

FP7 INFRASTRUCTURE

CONSORTIUM AGREEMENT FOR THE INTEGRATED INFRASTRUCTURE INITIATIVE FOR NEUTRON SCATTERING AND MUON SPECTROSCOPY (NMI3-II)

2012 – 2016

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CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) (hereinafter referred to as “Rules for Participation”) and the European Commission Grant Agreement, adopted on 10 April 2007, (hereinafter referred to as the “Grant Agreement” or “EC-GA” and Annex II adopted on 10 April 2007, (hereinafter referred to as “Annex II of the EC-GA”, and is made on 1 February 2012 (hereinafter referred to as the “Effective Date”)

BETWEEN:

- (1) INSTITUT MAX VON LAUE – PAUL LANGEVIN, France (hereinafter referred to as “the Co-ordinator”)

And the other beneficiaries being party to the Contract and this Consortium Agreement

- (2) SCIENCE AND TECHNOLOGY FACILITIES COUNCIL, UK
- (3) TECHNISCHE UNIVERSITAET MUENCHEN, Germany
- (4) FORSCHUNGSZENTRUM JUELICH GMBH, Germany
- (5) PAUL SCHERRER INSTITUT, Switzerland
- (6) HELMHOLTZ-ZENTRUM BERLIN FUER MATERIALIEN UND ENERGIE GMBH, Germany
- (7) COMMISSARIAT A L'ENERGIE ATOMIQUE ET AUX ENERGIES ALTERNATIVES CEA, France acting on its behalf and on behalf of Centre National de la Recherche Scientifique (CNRS)
- (8) HELMHOLTZ-ZENTRUM GEESTHACHT ZENTRUM FÜR MATERIAL- UND KÜSTENFORSCHUNG GMBH, Germany
- (9) CENTRE FOR ENERGY RESEARCH, HUNGARIAN ACADEMY OF SCIENCES former name: *MAGYAR TUDOMANYOS AKADEMIA KFKI ATOMENERGIA KUTATOINTEZET*, Hungary
- (10) WIGNER RESEARCH CENTRE FOR PHYSICS OF THE HUNGARIAN ACADEMY OF SCIENCES former name: *SZILARDTESTFIZIKAI ES OPTIKAI KUTATOINTEZETE – MAGYAR TUDOMANYOS AKADEMIA*, Hungary
- ~~(11)~~ represented by beneficiary (9), *IZOTOPKUTATO INTEZET – MAGYAR TUDOMANYOS AKADEMIA*, Hungary
- (12) TECHNISCHE UNIVERSITEIT DELFT, The Netherlands

- (13) NUCLEAR PHYSICS INSTITUTE OF THE ASCR VVI, Czech Republic
- (14) CONSIGLIO NAZIONALE DELLE RICERCHE, Italy
- (15) KØBENHAVNS UNIVERSITET, Denmark
- (16) DANMARKS TEKNISKE UNIVERSITET, Denmark
- (17) UNIVERSIDAD DE ZARAGOZA, Spain
- (18) EUROPEAN SPALLATION SOURCE, Sweden

(hereinafter, jointly or individually, referred to as "Parties" or "Party")

Relating to the Project entitled **Integrated Infrastructure Initiative for Neutron Scattering and Muon Spectroscopy**, which shall be termed in short **NMI3-II** (hereinafter referred to as the "Project")

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the European Commission as part of the Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration Activities under the funding scheme of Collaborative Project and Co-ordination and Support Action (CP & CSA).

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the EC-GA.

The Parties are aware that this Consortium Agreement is based upon the DESCAR[®] model consortium agreement and that explanations to the DESCAR[®] model are available at www.DESCA-FP7.eu.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Definitions

1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules for Participation or in the EC-GA including its Annexes without the need to replicate said terms herein.

1.2 Additional Definitions

“Access providing facility” means any facility providing transnational Access within the present EC-GA.

“Activity” or **“Activities”** means any Activity created by decision of the Board in accordance with the provisions of this Consortium Agreement and the Contract.

