

Transnational Access User Agreement

This Transnational Access (TA) User Agreement, hereinafter referred to as "TA User Agreement" is made on 25/09/2024, hereinafter referred to as "Effective Date", within the framework of Grant Agreement No.101058684 with the European Commission (hereinafter referred to as EC GA)
BETWEEN:

CENTRE SCIENTIFIQUE ET TECHNIQUE DU BÂTIMENT (CSTB)

84 avenue Jean Jaurès Champs-sur-Marne, Marne-la-Vallée Cedex 2 (France)

VAT No FR 70 775 688 229

ERIES Project Beneficiary as a Transnational Access Provider, hereinafter referred to as "Access Provider", legally represented by:

Director of Nantes' CSTB laboratory

AND

Institute of Theoretical and Applied Mechanics of the Czech Academy of Sciences (ITAM CAS)

Prosecká 809/76

190 00 Prague 9, Czech Republic

VAT number: CZ68378297

hereinafter referred to as "User Group" and duly representing for the purposes hereof the Team of Users proposing the TA User Project described in Appendix I, represented for the purposes hereof by:

Director of ITAM CAS

hereinafter, jointly or individually, referred to as "Parties" or "Party" relating to the TA User Project described in Appendix I and titled:

"ERIES - Wind tunnel testing of FLeXible Advanced aeroelastic Models of BRidGe cables (ERIES-FLAMBeRG)"

herein after referred to as "TA User Project"

PREAMBLE

WHEREAS:

The User Group, having considerable experience in the field concerned, has submitted a Proposal for the TA User Project under the ERIES project of HORIZON-INFRA-2021-SERV-01-07 funded by the Horizon Europe Framework Programme.

The User Group has been selected by the Transnational Access Selection and Evaluation Panel (TA-SEP) of the ERIES project.

The User Group intends to perform and execute such TA User Project according to the terms and conditions of this Transnational Access User Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

PRELIMINARY ARTICLE

This Transnational Access User Agreement is concluded within the framework of Grant Agreement No. 101058684 – Engineering Research Infrastructures for European Synergies.

– with the European Commission (hereinafter referred to as EC GA). An extract of the EC GA is appended to this Agreement as Appendix II, forming an integral part of it. The term “Beneficiary” of the EC GA is replaced by the term “Access provider”.

ARTICLE 1. DEFINITIONS

"Background": Information held by the Party prior to signing of this TA User Agreement, as well as copyrights as well as other intellectual property rights pertaining to such information, the application for which has been filed before signing of this TA User Agreement and which is needed for carrying out the TA User Project or for using Foreground.

"Foreground": Named "Results" in the EC GA, means any (tangible or intangible) output of the action such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is generated in the action, as well as any rights attached to it, including intellectual property rights.

"Installations": Those instruments to which the User Group has been awarded access according to Appendix II of this TA User Agreement for carrying out the proposed work. This TA User Agreement exclusively covers the "Jules Verne" climatic wind tunnel located within the CSTB's Nantes establishment.

"User Group": A user group (UG) is a team of researchers from one or more institutes who apply for transnational access (TA) to an ERIES research infrastructure installation. "TA User Agreement": this agreement and its annexes.

"TA User Project": Project carried out in the framework of this TA User Agreement as described in its Appendix I.

"TA-SEP": refers to the Transnational Access Selection and Evaluation Panel of the ERIES project.

"TA User Plan": The description of the work in Appendix I of this TA User Agreement, as it may be elaborated further during the course of the work as deemed necessary.

"Needed". Means:

- For the implementation of the TA User Project: Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources.
- For Use of own Foreground: Access Rights are Needed if, without the grant of such Access Rights, the Use of own Foreground would be technically or legally impossible.

"Software": 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.

ARTICLE 2. PURPOSE

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

ARTICLE 3. ENTRY INTO FORCE, DURATION AND TERMINATION

3.1 ENTRY INTO FORCE

This TA User Agreement shall have effect from the Effective Date identified at the beginning of this TA User Agreement.

3.2 DURATION AND TERMINATION

This TA User Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under this TA User Agreement, but not beyond the termination of the EC GA.

Unless otherwise stated, and communicated in writing to the ERIES Coordinator, this agreement is assumed to end 30 days from the last recorded physical access of a User Group member to the Access Provider's facilities to carry out the activities described in Appendix I

If the Commission terminates the EC GA or the Access provider's participation in it, this TA User Agreement shall automatically terminate, subject to the provisions surviving the expiration or termination under Art. 3.3 of this TA User Agreement.

