Consortium Agreement

for Service Contract number ENER/20/NUCL/SI2.837814

"Review and evaluation of national radon action plans established in EU Member States according to the requirements in Council Directive 2013/59/Euratom –the BSS Directive – focussing on the practical implementation of the actions defined in these action plans"

This Consortium Agreement is made on 07 January 2021 Between

The **Studiecentrum voor Kernenergie/Centre d'Etude de l'Energie Nucléaire** [also known as the Belgian Nuclear Research Centre], Foundation of Public Utility, **SCK CEN**, with its Registered Office in Belgium, Avenue Herrmann-Debroux 40, BE-1160 BRUSSELS and its Operational Office also in Belgium, Boeretang 200, BE-2400 MOL, with enterprise number 0406.568.867 and VAT number BE406.568.867, represented by Professor Eric van Walle, Director-General, and Professor Derrick P. Gosselin, Chairman of the Board of Governors,

Consortium Leader,

And

Merience SCP, (hereinafter referred to as "**Merience**"), with its registered office in Llimoner 30, 08734 OLERDOLA (BARCELONA), Spain with enterprise number Tomo 43899 Folio 108 Hoja B441356 Inscr 1 and VAT number J65945149, represented by Meritxell Martell Lamolla,

Statni ustav ustav radiacni ochrany, (hereinafter referred to as "**SURO**"), with its registered office in Bartoskova 1450/28, 140 00 Praha 4, Czech Republic, with enterprise number 86652052 and VAT number CZ86652052, represented by RNDr. Zdeněk Rozlívka,

each a "Party" and jointly called "the Parties" (including the Consortium Leader);

WHEREAS

The Parties, having considerable experience in the field concerned, have submitted to the European Commission a proposal for Services to be performed in relation to the Subject Matter;

The European Commission has accepted that proposal, and the European Commission and the Consortium Leader (representing the Parties) have signed a **Service Contract ENER/20/NUCL/SI2.837814**;

With this Consortium agreement, the Parties wish, in addition to the provisions as described in the Service Contract, to set out their respective rights and obligations for the implementation of the Services;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Article 1 - Definitions and order

1.1 Definitions

"Consortium Agreement" means this Consortium Agreement;

"Consortium" means the Consortium formed under this Consortium Agreement by the Parties with regard to the Subject Matter;

"Consortium Members" means the Parties to this Consortium Agreement;

"European Commission" means the European Commission, Directorate-General for Energy, Directorate for nuclear energy, safety and ITER;

"Services" means all tasks to be performed by the Parties, independently or together, in the framework of this Consortium Agreement, in relation to the Subject Matter;

"Consortium Leader" means SCK CEN:

"Subject Matter" means:

"Review and evaluation of national radon action plans established in EU Member States according to the requirements in Council Directive 2013/59/Euratom –the BSS Directive – focussing on the practical implementation of the actions defined in these action plans".

"Service Contract" means the service contract ENER/20/NUCL/SI2.837814;

"Third Party" means all any natural or legal person(s) other than "the Parties" (Consortium Members) or the European Commission;

1.2 Order of preference

In case the terms of this Consortium Agreement are in conflict with the terms of the Service Contract, the terms of the latter shall prevail.

Article 2 - Purpose

The purpose of this Consortium Agreement is to specify with respect to the Subject Matter the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the Service Contract, and the rights and obligations of the Parties concerning inter alia liability, organisation of the Consortium and dispute resolution.

Article 3 – Entry into force, duration and termination

- 3.1 This Consortium Agreement shall have the same commencement date as the Service Contract.
- 3.2 This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the Service Contract and under this Consortium Agreement.
 - However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.
- 3.3 If the Service Contract (i) is not signed by the European Commission or a Party, or (ii) is terminated, or (iii) if a Party's participation in the Service Contract is terminated upon request by the European Commission, this Consortium Agreement shall automatically terminate in respect of the affected Party/Parties, subject to the provisions surviving the expiration or termination under Article 3.4 of this Consortium Agreement.
- 3.4 The provisions relating to 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.
 - 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 Consortium Members and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

Article 4 - No legal personality

The Consortium is not a corporate entity or legal person of any kind. The Parties shall take all necessary measures to ensure that the Consortium is not assimilated *de facto* to a legal entity.

