

## CONSORTIUM AGREEMENT

Between:

- 1. Výzkumný a zkušební ústav Plzeň s.r.o.**, (hereinafter referred to as: VZU Plzeň or the Coordinator), Tylova 1581/46, 301 00 Plzeň, Czech Republic as represented by \_\_\_\_\_, Managing director and \_\_\_\_\_, Managing director  
Account number: \_\_\_\_\_,
- 2. Západočeská univerzita v Plzni**, Univerzitní 2732/8, 301 00 Plzeň, Czech Republic as represented by \_\_\_\_\_, Vice-Rector for Research, Creative Activities and Doctoral Study  
Account number: \_\_\_\_\_,
- 3. Chemnitz University of Technology, the Professorship for Forming and Joining**, Straße der Nationen 62, D-09111 Chemnitz, Germany as represented by \_\_\_\_\_, the Rector
- 4. MATERIÁLOVÝ A METALURGICKÝ VÝZKUM s.r.o.**, Pohraniční 693/31, 703 00 Ostrava, Czech Republic as represented by \_\_\_\_\_,  
Account number: \_\_\_\_\_,
- 5. Università degli Studi di Modena e Reggio Emilia**, Via Università, 4, 411 21 Modena, Italy, as represented by \_\_\_\_\_, Rector and Legal Representative.

hereinafter, jointly or individually, referred to as "Parties" or "Party".

Within the framework of the Clean Energy Transition Partnership Program, each Party has applied for governmental funding for its participation in the project from the appropriate agency or governmental department or bureau in the country where it is located.

The Parties intend to jointly execute the project with the following title: "Identification of the effect of hydrogen as a function of structural condition in pipeline distribution infrastructure and storage tanks", Project Acronym "HOOPLA" (the "Project"). For this purpose, each partner has applied for a grant.

Subject to each Party's funding through the necessary grant from its respective national governmental funding authority, the Parties agree on the terms and conditions below.

The Parties hereby agree as follows:

### 1 Purpose of the agreement

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

## **2 Responsibilities of Parties**

### **2.1 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 this Consortium Agreement.

The Parties undertake to make every effort to achieve the objectives of the Project set out in Annex No. 1 – Outputs/deliverables of the project in a manner of good faith. Annex No. 1 is an integral part of this Consortium Agreement. In case of discrepancies in the core text of this Agreement and Annex No. 1, the core text of this Consortium Agreement shall prevail.

Each Party is solely responsible for the performance of its own tasks and the underlying request for allocation of funds as listed in Annex No. 2 to this Agreement. Each Party shall bear its own costs relating to the Project.

Each Party undertakes to promptly notify the Coordinator of any significant information, fact, problem or delays that are likely to affect the Project.

Each Party shall promptly provide all information reasonably required 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.

### **2.2 Breach**

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

If such breach is substantial and is not remedied by the Defaulting Party within that period or is not capable of remedy, the other Parties may decide on the consequences thereof which may include termination of participation of the Defaulting Party.

## **3 Liability towards each other**

### **3.1 No warranties**

In respect of any information or materials (incl. Results (definition in Section 6.1) and Background (definition in Section 6.2)) supplied by any Party to another Party 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 to Results or Background shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party exercising its access rights.

### **3.2 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 willful act or gross negligence.

For any remaining contractual liability, a Party's aggregate liability towards the other Parties collectively shall be limited to the amount of its grant in the respective funding notification provided such damage was not caused by a willful act or gross negligence.

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

### **3.3 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 said Party's obligations by it or on its behalf under this Consortium Agreement or from its use of Results or background.

### **3.4 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 Coordinator of any Force Majeure event 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 Coordinator with consent of other Parties.

### **3.5 National Grant Agreements**

Any Party having concluded a national grant agreement with a national funding authority is individually and solely responsible for complying with the provisions of such national grant agreement. There shall be no joint and several liabilities of the other Parties hereto, for any obligations under any such national grant agreement. No national grant agreement shall affect the obligations of any Party hereunder.

## **4 Coordination**

The Project shall be coordinated by VZU Plzeň, namely \_\_\_\_\_, (hereinafter referred to as the Coordinator).

The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in this Consortium Agreement.