In the event the Access provider considers itself unable to fulfil its obligations outlined in Appendix I of this TA User Agreement for major technical or economic reasons affecting the TA User Project, it may refer the case to the Transnational Access Selection and Evaluation Panel (TA-SEP) of the ERIES project with a notice in writing to the User Group. The TA-SEP may decide to keep this TA User Agreement in force, or allow its termination, or reallocate the TA User Project to another beneficiary of the ERIES project which provides Transnational Access, subject to the agreement of that beneficiary. In that latter case, this TA User Agreement will be terminated and a new one will be concluded and signed between the User Group and that other beneficiary of ERIES.

3.3 SURVIVAL OF RIGHTS AND OBLIGATIONS

The provisions relating to Access Rights and Confidentiality, for the time mentioned therein, as well as for Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of this TA User Agreement.

ARTICLE 4. RESPONSIBILITIES OF PARTIES

4.1 GENERAL PRINCIPLES

Each Party undertakes the efficient implementation of the TA User Project and agrees to cooperate, perform and fulfil, promptly and on time, all of its obligations under this TA User Agreement and its Appendix I.

Each Party undertakes to promptly notify the other, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the TA User Project. Each Party shall promptly provide all information reasonably required by the other Party in order to carry out its tasks.

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

4.2 BREACH

In the event the Access provider identifies a material breach by the User Group of its obligations under this TA User Agreement it shall give written notice requiring that such breach be remedied within 30 calendar days.

If such breach is not remedied within that period or cannot be remedied and the breach is reasonably considered as “substantial” by the Access provider, the latter may propose to the TA-SEP to declare the User Group to be a Defaulting Party and to decide on the consequences thereof, which may include termination of the TA User Project.

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 solely responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this TA User Agreement and of the ERIES Grant Agreement. It has to ensure that the use of third parties does not affect the rights and obligations of the other Parties under this TA User Agreement and of the ERIES Grant Agreement, including their Access Rights regarding Background and Foreground.

4.4 PROVISION AND USE OF THE INSTALLATIONS

The Access provider agrees to:

- Provide access to Installations as needed for the TA User Project as specified in Appendix I of this TA User Agreement, for at least the number of Units of Access estimated therein.
- Nominate a Technical Contact, who will be a member of the Access provider staff having knowledge of, and authority for the proper use of the Installations
- Advise on and supervise the safety of the User Group whilst on Access provider premises.
- in view of the complexity of the Installations and its value to the CSTB as a means of production, supervise all work requiring the use of the Installations
- Announce to the User Group any few-day-long training course (on the use of the Installations, advances in experimental testing techniques, good practice in operation of testing facilities, maintenance of lab equipment, qualification of products and systems, etc.) it may offer within the framework of the EC GA after the Effective Date of the TA User Agreement and have it open to the User Group free of charge.

The User Group agrees to:

- Comply with the terms and conditions of the EC GA.
- Work under the guidance of the Access Provider Technical Contact.
- Follow the safety rules for the Access provider's site and the Installations as described in the safety briefing to be provided by the Access provider.
- Report to the Access provider on the progress of the work, when requested by the Technical Contact.
- Allow the Access provider, the ERIES Project Coordinator and the European Commission to publish details of the User Group (names and institutions of TA User Teams).
- Disseminate the Foreground in accordance with the EC GA and Art. 6.3 of this TA User Agreement

Agreement, in particular by making publications in interim and final public reports (conforming to a common format and uploaded on the ERIES web portal) at the Workshops organised in the framework of the ERIES project, as well as in journal or conference papers

Appendix I of this TA User Agreement must include:

- A detailed description of the resources made available by the Access Provider;
- A detailed description of the activities to be carried out by the Parties;
- The detail of the costs covered by the Access Provider and those covered by the User Group (for instance specimen costs related to its construction, material supply, dismantling, etc.)

Appendix I of this TA User Agreement may include specific agreements for:

- The User Group to deliver the specimens to be tested or parts or components thereof to the premises of the Access provider at the User Group's own expenses and responsibility. In that case, no warranty of any kind is made or implied by the Access provider as to the sufficiency or fitness for purpose of the specimens or parts or components thereof delivered to its premises.
- The User Group to cover whole or part of the construction cost of the specimens to be tested. In that case Appendix I of this TA User Agreement shall also delineate the responsibilities of the Parties regarding the construction of these test specimens and its supervision.