Each Party undertakes to abstain from any act (or omission to act) that would cause prejudice to the Consortium or this Consortium Agreement.

Article 5 – Responsibilities of Parties

5.1 Performance of Services

Each Party shall take part in the efficient implementation of the Consortium Agreement, and shall cooperate, perform and fulfil, on time, all obligations under the Service Contract, a copy of which is attached as Annex I to this Consortium Agreement, and all obligations under this Consortium Agreement, in accordance with the distribution of tasks (Annex II), as may be reasonably required from it and in a manner of good faith, according to reasonable best professional practices and all required standards in terms of skills, diligence, prudence and operating practice, as prescribed by applicables laws.

The Parties explicitly agree to have received copy of the Service Contract and its corresponding annexes, and have knowledge of their content.

Each Party shall perform and comply with all the provisions of the Service Contract (including any subsequent variation thereto notified to it timely in writing) included in Annex I of this Consortium Agreement, on the part of SCK CEN to be observed, performed and complied with so far as they relate and apply to the Services, including the provision of any warranties or guarantees required by the Service Contract.

The Parties shall be deemed to have knowledge of all provisions of the Service Contract (including any subsequent variations to the Service Contract of which he shall be notified timely and in writing) which are included in Annex I. Each Party shall so perform its part of the Services (Annex II) that no act or omission of that Party shall constitute, cause or contribute to any breach by SCK CEN of its obligations in accordance with the Service Contract.

In particular, any Party shall assign sufficient personnel with the required skills and experience throughout the entire performance of the Services. The Consortium Leader is entitled to make a reasoned request for the replacement of personnel if any of the Parties' personnel fails to correspond to the profile required by the European Commission under the Service Contract.

Each Party undertakes to notify promptly any information, fact, problem or delay which may affect or hamper the Services to be performed to the Consortium Leader. Each Party shall as soon as reasonably possible provide all information reasonably required by the Consortium Leader to carry out its tasks under this Consortium Agreement.

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

5.2 Involvement of Third Parties

Subcontracting is not allowed without prior written agreement of the European Commission and the Consortium Leader.

A Party that enters into a subcontract or otherwise involves Third Parties (including but not limited to affiliated entities) remains responsible for carrying out its relevant part of the Services 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.

5.3 Default

If any Party:

- a) goes into liquidation, whether compulsory or voluntarily; or
- b) has an administrator appointed or has a receiver, administrative receiver, manager, trustee or similar officer appointed over the whole or any part of its assets or undertaking; or
- c) Fails to fulfil any material obligation of this Consortium Agreement, which is clearly attributable to the Party's portion of the respective Consortium Agreement, after having received fourteen (14) calendar days written notice to do so from the Consortium Leader, for which the date of receipt of the written notice shall be the commencement date of the fourteen (14) calendar days,

it shall be considered as a Defaulting Party ("Defaulting Party") by the Consortium Leader

In case a Party is considered to be a Defaulting Party, the non-Defaulting Parties shall do their best efforts to carry out and complete the purposes of this Consortium Agreement involved. Without prejudice to the principles of article 10 of this Consortium Agreement, the Defaulting Party shall indemnify those non-Defaulting Parties against all direct and indirect costs, losses and/or damages suffered as a result of the default.

The non-Defaulting Consortium Members may by unanimity decide on the consequences towards the Defaulting Party which may include termination of its participation in the Consortium Agreement. The European Commission will be informed of the decision to termination and will be informed of the intended way forward.

