

Consortium Agreement



CHES

Version 1.0 – 19/01/2023

(Based on DESC A – Model Consortium Agreement for Horizon Europe, version 1, December 2021)

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CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon Regulation (EU) No 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation (2021-2027), laying down its rules for participation and dissemination (hereinafter referred to as “Horizon Europe Regulation”), and on the European Commission’s General Model Grant Agreement and its Annexes, and is made on 01 January 2023, hereinafter referred to as the Effective Date

BETWEEN:

the beneficiaries:

1. **Masarykova univerzita**, MUNI, established in Zerotinovo namesti 9, BRNO 601 77, Czechia, the Coordinator,
2. **TARTU ULIKOOL**, UTARTU, established in ULIKOOLI 18, TARTU 50090, Estonia,
3. **VYSOKE UCENI TECHNICKE V BRNE**, BUT, established in ANTONINSKA 548/1, BRNO STRED 601 90, Czechia,
4. **TALLINNA TEHNIKAÜLIKOOL**, TalTech, established in Ehitajate tee 5, TALLINN 19086, Estonia,
5. **CYBERNETICA AS**, CYBER, established in MAEALUSE 2, TALLINN 12618, Estonia,
6. **RED HAT CZECH S R O**, Red Hat, established in PURKYNOVA 647/111 MEDLANKY, BRNO 612 00, Czechia,
7. **GUARDTIME OU**, GUARDTIME, established in A H TAMMSAARE TEE, 60 KRISTIINE DISTRICT, TALLINN 11316, Estonia,
8. **RIIGI INFOSUSTEEMI AMET**, RIA, established in PARNU MNT 139 A, Tallinn 15169, Estonia,
9. **CYBERSECURITY HUB, ZU**, CSH, established in SUMAVSKA 416/15, BRNO 602 00, Czechia,

and the associated partners:

10. **National Cyber and Information Security Agency**, NCISA, Mucednicka 1125/31, BRNO 616 00, Czechia
11. **JIC, ZAJMOVE SDRUZENI PRAVNICKCH OSOB**, JIC, Purkynova 649/127, BRNO 612 00, Czechia
12. **MTÜ Eesti Infoturbe Assotsiatsioon**, EISA, Pärnu maantee 15, TALLIN 10141, Estonia

hereinafter, jointly or individually, referred to as “Parties” or “Party”

relating to the Action entitled

Cyber-security Excellence Hub in Estonia and South Moravia

in short

CHES

hereinafter referred to as “Project”

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Granting Authority as part of Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement to be signed by the Parties and the Granting Authority (hereinafter “Grant Agreement”).

The Parties are aware that this Consortium Agreement is based upon the [DESCA model consortium agreement](#).

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions

1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Horizon Europe Regulation or in the Grant Agreement including its Annexes.

1.2 Additional Definitions

“Access Rights”

Access Rights means licenses or user rights to Background or Results of the Project.

“Consortium Body”

Consortium Body means any management body described in Section 6 (Governance Structure) of this Consortium Agreement.

“Consortium Plan”

Consortium Plan means the description of the Action and the related agreed budget as first defined in the Grant Agreement and which may be updated by the Steering Committee.

“Granting Authority”

means the body awarding the grant for the Project.

“Defaulting Party”

Defaulting Party means a Party which the Steering Committee has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Section 4.2 of this Consortium Agreement.

“Exploitation or Exploit”

Exploitation or Exploit means the direct or indirect use of Results in i) further research activities other than those covered by the Project, or ii) in developing, creating and marketing a product, or process, or iii) in creating and providing a service, or iv) in standardization activities.

“Fair and Reasonable”

Fair and Reasonable shall have the meaning given to Fair and Reasonable Conditions in the Grant Agreement, namely, expressed in the terminology of this Consortium Agreement: "appropriate conditions including possible financial terms taking into account the specific circumstances of the request for Access Rights, for example the actual or potential value of the Results or Background to which Access Rights are requested and/or the scope, duration and characteristics of the Exploitation envisaged"; and shall include the following understanding: to fall within Fair and Reasonable conditions, the conditions must also be non-discriminatory and within the meaning of the European State Aid Law.

“Needed”

means:

For the implementation of the Project:

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

For Exploitation of own Results:

Access Rights are Needed if, without the grant of such Access Rights, the Exploitation of own Results would be technically or legally impossible.

“Open Source License”

Open Source License means any license that i) complies with the open source definition of the Open Source Initiative at the site <https://opensource.org/osd>, ii) or listed on the Open Source Initiative site <https://opensource.org/licenses> or any successor location of these two sites.

"Open Source Software"

Open Source Software means any Software governed by an Open Source License.

“Result”

Result means any tangible or intangible output of the Project, such as data, knowledge or information, that is generated in the Project, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including Intellectual Property Right.

“Software”

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.

2 Purpose

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

3 Entry into force, duration and termination

3.1 Entry into force

An entity becomes a Party to this Consortium Agreement 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.

An entity becomes a new Party to the Consortium Agreement upon signature of the accession document (Attachment 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 shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the Grant Agreement 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.

If

- the Grant Agreement is not signed by the Granting Authority or a Party, or
- the Grant Agreement is terminated, or
- a Party's participation in the Grant Agreement is terminated,

this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Section 3.3 of this Consortium Agreement.

3.3 Survival of rights and obligations

The provisions relating to Access Rights, Dissemination 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.

Termination shall not affect any rights or obligations of a Party leaving the Project incurred prior to the date of termination, unless otherwise agreed between the Steering Committee and the leaving Party. This includes the obligation to provide all necessary input, deliverables and documents for the period of its participation.

4 Responsibilities of Parties

4.1 General principles

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

Each Party undertakes to notify promptly the Granting Authority and the other Parties, in accordance with the governance structure of the Project, of any significant information, fact, problem or delay likely to affect the Project.

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks and shall responsibly manage the access of its employees to the EU Funding & Tenders Portal.

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 that the Steering Committee identifies a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement (e.g. improper implementation of the Project), the Coordinator or, if the Coordinator is in breach of its obligations, the Party appointed by the Steering Committee, will give formal notice to such Party requiring that such breach will be remedied within 30 calendar days from the date of receipt of the written notice by the Party.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Steering Committee 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 (including but not limited to Affiliated Entities or other Participants) 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. Such Party 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.