4.5 TRAVEL AND SUBSISTENCE EXPENSES

Travel and subsistence of User Groups to the premises of the Access provider for the purposes of the TA User Project will be paid by the Access provider according to its own rules and up to a certain ceiling set by it and specified in Appendix I of this TA User Agreement, depending on the number of days spent at the Access Provider.

The User Group agrees to:

- Submit to the Access Provider only those claims for Travel and Subsistence expenses which have been legitimately incurred in connection with the TA User Project and are not covered from other sources;
- Keep expenditures to a reasonable minimum;
- Provide proof of expenditures in the form of original receipts, as requested.

The Access provider may arrange to pay travel and subsistence expenditures of the User Group directly to a supplier (e.g., to issue travel tickets or settle a hotel bill).

ARTICLE 5. LIABILITY TOWARDS EACH OTHER

5.1 NO WARRANTIES

In respect of any information supplied by one Party to the other under this TA User Agreement, no warranty or representation of any kind is made, given or implied neither as to the sufficiency or fitness for purpose, nor as to the absence of any infringement of any proprietary rights of third parties.

The recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information.

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 Affiliates) exercising its Access Rights.

The express undertakings and warranties given by the Parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

In agreeing access to the Installations, each Party acknowledges that this TA User Agreement provides for the carrying out of experimental research and the use of experimental equipment whose properties and safety may not have been fully established. Therefore, specific results or outcomes cannot be guaranteed.

5.2 LIMITATIONS OF CONTRACTUAL LIABILITY

No Party shall be responsible to the other Party for indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts.

The exclusion of liability shall not apply in the case of damage caused by a wilful act or omission or in case of a breach of confidentiality obligations.

The terms of this TA User Agreement shall not be construed to amend or limit any Party's non-contractual liability.

The Access provider shall take reasonable care to ensure the safety of the User Group during their access to the Facility, in compliance with the prevailing Health & Safety Regulations. It shall not be held liable for damage or loss sustained by the User Group in connection with the performance of the work under the TA User project unless the damage or the loss have been caused by the negligence or intentional misconduct of the Access provider or its employees or representatives during the execution of the TA User project.

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 under this TA User Agreement or from its use of Foreground or Background. Notwithstanding anything to the contrary within this TA User Agreement, no third party shall be entitled to rely upon or enforce anything contained within this Agreement.

The Access Provider shall not be held responsible for any acts or omissions committed by the User Group in executing the work under the TA User Agreement nor for any defaults of products or services, if any, created on the basis of Foreground resulting from the TA User project.

The User Group agrees to indemnify and hold harmless the Access provider in case of any action, complaint or proceeding brought by a third party against it as a result of damage or loss caused, either by act or omission committed by the User Group in executing the TA User project, or due to defaults of the products or services, if any, created on the basis of the Foreground resulting from the TA User project.

5.4 *FORCE MAJEURE*

‘Force majeure’ means any situation or event that:

- Prevents either party from fulfilling their obligations under the Agreement;
- Was unforeseeable, exceptional situation and beyond the parties’ control;
- Was not due to error or negligence on their part (or on the part of third parties involved in the action), and proves to be inevitable in spite of exercising all due diligences.

The following cannot be invoked as force majeure:

- Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure;
- Labour disputes or strikes;
- Financial difficulties.

Any situation constituting force majeure must be formally notified to the other party without delay, stating the nature, likely duration and foreseeable effects.

The parties must immediately take all the necessary steps to limit any damage due to force majeure and do their best to resume implementation of the action as soon as possible. The party prevented by force majeure from fulfilling its obligations under the Agreement cannot be considered in breach of them.

If the consequences of Force Majeure for the TA User Project are not overcome within forty-five (45) days after such notification, the Parties may refer the case to the TA-SEP of the ERIES Project, requesting a solution such as those outlined in Sections 3.2 or 4.2.

5.5 *DAMAGE TO THE PROPERTY OF THE PARTIES*

Each of the Parties is liable for any damage it causes by negligence or by a wilful act to the movable or immovable property of the other Party as a result of or in connection with the performance of the TA User Agreement.

5.6 *BODILY INJURY*

Each Party shall ensure that its personnel are covered in accordance with the applicable legislation in the field of social security, industrial accidents and occupational diseases to which it is subject and shall carry out the formalities incumbent upon it.

Each Party shall be liable for damage of any kind caused by its personnel to the personnel of the other Party.

5.7 *INSURANCE*

Each Party must take out and maintain in force the necessary insurance policies, in particular civil liability, to cover any damage to property that may occur as a result of its actions in the performance of the TA User Agreement.