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations
- collecting, reviewing of reports to verify consistency and submitting reports
- transmitting documents and information connected with the Project to any other Parties concerned
- keeping the address list of the Partners contact persons and other contact persons updated and available.

- preparing meetings of the Parties, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at the meetings or by written consent of all the Parties in lieu of a meeting.

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 a Party consented to such representation prior to the representation in writing.

Each Party will provide the Coordinator with the Project documents needed by the Coordinator to perform its tasks as Coordinator. Each Party is responsible to provide its documents/reports to its national funding authority.

The Project Executive Board (EB) will be established during the first week of the project solution and will meet (online or in person) during the first month. Then the Coordinator shall convene ordinary meetings of EB and each relevant person online or in person at least once every three months and shall also convene extraordinary meetings at any time upon written request of any Party. The Coordinator shall provide written notice of a meeting – including an agenda – to each Party as soon as possible and in any case at least 14 calendar days preceding an ordinary meeting and at least seven calendar days preceding an extraordinary meeting. Meetings may be held at a location acceptable to all of the Parties; they may also be held by teleconference or other telecommunication means provided that each of the Parties is able to hear and be heard at the meeting. The Coordinator shall produce written minutes of each meeting which, after written approval by each Party, shall be the formal record of all decisions taken with regard to the Project. The meetings of the relevant members of individual WPs will be organized in accordance with the needs or WPs solution (online or in person).

## **5 Financial provisions**

A basic overview of the budget and costs of each party for the implementation of the project is given in Annex 2 – The basic overview of the budget and costs. Each Party shall bear its own costs incurred in connection with the implementation of the Project as such costs are funded by the respective National Funding Authorities. For the Czech Parties, the National Funding Authority is Technology Agency of the Czech Republic (TA CR), for the Italian Party, Ministero dell'Università e della Ricerca (MUR) and for the German (Saxonian) Party Saxon State Ministry for Science, Culture and Tourism (SMWK).

For the Czech Parties:

The planned part of the grant will be transferred by the Principal Recipient to the other Czech participants in the project within 30 calendar days from the date of receipt of the grant from the Technology Agency of the Czech Republic for the relevant calendar year to the account of the Coordinator on the basis of the Grant Agreement.

The bank details of the other Czech participants are given in the introduction to this document. The amount of the planned support is set out in Annex 4 Zavazne parametry reseni projektu.

## 6 Results / Rights of use

### 6.1 Results

“Results” means any (tangible or intangible) output of the research and development such as data, know-how, inventions and industrial property rights applied for or granted thereon, as well as copyright-protected works, including software — whatever its form or nature, that is generated in the Project.

The Parties shall regularly inform each other on an ongoing basis at periodic intervals which the Parties shall mutually determine about their respective Results and work progress and shall exchange interim and final reports prepared by them pursuant to and as determined under their respective funding grants.

Results are owned by the Party that generates them.

Two or more Parties own Results jointly if they have jointly generated them. The co-ownership share of the Result is determined by the ratio of the parties' creative contributions to achieving the Result. The Parties involved in joint inventions shall agree upon the registration (including management thereof), maintenance and defense of industrial property rights to the joint invention, as well as the associated costs.

The joint owners must agree (in writing) on the terms of exercise of their joint ownership (joint ownership agreement).

Unless otherwise agreed in the joint ownership agreement:

- Joint owners shall be entitled to use inventions as well as industrial property rights applied for or granted thereon for the term thereof like their own without any financial adjustment having to be made. Joint owners may grant non-exclusive rights of use to third parties without prior written consent of the other joint owner(s). If any of the joint owners grants a non-exclusive right of use to the joint invention, 90 % of the revenue from the license will be distributed among all joint owners in proportion of their co-ownership shares and the remaining 10 % of the revenue belongs to the joint owner who granted the license. Insofar as a research organization within the meaning of the EU Framework for State aid for research and development and innovation (2014/C198/01) is involved in a joint invention alongside a company, the Partners involved will, with regard to No. 2.2.2 of the EU Framework, carefully evaluate contributions, document the result and compensate financial benefits based on the mutual usage and licensing rights, if necessary through an additional compensation in a separate agreement, in order to ensure that the Partners in the commercial sector are not granted any indirect state aid due to the collaboration under this Agreement. For copyright protected works, which are jointly created during the implementation of the Project by employees of several Parties (including software) as well as jointly created know-how, the provisions of this Section under the first indent – to the extent to which they may be applicable – shall apply accordingly.;
- 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);
- The Parties shall grant each other a non-exclusive, non-transferable right of use at no charge for Results achieved solely by the respective Party for the duration and implementation of the Project.