4.4 Specific responsibilities regarding data protection

Where necessary, the Parties shall cooperate in order to enable one another to fulfil legal obligations arising under applicable data protection laws (the *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data* and relevant national data protection law applicable to said Party) within the scope of the performance and administration of the Project and of this Consortium Agreement.

In particular, the Parties shall, where necessary, conclude a separate data processing, data sharing and/or joint controller agreement before any data processing or data sharing takes place.

4.5 Associated Partners

In accordance with Article 9.1 of the Grant Agreement, notwithstanding any other provisions in this Consortium Agreement, the Associated Partners:

- shall be subject to the provisions of Articles 11 (proper implementation), 12 (conflicts of interest), 13 (confidentiality and security), 14 (ethics), 17.2 (visibility), 18 (specific rules for carrying out action), 19 (information) and 20 (recordkeeping) of the Grant Agreement; and
- shall implement the action tasks attributed to them in the Annex I of the Grant Agreement in accordance with article 11 of the Grant Agreement;
- shall not be subject to Clause 7 (Financial Provisions) of this Consortium Agreement and shall not vote on the questions arising thereof;
- shall enable the bodies mentioned in Article 25 (e.g. granting authority, OLAF, Court of Auditors (ECA), etc.) to exercise their rights also towards the associated partners as if they were the Beneficiaries under the Grant Agreement.

5 Liability towards each other

5.1 No warranties

In respect of any information or materials (incl. Results and Background) supplied by one Party to another under the Project, 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 recipient Party 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 (or its entities under the same control) 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, except in case of breach of confidentiality.

A Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's share of the total costs of the Project as identified in Annex 2 of the Grant Agreement.

A Party's liability shall not be limited under either of the two foregoing paragraphs to the extent such damage was caused by a willful act or gross negligence or to the extent that such limitation is not permitted by law.

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 Results or Background.

5.4 Force Majeure

No Party 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.

Each Party will notify the Steering Committee of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notice, the transfer of tasks - if any - shall be decided by the Steering Committee.

5.5 Export control

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement due to a restriction resulting from import or export laws and regulations and/or any delay of the granting or extension of the import or export license or any other governmental authorisation, provided that the Party has used its reasonable efforts to fulfil its tasks and to apply for any necessary license or authorisation properly and in time.

Each Party will notify the Steering Committee of any such restriction without undue delay. If the consequences of such restriction for the Project are not overcome within 6 weeks after such notice, the transfer of tasks - if any - shall be decided by the Steering Committee.

6 Governance structure

6.1 General structure

The organisational structure of the consortium shall comprise the following Consortium Bodies:

- The Steering Committee as the ultimate decision-making body of the consortium
- The Strategy Board as the supervisory body for the execution of the Project, which shall report to and be accountable to the Steering Committee
- The Coordinator as the legal entity acting as the intermediary between the Parties and the Granting Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

6.2 General operational procedures for all Consortium Bodies

6.2.1 Representation in meetings

Any Party which is appointed to take part in a Consortium Body shall designate one representative (hereinafter referred to as "Member").

Any Member:

- should be present or represented at any meeting;
- 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 chairperson of a Consortium Body shall convene meetings of that Consortium Body.

	Ordinary meeting	Extraordinary meeting
Steering Committee	At least once a year	At any time upon request of the Strategy Board or 1/3 of the Members of the Steering Committee
Strategy Board	At least five times a year	At any time upon request of any Member of the Strategy Board

6.2.2.2 Notice of a meeting

The chairperson of a Consortium Body shall give written notice of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated below.

	Ordinary meeting	Extraordinary meeting
Steering Committee	45 calendar days	15 calendar days
Strategy Board	14 calendar days	7 calendar days

6.2.2.3 Sending the agenda

The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body an agenda no later than the minimum number of days preceding the meeting as indicated below.

Steering Committee	21 calendar days, 10 calendar days for an extraordinary meeting
Strategy Board	7 calendar days

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 notice to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.

Steering Committee	14 calendar days, 7 calendar days for an extraordinary meeting
Strategy Board	2 calendar days

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

Meetings of each Consortium Body may also be held by tele- or videoconference, or other telecommunication means.

6.2.2.7

Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.2.5.2.

6.2.2.8

Decisions without a meeting

Any decision may also be taken without a meeting if

- a) the Coordinator circulates to all Members of the Steering Committee a suggested decision with a deadline for responses of at least 10 calendar days after receipt by a Party and
- b) the decision is agreed by 51 % of all Parties.

The Coordinator shall inform all the Parties of the outcome of the vote.

A veto according to Section 6.2.5 may be submitted up to 15 calendar days after receipt of this information.

The decision will be binding after the Coordinator sends a notification to all Members. The Coordinator will keep records of the votes and make them available to the Parties on request.

6.2.3 Voting rules and quorum

6.2.3.1

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

If the quorum is not reached, the chairperson of the Consortium Body shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members is present or represented.

6.2.3.2

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

6.2.3.3

A Party which the Steering Committee has declared according to Section 4.2 to be a Defaulting Party may not vote.

6.2.3.4

Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast.

6.2.4 Veto rights

6.2.4.1

A Party which can show that its own work, time for performance, costs, liabilities, intellectual property rights 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 Party may only veto such a decision during the meeting.

6.2.4.3

When a decision has been taken on a new item added to the agenda before or during the meeting, a Party may veto such decision during the meeting or within 15 calendar days after receipt of the draft minutes of the meeting.

A Party that is not appointed to participate to a particular Consortium Body may veto a decision within the same number of calendar days after receipt of the draft minutes of the meeting.

6.2.4.4

When a decision has been taken without a meeting a Party may veto such decision within 15 calendar days after written notice by the chairperson of the outcome of the vote.

6.2.4.5

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 the Parties.

6.2.4.6

A Party may neither veto decisions relating to its identification to be in breach of its obligations nor 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.

