

CONSORTIUM AGREEMENT

Back for the Future (Back4Future)

Upgrading the Centre of Excellence for Advanced Materials and Nanostructures

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CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon REGULATION (EU) No 1290/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 laying down the rules for the participation and dissemination in “Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)” (hereinafter referred to as “Rules for Participation”), and the European Commission Multi-beneficiary General Model Grant Agreement and its Annexes, and is made on September 1st 2017, hereinafter referred to as the Effective Date

BETWEEN:

VYSOKÉ UČENÍ TECHNICKÉ V BRNĚ (VUT), 00216305, established in Antonínská 548/1, 601 90 Brno, Czech Republic,
the Coordinator

MASARYKOVA UNIVERZITA (MU), Žerotínovo náměstí 9, 601 77, Brno, Czech Republic,
the Partner

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the Partner

TECHNISCHE UNIVERSITÄT WIEN (TU Wien), Karlsplatz 13, 1040, Wien, Austria,
the Partner

UNIVERSITÄT FÜR BODENKULTUR WIEN (BOKU), Gregor Mendel Strasse 33, 1180, Wien, Austria,
the Partner

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

relating to the Action entitled

Back for the future Upgrading the Centre of Excellence for Advanced Materials and Nanostructures

in short “**Back4Future**”

hereinafter referred to as “Project”

WHEREAS:

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Version 1.2, March 2016

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Funding Authority as part of the Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020).

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 Funding Authority (hereinafter “Grant Agreement”).

The Parties are aware that this Consortium Agreement is based upon the DESCAs model consortium agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Definitions

2.1. Definitions

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

2.2. Additional Definitions

“Consortium Body“:

Consortium Body means any management body described in the Governance Structure section 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.

"Funding Authority"

Funding 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.

“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.

Section 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.

Section 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.

A new entity becomes a Party to the Consortium Agreement upon signature of the accession document by the new Party and the Coordinator. Such Accession document becomes the attachment to this Consortium Agreement. 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 Funding Authority or a Party, or
- is terminated, or
- if 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.

This Consortium Agreement is valid only during the Phase 1 of the Back4Future project.

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 Consortium 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 inputs, deliverables and documents for the period of its participation.

Section 4: Responsibilities of Parties

4.1. General principles

Each Party undertakes to take part in the efficient implementation of the 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 Belgium law.

Each Party undertakes to notify promptly, in accordance with the governance structure of the Project, 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.

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 a responsible Consortium Body 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 15 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) 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. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the Grant Agreement.

Section 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 Affiliated Entities) exercising its Access Rights.

5.2. Limitations of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act or by a breach of confidentiality.

For any remaining contractual liability, 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 provided such damage was not caused by a wilful act or gross negligence.

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

5.3. Damage caused to third parties

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Consortium Agreement or from its use of 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 competent Consortium Bodies of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

Section 6: Governance structure

6.1. General structure

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

Steering Committee as the strategic decision-making body of the Consortium with supervision power.

Executive Board as the internal collective managerial body for the execution of the Project which shall report to and be accountable to the Steering Committee.

The Coordinator is the legal entity acting as the intermediary between the Parties and the Funding 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 Project Management Board assists the Executive Board and the Coordinator with the project implementation.

6.2. *Steering Committee*

The Steering Committee shall consist of one representative of each Party as described in the Project (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 Steering Committee, unless decided otherwise by the Steering Committee.

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

This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Section 11.8 of this Consortium Agreement.

6.3. *Operational procedures for the Steering Committee*

6.3.1. 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.

6.3.2. Preparation and organisation of meetings

The Project Coordinator will convene ordinary meetings of the Steering Committee as described in the Project proposal:

1. kick-off meeting to approve the strategy for Business Plan preparation (M1)
2. meeting to approve Long-term Scientific Vision and Research Strategy, and to review the business plan outline (M6)
3. meeting to approve the final business plan for the setting up of the centre (M12)

Steering Committee shall also convene extraordinary meetings at any time upon written request of any Member.

The Project Coordinator shall give notice in writing of a meeting to each Member as soon as possible, but no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

The Project Coordinator shall prepare and send each Member a written original agenda. 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 notification to all of the other Members no later than 5 calendar days preceding the meeting.