ARTICLE 6 FOREGROUND

The Foreground is owned by the Party of this TA User Agreement carrying out the work generating the Foreground.

Regarding Foreground EC GA shall apply with the following additions:

6.1 JOINT OWNERSHIP

Two or more beneficiaries own results jointly if:

- a. they have jointly generated them
- And / or
- b. it is not possible to:
 - i. establish the respective contribution of each beneficiary, or
 - ii. separate them for the purpose of applying for, obtaining or maintaining their protection

The joint owners must agree (in writing) on the allocation and terms of exercise of their joint ownership ('joint ownership agreement'), to ensure compliance with their obligations under this Agreement. Unless otherwise agreed in the joint ownership agreement, each joint owner may grant non-exclusive licences to third parties to exploit jointly-owned results (without any right to sub-license), if the other joint owners are given:

- a. at least 45 days advance notice and
- b. fair and reasonable compensation.

Once the results have been generated, joint owners may agree (in writing) to apply another regime than joint ownership (such as, for instance, transfer to a single owner (see Article 40 of EC GA) with access rights for the others). The joint owners shall agree on all protection measures and the division of related cost in advance.

6.2 TRANSFER OF FOREGROUND

Each Party may transfer ownership of its own Foreground following the procedures of the EC GA Article 41.

It shall identify any third parties it intends to transfer Foreground to in [Attachment 3] to this TA User Agreement.

The transferring Party shall, however, ensure that the rights of the other Party will not be affected by such transfer. If the Foreground is jointly owned the transferring Party shall notify the other owning Parties of such transfer.

The Parties recognise that in the framework of a merger or an acquisition of an important part of its assets, a Party may be subject to confidentiality obligations which prevent it from giving the full 45 days prior notice foreseen in the EC GA.

6.3 DISSEMINATION

6.3.1 Publication

The User Groups have the same rights and obligations in regard to publicity as referred to for the Access provider in the EC GA.

The User Group Leader must provide the ERIES Coordinator a short summary highlighting the scientific output of the access received, preferably with one/two images, for use on the ERIES website.

Dissemination activities including but not restricted to publications and presentations shall be governed by Articles 16 and 17 of the EC GA. Dissemination activities both from the Access Providers and the User Groups shall be duly reported to ERIES Coordinator.

The User Groups shall make suitable publicity in their publications about the support given by the European Community for the access provided to them, by including in all publications or any other dissemination relating to Foreground the following statement:

“This work is part of the transnational access project "ERIES-FLAMBeRG", supported by the Engineering Research Infrastructures for European Synergies (ERIES) project (www.eries.eu), which has received funding from the European Union’s Horizon Europe Framework Programme under Grant Agreement No. 101058684.

Prior notice of any planned publication shall be made to the other Party 45 days before the publication. Any objection to the planned publication shall be made in accordance with the EC GA in writing to the Coordinator of the ERIES project and to the other Party within 30 days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted. An objection may be justified if

- the publication contains Confidential Information; or
- the protection of the objecting Party's Foreground or Background is adversely affected. The objection shall include a precise request for necessary modifications.
- contributing members of the Beneficiary (Access Provider) or the User Group are not included as co-authors, new co-authors that did not contribute to the TA effort are included, or there is disagreement with respect to the order of the authors.

The two parties need to agree in advance on the list and the order of the authors for every publication, or oral presentation, or dissemination via the social media, that results from this TA User Agreement (journal paper, paper in conference proceedings, book chapter, press release or any other publicly accessible document or public posting) within the 45 day period.

If an objection has been raised the Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amending the planned publication and/or by protecting information before publication). If the objection is for the protection of Foreground or Background any delay to publication to allow protection to take place shall be for a maximum of 60 days.

The objecting Party shall not unreasonably continue the opposition if appropriate actions are performed following the discussion.

The Access Provider, with the assistance of the User Groups, shall upload all foreground (metadata, information, data and results) generated as part of this agreement to the ERIES project’s designated system (for the metadata) and to an EOSC-compatible repository (information, data and results) to obtain a digital object identifier (DOI). The process should be completed within: 45 days regarding project general information and metadata (to ERIES project’s designated system), and 90 days for the curated foreground (to a DOI-granting repository), upon conclusion of this agreement.

The User Group and the Access Provider may agree on an embargo period prior to the conclusion of this agreement. This embargo period, which may not exceed 6 months, applies to all foreground generated, before access is granted to the foreground via the ERIES project's designated system. In the absence of such an agreement, which must be communicated in writing to the ERIES Coordinator prior to the conclusion of this agreement, it is assumed that no such embargo period exists and the foreground will be made available once uploaded.

