Consortium Agreement

[LIFE4ZOO]

Version [FINAL]

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**CONSORTIUM AGREEMENT**

**BETWEEN:**

**TECHNICKÁ UNIVERZITA V LIBERCI (TUL), established in STUDENTSKÁ 1402/2, LIBEREC 1, 467 17, CZECH REPUBLIC**

**The Coordinator**

**and**

**PHOTON WATER TECHNOLOGY S.R.O. (PWT), established in GENERÁLA SVOBODY 25/108, 460 01, LIBEREC XII-Staré Pavlovice, CZECH REPUBLIC,**

**The Beneficiary No. 2**

**ZOO LIBEREC, PŘÍSPĚVKOVÁ ORGANIZACE (ZOO Liberec), established in LIDOVÉ SADY 425/1, 460 01, LIBEREC, CZECH REPUBLIC**

**The Beneficiary No. 3**

**and**

**FUNDACIO SOLIDARITAT UB (FSUB), established in CALLE MELCIOR DE PALAU 140, 080 14, BARCELONA, Spain**

**The Beneficiary No. 4**

**and**

**UNIVERSITAT DE GIRONA (UdG), established in PLACA SANT DOMENEC 3, 170 04, GIRONA Spain**

**The Beneficiary No. 5**

**and**

**BARCELONA DE SERVEIS MUNICIPALS SA (B:SM), established in CL CALABRIA 66, 08 015, BARCELONA, Spain**

**The Beneficiary No. 6**

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

relating to the Action entitled

**Water Resources Management in Visitor Attractions - FIT4USE Water Recirculation Technology** in short

**LIFE22-ENV-CZ-LIFE4ZOO or LIFE4ZOO**

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 Programme for the Environment and Climate  
Action (LIFE).

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

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

# Definitions

## Definitions

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

## Additional Definitions

**“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 Project Management Committee.

**“Granting Authority”**

means the body awarding the grant for the Project.

**“Defaulting Party”**

Defaulting Party means a Party which the Project Management 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.

**“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.

**“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.

# 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.

# Entry into force, duration and termination

## 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 date of publication of the signed Consortium Agreement in the Register of Contracts according to the Czech Republic Act no. 340/2015 Coll. (on the Register of Contracts), as amended.

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.

## 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 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.

## 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 Project Management Committee and the leaving Party. This includes the obligation to provide all necessary input, deliverables and documents for the period of its participation.

# Responsibilities of Parties

## 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. The Beneficiaries undertake to provide the Coordinator with all necessary and timely cooperation in order to comply with the obligations of the Coordinator under this Consortium Agreement and the Grant Agreement.

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 and on time provide all information, materials and documents in accordance with this Consortium Agreement and the Grant Agreement or which are 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 Portal Participant Register and EU Funding & Tenders Portal if necessary.

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

## Breach

In the event that the Project Management 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 Project Management 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 (including, but without limitation to breach as defined in Art. 28.1. a) and b) of the Grant Agreement) and is not remedied within that period or is not capable of remedy, the Project Management 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.

## 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.

## 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.

# Liability towards each other

## General principles and sanctions

Each Party shall be responsible for proper performance of its obligations and tasks set forth in this Consortium Agreement and the Grant Agreement.

Each Party shall be liable to other Parties for any damage caused by the breach of its obligations under this Consortium Agreement and the Grant Agreement and shall be obliged to compensate the other Parties for any damage incurred.

In the event a Party breaches its obligations under this Consortium Agreement or the Grant Agreement with financial consequences exercised by the granting authority against the Coordinator, the Party in breach shall pay to the Coordinator a contractual penalty in the amount corresponding to the amount of funds requested by the granting authority from the Coordinator. The right to damages shall not be affected thereto.

## 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.

## 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.

## 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 as defined in Art. 35 of the Grant Agreement.

Each Party will notify the Project Management 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 Project Management Committee.

The Parties must immediately take all necessary steps to limit any damages caused by Force Majeure and make every effort to resume the implementation of the Project as soon as possible.

# Governance structure

## General structure

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

The **Project Management Committee** is the decision-making body of the consortium. The Project Management Committee shall be responsible for the overall administrative and financial management of the Project and shall perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

The **Coordinator** is 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.

The **Executive Group** is responsible for coordination of execution of activities and tasks within the Project.

The **Project Advisory Group** is an advisory, consultation and monitoring group of representatives of interested third parties.

## Project Management Committee

### Members

The Project Management Committee shall consist of the project manager of each Party (hereinafter referred to as “Member”).