6.2.4.7

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

6.2.5 Minutes of meetings

6.2.5.1

The chairperson of a Consortium Body shall produce minutes of each meeting which shall be the formal record of all decisions taken. He/she shall send the draft minutes to all Members within 10 calendar days of the meeting.

6.2.5.2

The minutes shall be considered as accepted if, within 15 calendar days from receipt, no Member has sent an objection by written notice to the chairperson with respect to the accuracy of the draft of the minutes by written notice.

6.2.5.3

The chairperson shall send the accepted minutes to all the Parties and to the Coordinator, who shall retain copies of them.

6.3 Specific operational procedures for the Consortium Bodies

6.3.1 Steering Committee

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

6.3.1.1 Members

6.3.1.1.1

The Steering Committee shall consist of one representative of each Party (hereinafter Steering Committee Member).

6.3.1.1.2

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

6.3.1.1.3

The Coordinator shall chair all meetings of the Steering Committee, unless decided otherwise in a meeting of the Steering Committee.

6.3.1.1.4

The Parties agree to abide by all decisions of the Steering Committee. This does not prevent the Parties from exercising their veto rights, according to Section 6.2.4.1, or from submitting a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 11.8.

6.3.1.2 Decisions

The Steering Committee 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 Strategy Board shall also be considered and decided upon by the Steering Committee.

The following decisions shall be taken by the Steering Committee:

Content, finances and intellectual property rights

- Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Granting Authority
- Changes to the Consortium Plan
- Modifications or withdrawal of Background in Attachment 1 (Background Included)
- Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3.2)
- Additions to Attachment 4 (Identified entities under the same control)

Evolution of the consortium

- Entry of a new Party to the Project and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the Project and the approval of the settlement on the conditions of the withdrawal
- Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement
- Declaration of a Party to be a Defaulting Party
- Remedies to be performed by a Defaulting Party
- Termination of a Defaulting Party's participation in the Project and measures relating thereto
- Proposal to the Granting Authority for a change of the Coordinator
- Proposal to the Granting Authority for suspension of all or part of the Project
- Proposal to the Granting Authority for termination of the Project and the Consortium Agreement

Appointments

On the basis of the Grant Agreement, the appointment if necessary of:

- Strategy Board Members
- External Expert Advisory Board Members

6.3.2 Strategy Board

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

6.3.2.1 Members

The Strategy Board shall consist of the Coordinator and the representatives of the Parties appointed to it by the Steering Committee.

The Coordinator shall chair all meetings of the Strategy Board, unless decided otherwise by a majority of two-thirds.

6.3.2.2 Minutes of meetings

Minutes of Strategy Board meetings, once accepted, shall be sent by the Coordinator to the Steering Committee Members for information.

6.3.2.3 Tasks

6.3.2.3.1

The Strategy Board shall prepare the meetings, propose decisions and prepare the agenda of the Steering Committee according to Section 6.3.1.2.

6.3.2.3.2

The Strategy Board shall seek a consensus among the Parties.

6.3.2.3.3

The Strategy Board shall be responsible for the proper execution and implementation of the decisions of the Steering Committee.

6.3.2.3.4

The Strategy Board shall monitor the effective and efficient implementation of the Project.

6.3.2.3.5

In addition, the Strategy Board shall collect information at least every 6 months on the progress of the Project, examine that information to assess the compliance of the Project with the Consortium Plan and, if necessary, propose modifications of the Consortium Plan to the Steering Committee.

6.3.2.3.6

The Strategy Board shall:

- support the Coordinator in preparing meetings with the Granting Authority and in preparing related data and deliverables
- prepare the content and timing of press releases and joint publications by the consortium or proposed by the Granting Authority in respect of the procedures of the Grant Agreement Article 17 and Annex 5 Section “Communication, Dissemination, Open Science and Visibility” and of Section 8 of this Consortium Agreement.

6.3.2.3.7

In the case of abolished tasks as a result of a decision of the Steering Committee, the Strategy Board shall advise the Steering Committee on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration any prior legitimate commitments which cannot be cancelled.

6.4 Coordinator

6.4.1

The Coordinator shall be the intermediary between the Parties and the Granting Authority and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.

6.4.2

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations under this Consortium Agreement and the Grant Agreement
- keeping the address list of Members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Granting Authority
- transmitting documents and information connected with the Project to any other Parties concerned
- administering the financial contribution of the Granting Authority and fulfilling the financial tasks described in Section 7.2
- providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

If one or more of the Parties is late in submission of any Project deliverable, the Coordinator may nevertheless submit the other 'Parties' Project deliverables and all other documents required by the Grant Agreement to the Granting Authority in time.

6.4.3

If the Coordinator fails in its coordination tasks, the Steering Committee may propose to the Granting Authority to change the Coordinator.

6.4.4

The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement.

6.4.5

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

6.5 Advisory Group (AG)

An Advisory Group (AG) will be appointed and steered by the Strategy Board. The AG shall assist and facilitate the decisions made by the Steering Committee.

The Coordinator will ensure that a non-disclosure agreement is executed between all Parties and each AG member.

By way of exception to Section 6.4.4 above, the Parties mandate the Coordinator to execute, in their name and on their behalf, a non-disclosure agreement (hereafter "NDA") with each member of the AG, in order to protect Confidential Information disclosed by any of the Parties to any member of the AG, either directly or through the Coordinator in the case where the concerned Party gave to the Coordinator its prior written approval for such disclosure. The NDA for the AG members is enclosed in Attachment 5. The mandate of the Coordinator comprises solely the execution of the NDA in Attachment 5.

Its terms shall be not less stringent than those stipulated in this Consortium Agreement, and it shall be concluded no later than 30 calendar days after their nomination or before any confidential information will be exchanged/disclosed, whichever date is earlier. The Coordinator shall write the minutes of the

AG meetings and submit them to the Steering Committee. The AG members shall be allowed to participate in Steering Committee meetings upon invitation but have not any voting rights.

7 Financial provisions

7.1 General Principles

7.1.1 Distribution of Financial Contribution

The financial contribution of the Granting Authority to the Project shall be distributed by the Coordinator according to:

- the Consortium Plan
- the approval of reports by the Granting Authority, and
- the provisions of payment in Section 7.2.