6.3.2 Publication of another party's foreground or background

For the avoidance of doubt, a Party may not publish Foreground or Background of the other Party, even if such Foreground or Background is amalgamated with the Party's Foreground, without the other Party's prior written approval. For the avoidance of doubt, the mere absence of an objection according to Section 6.3.1 is considered as an approval.

6.3.3 Cooperation obligations

The Parties undertake to co-operate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Foreground or Background. However, confidentiality and publication clauses have to be respected.

The User Group Leader must complete an EC user questionnaire to measure user satisfaction – the link to this questionnaire will be available on the project website.

Users will be expected to attend the Final Workshop to present their experience and research results (subject to the User's IP restrictions) in order to encourage further networking and scientific collaboration, acknowledge the support of the EC and publicise their devices/concepts if desired. The outcomes presented at this workshop will be disseminated via the ERIES website and further publication will be encouraged. Travel and subsistence of User Group members attending this workshop will be reimbursed on the basis of available funds, described in Appendix I Section 11.

6.3.4 Use of names, logos or trademarks

Nothing in this TA User Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the other Party or any of its logos or trademarks without its prior written approval.

6.3.5 Social media posts

All posts to social media (including text, photos, videos) referring to the tests conducted at the premises of the RI of the Beneficiary offering TA, shall be reviewed, and approved by the latter in order to ensure compliance with their respective marketing rules and policy. The Beneficiary and its Marketing Team has the right to adjust the content of the post prior to publication to reflect its standard practices and format of social media content. All posts resulting from this User Agreement should also explicitly acknowledge the ERIES project. Digital Media involving images of people (with or without name tagging) are subject to the permission of the people involved.

ARTICLE 7. ACCESS RIGHTS

7.1 BACKGROUND COVERED

In accordance with and subject to the provisions of the EC GA, any Party may enter in [Attachment 2] exclusions from the obligation to grant Access Rights to specific Background in accordance with the provisions of this TA User Agreement. All other Background except that listed in Attachment 2 shall be available for the granting of Access Rights (i.e., licences and user rights) in accordance with the provisions of this TA User Agreement.

7.2 GENERAL PRINCIPLES

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

As provided in the EC GA, each Party shall inform the other Party as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the TA User Project).

Any Access Rights granted expressly 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, if not otherwise agreed in writing by all the Parties according to the EC GA.

Foreground 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 to the Party owning the Background or Foreground in writing (including by e-mail with acknowledgement of read receipt) with copy to the Co-ordinator. 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.

7.3 ACCESS RIGHTS FOR IMPLEMENTATION

Access Rights to Foreground and Background needed for the execution of own work of a Party under the TA User Project shall be granted by the owner of the Access Rights on a royalty-free basis in so far as free and reasonably able to do so. More specifically, the User Group should always enjoy access rights, on a royalty-free basis, to the background of the access provider and to the foreground, if needed to carry out its own work under the project.

7.4 ACCESS RIGHTS FOR USE

Access Rights to Foreground or Background Needed for Use of a Party's own Foreground shall be granted on fair and reasonable market conditions. A third party shall not be granted direct Access to Foreground generated by other Parties unless those Parties explicitly agree to it.

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

7.5 ACCESS RIGHTS FOR AFFILIATED ENTITIES

Affiliated Entities have Access Rights under the conditions of the EC GA.

Such Access Rights to Affiliated Entities shall be granted on fair and reasonable conditions and upon written bilateral agreement.

Affiliated Entities which obtain Access Rights in return grant Access Rights to all Parties and fulfil all confidentiality and other obligations accepted by the Parties under the EC GA or this TA User Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliate Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Foreground.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

7.6 ADDITIONAL ACCESS RIGHTS

For the avoidance of doubt any grant of Access Rights not covered by this TA User 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.

7.7 ACCESS RIGHTS AFTER TERMINATION OF THE TA USER AGREEMENT

7.7.1 Defaulting party

Access Rights granted to a User Group declared as a Defaulting Party according to Article 4.2 of this TA User Agreement 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 ERIES TA-SEP to terminate this TA User Agreement.

7.7.2 Non-defaulting parties

If this TA User Agreement is terminated according to its Article 3.2, Parties shall have Access Rights to the Foreground developed until the date of the termination. The time limit for its right to request these Access Rights shall start on the same date.