- For any further usage, each Party shall be granted upon request, which must be asserted in writing to the respective Party, a non-exclusive, non-transferable right of use at standard market rates and at terms and conditions to be agreed upon prior to any intended use.
- When assessing the standard market terms, the necessary contributions made by the concerned Parties in the context of the Project for the respective Result shall be taken into account; compared to the terms for uninvolved Parties, the relevant Party may be given a corresponding discount for such contributions.
- Software shall be provided in object code only.

## **6.2 Pre-existing Knowledge (Background)**

Pre-existing knowledge (Background) means any data, know-how - whatever its form or nature (tangible or intangible), including inventions and industrial property rights applied for or granted thereon, and copyright-protected works, including software - that is held by the Parties before they acceded to this Consortium Agreement which were incorporated by them into the Project, and that is needed to implement the Project.

In Annex No. 3 – Background IP brought to the project, the Parties have identified such industrial property rights for the Project which will be incorporated by them into the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.

## **6.3 Access Rights to Background**

The Parties grant each other, upon request, a non-exclusive, non-transferable, non-sublicensable right of use at no charge to Background for the duration and implementation of the Project, provided the Parties are legally able to do so and to the extent this is necessary for the implementation of the Project.

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

For any further usage, to the extent that it is imperative for the exploitation of a Party's own Results, the other Parties shall, upon request, which must be submitted in writing to the respective Party within one year after the end of the Project, grant this Party a non-exclusive, non-transferable, non-sublicensable right of use for a fee at standard market terms, provided they are legally able to do so. The details of this arrangement shall be agreed upon in writing by the relevant Parties prior to commencing any such further usage of the Background.

Software shall be provided in object code only.

Access Rights to Background if needed for exploitation of a Party's own Results, including for commercial research on behalf of a third party, shall be granted at standard market rates.

If any work to be performed by a Party is performed by a third party, then this Party shall ensure that the Results achieved thereby shall be provided to the other Parties and rights of use are granted thereon pursuant to the terms of this Agreement.

## **7 Non-disclosure agreement and confidentiality**

Confidential information shall mean: all the information, materials, documents, data in written, oral, electronic, or any other form concerning the terms of the cooperation between the Parties, business plans and strategies of one of the Parties (including marketing plans), all the technical and technological data concerning production as well as technology, repair and servicing of products (know

– how), and the data concerning the existing and potential clients and contractors of one of the Parties, disclosed directly by one of the Parties or through its authorized representatives or the data any Party obtained from the other Party during this cooperation, hereinafter referred to as “Confidential Information”. Confidential information shall mean all the information which is designated as confidential by the disclosing Party vis-à-vis the receiving Party.

Each Party shall use all information of the other Parties that is classified as confidential exclusively for the Project, shall keep it confidential and shall not provide it to third parties without the prior written consent of the disclosing Party during the Project and for a period of five (5) years after the end of the Project. This obligation shall not apply to information which

- was known to the public or was generally available prior to the notification to the receiving Party or
- becomes known to the public or generally available after the notification to the receiving Party without that receiving Party being involved or at fault or
- the receiving Party was already aware of at the time of receipt of the information or
- is information that was disclosed or made available to the receiving Party at any time by a third party without imposition of any obligation of confidentiality or
- was developed by an employee of the receiving Party without knowledge of the information.

The internal dissemination of confidential information by a Party shall be permitted only insofar as this is necessary for the Project (on a need-to-know basis) and provided it can be ensured that the only employees who receive this information are employees who have been made subject, to the extent legally possible, to the same confidentiality requirements as set out in this agreement.

The receiving Party hereby undertakes, within one month after the end of the Project, to return to the disclosing Party or upon request, destroy all Confidential Information that has been disclosed to the receiving Party including all copies thereof and to delete all information stored in a machine readable form to the extent practically possible. The receiving Parties 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 receiving Party complies with the confidentiality obligations contained herein with respect to such copy for as long as the copy is retained.