“Activity Co-ordinator” means the manager who will carry out the co-ordination tasks for an Activity and who represents that Activity as a Member of the General Assembly.

“Advisory Committee” means the body established in accordance with Section 6.1.3.

“Board” means the body established in accordance with Section 6.1.1.

“Consortium Plan” means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the Board.

“Consortium Budget” means the allocation of all the resources in cash or in kind for the activities as defined in Annex I of the Grant Agreement and in the Consortium Plan thereafter.

“Consortium Body” shall be the generic term applied to the separate groups and committees as defined within this Consortium Agreement

“EC-GA” means the Grant Agreement No. 283883 – FP7-INFRASTRUCTURES-2011-1 (including its Annexes) for the undertaking by the Parties of the Project. EC-GA also means, as applicable, any EC-GA amendment.

“Defaulting Party” means a Party which the Board has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Article 4.2 of this Consortium Agreement.

“Deliverables” shall mean as described in Annex 1 and shall include by demonstration but not limitation reports, progress reports and certified audit reports, as well as hardware and Software referred to in the EC-GA and in this Consortium Agreement that have to be delivered to the Co-ordinator, Activity Co-ordinator(s), if any, and/or the Commission.

“General Assembly” means the body established in accordance with Section 6.1.2.

“Joint Research Activity Committee” means the body established in accordance with Section 6.1.5.

“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 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.

“Non-Contractors” shall include by demonstration but not limitation User Organisations, and Observer Organisations named in this Consortium Agreement, other experts and qualified persons as shall be invited.

“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

3.1.1 An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

3.1.2 This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

3.1.3 A new Party enters the Consortium upon signature of the accession document Attachment 2 by the new Party and the Co-ordinator. Such accession shall have effect from the date identified in the accession document.

3.2 Duration and termination

3.2.1 This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the EC-GA and under this Consortium Agreement.

3.2.2 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 and Annex II of the (EC-GA Article II.37. and II.38.).

3.2.3 If the Commission does not award the EC-GA or terminates the EC-GA or a Party's participation in the EC-GA, this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Art. 3.3 of this Consortium Agreement.

3.3 Survival of rights and obligations

3.3.1 The provisions relating to Access Rights 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.

3.3.2 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 General Assembly and the leaving Party. This includes the obligation to provide all input, Deliverables and documents for the period of its participation.

Section 4: Responsibilities of Parties

4.1 General principles

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

4.4.2 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.

4.4.3 Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Co-ordinator to carry out its tasks.

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

4.2 Breach

4.2.1 In the event a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the EC-GA (e.g.: a partner producing poor quality work), the Co-ordinator will give written notice to such Party requiring that such breach be remedied within 30 calendar days.

4.2.2 If such breach is substantial and is not remedied within that period or is not capable of remedy, the Board 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 solely 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 EC-GA. 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 EC-GA.

Section 5: Liability towards each other

5.1 No warranties

In respect of any information or materials (incl. Foreground 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 Affiliates) exercising its Access Rights.

5.2 Limitations of contractual liability

5.2.1 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.

5.2.2 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 I of the EC-GA provided such damage was not caused by a wilful act or gross negligence.

5.2.3 The terms of this Consortium Agreement shall not be construed to amend or limit any Party's non-contractual 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 Foreground or Background.

5.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure. Each Party will notify the competent Consortium Bodies of any Force Majeure as soon as possible. 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

6.1.1 The Board

The Board forms the ultimate decision-making body of the Consortium comprising one representative of each Party and the Project Co-ordinator as chairman.

Countries with strong user communities but without national source are to be represented in the Board as observers. These communities are represented by the Parties of the respective nationality in the EC-GA.

The user organisations European Neutron Scattering Association (ENSA) and the International Society for Muon Spectroscopy Europe (ISMS-E) are equally invited as observers to the Board.

As specified under 2.1 (Management and procedures) in Annex 1, the above are hereinafter collectively called the "Board Members".

6.1.2 The General Assembly

6.1.2.1 The General Assembly forms the principle discussion forum of the Project. It shall be attended by the representatives of the Parties. The General Assembly shall include:

All members of the Board as described in 6.1.1, and

The Activity Co-ordinators as listed in Annex 1 of the EC-GA.