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.6 of this Consortium Agreement.

The Coordinator shall chair all meetings of the Project Management Committee.

The Parties agree to abide by all decisions of the Project Management Committee.

The financial manager of each Party may by invited on the Project Management Committee meeting, however without a voting right.

## Operational procedures for the Project Management Committee:

### Representation in meetings

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.

### Preparation and organisation of meetings

#### Convening meetings:

The Coordinator shall convene ordinary meetings of the Project Management Committee at least once every six months and shall also convene extraordinary meetings at any time upon written request of any Member.

Joint meetings of the Project Management Committee and the Advisory Group on the Project progress including site visit will be held at least once a year (hereinafter referred to as “project progress meetings”).

The term of the next meeting will be set at the meeting.

#### Notice of a meeting and agenda

The Coordinator shall give written notice of a meeting including the agenda and all necessary documents to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

#### Adding agenda items:

Any agenda item requiring a decision by the Members must be identified as such on the agenda.

Any Member may add an item to the original agenda by written notice to all of the other Members no later than 7 calendar days preceding the meeting and 2 days preceding an extraordinary meeting.

#### 

During a meeting of the Project Management Committee the Members present or represented can unanimously agree to add a new item to the original agenda.

#### 

Meetings of the Project Management Committee may also be held by tele- or videoconference or other telecommunication means.

#### 

Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.3.5.2.

### Decisions without a meeting

Any decision may also be taken without a meeting if

1. the Coordinator circulates to all Members of the Project Management Committee a suggested decision with a deadline for responses of at least 10 calendar days after receipt by a Party and
2. the decision is agreed by two-thirds (2/3) of all Members of the Project Management Committee.

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

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.

### Voting rules and quorum

#### 

The Project Management Committee shall not deliberate and decide validly in meetings unless at least two-thirds (2/3) of its Members are present or represented (quorum).

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

#### 

Each Member present or represented in the meeting shall have one vote. A Party which the Project Management Committee has declared according to Section 4.2 to be a Defaulting Party may not vote.

#### 

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

6.3.4.4.

The Coordinator may exercise a veto with respect to any decision of the Project Management Committee if it is inconsistent with contractual or financial rules of the Project. The Coordinator may only veto such a decision during the meeting or within 15 calendar days after the draft minutes of the meeting has been sent to the Members or, in case the decision concerned has been taken without a meeting, the Coordinator may veto such a decision within 15 calendar days after the written notice of the outcome of the vote has been sent to the Members.

6.4.4.5.

In case of exercise of veto, the Parties shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Parties and in conformity with contractual and financial rules of the Project.

### Minutes of meetings

#### 

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

#### 

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

#### 

The Coordinator shall send the accepted minutes to all the Members and shall retain copies of them.

### Decisions of the Project Management Committee

The Project Management Committee, shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein.

The following decisions shall be taken by the Project Management Committee:

Content of the Project, 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 **Chyba! Nenalezen zdroj odkazů.**)

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
* 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

Defaulting party status

* 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 consortium and measures relating thereto
* Appointment and withdrawal of Advisory Group members

The Project Management Committee may decide on other matters concerning the Project and the consortium, which are not explicitly listed in this Article 6.3.6., unless they are entrusted in the competence of the Coordinator, Executive Group or the Advisory Group according to this Consortium Agreement or the Grant Agreement.

## Coordinator

### 

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.

### 

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 certification) and specific requested documents to the Granting Authority
* preparing the meetings, proposing decisions and preparing the agenda of Project Management Committee meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings
* transmitting promptly documents and information connected with the Project to any other Party concerned
* administering the financial contribution of the Granting Authority in cooperation with financial managers of each Party 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.

### 

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

### 

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.

### 

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

## Executive Group

6.5.1. **Responsibilities**

The Executive Group shall be responsible for coordination of execution of activities and tasks within the Project. It shall coordinate and monitor individual works and outputs within Project work packages.

In particular, the Executive Group shall:

- coordinate, monitor and evaluate the progress in works and outputs within the Project activities,

- draw up regular reports on Project progress implementation and submit them to the Project Management Committee,

- submit proposals, recommendations and opinions to the Project Management Committee regarding the implementation of the Project,

- submit notification on improper execution of a Party´s tasks and activities to the Project Management Committee.

6.5.2. **Members**

The Executive Group shall consist of the work package leader and/or a task leader of each Party. Each Party shall appoint one (1) member of the Executive Group.

Member of the Executive Group may not be a member of the Project Management Committee.