7.8 SPECIFIC PROVISIONS FOR ACCESS RIGHTS TO SOFTWARE

For the avoidance of doubt, the general provisions for Access Rights provided for in this Article 7 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.

ARTICLE 8: NON-DISCLOSURE OF INFORMATION

User Groups have the same rights and obligations in regard to confidentiality as referred to for the Access provider itself in the EC GA.

All information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to the other Party (the "Recipient") in connection with the TA User Project during its implementation and which has been explicitly marked as "confidential", or, when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days 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 of non-disclosure under this TA User Agreement, for a period of 5 years after the end of the EC GA:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information to any third party 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 on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine-readable form. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only.

The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees receiving Confidential Information are under similar obligations to keep such information confidential.

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 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 confidence by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the EC GA;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
- the Confidential Information was already known to the Recipient prior to disclosure.

The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the TA User 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 unauthorised disclosure, misappropriation or misuse by any person of Confidential Information as soon as practicable after it becomes aware of such unauthorised 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, such shall not amount to a breach of confidence provided that 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.

The confidentiality obligations under this TA User Agreement and the EC GA shall not prevent the communication of Confidential Information to the European Commission.

ARTICLE 9. MISCELLANEOUS

9.1 ATTACHMENTS, INCONSISTENCIES AND SEVERABILITY

This TA User Agreement consists of this body text and:

- Attachment 1 (List of Contact persons and User Group Members)
- APPENDIX I: Description of TA User Project, including technical drawings
- APPENDIX II: Extract of the Grant Agreement n.101058684 with the European Commission

In case of conflicts between the Attachments and the body text of this TA User Agreement, the latter shall prevail, except for the Grant Agreement in Appendix II, which shall prevail on all other documents.

Should any provision of this TA User Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this TA User Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

9.2 NO REPRESENTATION, PARTNERSHIP OR AGENCY

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this TA User 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.

9.3 NOTICES AND OTHER COMMUNICATION

Any notice to be given under this TA User Agreement shall be in writing (including by e-mail with acknowledgement of receipt) to the Parties, specifically to the recipient and the address listed as contact person for the Party in [Attachment 1].

9.3.1 Formal notices

If it is required in this TA User Agreement (namely in Section 7.7.1 and 9.4) 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 courier or mail with recorded delivery.

9.3.2 Other communication

Other communication between the Parties may also be affected by other means such as e-mail with acknowledgement of receipt.

Any change of persons or contact details shall be notified promptly by the respective Party to the other.

9.4 ASSIGNMENT AND AMENDMENTS

No rights or obligations of the Parties arising from this TA User Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval except for those third parties listed in Attachment 3, subject to the provisions of the TA User Agreement and the EC GA.

Amendments and modifications to the text of this TA User Agreement or its Appendix I require a separate agreement between the Parties. Additions or modifications to the Attachments may be

made by formal notice of the Party to which the additions or modifications refer, addressed to the other Party.

If the EC GA is amended during the course of this TA User Agreement, Appendix II of this TA User Agreement shall be replaced by its amended version.

9.5 MANDATORY STATUTORY LAW

Nothing in this TA User Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

9.6 LANGUAGE

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

9.7 APPLICABLE LAW

This TA User Agreement and all clauses in the EC GA affecting the rights and obligations between the Parties shall be construed in accordance with and governed by the laws of Belgium.

9.8 SETTLEMENT OF DISPUTES

The Parties agree to use reasonable endeavours to try to amicably settle any dispute, controversy or claim arising between them in relation to the implementation of this TA User Agreement and for such purpose, to bring the dispute, controversy or claim to the General Assembly of the ERIES project.

All disputes arising out of or in connection with this TA User Agreement, which cannot be solved amicably, shall be subject to the jurisdiction of the national courts of Belgium.

ARTICLE 10: SIGNATURES

AS WITNESS: The Parties have caused this TA User Agreement to be duly signed by the undersigned authorised representatives in counterparts in the day and year first above written.

This TA User Agreement is signed

Signature by the User Group

on behalf of Party: Institute of Theoretical and Applied Mechanics of the Czech Academy of Sciences

Name:

Duly authorized for the purpose hereof

Date: 2024.10.10
14:25:14 +02'00'

Date: _____

Signature: _____

and

Signature by the Access provider

on behalf of the Access provider: CENTRE SCIENTIFIQUE ET TECHNIQUE DU BÂTIMENT (CSTB)

By:

Duly authorized for the purpose hereof

Date: _____

Signature: _____

Date : 10/10/2024 12:01:45