And representatives of users as listed in Annex 1 comprising:

Other EU Neutron/Muon Related Projects

Countries with large User Communities but no National Source to include Consejo Superior De Investigaciones Cientificas (CSIC), Spain and Consiglio Nazionale delle Ricerche (CNR), Italy

User Organisations to include: the European Neutron Scattering Association (ENSA) and the International Society for Muon Spectroscopy Europe (ISMS-E)

The Board Members together with the Activity Co-ordinators and the representatives of the user organisations listed above shall hereinafter be called the “GA Members”.

In addition the General Assembly shall be attended by observer organisations listed in Annex 1 as follows:

Non-European scientific observers to include: Australian Nuclear Science and Technology Organisation (ANSTO), China Institute of Atomic Energy (CIAE), Frank Laboratory of Neutron Physics (FLNP) Russia, the Japan Atomic Energy Agency (JAEA), the Korea Atomic Energy Research Institute (KAERI), Spallation Neutron Source (SNS) United States of America

and

The Commission’s nominated representative.

6.1.2.2 Attendance at the General Assembly of additional user organisations and observer organisations may be recommended to the Board.

6.1.2.3 The General Assembly shall take place in the public domain and be attended by GA Members plus observers by invitation of the Project Co-ordinator.

6.1.3 The Advisory Committee

6.1.3.1 Members of the Advisory Committee shall be nominated by the Board and appointed by the Project Co-ordinator at his sole discretion at the first Board Meeting. Appointment to the Advisory Committee shall be for the full term of the Project. In the event of the discharge of a member (either by withdrawal or dismissal) a replacement shall be nominated by the Board and appointed by the Project Co-ordinator.

6.1.3.2 The Advisory Committee shall have a maximum of six appointed members.

6.1.3.3 In consultation with the Advisory Committee the Project Co-ordinator may co-opt additional members if a particular expertise is required.

6.1.3.4 Save for the Project Co-ordinator who shall act as chair of the Advisory Committee the members of the Advisory Committee shall not be Party to the EC-GA. They shall be charged to act in a personal capacity. In the event a matter arises in which they have a vested interest the member is required to declare this.

6.1.4 Access Activity Co-ordinators

Each Access providing facility shall appoint their representative to serve as Co-ordinator of tasks under their respective Access Activity.

6.1.5 Joint Research Activity Committees

- 6.1.5.1 Parties engaged on the delivery of each of the Joint Research Activity (hereinafter “JRA”) Workpackages shall establish a JRA Committee for that respective JRA comprised of one representative of each Party performing work.
- 6.1.5.2 The Project Co-ordinator shall appoint a JRA Co-ordinator for each of the JRA Committees from amongst the members of each particular JRA.
- 6.1.5.3 The JRA Co-ordinators shall each (a) act as chair of their respective JRA Committee and (b) shall attend the General Assembly on behalf of the members of their JRA.

6.1.6 The Project Office

- 6.1.6.1 The Project Office shall be established by the Project Co-ordinator and shall comprise the Co-ordinator, Project Manager, Information Manager and Networking Activity Co-ordinator

6.2 **Timing of Meetings**

6.2.1 Meetings of the Board and General Assembly

- 6.2.1.1 **Meetings of the Board** shall be held joint to meetings of the General Assembly. All Board Members attending the Board meeting must also attend the General Assembly.
- 6.2.1.2 **Ordinary meetings** of the General Assembly and the Board shall be convened at least once a year. The Board shall consider the report of the Advisory Committee, receive and discuss the accounts for the past Project year, discuss the Consortium Budget and Consortium Plan for the next Project year. The Board proposes changes in (a) work shares; (b) the acceptance of new Parties; and (c) withdrawals or exclusion of Parties.
- 6.2.1.3 **Kick-Off Meeting.** The first meeting of the General Assembly termed the kick-off meeting of the Project shall take place at the latest two months after the start of the project.
- 6.2.1.4 **Extraordinary Meetings** of the General Assembly and the Board may be convened either by the Co-ordinator or upon written request of a majority of members as defined in article 6.3.4.4 of the respective Consortium Body.