A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.

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 (and those of its Affiliated Entities, if any) with respect to the Project towards the Granting Authority. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Granting Authority.

7.1.3 Funding Principles

A Party that spends less than its allocated share of the budget as set out in the Consortium Plan or – in case of reimbursement via unit costs - implements less units than foreseen in the Consortium Plan will be funded in accordance with its units/actual duly justified eligible costs only.

A Party that spends more than its allocated share of the budget as set out in the Consortium Plan will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

7.1.4 Excess payments

A Party has received excess payment

- a) if the payment received from the Coordinator exceeds the amount declared or
- b) if a Party has received payments but, within the last year of the Project, its real Project costs fall significantly behind the costs it would be entitled to according to the Consortium Plan.

In case a Party has received excess payment, the Party has to inform the Coordinator and return the relevant amount to the Coordinator without undue delay. In case no refund takes place within 30 days upon request for return of excess payment from the Coordinator, the Party is in substantial breach of the Consortium Agreement.

Amounts which are not refunded by a breaching Party and which are not due to the Granting Authority, shall be apportioned by the Coordinator to the remaining Parties pro rata according to their share of total costs of the Project as identified in the Consortium Budget, until recovery from the breaching Party is possible.

7.1.5 Revenue

In case a Party earns any revenue that is deductible from the total funding as set out in the Consortium Plan, the deduction is only directed toward the Party earning such revenue. The other Parties' financial share of the budget shall not be affected by one Party's revenue. In case the relevant revenue is more than the allocated share of the Party as set out in the Consortium Plan, the Party shall reimburse the funding reduction suffered by other Parties.

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

A Party leaving the consortium shall refund to the Coordinator any payments it has received except the amount of contribution accepted by the Granting Authority or another contributor.

In addition, a Defaulting Party shall, within the limits specified in Section 5.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform the leaving Party's task and necessary additional efforts to fulfil them as a consequence of the Party leaving the consortium. The Steering Committee should agree on a procedure regarding additional costs which are not covered by the Defaulting Party or the Mutual Insurance Mechanism.

7.2 Payments

7.2.1 Payments to Parties are the exclusive task 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

perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts

undertake to keep the Granting Authority's financial contribution to the Project 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.

With reference to Article 22 of the Grant Agreement, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount less the amounts retained by the Granting Authority for the Mutual Insurance Mechanism and for the final payment.

7.2.2

The transfer of the initial pre-financing, the additional pre-financings (if any) and interim payments to Parties will be handled in accordance with Article 22.1. and Article 7 of the Grant Agreement following this payment schedule:

Funding of costs included in the Consortium Plan will be paid by the Coordinator to the Parties after receipt of payments from the Granting Authority without undue delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the Granting Authority will be paid to the Party concerned.

The Coordinator is entitled to withhold any payments due to a Party identified by the Steering Committee to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or to a Beneficiary which has not yet signed this Consortium Agreement.

The Coordinator is entitled to recover any payments already paid to a Defaulting Party except the costs already claimed by the Defaulting Party and accepted by the Granting Authority. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Granting Authority.

8 Results

8.1 Ownership of Results

Results are owned by the Party that generates them.

8.2 Joint ownership

Joint ownership is governed by Grant Agreement Article 16.4 and its Annex 5, Section Ownership of results, with the following additions:

Unless otherwise agreed:

- each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research and teaching activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s).
- 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 are given: (a) at least 45 calendar days advance notice; and (b) fair and reasonable compensation.

The joint owners shall agree on all protection measures and the division of related cost in advance.

8.3 Transfer of Results

8.3.1

Each Party may transfer ownership of its own Results, including its share in jointly owned Results, following the procedures of the Grant Agreement Article 16.4 and its Annex 5, Section Transfer and licensing of results, sub-section “Transfer of ownership”.

8.3.2

Each Party may identify specific third parties it intends to transfer the ownership of its Results to in Attachment (3) of this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to such a transfer to listed third parties according to the Grant Agreement Article 16.4 and its Annex 5, Section Transfer of licensing of results, sub-section “Transfer of ownership”, 3rd paragraph.

8.3.3

The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties under the Consortium Agreement and the Grant Agreement will not be affected by such transfer. Any addition to Attachment (3) after signature of this Consortium Agreement requires a decision of the Steering Committee.

8.3.4

The Parties recognise that in the framework of a merger or an acquisition of an important part of its assets, it may be impossible under applicable EU and national laws on mergers and acquisitions for a Party to give at least 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.

8.3.5

The obligations above apply only for as long as other Parties still have - or still may request - Access Rights to the Results.

8.4 Dissemination

8.4.1

For the avoidance of doubt, the confidentiality obligations set out in Section 9.8 apply to all dissemination activities described in this Section 8.4 as far as Confidential Information is involved.

8.4.2 Dissemination of own (including jointly owned) Results

8.4.2.1

During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 17.4 of the Grant Agreement and its Annex 5, Section Dissemination, subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties at least 45 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement by written notice to the Coordinator and to the Party or Parties proposing the dissemination within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

Excluded from the need of prior notice are submissions of abstracts to scientific meetings and congresses or marketing materials, including marketing presentations, related to Results, provided that they do not disclose details of research or confidential information of other Parties, and provided that the submission can be retracted if justified objections according to Section 8.4.2.2. by other Parties occur.

8.4.2.2

An objection is justified if

- a) the protection of the objecting Party's Results or Background would be adversely affected, or
- b) the objecting Party's legitimate interests in relation to its Results or Background would be significantly harmed, or
- c) the proposed publication includes Confidential Information of the objecting Party.

The objection has to include a precise request for necessary modifications.

8.4.2.3

If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

8.4.2.4

The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted, provided that the objections of the objecting Party have been addressed.

8.4.3 Dissemination of another Party's unpublished Results or Background

A Party shall not include in any dissemination activity another Party's Results or Background or Confidential Information without obtaining the owning Party's prior written approval, unless they are already published.

8.4.4 Cooperation obligations

The Parties undertake to cooperate to allow the timely submission, examination, publication and defense 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.

8.4.5 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.