5.4 Conflict of interest

The respective Party/Parties shall inform the Consortium Leader of any situation which constitutes or is likely to lead to a conflict of interest during the performance of the Service Contract or the Consortium Agreement. The Party/Parties concerned will align with the Consortium Leader on necessary measures to be taken immediately to rectify the situation.

Article 6 - Organisation of the Consortium

Within the Consortium, SCK CEN shall be Consortium Leader. The Consortium Leader shall exercise its function in close co-operation with the other Parties.

The Consortium Leader will maintain a Project Management Office ("PMO") to facilitate easy access to and communication with the European Commission. The PMO will be integrated within SCK CEN's existing facilities in Mol that are equipped with all necessary office equipment, including communication, computing, printing and copying facilities and a meeting room. The office and facilities can be made available for (limited) use by one or more Parties in connection with potential meetings in Mol upon conditions to be agreed.

The Services to be provided by the Consortium Leader through the PMO to the Consortium Members reflect long term experience with EC, knowledge of the functioning of contracts and established quality assurance system. Those Services are divided into two main areas:

- a) management and coordination of day to day activities of the Consortium;
- b) direct and sole contact and correspondence between the European Commission and the Consortium, e.g. seeking clarification during proposal phases and follow up on proposal status;
- c) coordinating and organising all practical and logistical issues of the Service Contract, limited to those that are of relevance for the Consortium as a whole (organisation of any travel on individual assignments remains the full responsibility of the Party concerned);
- d) monitoring of the Service Contract progress and performance (including reporting); and
- e) collect invoices from the other Parties complete with required attachments, compile them into one invoice from the Consortium Leader, forward this invoice to the European Commission, and receive payments and thereafter forward the sums due to the other Parties.

The project management will be done by SCK CEN, in accordance with the principles as laid down in the proposal for services.

Article 7 – Financial provisions

7.1 Fee rates

The responsible Party will be paid the fee rates agreed and mentioned in the Purchase Order of the Consortium Leader for each specific activity per person/month spent in providing the Services, with the maxima as stated in Annex III.

7.2 Invoices

Every six months, the responsible Party shall make up its invoices for the Consortium Leader at the above quoted rates.

The Consortium Leader will compile the invoices into one invoice towards the European Commission, in accordance with the provisions of the Service Contract.

Aspects of pre-financing will be discussed between the Parties, in accordance with the provisions of the Service Contract, prior to any invoicing by the Consortium Members.

7.3 Payments

Payments will be made by the European Commission to the Consortium Leader, upon acceptance of the related invoices, in accordance with the provisions of the Service Contract.

Payments to the Parties are the exclusive task of the Consortium Leader.

The Consortium Leader is not obliged to pay the respective Party for Services performed, until (i) the Consortium Leader has included the amount of that respective Party's invoice in the Consortium Leader's invoice to the European Commission and (ii) has received payment of that invoice from the European Commission. Payment shall be done within thirty (30) calendar days after receipt of the corresponding payment by the European Commission.

The Consortium Leader is entitled to any interests due by the European Commission for late payment, and will transfer these interests pro rata to the Parties who have suffered damage through such late payment from the European Commission.

The Consortium Leader is entitled to withhold any payments to a beneficiary which has not yet signed this Consortium Agreement until the Consortium Agreement has been signed.

With regard to Services that not, not (fully) correct or not in time were performed, the Consortium Leader is entitled to withhold any payments due to a Defaulting Party from the moment a Party is considered a Defaulting Party by the Consortium Leader in accordance with article 5.3 of this Consortium Agreement.

7.4 Guarantees

Where the European Commission requires a guarantee for the performance of Services in accordance with the provisions of the Service Contract, or any other guarantee, such guarantee shall be issued by SCK CEN, and the respective Party/Parties which is/are responsible for the proper performance of the related part of the Services shall provide a proper counter-guarantee towards SCK CEN. Any cost related to the provision of such guarantee is deemed to be included in its/their fees of the financial part of the tender prepared by the Party involved.

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

A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by the European Commission. Furthermore a Defaulting Party shall bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks.