6.2.2. Timing of Other Meetings

- 6.2.2.1 **Ordinary meetings** of the **Advisory Committee** shall be convened at least once a year. Preferentially joint to the General Assembly.
- 6.2.2.2 **Joint Research Activity Committees.** Each of the Joint Research Activity Committees shall convene meetings as deemed appropriate for the good

management of their respective JRA Committee and in accordance with their responsibilities under the EC-GA and this Consortium Agreement.

6.3 General operational procedures for all Consortium Bodies

Notwithstanding specific procedures for individual Consortium Bodies set out in Article 6.1 the following general operational procedures apply. In the event of a conflict between general and specific operational procedures the specific operational procedures shall take precedence.

6.3.1. Primary Responsibility

6.3.1.1 All Parties to the EC-GA shall be responsible for submitting the Deliverables related to their tasks in a timely manner and accordance with the mechanism and timetable as set out in Annex 1.

6.3.1.2 The Networking, Access and Joint Research Activity Co-ordinators shall each inform the Co-ordinator at an early stage if they have any reason to consider that Deliverables might not be submitted at the appropriate time, e.g. in the case of a Defaulting Party.

6.3.1.3 Members of each Consortium Body:

- should be present or represented at any meeting of their respective Consortium Body;
- may appoint a substitute or a proxy to attend at any meeting of that Consortium Body; and
- shall participate in a cooperative manner in the meetings in the spirit of collaboration and acting in good faith.

6.3.2 Preparation and organisation of meetings

6.3.2.1 *Convening meetings:*

The chairperson of each Consortium Body shall convene meetings of that Consortium Body:

| <u>Consortium Body</u> | <u>Ordinary meeting</u> | <u>Extraordinary meeting</u> |
|---------------------------------------|-------------------------|--|
| General Assemblies, Board meetings | At least once a year | At any time upon written request of the Board |

6.3.2.2 *Notice of a meeting:*

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

| <u>Consortium Body</u> | <u>Ordinary meeting</u> | <u>Extraordinary meeting</u> |
|---|-------------------------|------------------------------|
| General Assemblies, Board meetings, Advisory Committee meetings | 30 calendar days | 15 calendar days |

6.3.2.3 *Sending the agenda:*

The chairperson of a Consortium Body shall prepare and send each member of that Consortium Body a written (original) agenda no later than the minimum number of days preceding the meeting as indicated below.

| <u>Consortium Body</u> | <u>Ordinary meeting</u> | <u>Extraordinary meeting</u> |
|---------------------------------------|-------------------------|------------------------------|
| General Assemblies, Board meetings | 21 calendar days | 10 calendar days |

6.3.2.4 *Adding agenda items:*

6.3.2.4.a Any member of a Consortium Body may add an item to the original agenda by written notification to all of the other members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.

| <u>Consortium Body</u> | <u>Ordinary meeting</u> | <u>Extraordinary meeting</u> |
|---------------------------------------|-------------------------|------------------------------|
| General Assemblies, Board meetings | 14 calendar days | 7 calendar days |

6.3.2.4.b During a meeting the members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.

6.3.2.4.c Any agenda item requiring a decision by the members of a Consortium Body must be identified as such on the agenda.

6.3.2.5 *Decisions outside of meetings*

Any decision may also be taken without a meeting if the Co-ordinator circulates to all members of a Consortium Body a written document which is then signed by the majority as defined under Article 6.3.4.4 of all members of that Consortium Body.

6.3.2.6 *Meetings by Teleconference*

Meetings of each Consortium Body may also be held by teleconference or other telecommunication means.

6.3.2.7 *Binding Decision:*

Decisions will only be binding once the relevant part of the Minutes has been accepted according to Article 6.3.5.