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

Meetings of the Steering Committee may also be held by teleconference 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 of this Consortium Agreement.

Any decision may also be taken without a meeting if the Project Coordinator circulates to all Members of the Steering Committee a written document, which is then agreed by the defined majority (see Section 6.3.3) of all Members of the Steering Committee. Such document shall include the deadline for responses.

Decisions taken without a meeting shall be considered as accepted if, within the period set out in article 6.3.4.4, no Member has sent an objection in writing to the Project Coordinator. The decisions will be binding after the Project Coordinator sends to all Members of the Consortium Body and to the Coordinator a written notification of this acceptance.

6.3.3. Voting rules

The Steering Committee shall not deliberate and decide validly unless 3/4 of its Members are present or represented (quorum). If the quorum is not reached, the Project Coordinator shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the Project Coordinator shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members are present or represented. The Conflict resolution meeting shall be organized no later than 7 calendar days after receiving an official written request.

Each Member present or represented in the meeting shall have one vote. A Party which the Steering Committee has declared according to Section 4.2 to be a Defaulting Party may not vote. Decisions shall be taken by a majority of the votes cast.

6.3.4. Veto rights

A Member 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 the Steering Board may exercise a veto with respect to the corresponding decision or relevant part of the decision.

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

When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 5 calendar days after the draft minutes of the meeting are sent.

When a decision has been taken without a meeting a Member may veto such decision within 7 calendar days after written notification by the Project Coordinator of the outcome of the vote.

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

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.

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

6.3.5. Minutes of meetings

The Project Coordinator shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He/she shall send draft minutes to all Members within 7 calendar days of the meeting.

The minutes shall be considered as accepted if, within 7 calendar days from sending, no Member has sent an objection in writing to the Project Coordinator with respect to the accuracy of the draft of the minutes.

The Project Coordinator shall send the accepted minutes to all the Members of the Steering Committee. If requested the Project Coordinator shall provide authenticated duplicates to Parties.

6.3.6. Decisions of the Steering Committee

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.

The following decisions shall be taken by the Steering Committee:

- Content of the Business plan, finances and intellectual property rights;
- Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Funding Authority;
- Changes to the Consortium Plan;
- Evolution of the consortium;
- Entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party;
- Withdrawal of a Party from the consortium 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 consortium and measures relating thereto;
- Proposal to the Funding Authority for a change of the Coordinator;
- Reviewing or amending, after the approval of the EU Commission, the following:
 - Costs or timescale under the Grant Agreement;
 - Proposal to the Funding Authority for suspension of all or part of the Project
 - Proposal to the Funding Authority for termination of the Project and the Consortium Agreement

In the case of abolished tasks as a result of a decision of the Steering Committee, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

6.4. *Coordinator*

The Coordinator shall be the intermediary between the Parties and the Funding 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;
- 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 Funding Authority;
- Preparing the meetings, proposing decisions and preparing the agenda of Steering Board 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 Funding Authority and fulfilling the financial tasks described in Section 7.3
- 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 Funding Authority in time.

If the Coordinator fails in its coordination tasks, the Steering Committee may propose to the Funding 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.

6.5. *Operational procedures for the Executive Board*

6.5.1. Representation in meetings

The Executive Board shall consist of the Project Coordinator, Scientific Coordinators of each Party and the International Scientific Advisory Board as described in the Project (hereinafter referred to as a „EB member“).

The International Scientific Advisory Board is composed of external members and therefore, each member will sign a non-disclosure agreement.

The Project Coordinator shall chair all meetings of the Executive Board, unless decided otherwise by the Steering Committee.

The Parties agree to abide by all decisions of the Executive Board. This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Section 11.8 of this Consortium Agreement.

Any member of the Executive Board:

- 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.

6.5.2. Preparation and organisation of meetings

The Project Coordinator shall convene ordinary meetings of the Executive Board at least once every 3 months (M1, M3, M6, M9, and M12) and shall also convene extraordinary meetings at any time upon written request of any EB member.