Article 8 – Results and pre-existing rights

The ownership of the results shall be fully and irrevocably acquired by the European Commission under the Service Contract.

Each Party warrants that the results it delivers are free of rights or claims from creators and Third Parties including in relation to pre-existing rights, for any use envisaged by the European Commission. To that effect, each Party shall establish a list of all pre-existing rights and rights of creators and Third Parties on the results. Such list shall be provided no later than the date of delivery of the final results to the Consortium Leader.

Each Party warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged by the European Commission.

Publications of any kind referring to the Services of the other Parties or of the Consortium shall require the prior approval of the other Parties and can only be made in accordance with the terms of the Service Contract.

Article 9 – Access rights to pre-existing rights

Each Party shall license its pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the European Commission, from the moment the results were delivered and approved. Such licensing shall be done in accordance with the provisions of the Service Contract.

The Parties will grant each other, on a royalty-free, non-exclusive and irrevocable basis access rights to the pre-existing rights they have jointly identified, when and to the extent strictly required for their performance of the Service Contract.

Article 10 - Liability and insurance

- 10.1 The technical and financial responsibility for a given assignment is allocated to the Parties which are responsible for the proper performance of that part of the Service Contract (Annex II).
 - The Parties shall hold harmless and shall indemnify each other from and against any loss or damage which is caused by a breach of other duty arising from or connected with the Services to be performed, clearly attributable to the Party's portion of the Service Contract. The aggregate liability of that Party shall be limited to the respective % share of that Party, provided damage was not caused by willful misconduct or from gross negligence or in the case of an action brought against the European Commission by a Third Party for breach of its intellectual property rights.
- 10.2 Where damage or loss is caused by more than one Party, each shall bear a share of the indemnity which corresponds to the degree of its contribution to the cause of the liability.
 - If the Parties disagree as to which Party/Parties is/are liable for a claim of the European Commission, another Consortium Member or a Third Party and/or as to their share of contribution towards the claim, the Parties concerned shall provisionally make payment in proportion to their share of the price mentioned in the Service Contract. Once it is established which Party is liable and for what amount, or if the matter has been decided in accordance with the dispute resolution clause of this Consortium Agreement, the Parties shall immediately reimburse each other accordingly.
- 10.3 Each Party shall subscribe and maintain appropriate insurance policies to cover risks involving its Third Party liability and its professional liability in respect of the performance of this Consortium Agreement, including statutory worker's compensation, professional liability (covering bodily injury and/or physical damage) and Third Party liability.
 - In addition, the Parties shall subscribe and maintain appropriate insurance policies to cover the risks associated with the performance of the Service Contract, or shall provide a declaration that their risks are covered by the respective government.
- 10.4 Parties that are public bodies that are prohibited by their national law to subscribe to insurance policies are exempt from the obligations imposed in article 10.3.

Article 11 - Taxes

Each Party shall be responsible for its own taxes and for all its own tax-, fees-, duties-, social insurance or similar expenses related matters.

Article 12 – Confidentiality

Without prejudice to any confidentiality obligations in the Service Contract in respect of the European Commission's information, the Parties agree that all information which they receive from another Party pursuant to or in connection with the Service Contract or the Consortium Agreement, whether marked as confidential or not, shall be treated as and remain Confidential Information by the receiving Party.

It is understood that the term "Confidential Information" includes all information, except information which:

- a) is already known to the receiving Party at the time of receipt or;
- b) can be shown by the receiving Party to have been obtained, without violating its obligations hereunder, from other sources, without reservation as to confidentiality, or through its own independent efforts;
- c) is at the time of disclosure generally available to the public through no fault of the receiving Party.

The receiving Party shall take all necessary measures to ensure that no accidental or unauthorised disclosure of the disclosing Party's Confidential Information occurs and shall generally exert the same degree of due and diligent care as it applies with respect to its own Confidential Information, which standard shall in no instance be less than reasonable care.