6.3.3 Confidentiality

- 6.3.3.1 The ethos of this Project shall be openness to encourage the flow of ideas. Each Party however shall be mindful to protect the intellectual property of the other Parties. It is the responsibility of each and every Party presenting material at any meeting not to render public information that would infringe the legitimate intellectual property rights of another Party;
- 6.3.3.2 All Parties shall be aware that the **General Assembly** as described under Article 6.1.2. shall be open to both Parties to the Contract and to Non-Contractors and shall be an open forum at which ideas and information are exchanged in the public domain.
- 6.3.3.3.a In the case of **Joint Research Activity (“JRA”)** meetings these shall be in the public domain and as in Article 6.3.3.1 it is the responsibility of each and every Party presenting material at any meeting not to render public information that would infringe the legitimate Intellectual Property rights of another Party.
- 6.3.3.3.b The above Article shall prevail save that a JRA Co-ordinator may at the request of a Party to the JRA decide that any one meeting may be held as a closed session in order that matters may be discussed between Parties without infringing Intellectual Property rights.
- 6.3.3.4.a In the case of meetings of **all other Consortium Bodies** all Parties shall ensure Intellectual Property is protected. Non-Contractors invited to meetings other than those described in Articles 6.3.3.2 and 6.3.3.3 above shall be required to sign a Confidentiality Agreement (Attachment 6).
- 6.3.3.4.b It shall be the responsibility of the Co-ordinator of the Consortium Body in question to make the invitation and to ensure the invitee signs the Confidentiality Agreement prior to attending the meeting and/or receiving confidential information. Once signed by the invitee it shall be presented to the Project Co-ordinator for countersignature.
- 6.3.3.5 This Confidentially Agreement complies with the provisions of Article II.9 of the Grant Agreement.

6.3.4 Voting rules and quorum

- 6.3.4.1 The Board shall not deliberate and decide validly unless two-thirds (2/3) of its members are present or represented (quorum).
- 6.3.4.2 Each Board Member present or represented in the meeting shall have one vote.
- The coordinator abstains from voting if his institution is already represented in the Board.
- Observers do not vote.

6.3.4.3 Defaulting Parties may not vote.

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

6.3.5 Veto rights

6.3.5.1 A Party which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by the assent of the General Assembly or a decision of the Board may exercise a veto with respect to the corresponding assent of the General Assembly or the decision or relevant part of the decision of the Board.

6.3.5.2 For the avoidance of doubt only attendees of the General Assembly who are Party to the EC-GA have a right of veto.

6.3.5.3 When the assent of the General Assembly or the decision of the Board is foreseen on the original agenda, a Party may veto such a decision during the meeting only.

6.3.5.4 When assent of the General Assembly or decision of the Board has been taken on a new item added to the agenda before or during the meeting, a Party may veto such decision during the meeting and within 15 days after the draft minutes of the meeting are sent.

6.3.5.5 In case of exercise of veto, the Parties shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Parties to the EC-GA.

6.3.5.6 A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.

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

6.3.6 Minutes of meetings

6.3.6.1 The chairperson of a Consortium Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send the draft minutes to all members within 15 calendar days of the meeting.

6.3.6.2 The minutes shall be considered as accepted if, within 15 calendar days from sending, no member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes.

6.3.6.3 The chairperson shall send the accepted minutes to all the members of the Consortium Body and to the Co-ordinator, who shall safeguard them. If requested the Co-ordinator shall provide authenticated duplicates to Parties.

6.4 Specific operational procedure for Consortium Bodies

Notwithstanding Article 6.3 the following specific operational procedures apply and shall take precedence.

6.4.1 The Co-ordinator

The Co-ordinator is the legal entity acting as the intermediary between the Parties and the European Commission. The Co-ordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the EC-GA and this Consortium Agreement:

- 6.4.1.1
- (i) sign the EC-GA with the European Commission;
 - (ii) collect from all Parties the cost and other statements for submission to the European Commission;
 - (iii) prepare, with the support of the members of the Board and the Project Office, the reports and Project documents required by the European Commission; and,
 - (iv) ensure prompt delivery of all hardware, Software and data identified as Deliverable items in the Contract or requested by the European Commission for reviews and audits, including the results of the financial audits prepared by independent auditors.
- 6.4.1.2
- At the first meeting of the General Assembly the Co-ordinator shall announce the timetable and mechanism for submission of Deliverables, including audit certificates. Three months notice will be given of any changes to the timetable or mechanism for submission.
- 6.4.1.3
- Pursuant to the EC-GA, the Co-ordinator shall be responsible for the:
- (i) overall management of the Project with the support of the Project Office,
 - (ii) chairing the Advisory Committee, the General Assembly and the Board,
 - (iii) preparation of the meetings and decisions of the General Assembly, the Board and the Advisory Committee,
 - (iv) administering the Community financial contribution and fulfilling the financial tasks described in Art. 7.3, i.e. receiving payments from the Commission, making payments to Parties and keeping accurate records of these transactions,
 - (v) proposing the annual Consortium Plan for approval by the Board and the General Assembly,

- (vi) making proposals to the Parties (other than a Defaulting Party) to serve notices on a Defaulting Party and to assign the Defaulting Party's tasks to specific entities.
- (vii) transmitting documents and information connected with the Project to and between Activity Co-ordinators, as appropriate, and any other Parties concerned,
- (viii) keeping the address list of members and other contact persons updated and validated,
- (ix) providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

6.4.1.4 *Rights*

6.4.1.4.a To the extent that serious concerns regarding the financial soundness of one or several Parties exist, the Co-ordinator has the authority to require the appropriate letter of comfort to prove that the corresponding Party is able to fulfil their financial obligations with regard to the EC-GA and this Consortium Agreement. Until this is provided, the Co-ordinator is entitled to refuse the disbursement of the financial contributions of the European Commission to this Party.

6.4.1.4.b Furthermore, the Co-ordinator shall have the right to withhold payment if a Party fails to deliver reports and/or materials on time and as required by the Project Co-ordinator and the Commission.

6.4.1.4.c So as not to delay delivery of the Project's Periodic Reports to the European Commission, if a Party fails to supply their Periodic Return within the time specified by the Project Co-ordinator, the Project Co-ordinator has the right to request that Party to submit a nil return in order that the reports and claims of other Parties delivering within time may be submitted to the European Commission.

6.4.1.5 The Co-ordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party. The Co-ordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the EC-GA.

6.4.2 The Project Office

The Project Office shall be responsible for the execution of the following tasks:

- (i) Support the Co-ordinator in reporting to the European Commission and the execution of the Co-ordinator's duties as set out in the Consortium Agreement,
- (ii) Provide the necessary support for the day-to-day management of the Project,

- (iii) Assist the Board, General Assembly, Advisory Committee and Activity Co-ordinators.

6.4.3 The Board

6.4.3.1 *Representation*

6.4.3.1.a Each Board Member as defined under Article 6.1.1 shall be entitled to send one representative to each meeting of the Board. If a representative is unable to attend a meeting they shall nominate a proxy from amongst the other representatives due to attend the meeting. Each Board Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters in Art. 6.4.3.2 of this Consortium Agreement.

6.4.3.1.b Parties who only participate in the Project as partners in a Joint Research Activity are not represented on the Board. However they may charge their JRA Co-ordinator to attend Board Meetings as an observer.

6.4.3.2. *Decisions*

6.4.3.2.a The Board is the ultimate decision making body of the Project and their decisions shall be binding. Notwithstanding this provision, Parties may submit a dispute to resolution in accordance with the provisions of the Settlement of disputes in Article 11.8. The Board shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. In addition, all proposals made by the General Assembly shall also be considered and decided upon by the Board.