8.4.6 Authorship

The Parties agree to take into the highest consideration academic standards and custom in terms of authorship on publications. In accordance with normal scientific practice, all investigators and contributors to a publication will be acknowledged.

8.4.7 Open access principles

As defined in Annex I of the Grant Agreement, the Parties will comply with the obligations related to open access publishing of scientific articles and the defined provisions on open access to research data. Additional provisions and requirements will be defined in the Data Management Plan that all Parties will follow.

9 Access Rights

9.1 Background included

9.1.1

In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.

Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.

9.1.2

Any Party may add additional Background to Attachment 1 during the Project provided they give written notice to the other Parties. However, approval of the Steering Committee is needed should a Party wish to modify or withdraw its Background in Attachment 1.

9.2 General Principles

9.2.1

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

9.2.2

Any Access Rights granted exclude any rights to sublicense unless expressly stated otherwise.

9.2.3

Access Rights shall be free of any administrative transfer costs.

9.2.4

Access Rights are granted on a non-exclusive basis.

9.2.5

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

9.2.6

All requests for Access Rights shall be made in writing. The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

9.2.7

The requesting Party must show that the Access Rights are Needed.

9.3 Access Rights for implementation

Access Rights to Results and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.

9.4 Access Rights for Exploitation

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.

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

9.4.2

Access Rights to Background if Needed for Exploitation of a Party's own Results, shall be granted on Fair and Reasonable conditions.

9.4.3

A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

9.5 Access Rights for entities under the same control

Entities under the same control have Access Rights under the conditions of the Grant Agreement Article 16.4 and its Annex 5, Section "Access rights to results and background", sub-section "Access rights for entities under the same control" if they are identified in Attachment 4 (Identified entities under the same control) to this Consortium Agreement.

Such Access Rights must be requested by the entity under the same control from the Party that holds the Background or Results. Alternatively, the Party granting the Access Rights may individually agree with the Party requesting the Access Rights to have the Access Rights include the right to sublicense to the latter's entity under the same control listed in Attachment 4. Access Rights to an entity under the same control shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.

Entities under the same control which obtain Access Rights in return fulfil all confidentiality obligations accepted by the Parties under the Grant Agreement or this Consortium Agreement as if such entities were Parties.

Access Rights may be refused to entities under the same control if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.

Access Rights granted to any entity under the same control are subject to the continuation of the Access Rights of the Party with whom it is under the same control, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an entity under the same control, any Access Rights granted to such former entity under the same control shall lapse.

Further arrangements with entities under the same control may be negotiated in separate agreements.

9.6 Additional Access Rights

For the avoidance of doubt any grant of Access Rights not covered by the Grant Agreement or this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

9.7 Access Rights for Parties entering or leaving the consortium

9.7.1 New Parties entering the consortium

As regards Results developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.

9.7.2 Parties leaving the consortium

9.7.2.1 Access Rights granted to a leaving Party

9.7.2.1.1 Defaulting Party

Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the Steering Committee to terminate its participation in the consortium.

9.7.2.1.2 Non-defaulting Party

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Results developed until the date of the termination of its participation.

It may request Access Rights within the period of time specified in Section 9.4.3.

9.7.2.2 Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

9.8 Specific provisions for Access Rights to Software

9.8.1 Definitions relating to Software

"Application Programming Interface" or "API"

means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.

"Controlled License Terms" means terms in any license that require that the use, copying, modification and/or distribution of Software or another work ("Work") and/or of any work that is a modified version of or is a derivative work of such Work (in each case, "Derivative Work") be subject, in whole or in part, to one or more of the following:

- a) (where the Work or Derivative Work is Software) that the Source Code or other formats preferred for modification be made available as of right to any third party on request, whether royalty-free or not;

- b) that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
- c) that a royalty-free license relating to the Work or Derivative Work be granted to any third party.

For the avoidance of doubt, any Software license that merely permits (but does not require any of the things mentioned in (a) to (c) is not under Controlled License Terms.

“Object Code” means Software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for linking procedures and functions to other software.

“Software Documentation” means Software information, being technical information used, or useful in, or relating to the design, development, use or maintenance of any version of a Software programme.

“Source Code” means Software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.

9.8.2 General principles

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software as far as not modified by this Section 9.8.

Parties’ Access Rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

The introduction of Software under Controlled License Terms in the Project requires the prior approval of the Steering Committee to implement such introduction into the Consortium Plan.

In case of an [approved] introduction of Software under Controlled License Terms’ in the Project, the Controlled License Terms shall prevail over any conflicting provisions of this Consortium Agreement for affected original and derivative Background and Results.

9.8.3 Access to Software

Access Rights to Software that is Results shall comprise:

- Access Rights to the Object Code; and,
- where normal use of such an Object Code requires an API, Access Rights to the Object Code and such an API; and,
- if a Party can show that the execution of its tasks under the Project or the Exploitation of its own Results is technically or legally impossible without Access Rights to the Source Code, Access Rights to the Source Code to the extent necessary.

Background shall only be provided in Object Code unless otherwise agreed between the Parties concerned.

9.8.4 Software license and sublicensing rights

9.8.4.1 Object Code

9.8.4.1.1 Results - Rights of a Party

Where a Party has Access Rights to Object Code and/or API that is Results for Exploitation, such Access shall, in addition to the Access for Exploitation foreseen in Section 9.4, as far as Needed for the Exploitation of the Party's own Results, comprise the right:

- to make an agreed number of copies of Object Code and API; and
- to distribute, make available, market, sell and offer for sale such Object Code and API alone or as part of or in connection with products or services of the Party having the Access Rights;

provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to exploit Object Code and API for its own Results.

If it is intended to use the services of a third party for the purposes of this Section 9.8.4.1.1, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.

9.8.4.1.2 Results - Rights to grant sublicenses to end-users

In addition, Access Rights to Object Code shall, as far as Needed for the Exploitation of the Party's own Results, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code alone or as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:

- to maintain such product/service;
- to create for its own end-use interacting interoperable Software in accordance with the Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs.

9.8.4.1.3 Background

For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.4.2 Source Code

9.8.4.2.1 Results - Rights of a Party

Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code that is Results for Exploitation, Access Rights to such Source Code, as far as Needed for the Exploitation of the Party's own Results, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service.