The Project Coordinator shall give notice in writing of a meeting to each Member as soon as possible, but no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

The Project Coordinator shall prepare and send each Member a written original agenda. Any agenda item requiring a decision by the Members must be identified on the agenda. Any Member may add an item to the original agenda by written notification to all of the other Members no later than 5 calendar days preceding the meeting.

During a meeting of the Executive Board the Members present or represented can unanimously agree to add a new item to the original agenda. Meetings of the Executive Board may also be held by teleconference or other telecommunication means.

Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.5.5 of this Consortium Agreement.

Any decision may also be taken without a meeting if the Project Coordinator circulates to all EB Members a written document, which is then agreed by the defined majority (see Section 6.5.3) of all EB Members of the Executive Board. Such document shall include the deadline for responses.

Decisions taken without a meeting shall be considered as accepted if, within the period set out in article 6.5.4, no EB Member has sent an objection in writing to the Project Coordinator. The decisions will be binding after the Project Coordinator sends to all EB Members and to the Coordinator a written notification of this acceptance.

6.5.3. Voting rules

The Executive Board shall not deliberate and decide validly unless 3/4 of its Members are present or represented (quorum). If the quorum is not reached, the Project Coordinator shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the Project Coordinator shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of EB Members are present or represented. The Conflict resolution meeting shall be organized no later than 7 calendar days after receiving an official written request.

Each EB Member, excluding the members of the International Scientific Advisory Board, present or represented in the meeting shall have one vote. Decisions shall be taken by a majority of the votes cast.

6.5.4. Veto rights

An EB Member 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 the Executive Board may exercise a veto with respect to the corresponding decision or relevant part of the decision.

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

When a decision has been taken on a new item added to the agenda before or during the meeting, an EB Member may veto such decision during the meeting and within 5 calendar days after the draft minutes of the meeting are sent.

When a decision has been taken without a meeting an EB Member may veto such decision within 7 calendar days after written notification by the Project Coordinator of the outcome if the vote.

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

6.5.5. Minutes of meetings

The Project Coordinator shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He/she shall send draft minutes to all EB Members within 7 calendar days of the meeting.

The minutes shall be considered as accepted if, within 7 calendar days from sending, no EB Member has sent an objection in writing to the Project Coordinator with respect to the accuracy of the draft of the minutes.

The Project Coordinator shall send the accepted minutes to all the EB Members of the Executive Board, and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

6.5.6. Decisions of the Executive Board

The following decisions shall be taken by the Executive Board:

- Determination of the Project strategy;
- Implementation of the decisions of the Steering Committee;
- Development of the Business Plan, with respect to decisions of the Steering Committee;
- Reviewing or amending the project outputs with regard to schedule and deliverables;
- Dealing with expenditures over the project's budget;

6.6. *Project Management Board*

The Project Management Board shall be composed of five work package leaders ensuring the operational level of the Project.

The Project Management Board shall be responsible for implementation of the Project. It shall have the following responsibilities:

- Monitoring the implementation of the tasks assigned to individual work packages;
- Coordination of all project activities according to the schedule;
- Monitoring the achievement of project outputs – milestones and deliverables;
- Deciding about minor project amendments;
- Preparing documents for the EB meeting.

Section 7: Section: Financial provisions

7.1. *General Principles*

7.1.1. Distribution of Financial Contribution

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

- The Consortium Plan;
- The approval of reports by the Funding Authority, and
- the provisions of payment in Section 7.3;

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 with respect to the Project towards the Funding 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 Funding 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 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. Return of excess payments; receipts

7.1.4.1 In any case of a Party having received excess payments, the Party has to return the relevant amount to the Coordinator without undue delay.

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

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

A Party leaving the consortium shall refund all payments it has received except the amount of contribution accepted by the Funding Authority or another contributor.

7.2 *Budgeting*

The budget set out in the Consortium Plan shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

7.3 *Payments*

7.3.1 *Payments to Parties are the exclusive tasks of the Coordinator.*

In particular, the Coordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts
- undertake to keep the Funding 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 Articles 21.2 and 21.3.2 of the Grant Agreement, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount from which the amounts retained by the Funding Authority for the Guarantee Fund and for the final payment have been deducted.