6.4.3.2.b The following decisions shall be taken by the Board on content, finances and intellectual property rights:

- (i) ratification of the structure of the Project,
- (ii) proposals for changes to Annex I of the EC-GA to be agreed by the European Commission,
- (iii) all budget-related matters,
- (iv) preparation of and final approval of changes to the Consortium Plan (including the Consortium Budget),
- (v) additions to Attachment 1 (Background excluded),
- (vi) additions to Attachment 3 (Listed Affiliated Entities),
- (vii) additions to Attachment 5 (List of Third Parties),

6.4.3.2.c The following decisions shall be taken by the Board on Evolution of the Consortium:

- (i) entry of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party,
- (ii) withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal

- (iii) entry and withdrawal of User Representatives and Observer Organisations to the General Assembly,
- (iv) declaration of a Party to be a Defaulting Party,
- (v) remedies to be performed by a Defaulting Party,
- (vi) termination of a Defaulting Party's participation in the Consortium and measures relating thereto,
- (vii) proposal to the European Commission for a change of the Co-ordinator,
- (viii) proposal to the European Commission for suspension of all or part of the Project,
- (ix) proposal to the European Commission for termination of the Project and the Consortium Agreement.

6.4.3.3. Tasks

The Board shall:

- (i) nominate Members of the Advisory Committee,
- (ii) propose items for the Agenda to the Board,
- (iii) propose items for the General Assembly,
- (iv) support the Co-ordinator in the preparation of reports, Deliverables and related documents.

6.4.4 The General Assembly

6.4.4.1 *Representation*

6.4.4.1.a Parties who only participate in the Project as partners in a Joint Research Activity are represented at the General Assembly by their respective JRA Co-ordinator.

6.4.4.1.b In the event an item on the agenda of the General Assembly concerns: (a) a change to a Party's Project Share, (b) a dispute concerning their IPR, or (c) any proposal to exclude them from the Project, that Party has the right to send its representative to both the General Assembly and the subsequent Board Meeting as an observer; save that if that Party is already a GA Member or Board Member they are already represented and this article does not apply.

6.4.4.1.c In the event the representative of an Access Activity Co-ordinator is unable to attend a meeting of the General Assembly they may be substituted by a member of the same organisation.

6.4.4.2 *Decisions*

It is anticipated that the body of the General Assembly may debate and its Members achieve consensus on the delivery of the Project and its attendant actions. In the event a decision is not reached by consensus at the General Assembly, then upon the request of a Board Member at that General Assembly

the decision shall be made by a formal vote of the Board at the subsequent Board meeting to immediately follow the General Assembly.

6.4.4.3 *Tasks*

The General Assembly is the principle discussion body of the Project. The General Assembly shall discuss all matters concerning the Project and prepare the decisions of the Board. The Board will only make formal decisions on those matters which cannot be decided by consensus in the General Assembly.

6.4.5. Joint Research Activity Co-ordinator

6.4.5.1 *Representation*

If a Joint Research Activity Co-ordinator is unable to attend a meeting of the General Assembly they may be substituted by another representative of a Party participating in the relevant Joint Research Activity.

6.4.6 Advisory Committee

6.4.6.1 *Representation*

6.4.6.1.a Members of the Advisory Committee shall act in a personal capacity not as the representatives of any of the Parties.

6.4.6.1.b In the event of a conflict of interest occurring on any specific issue, the Advisory Committee member should declare this.

6.4.6.2 *Tasks*

6.4.6.2.a The Advisory Committee is to advise on the execution of the project and shall be accountable to the Board.

6.4.6.2.b Under the control of, and in compliance with the decisions of the Board, the Advisory Committee shall advise the Co-ordinator and the General Assembly on the Project. The Advisory Committee assumes overall responsibility towards the General Assembly for liaison between the Parties for analysing and approving the results generated under Activities.

6.4.6.2.c The Advisory Committee shall:

- (i) support the Co-ordinator in fulfilling obligations towards the European Commission,
- (ii) provide assurance that all work shall meet functional requirements,
- (iii) provide advice in relation to the Activities on technical, financial and/or exploitation/dissemination issues as applicable,
- (iv) review and comment upon the Consortium Plan and its revisions,

Section 7: Financial provisions

7.1 General Principles

7.1.1 Distribution of Financial Contribution

The Community financial contribution to the Project shall be distributed by the Project Co-ordinator according to:

- the Consortium Budget as included in the Consortium Plan,
- the approval of reports by the European Commission, and
- the provisions of payment in Article 7.3.