If it is intended to use the services of a third party for the purposes of this Section 9.8.4.2.1, the Parties shall agree on the terms thereof, with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.

9.8.4.2.2 Results – Rights to grant sublicenses to end-users

In addition, Access Rights, as far as Needed for the Exploitation of the Party's own Results, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.

Further sublicensing of Source Code is explicitly excluded.

9.8.4.2.3 Background

For the avoidance of doubt, where a Party has Access Rights to Source Code that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.5 Specific formalities

Each sublicense granted according to the provisions of Section 9.8.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.

9.9 Open Source License Terms

Notwithstanding any terms in the Consortium Agreement or the Grant Agreement, all software or documentation in any form or category and all derivations and modifications thereof that are licensed under an Open Source License shall be solely governed by the Open Source License.

10 Non-disclosure of information

10.1

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

Confidential information shall also include any information which can be obtained by examination, testing or analysis of any hardware, software, material or component provided by the Disclosing Party subject to marking of such hardware, software, material or component provided by the Disclosing Party as "confidential".

10.2

The Recipients hereby undertake in addition and without prejudice to any commitment on non-disclosure under the Grant Agreement, for a period of 5 years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored

in a machine-readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient complies with the confidentiality obligations herein contained with respect to such copy.

10.3

The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

10.4

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 confidentiality to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
- 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 10.7 hereunder.

10.5

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

10.6

Each Recipient shall promptly inform the relevant Disclosing Party by written notice of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

10.7

If any Recipient 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.

11 Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and:

- Attachment 1 (Background included)
- Attachment 2 (Accession document)
- Attachment 3 (List of third parties for simplified transfer according to Section 8.3.2)
- Attachment 4 (Identified entities under the same control)
- Attachment 5 (NDA for External Expert Advisory Board agreed under Section 6)

In case the terms of this Consortium Agreement are in conflict with the terms of the Grant Agreement, the terms of the latter shall prevail. 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 that fulfils the purpose of the original provision.

11.2 No representation, partnership or agency

Except as otherwise provided in Section 6.4.4 **Chyba! Nenalezen zdroj odkazů.**, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium. 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 Formal and written notices

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

Any change of persons or contact details shall be immediately communicated to the Coordinator by written notice. The address list shall be accessible to all Parties.

Formal notices:

If it is required in this Consortium Agreement (Sections 4.2, 9.7.2.1.1, and 11.4) 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 with acknowledgement of receipt.

Written notice:

Where written notice is required by this Consortium Agreement, this is fulfilled also by other means of communication such as e-mail.

11.4 Assignment and amendments

Except as set out in Section 8.3, 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 6.3.1.2 require a separate written agreement to be signed 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.

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.

11.8 Settlement of disputes

The Parties shall endeavour to settle their disputes amicably.

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 Brussels unless otherwise agreed upon. The language to be used in the mediation 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 mediation within 60 calendar days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of 60 calendar days, either Party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. 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.

The award of the arbitration will be final and binding upon the Parties.

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

12 Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Masarykova univerzita

Signature(s)

XXXXXXXXXX

XXXXXXXXXX

Date 07.02.2023

TARTU ULIKOOL

Signature(s)

XXXXXXXXXX

XXXXXXXXXX

Date 23.01.2023

VYSOKE UCENI TECHNICKE V BRNE

Signature(s)

XXXXXXXXXX

XXXXXXXXXX

Date 30.01.2023

TALLINNA TEHNIKAÜLIKOOL

Signature(s)

XXXXXXXXXX

XXXXXXXXXX

Date 27.01.2023

CYBERNETICA AS

Signature(s)

XXXXXXXXXX

XXXXXXXXXX

Date January 20th, 2023

RED HAT CZECH S R O

Signature(s)

XXXXXXXXXX

XXXXXXXXXX

Date 15.03.2023

GUARDTIME

OU Signature(s)

XXXXXXXXXX

XXXXXXXXXX

Date 02.01.2023

RIIGI INFOSUSTEEMI AMET

Signature(s)

XXXXXXXXXX

XXXXXXXXXX

Date 20.02.2023

CYBERSECURITY HUB, ZU

Signature(s)

XXXXXXXX

XXXXXXXXXX

Date 22.02.2023

National Cyber and Information Security Agency

Národní úřad pro kybernetickou a informační bezpečnost

Signature(s)

XXXXXXXXXX

XXXXXXXXXX

Date 10.02.2023

JIC, ZAJMOVE SDRUZENI PRAVNICKCH OSOB

Signature(s)

XXXXXXXX

XXXXXXXXXX

Date 22.02.2023

MTÜ Eesti Infoturbe Assotsiatsioon

Signature(s)

XXXXXXXXXX

XXXXXXXXXX

Date 23.01.2023

Attachment 1: Background included

According to the Grant Agreement (Article 16.1) Background is defined as “data, know-how or information (...) that is (...) needed to implement the Action or exploit the results”. Because of this need, Access Rights have to be granted in principle, but Parties must identify and agree amongst them on the Background for the Project. This is the purpose of this attachment.

PARTY 1

As to Masarykova univerzita, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of Masarykova univerzita is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

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

PARTY 2

As to TARTU ULIKOOL, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of TARTU ULIKOOL is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

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

PARTY 3

As to VYSOKE UCENI TECHNICKE V BRNE, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of VYSOKE UCENI TECHNICKE V BRNE is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

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

PARTY 4

As to TALLINNA TEHNIKAÜLIKOO, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of TALLINNA TEHNIKAÜLIKOO is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