Confidential Information which one Party receives from another Party in connection with this Consortium Agreement shall only be used for purposes of this Consortium Agreement and shall not be disclosed to any Third Party without the express prior written agreement of the disclosing Party. It shall be made available to Third Parties only to the extent this is necessary for the performance of this Consortium Agreement and provided that such Third Parties have previously accepted in writing to respect equivalent confidentiality requirements. In such case, the Party whose confidential information is to be disclosed to the Third Party may not unreasonably withhold its consent.

When required to do so in order to comply with applicable laws or regulations or with a court or administrative order, the receiving Party may disclose Confidential Information provided it has first:

- given the disclosing Party with timely advance, written notice of the information requested by such public authority and of its intent to so disclose;
- · minimised the amount of information to be disclosed so as to make such disclosure as benign as possible to the best interests of the disclosing Party; and
- made every reasonable effort (which shall include participation by the disclosing Party in discussions with the public authority) to secure confidential treatment and minimisation of the information to be disclosed.

The provisions under this article 12 shall remain in force for the duration of the Consortium Agreement, and for a period of three (3) years following its termination or expiry.

Article 13 – Communication

Any communication or 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 Consortium Leader.

Any change of persons or contact details shall be notified immediately by the respective Party to the Consortium Leader.

For SCK CEN:	Name:	Mr. Klaas VAN DER MEER (Consortium Leader)
	Tel.:	
	Email:	
For Merience:	Name:	Meritxell Martell Lamolla
	Tel.:	
	Email:	
For SURO:	Name:	Ivana Fojtíková
	Tel.:	
	Email:	

Article 14 – Force Majeure

14.1 A Party shall not be liable for a delay or failure to fulfil its obligations under this Consortium Agreement, as a consequence of a case of force Majeure, as defined in the Service Contract.

Any Party so affected, upon giving prompt written notice to the other Parties, within 5 calendar days after the date on which Force Majeure event happened, shall be excused from such performance to the extent of such prevention, restriction or interference; provided that the affected Party shall use its best efforts to avoid or remove such causes of non-performance and shall continue performance hereunder with the utmost despatch whenever such causes are removed.

14.2 The Consortium Leader shall immediately notify the European Commission as set forth in the Service Contract.

Article 15 - Assignment

No rights or obligations of the Parties arising from this Consortium Agreement may be assigned, in whole or in part, to any Third Party without the other Parties' and the European Commission's prior formal approval.

Article 16 - Applicable law and dispute resolution

- 16.1 This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.
- 16.2 The Parties shall endeavour to settle their disputes amicably.

Should a dispute arise between the Parties concerning the validity, the interpretation and/or the implementation of this Consortium Agreement, which cannot be settled amicably, Parties shall refer the dispute to the competent courts of Brussels.

Article 17 – Miscellaneous

17.1 Severability

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.

17.2 Change in Circumstances

If any change in laws, decrees, regulations or administrative order intervenes with this Consortium Agreement, or in case of any change to the Service Contract, which affects the commercial basis or the reasonable performance of the objectives of this Consortium Agreement, Parties shall negotiate in good faith the modifications to be applied to this Consortium Agreement as a result of such change.

17.3 Written Form

Modifications and amendments must be in writing and signed by all Parties in order to be effective. This shall as well apply if the Parties have already agreed upon such modification/amendment before, but only in oral form. The written form requirement shall furthermore apply to the written form requirement itself as well as to its waiver.

17.4 Language

The language of this with this Consortium Agreement and of all correspondence and other communication between the Parties shall be English.

17.5 Entire agreement

This Consortium Agreement sets out the entire agreement and understanding between the Parties in relation to the Subject Matter of this Consortium Agreement and supersedes all previous agreements, arrangements and understandings between them with regard all matters covered by, or referred to in, this Consortium Agreement.