7.3.2 *The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following:*

Funding of costs included in the Consortium Plan will be paid to Parties as an Advanced Payment after receipt from the Funding Authority without undue delay and in conformity with the provisions of the Grant Agreement.

The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body 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. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Funding Authority.

Section 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 26.2.

Unless otherwise agreed:

- each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and

- 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.

8.3 Transfer of Results

8.3.1 Each Party may transfer ownership of its own Results following the procedures of the Grant Agreement Article 30.

8.3.2 The transferring Party is obliged to inform the other Parties of such transfer 45 days before that transfer takes place and shall ensure that the rights of the other Parties will not be affected by such transfer.

Any other beneficiary may object within 30 days of receiving notification, if it can show that the transfer would adversely affect its access rights. In this case, the transfer may not take place until agreement has been reached between the beneficiaries concerned.

8.3.3 The Parties recognize 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 the full 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.

8.3.4 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, nothing in this Section 8.4 has impact on the confidentiality obligations set out in Section 10.

8.4.2 Dissemination of own 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 29.1 of the Grant Agreement subject to the following provisions.

8.4.2.2 An objection is justified if:

- (a) the protection of the objecting Party's Results or Background would be adversely affected
- (b) the objecting Party's legitimate interests in relation to the Results or Background would be significantly harmed.

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.

8.4.3 Dissemination of another Party's unpublished Results or Background

A Party shall not include in any dissemination activity another Party's Results or Background 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 defence 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.

Section 9: Access Rights

9.1 *Background included*

9.1.1 According to the Grant Agreement (Article 24) Background is defined as “any data, know-how or information— whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that is held by the beneficiaries before they acceded to this Agreement, and that is needed to implement the action or exploit the results”. No data, know-how or information shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

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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 expressly 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.

9.4 *Access Rights for Exploitation*

9.4.1 Access Rights to Results if Needed for Exploitation of a Party's own Results including for research on behalf of a third party shall be granted on Fair and Reasonable conditions. Access rights to Results for internal research activities shall be granted on a royalty-free basis.

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

9.4.2 A request for Access Rights may be made up to 12 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.

9.5 *Additional Access Rights*

For the avoidance of doubt any grant of Access Rights not covered by the Grant Agreement of 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.

9.6 *Access Rights for Parties entering or leaving the consortium*

9.6.1 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.

9.6.2 Parties leaving the consortium

9.6.2.1 Access Rights granted to a leaving Party

9.6.2.1.1 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.

9.6.2.1.2 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 9.4.2.

9.6.2.2 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.

9.7 *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.

Section 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".

10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of 4 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 comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

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

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

Section 11: Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text.

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.

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.

11.2 No representation, partnership or agency

Except as otherwise provided in Section 6.4.4, 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 Notices and other communication

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

Formal notices:

If it is required in this Consortium Agreement (Sections 4.2, 9.6.2.1.1, 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 or telefax with receipt acknowledgement.

Other communication:

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

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

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 Section 6.3.6 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.

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.

Section 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.

VYSOKÉ UČENÍ TECHNICKÉ V BRNĚ (VUT)

Name:	prof. RNDr. Ing. Petr Štěpánek , CSc
Title:	Rector
Date:	
Signature:	

MASARYKOVA UNIVERZITA (MU)

Name:	Mgr. Roman Badík
Title:	Office head – Research & Development Office
Date:	
Signature:	

ÚSTAV FYZIKY MATERIÁLŮ AV ČR, v.v.i. (IPM)

Name:	prof. RNDr. Ludvík Kunz , CSc., dr. h. c.
Title:	Director
Date:	
Signature:	

MENDELOVA UNIVERZITA V BRNĚ (MENDELU)

Name:	prof. RNDr. Ladislav Havel, CSc.
Title:	Rector
Date:	
Signature:	

TECHNISCHE UNIVERSITÄT WIEN (TUW)

Name:	Univ.Prof. DI Dr. Johannes Fröhlich
Title:	Vice Rector for Research an Innovation
Date:	
Signature:	

UNIVERSITÄT FÜR BODENKULTUR WIEN (BOKU)

Name:	Josef Glössl , O.Univ.Prof. Dr.
Title:	Vice Rector for Research and International Research Collaboration
Date:	
Signature:	