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

PARTY 5

As to CYBERNETICA AS, it is agreed between the Parties that, to the best of their knowledge, the following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific restrictions and/or conditions for implementation (Article 16.4 Grant Agreement and its Annex 5, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the Action”)	Specific restrictions and/or conditions for Exploitation (Article 16.4 Grant Agreement and its Annex 5, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”)
The Sharemind® MPC privacy preserving computation system, including the secure multi-party computation runtime, SecreC programming tools and standard library	CYBERNETICA AS grants to the other Parties a limited, non-exclusive, non-transferable, non-assignable, revocable royalty-free license, during the term of the Consortium Agreement, to use the listed background solutions for the sole purposes and to the extent needed for the implementation of their own part of the work under the Project, in accordance with the provisions set forth in the Consortium Agreement. Upon CYBERNETICA AS’s request, the relevant Party shall sign a license agreement concerning the specific terms and conditions of such use. Access to Source Code of Cybernetica AS’s Background shall be possible only in case of a specific agreement negotiated with CYBERNETICA AS.	Exploitation shall be subject to a specific agreement negotiated with CYBERNETICA AS.
The Sharemind® HI privacy preserving computation and data sharing system, including the standard library and software development kit		
The SplitKey authentication and digital signature technology		
The pleak.io Privacy-Enhanced Business Modelling tool and the built-in risk and sensitivity analysis tools		
The CSA asset management and risk analysis toolkit		

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

PARTY 6

As to RED HAT CZECH S R O, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of RED HAT CZECH S R O is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

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

PARTY 7

As to GUARDTIME OU, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of GUARDTIME OU is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section "Access rights to results and background", sub-section "Access rights to background and results for implementing the action") or Exploitation of that other Party's Results (Article 16.1 and its Annex 5 Grant Agreement, Section "Access rights to results and background", sub-section "Access rights for exploiting the results").

For sake of clarity, in particular, but without limitation, GUARDTIME OU owns and develops various digital signature and timestamping technologies and solutions that it refers to by the trademarks "KSI" and "BLT" (referred to here collectively as "Guardtime Proprietary Solutions"). Notwithstanding any interpretation of this Consortium Agreement and/or the Grant Agreement, or of any attachment, or other ancillary agreement thereto, if GuardTime OU makes available to any other Party (including the Party's affiliates) any API, software development kit, or other software that forms an interface with any of the Guardtime Proprietary Solutions (collectively, "Interface Software"), this shall not cause the Interface Software itself, or any of the Guardtime Proprietary Solutions, in whole or in part, to be viewed as Background, or as any part of any Result, and shall not give rise to any Access Rights to the Guardtime Proprietary Solutions or Interface Software, nor to any expressed or implied license; access to and use of Guardtime Proprietary Solutions and Interface Software will remain available only on commercial terms.

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

PARTY 8

As to RIIGI INFOSUSTEEMI AMET, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of RIIGI INFOSUSTEEMI AMET is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

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

PARTY 9

As to CYBERSECURITY HUB, ZU, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of CYBERSECURITY HUB, ZU is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

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

PARTY 10

As to National Cyber and Information Security Agency, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of National Cyber and Information Security Agency is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

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

PARTY 11

As to JIC, ZAJMOVE SDRUZENI PRAVNICKCH OSOB, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of JIC, ZAJMOVE SDRUZENI PRAVNICKCH OSOB is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section "Access rights to results and background", sub-section "Access rights to background and results for implementing the action") or Exploitation of that other Party's Results (Article 16.1 and its Annex 5 Grant Agreement, Section "Access rights to results and background", sub-section "Access rights for exploiting the results").

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

PARTY 12

As to MTÜ Eesti Infoturbe Assotsiatsioon, it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of MTÜ Eesti Infoturbe Assotsiatsioon is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights to background and results for implementing the action”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “Access rights to results and background”, sub-section “Access rights for exploiting the results”).

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

Attachment 2: Accession document

ACCESSION

of a new Party to

CHES Consortium Agreement, version [..., YYYY-MM-DD]

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE Grant 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].

Masarykova univerzita

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]

Masarykova univerzita

Signature(s)

Name(s)

Title(s)

Attachment 3: List of third parties for simplified transfer according to Section 8.3.2.

With respect to RED HAT CZECH S R O

- Red Hat, Inc.
- Any company directly or indirectly controlled by Red Hat, Inc.

With respect to University of Tartu: UniTartu Ventures OÜ, registry code 16124187.

Attachment 4: Identified entities under the same control according to Section 9.5

With respect to RED HAT CZECH S R O

- Red Hat, Inc.
- Any company directly or indirectly controlled by Red Hat, Inc.

With respect to University of Tartu: UniTartu Ventures OÜ, registry code 16124187.

Attachment 5: NDA for Advisory Group agreed under Section 6

CONFIDENTIAL NON-DISCLOSURE AGREEMENT (NDA)

THIS NON-DISCLOSURE AGREEMENT (this “**Agreement**”) is made and entered into as of the *[insert date]* (the “**Effective Date**”), by and between:

Consortium Members, as defined below and listed in Exhibit 1;

and

[insert Recipient’s name and Recipient’s address; if Recipient is another (“**Contract Partner**”)

12.1 WHEREAS,

The parties intend to disclose/receive confidential information for the purpose of facilitating discussions between the Consortium Members and the Contract Partner.

The Consortium Members have authorized **Masaryk University** (the “**CHES Coordinator**”) to execute this Agreement on behalf of the **Consortium Members**.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree as follows:

1. DEFINITIONS

“**Confidential Information**” represents all information in whatever form or mode of communication, which is disclosed by a **Party** (the “**Disclosing Party**”) to any other **Party** (the “**Recipient**”) in connection with the Project during its implementation and which has been explicitly marked as “confidential” at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the **Disclosing Party**.

“**Consortium Members**” shall mean the parties to the Consortium Agreement for CHES effective as of *[...]* (“**Consortium Agreement**”) as listed at Exhibit 1.

2. PURPOSE OF DISCLOSURE

The Confidential Information is being disclosed for the purpose of facilitating discussions between Consortium Members and Contract Partner in order to engage in discussions providing

independent advice to the CHES Consortium Members as part of the Advisory Group of CHES (the “**Purpose**”).

3. MAINTENANCE OF CONFIDENTIALITY; NON-USE OBLIGATIONS

1. Each Disclosing Party’s Confidential Information shall be kept confidential by each Recipient and, except as otherwise permitted herein, shall not be disclosed by the Recipient to any third party without first obtaining the Disclosing Party’s prior written consent to such disclosure. Each Recipient shall protect the Confidential Information in the same manner it protects its own confidential information of a similar nature, which shall be at least a reasonable standard of care.
2. The Confidential Information shall not be utilized by the Recipient, except for the Purpose permitted herein, without first obtaining the Disclosing Party’s prior written consent to such use.