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Annexes:

- Service Contract ENER/20/NUCL/SI2.837814 "Review and evaluation of national radon action plans established in EU Member States according to the requirements in Council Directive 2013/59/Euratom – the BSS Directive – focussing on the practical implementation of the actions defined in these action plans".
- Services and the distribution of tasks per partner
- Monthly rates/maximum prices of the Consortium members/other costs
- IV. Gantt chart

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Signature pages as of next page.

Signature page SCK CEN

Name: Professor Eric van Walle
Function: Director-General

Date: 2021-01-07

Signature:

Name: Professor Derrick P. Gosselin

Function: Chairman of the Board of Governors

Date: 2021-01-07

Signature:

Name:			
Function:			
Date:			
Signature:			

Signature page Merience

Signature page SURO Name: **Function:** Date: Signature:

Annex I

Service Contract number ENER/20/NUCL/SI2.837814

"Review and evaluation of national radon action plans established in EU Member States according to the requirements in Council Directive 2013/59/Euratom -the BSS Directive – focussing on the practical implementation of the actions defined in these action plans"

and its Annexes I and II

provided as separate files to this Consortium Agreement.

Annex II

Services and the distribution of tasks per partner

The Project is split into 5 tasks. The overall responsibility of each task lies with the task leader. The responsibilities of all partners per each task are as follows:

	Description of the task	SCK CEN	SURO	MERIENCE
Task 1	Identification and establishment of contacts with authorities	Task contributor and responsible for 3 Milestones: Log book of contacts and interactions	Task contributor	Task 1 leader responsible for D1.1: List of competent authorities
Task 2	Review and analysis of national radon action plans and their implementation	Task contributor and responsible for Milestones: Questionnaire formulated M2.1 (month 4), Responses collected M2.2 (month 9)	Task leader and responsible for Milestone: Check of RAP status M2.3 (month 19) and contributor to the task	Task contributor and responsible for Intermediate report on review and analysis of national radon action plans and their implementation
Task 3	Comparative horizontal analysis of the implementation of the national radon action plan by all EU Member States and the United Kingdom	Task leader and responsible for Intermediate report on comparative horizontal analysis of the implementation of the national radon action plan	Task contributor and responsible for Draft analysis prepared for discussion at regional workshops M3.1	Task contributor and rosponsible for implementation of regional workshops orgnisation and proceedings
Task 4	Organisation and implementation of the final workshop	Task contributor and responsible for the Final study report (month 24) taking into account results of the discussion	Task contributor and responsible for motivation of partipants, presentations and discussion the results of the study	Task leader and responsible for Agenda of the workshop M4.1 (month 18); Final workshop proceedings M4.2 (month 22), Draft final report M4.3 (month 22)
Task 5	Project management and quality control	Task leader and responsible for: D5.1 Inception report (month 1), D5.2: Progress report (month 11), D5.3: Final Report (month 22), organisation of Kick-off meeting M5.1 (month 1); Final meeting M5.3 (month 24)	Task contributor; in particular to assist in the scientific control of the project and contribute to the Milestone: Periodical exchanges with the Reference Group members	Task contributor and responsible for: Minutes of the kick off meeting M5.2, D3.1 List of the Reference Group members M5.4 (month1), Milestones Periodical exchanges with the Reference Group members M5.5 (M6), M5.6 (M11), M5.7 (M22)

Annex III

Monthly rates/maximum prices of the Consortium members/other costs

	SCK CEN	SURO	MERIENCE
person/months per partner	6	5	6
costs p/m in EURO	20735	5000	8333
other costs: regional workshop in EUR*	10000		
other costs: final workshop in EUR*	25 000		
labour costs in EUR	124410	25000	49998
all costs in EUR	159 410	25000	49998

Value of the project: 234 408 EUR

* In case workshops are organised as virtual events instead of face to face meetings, the consortium will reimburse the ICT costs related to providing the technology and managing the online event to the partner organising and managing that event. Additionally, the remaining financial resources for organising workshops will be equally distributed among the partners at the end of the project.

Annex IV