Members of the Executive Group should be present or represented at any meeting.

6.5.3. **Meetings**

The members shall elect a chairperson amongst them at the first meeting of the Executive Group. The chairperson shall convene ordinary meetings of the Executive Group at least every three (3) months and shall also convene extraordinary meetings at any time upon a written request of any member.

The meetings of the Executive Group will be primarily held by tele- or videoconference or other telecommunication means.

The chairperson shall give a written notice of a meeting including the agenda and all necessary documents to each member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

During a meeting of the Executive Group any member may suggest to add a new item to the original agenda.

6.5.4. **Voting rules and quorum**

The Executive Group shall have a quorum, if two-thirds (2/3) of all its members is present or represented. If the quorum is not reached at the beginning or during the meeting, the chairperson shall end the meeting. An alternate meeting shall be held within 15 days.

Each member of the Executive Group present or represented shall have one vote.

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

### Minutes of meetings

The chairperson shall produce minutes of each meeting. He/she shall send draft minutes to all members within 10 calendar days of the meeting.

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

The chairperson shall send the accepted minutes to all members, the Project Management Committee and the Coordinator and shall retain copies of them.

## Project Advisory Group

6.6.1.

The Project Advisory Group is an advisory, consultation and monitoring group of representatives of interested third parties appointed by the Project Management Committee. The Project Advisory Group shall perform monitoring and supervision of the implementation of project actions, achievement of set objectives and providing external consultations and recommendations on improvement of the project outputs as well as on solving the possible obstacles and risks.

6.6.2.

Its aim will be to evaluate the project’s interim results and to make recommendations both in terms of feasibility and sustainability of the results achieved.

6.6.3.

The Project Advisory Group will take part in the annual project progress meetings, it will be provided with ongoing project results by the Project Management Committee. The Project Advisory Group will provide the Project Management Committee with recommendations during the course of the Project.

6.6.4.

The Project Advisory Group members shall be allowed to participate in Project Management Committee meetings upon invitation but have not any voting rights.

6.6.5.

The Coordinator will ensure that a non-disclosure agreement is executed between the Parties and each Project Advisory Group member.

The non-disclosure agreement shall be concluded no later than 30 days after their nomination or before any confidential information will be exchanged/disclosed, whichever date is earlier.

By way of exception to Section 6.4.4 above, the Parties hereby mandate the Coordinator to execute and conclude, in their name and on their behalf, a non-disclosure agreement (hereafter “NDA”) with each member of the Project Advisory Group, in order to protect Confidential Information disclosed by any of the Parties to any member of the Project Advisory Group. The NDA for the Project Advisory Group members is enclosed in Attachment 3. The mandate of the Coordinator comprises solely the execution and conclusion of the NDA in Attachment 3.

# Financial provisions

## General Principles

### 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.

### 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.

### 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.

### Excess payments

A Party has received excess payment

1. if the payment received from the Coordinator exceeds the amount declared or
2. if a Party has received payments but, within the last year of the Project, its real Project costs fall 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.

### 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.

### 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 Project Management Committee should agree on a procedure regarding additional costs which are not covered by the Defaulting Party.

## Payments

### 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.

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.

### 

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 within 30 days after receipt of payments from the Granting Authority 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 Project Management 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.

The liability of the Parties in accordance with Article 5.1. of this Consortium Agreement shall not be affected.

# Results

## Ownership of Results

Results are owned by the Party that generates them.

## Joint ownership

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.

## Transfer of Results

### 

Each Party may transfer ownership of its own Results, including its share in jointly owned Results.

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.

### 

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

## Dissemination

### 

For the avoidance of doubt, the confidentiality obligations set out in Section 10 apply to all dissemination activities described in this Section 8.4 as far as Confidential Information is involved.

### Dissemination of own (including jointly owned) Results

#### 

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 Communication, Dissemination and Visibility, 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.

#### 

An objection is justified if

1. the protection of the objecting Party's Results or Background would be adversely affected, or
2. the objecting Party's legitimate interests in relation to its Results or Background would be significantly harmed, or
3. the proposed publication includes Confidential Information of the objecting Party.

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

#### 

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.

#### 

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.

### Dissemination of another Party’s unpublished Results or Background

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

### 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.

### 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.

# Access Rights

## Background included

### 

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.

### 

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 Project Management Committee is needed should a Party wish to modify or withdraw its Background in Attachment 1.

## General Principles

### 

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.

### 

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

### 

Access Rights shall be free of any administrative transfer costs.

