MGA starts

▶ Survival Clause – uses a pragmatic approach of provisions which b nature shall survive with examples

▶ Responsibilities – phrased as in a “timely manner” reflecting the spirit of co-operation

Inconsistencies, Disputes, Forum for Resolution

- ↳ Following the hierarchical of RfP – MGA – CA
- ↳ Force Majeure – brief, succinct and balanced
- ↳ Law : Belgium alone
- ↳ Disputes focus on resolution within the Partners and as last resort:
- ↳ Option for Courts or Arbitration

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