4. EXCLUDED INFORMATION

Confidential Information shall not include any information which:

1. Recipient can demonstrate by reasonable proof was in Recipient’s possession prior to the time of disclosure by a Disclosing Party hereunder, and was not acquired directly or indirectly from a Disclosing Party;
2. Recipient can demonstrate by reasonable proof was developed by or on behalf of Recipient independent of and without reference to the Confidential Information;
3. becomes available to Recipient from a third party who did not acquire such information directly or indirectly from a Disclosing Party and who is not otherwise prohibited from disclosing such information.

Confidential Information shall not be deemed to be or have become public knowledge merely because any part of such Confidential Information is embodied in general disclosures or because individual features, components or combinations thereof are known or become known to the public.

5. NOTIFICATION OF MANDATORY DISCLOSURE

If any Recipient 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

1. notify the Disclosing Party, and
2. comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.

6. TERM

This Agreement shall come into effect on the effective date. It may be terminated with respect to further disclosures upon thirty (30) days’ prior written notice. The obligation to non-disclosed confidential information under this Agreement lasts from the effective date for 4 years from the end of the Project CHES, even if this Agreement is terminated.

7. NO OTHER OBLIGATION; NO LICENSE

This Agreement shall not be construed, by implication or otherwise, as an obligation to enter into any further agreement relating to the Confidential Information or as the grant of a license or other ownership rights other than to use the Confidential Information for the Purpose. Confidential Information disclosed by a Disclosing Party to a Recipient, as well as any right which could result from such Confidential Information, remains the exclusive property of that Disclosing Party.

8. NO REPRESENTATION OR WARRANTY

A Disclosing Party makes no representations or warranties either express or implied with respect to the Confidential Information and specifically disclaims any implied warranty of non-infringement or merchantability, satisfactory quality, or fitness for purpose.

9. RETURN OF CONFIDENTIAL INFORMATION

At the request of the Disclosing Party or, at the latest, on completion of the Purpose, and in the absence of any further written agreement between the parties, each Recipient shall cease all use of the Confidential Information and shall promptly return to each Disclosing Party all of its Confidential Information which is in tangible form, except that each Recipient shall be permitted to retain one (1) copy of the Confidential Information so that any continuing obligations may be determined. The return of the Confidential Information will not affect Recipient's obligation to observe the confidentiality and non-use obligations set out in this Agreement. The provisions of this clause 9 shall not apply to copies of electronically exchanged Confidential Information or copies thereof which must be stored by Recipient according to the provisions of mandatory applicable law. The provisions of this clause shall not apply to copies of electronically exchanged Confidential Information made as a matter of routine information technology backup and to Confidential Information or copies thereof which must be stored by the Receiving Beneficiary according to provisions of mandatory law.

10. RIGHTS OF THIRD PARTIES

Each Consortium Member shall have a right to enforce the terms of this Agreement.

11. SEVERABILITY

If any provision of this Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby. The parties shall in this case replace the invalid, illegal or unenforceable provision with a provision that is as close as possible to the economic effect of the invalid, illegal or unenforceable provision.

12. ENTIRE AGREEMENT; AMENDMENTS; WAIVER

This Agreement contains the entire understanding between the parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral communications, negotiations, understandings, or agreements of any kind with respect to such subject matter. No amendment or modification of this Agreement shall be effective except by a written instrument referring to this Agreement and signed by authorized representatives of both parties. Failure by a party to enforce any rights under this Agreement shall not be construed as a waiver of such rights nor operate as a waiver in other instances.

13. GOVERNING LAW; HEADINGS

This Agreement shall be governed by and construed in accordance with the laws of the Czech Republic, without giving effect to any of its conflict of laws principles. The headings in this Agreement are for convenience of reference only and shall not affect its interpretation.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in *[insert number of necessary duplicates]* in their own name and in case of Mandate Holder in addition in the name and on behalf of their respective Consortium Members as their duly authorized representative.

[name of authorized company or institution]

[Recipient]

(CHES Coordinator)

(Contract Partner)

Name:

Name:

Function:

Function:

Place: _____

Place: _____

Date: _____

Date: _____

[Add further signature lines for further signatures on behalf of signing entities, if requested by such signing entities]

EXHIBIT 1

1. **Masarykova univerzita**, MUNI, established in Zerotinovo namesti 9, BRNO 601 77, Czechia, the Coordinator,
2. **TARTU ULIKOOL**, UTARTU, established in ULIKOOLI 18, TARTU 50090, Estonia,
3. **VYSOKE UCENI TECHNICKE V BRNE**, BUT, established in ANTONINSKA 548/1, BRNO STRED 601 90, Czechia,
4. **TALLINNA TEHNIKAÜLIKOOL**, TalTech, established in Ehitajate tee 5, TALLINN 19086, Estonia,
5. **CYBERNETICA AS**, CYBER, established in MAEALUSE 2, TALLINN 12618, Estonia,
6. **RED HAT CZECH S R O**, Red Hat, established in PURKYNOVA 647/111 MEDLANKY, BRNO 612 00, Czechia,
7. **GUARDTIME OU**, GUARDTIME, established in A H TAMMSAARE TEE, 60 KRISTIINE DISTRICT, TALLINN 11316, Estonia,
8. **RIIGI INFOSUSTEEMI AMET**, RIA, established in PARNU MNT 139 A, Tallinn 15169, Estonia,
9. **CYBERSECURITY HUB, ZU**, CSH, established in SUMAVSKA 416/15, BRNO 602 00, Czechia,
10. **National Cyber and Information Security Agency**, NCISA, Mucednicka 1125/31, BRNO 616 00, Czechia
11. **JIC, ZAJMOVE SDRUZENI PRAVNICKCH OSOB**, JIC, Purkynova 649/127, BRNO 612 00, Czechia
12. **MTÜ Eesti Infoturbe Assotsiatsioon**, EISA, Pärnu maantee 15, TALLIN 10141, Estonia