### 

Access Rights are granted on a non-exclusive basis.

### 

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

### 

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.

### 

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

## 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.

## Access Rights for Exploitation

### 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.

### 

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

### 

A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Section 9.6.2.1.2, after the termination of the requesting Party’s participation in the Project.

## Additional Access Rights

The Parties agree to negotiate in good faith any additional Access Rights to Results as might be asked for by any Party, upon adequate financial conditions to be agreed.

## Access Rights for Parties entering or leaving the consortium

### 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.

### Parties leaving the consortium

#### Access Rights granted to a leaving Party

##### 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 Project Management Committee to terminate its participation in the consortium.

##### 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.

#### 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.

## Specific Provisions for Access Rights to Software

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software.

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 respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

# Non-disclosure of information

## 

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”.

## 

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.

## 

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.

## 

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 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.

## 

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

## 

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.

## 

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.

# Miscellaneous

## Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and:

* Attachment 1 (Background included)
* Attachment 2 (Accession document)
* Attachment 3 (Non-disclosure Agreement)
* Attachment 4 (Grant Agreement)

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.

## No representation, partnership or agency

Except as otherwise provided in Section 6.4.4 and 6.6.5., 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.

## 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 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 with acknowledgement of receipt.

## 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 require a separate written agreement to be signed between all Parties.

## 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.

## Language

This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

## Applicable law

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

## Settlement of disputes

The Parties shall endeavour to settle their disputes amicably.

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties.

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.

# 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.

**TECHNICKÁ UNIVERZITA V LIBERCI**

Signature(s):

Name(s): doc. RNDr. Miroslav Brzezina, CSc.

Title(s): Rector

Date: 1.8.2023

**PHOTON WATER TECHNOLOGY SRO**

Signature(s):

Name(s) RNDr. Petr Kvapil, Ph.D.

Title(s) CEO

Date: 1.8.2023

**ZOO LIBEREC, PŘÍSPĚVKOVÁ ORGANIZACE**

Signature(s):

Name(s): MVDr. David Nejedlo

Title(s): Director of ZOO Liberec

Date: 9.8.2023

**FUNDACIO SOLIDARITAT UB**

Signature(s):

Name(s): Xavier Lopez

Title(s): Director

Date: 6.9.2023

**UNIVERSITAT DE GIRONA**

Signature(s):

Name(s): Maria Pla de Solà Morales

Title(s): Vice-Rector for Research and Knowledge Transfer

Signing by Resolution of the Rector, of 22nd December 2021, on delegating signing to the Vice-Rector for Research and Knowledge Transfer, Dr Maria Pla de Solà-Morales

Date: 1.9.2023

**BARCELONA DE SERVEIS MUNICIPALS SA**

Signature(s):

Name(s): Miriam Plaza Gallart

Title(s): Deputy General Manager of Customer, Strategy and Transformation

Date: 30.08.2023

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 TECHNICKÁ UNIVERZITA V LIBERCI it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of TECHNICKÁ UNIVERZITA V LIBERCI is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “ INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE”).

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

**PARTY 2**

As to PHOTON WATER TECHNOLOGY S.R.O. 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”)** |
| Water recycling technology based on two-stage membrane separation using: **a/** ultrafiltration membranes with hollow fibers, working in the in-out direction in cross flow mode. **b/** nanofiltration and RO membranes. The technology uses progressive process algorithms and a water pretreatment system including IN-LINE coagulation. The technology is described in the internal Technical sheet of Photon Water Technology s.r.o. | Access rights to the Technical sheet subject to non disclosure agreement with Photon Water and respective Party of LIFE4ZOO project interested in obtaining these rights. | Exploitation rights to the Technical sheet subject to the licence agreement with Photon Water and respective party of LIFE4ZOO project interested in obtaining these rights. |

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

**PARTY 3**

As to ZOO LIBEREC, PŘÍSPĚVKOVÁ ORGANIZACE it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of ZOO LIBEREC, PŘÍSPĚVKOVÁ ORGANIZACE is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE”).

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

**PARTY 4**

As to FUNDACIO SOLIDARITAT UB it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of FUNDACIO SOLIDARITAT UB is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE”).

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

**PARTY 5**

As to UNIVERSITAT DE GIRONA it is agreed between the Parties that, to the best of their knowledge,

no data, know-how or information of UNIVERSITAT DE GIRONA is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE”).