The receiving Party 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 Party shall promptly advise the other Party in writing of any unauthorized disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorized disclosure, misappropriation or misuse.

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.

## **8 Publications**

Each Party is entitled to issue publications that do not contain any confidential information or Results of other Parties without the consent of the other Parties.

Publications containing confidential information and/or Work Results of another Party shall require the latter's prior written consent or consent by email and must be submitted to that Party prior to the publication. With respect to joint Results, consent may not be unreasonably withheld or delayed.

Any disclosure or notification obligations by the Parties to a Funding Authority shall remain unaffected.

## **9 Term and Termination**

The Project shall commence on the earliest possible date stipulated in the funding notifications obtained by the Parties from the respective governmental funding authorities and shall continue in effect until completion or until the Parties otherwise agree to terminate the Project. The target date for the completion of the Project is 30 June, 2026.

Each Party may terminate its participation in the Project subject to a three-month period of notice for good cause only. For the purposes of this Agreement good cause shall exist where further co-operation has become impossible or ineffective, funding has been significantly reduced or withdrawn. In the event of a material breach of this Agreement by a Defaulting Party, this Defaulting Party may be excluded from further participation in the Project under Section 2.2. The notice of termination must be sent to all Parties and to the respective Funding Authority in writing. The terminating Party shall withdraw from the Project when the termination takes effect.

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

If the remaining Parties mutually determine that the aim pursued by the Project cannot be achieved and thus the basis for this Agreement no longer applies, then the remaining Parties shall agree with the respective Funding Authorities and the respective European Authorities on future steps and, if necessary, shall enter into a separate agreement in that regard.

This Agreement will come into force on the date of the signature by all Parties. This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the Project and under this Consortium Agreement.

The provisions relating to confidentiality, for the time period mentioned therein, as well as for liability, applicable law and settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

## **10 Publication of the contract**

The contracting parties acknowledge that this Agreement will be published in the Register of Contracts according to Act No. 340/2015 Sb. on special conditions of effectiveness of certain contracts, publishing of these contracts and on Register of Contracts (the Contract Register Act), as amended.

For the purpose of publishing in the Register of Contracts the contracting parties declare to each other that the Agreement does not contain any business secret.

The contracting parties undertake that prior to entering into the Agreement they will mutually agree in writing on the extent of anonymisation of the Agreement in accordance with the Contract Register Act.

VZU will send this Agreement to the administrator of the Register of Contracts for publishing through the Register of Contracts without undue delay, but no later than 30 days after entering into the Agreement.

VZU will inform the other contracting party about publishing in the Register of Contracts without undue delay by sending the confirmation received from the Register of Contracts through its data mail box or to its email address.

## **11 Miscellaneous**

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.

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 information. Amendments and modifications to the text of this Consortium Agreement require a separate written agreement to be signed by all Parties.

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

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

The Parties shall endeavor to settle their disputes amicably.

All disputes arising out of or in connection with this Consortium Agreement, which cannot be or have not been solved amicably, shall be finally settled by the competent court of Brussels, Belgium.

## **Annexes**

Annex No. 1 – Outputs/deliverables of the project

Annex No. 2 – The basic overview of the budget and costs

Annex No. 3 – Background IP brought to the project

Annex No. 4 – “Závazné parametry řešení projektu”

## Signatures

### AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorized representatives.

Plzeň, .....

**Výzkumný a zkušební ústav Plzeň s.r.o.**

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\_\_\_\_\_, Managing director

\_\_\_\_\_, Managing director

Plzeň, .....

**Západočeská univerzita v Plzni**

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\_\_\_\_\_, Vice-Rector for Research, Creative Activities and Doctoral Study

Chemnitz, .....

**Chemnitz University of Technology, the Professorship for Forming and Joining**

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\_\_\_\_\_, The Rector

\_\_\_\_\_, Professorship for Forming and Joining

Ostrava, .....

**MATERIÁLOVÝ A METALURGICKÝ VÝZKUM s.r.o.**

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\_\_\_\_\_, Managing director

Modena, .....

**Università degli Studi di Modena e Reggio Emilia**

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\_\_\_\_\_, Rector and Legal Representative