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

**PARTY 6**

As to BARCELONA DE SERVEIS MUNICIPALS SA it is agreed between the Parties that, to the best of their knowledge, no data, know-how or information of BARCELONA DE SERVEIS MUNICIPALS SA is Needed by another Party for implementation of the Project (Article 16.1 and its Annex 5 Grant Agreement, Section “INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE”) or Exploitation of that other Party’s Results (Article 16.1 and its Annex 5 Grant Agreement, Section “INTELLECTUAL PROPERTY RIGHTS (IPR) — BACKGROUND AND RESULTS — ACCESS RIGHTS AND RIGHTS OF USE”).

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

Attachment 2: Accession document

ACCESSION

**of a new Party to**

**LIFE4ZOO 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].

TECHNICKÁ UNIVERZITA V LIBERECI as the Coordinator

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]

TECHNICKÁ UNIVERZITA V LIBERECI, the Coordinator

Signature(s)

Name(s) doc. RNDr. Miroslav Brzezina, CSc.

Title(s) Rector

Attachment 3: Non-disclosure Agreement

**NON-DISCLOSURE AGREEMENT**

Between:

**TECHNICKÁ UNIVERZITA V LIBERCI**, established in STUDENTSKÁ 1402/2, LIBEREC 1, 467 17, CZECH REPUBLIC, Reg. No. 46747885, represented by doc. RNDr. Miroslav Brzezina, CSc., Rector of the University

(hereinafter referred to as the “**Coordinator**” or “**TUL**")

and

**PHOTON WATER TECHNOLOGY s.r.o.** **(PWT)**, established in GENERÁLA SVOBODY 25/108, 460 01, LIBEREC XII-STARÉ PAVLOVICE, CZECH REPUBLIC, Reg. No. 04568095, represented by the Coordinator in accordance with Article 6.6.5. of the Consortium Agreement

(hereinafter referred to as the “**Beneficiary No. 2**” or “**PWT**”)

and

**ZOO LIBEREC, PŘÍSPĚVKOVÁ ORGANIZACE** **(ZOO Liberec)**, established in LIDOVÉ SADY 425/1, 460 01, LIBEREC, CZECH REPUBLIC, Reg. No. 10973583, represented by the Coordinator in accordance with Article 6.6.5. of the Consortium Agreement

(hereinafter referred to as the “**Beneficiary No. 3**” or “**ZOO Liberec**”)

and

**FUNDACIO SOLIDARITAT UB (FSUB)**, established in CALLE MELCIOR DE PALAU 140, 080 14, BARCELONA, Spain, Reg. No. CIF G61084950, represented by the Coordinator in accordance with Article 6.6.5. of the Consortium Agreement

(hereinafter referred to as the “**Beneficiary No. 4**” or “**FSUB**”)

and

**UNIVERSITAT DE GIRONA (UdG)**, established in PLACA SANT DOMENEC 3, 170 04, GIRONA Spain, Reg. No. 043, represented by the Coordinator in accordance with Article 6.6.5. of the Consortium Agreement

(hereinafter referred to as the “**Beneficiary No. 5**” or “**UdG**”)

and

**BARCELONA DE SERVEIS MUNICIPALS SA (B:SM)**, established in CL CALABRIA 66, 08 015, BARCELONA, Spain, Reg. No. A08765919, represented by the Coordinator in accordance with Article 6.6.5. of the Consortium Agreement

(hereinafter referred to as the “**Beneficiary No. 6**” or “**B:SM**”)

and

, established in      , Reg. No.      , represented by

(hereinafter referred to as the „**AG Member**“, or „“)

The beneficiaries no. 2 – 6 hereinafter referred to as the “**beneficiaries**”.

The Coordinator and the beneficiaries hereinafter referred to as the “**Consortium Members**”

Each of the parties above hereinafter, jointly or individually, also referred to as the “**Parties**” or the "**Party**", “**Disclosing Party**” or “**Recipient**”.

WHEREAS:

1. The Coordinator and the beneficiaries were awarded financial contribution for a Project entitled “ **Water Resources Management in Visitor Attractions - FIT4USE Water Recirculation Technology** in short **LIFE22-ENV-CZ-LIFE4ZOO or LIFE4ZOO** (hereinafter referred to as the “**Project**”)by the granting authority - European Climate, Infrastructure and Environment Executive Agency (CINEA) as a part of the Programme for the Environment and Climate Action (LIFE).
2. Based on the Consortium Agreement concluded between the Coordinator and the beneficiaries (hereinafter referred to as the “**Consortium Agreement**”), was appointed a member of the Project Advisory Group by the decision of the Project Management Committee dated .
3. In accordance with Art. 6.6.5. of the Consortium Agreement the Parties conclude this Non-disclosure Agreement to protect confidential information that will be exchanged or disclosed by any of the Consortium Member to the AG Member with respect to the Project.

**I.**

**Purpose and scope of the Agreement**

1. The purpose of this Agreement is to protect confidential information of the Parties, which is disclosed between any of the Consortium Member and the AG Member in connection with the Project.
2. The scope of the Agreement is further the definition of confidential information of the Parties and the commitment of keeping the confidential information discrete, not sharing them or provide access to third parties, or use them in its own interest or in interest of third parties, if not otherwise specified in this Agreement.

**II.**

**Confidential Information**

* 1. “**Confidential Information**” shall mean any 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.

**III.**

**Obligations of the Parties**

* 1. The Recipient hereby undertakes, for a period of 5 years after the end of the Project:
* not to spread the Confidential Information, copy them or make them accessible to any third party;
* to ensure, that all documents containing Confidential Information are properly filed,
* not to use the Confidential Information discordant to their purpose for its profit or on behalf of any third party and 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 Recipient including all copies thereof and to delete all information stored in a machine-readable form to the extent practically possible. The Recipient 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 a copy.
  1. The Recipient will transfer its obligation of Confidential Information secrecy onto its workers as well. In terms of this agreement, workers shall mean the employees of the Recipient or other individuals working for the Recipient based on any provable legal relationship.
  2. The Recipient shall limit the number of its workers with access to Confidential Information and accept measures to prevent the disclosure thereof.
  3. In case the Recipient will need a third party to ensure a relevant activity for the Recipient, the Recipient can hand over the Confidential Information to the third party only after the Disclosing Party´s written consent, and the third party's commitment to the same obligations of confidentiality as under this agreement.
  4. The Recipient will be responsible for the fulfilment of the obligations of confidentiality above on the part of their workers or third parties involved 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.
  5. Providing Confidential Information does not create any right to license, trademark, patent, the right to use or disseminate copyright works, or any other rights of intellectual property.
  6. The obligation not to disclose Confidential Information above shall not apply to 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, 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.
  1. 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.
  2. Each Recipient shall promptly inform the relevant Disclosing Party by a written notice of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.
  3. 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.

**IV.**

**Penalties**

* 1. In case of violation of obligations concerning the protection and use of Confidential Information according to this Agreement, the violating party is obliged to pay to the harmed party a contractual penalty in the amount of 5.000 EUR for every case of obligation violation. The penalty is due within 30 days from the delivery of penalty payment request. Payment of the penalty does not relieve the violating party of its obligations set by this Agreement. Payment of the penalty does not affect the right of the harmed party to claim compensation for damages.

V.

**Final arrangements**

1. This Agreement shall be binding upon and for the benefit of the Parties, their successors and assigns, provided that Confidential Information may not be assigned without consent of the Disclosing Party.
2. Nothing in this Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.
3. This Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.
4. This Agreement shall be construed in accordance with and governed by the laws of Belgium, excluding its conflict of law provisions.
5. The Parties shall endeavour to settle their disputes amicably. All disputes arising out of or in connection with this Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties. The award of the arbitration will be final and binding upon the Parties. Nothing in this Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.
6. Any amendments and modifications to the text of this Agreement require a separate written agreement to be signed by the Parties.
7. This Agreement comes into force and takes effect by the day of signing by the authorized representatives of the contracting parties.
8. In accordance with Art. 6.6.5. of the Consortium Agreement, the beneficiaries has authorized the Coordinator to execute and conclude, in their name and on their behalf, this Non-disclosure Agreement with the AG Member.

**AS WITNESS:**

The Parties have caused this Non-disclosure Agreement to be duly signed by the undersigned authorised representatives of the Parties.

|  |  |
| --- | --- |
| **TECHNICKÁ UNIVERZITA V LIBERCI, the Coordinator**  **PHOTON WATER TECHNOLOGY S.R.O.**  **ZOO LIBEREC, PŘÍSPĚVKOVÁ ORGANIZACE**  **FUNDACIO SOLIDARITAT UB**  **UNIVERSITAT DE GIRONA**  **BARCELONA DE SERVEIS MUNICIPALS SA** | **the Advisory Group Member** |
| Signature:  Name: doc. RNDr. Miroslav Brzezina, CSc.  Title: Rector  Date: | Signature:  Name:  Title:  Date: |

Attachment 4: Grant Agreement