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

7.1.2 Justifying Costs

7.1.2.1 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 European Commission. Neither the Project Co-ordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the European Commission.

7.1.2.2 Each workpackage responsible shall supply the Project Co-ordinator at the end of each six month period with a brief report of activity, time use in the preceding six month period (hereinafter "Project Monitoring Report") Attachment 7; save that these Project Monitoring Reports shall not be required at the end of months 18, 36 or 48 when the Commission's Periodic Reports shall be due.

7.1.3 Funding Principles

7.1.3.1 A Party which spends less than its allocated share of the Consortium Budget will be funded in accordance with its actual duly justified eligible costs only.

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

7.1.4 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 European Commission or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Article 5.2 of this Consortium Agreement, bear any additional costs occurring to the other Parties in order to perform its and their tasks.

7.2 Budgeting

The Consortium Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

7.2.1 Budgeting of coordination costs

Costs of coordination of joint research activities are not allowed as management cost according to Annex II of the EC-GA (EC-GA Article II.16.5) and have to be budgeted separately.

7.3 Payments

7.3.1 Payments to Parties are the exclusive tasks of the Project Co-ordinator

In particular, the Project Co-ordinator 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 Community financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Co-ordinator is a Public Body or is not entitled to do so due to statutory legislation.

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: budgeted costs for future work included in the Consortium Plan will be paid to Parties in separate instalments in conformity with the decisions of the Board, costs accepted by the Commission will be paid to the Party concerned, taking into account the amounts already paid for such reporting period.

7.3.3 The Co-ordinator 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 EC-GA” or to a Beneficiary which has not yet signed this Consortium Agreement.

7.3.4 The Co-ordinator is entitled to recover any payments already paid to a Defaulting Party.

Section 8: Foreground

Regarding Foreground, EC-GA Article II.26. - Article II.29. shall apply with the following additions:

8.1 Joint ownership

8.1.1 Where no joint ownership agreement has yet been concluded:

- each of the joint owners shall be entitled to use their jointly owned Foreground for internal research and educational purposes on a royalty-free basis, and without requiring the prior consent of the other joint owners(s), and
- each of the joint owners shall be entitled to use their jointly owned Foreground and to grant non-exclusive licenses to third parties, without any right to sublicense, subject to the following conditions:
 - at least 45 days prior notice must be given to the other joint owner(s) , and
 - fair and reasonable compensation must be provided to the other joint owner(s)

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

8.2 Transfer of Foreground

8.2.1 Each Party may transfer ownership of its own Foreground following the procedures of the EC-GA Article II 27.

8.2.2 Each Party may identify specific third parties it intends to transfer the ownership of its Foreground to in Attachment (5) to this Consortium Agreement. The other Parties hereby waive their right to object to a transfer to listed third parties according to the EC-GA Article II.27.3.

8.2.3 The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment (5) after signature of this Agreement requires a decision of the Board.

8.2.4 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 for the transfer as foreseen in the EC-GA, Article II 27.2.

8.3 Dissemination

8.3.1 Publication

8.3.1.1.a Dissemination activities including but not restricted to publications and presentations shall be governed by the procedure of Article II.30.3 of the EC-GA subject to the following provisions.

8.3.1.1.b Prior notice of any planned publication shall be made 30 days before the publication. Any objection to the planned publication shall be made in accordance with the EC-GA in writing to the Co-ordinator and to any Party concerned within 15 days

after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

8.3.1.1.c For the avoidance of doubt documents internal to the Project, that is not entering the public domain, are by definition not publications.

8.3.1.1.d Intellectual Property arising from research via the access programme shall be published according to the policy pertaining at the Access providing facility.

8.3.1.2 An objection is justified if

- (a) the objecting Party's legitimate academic or commercial interests are compromised by the publication; or
- (b) the protection of the objecting Party's Foreground or Background is adversely affected.

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

8.3.1.3 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 actions are performed following the discussion.

8.3.1.4 In the event the involved Parties cannot reach agreement, the Board may adjudicate and their decision shall be final.

8.3.2 Publication of another Party's Foreground or Background

For the avoidance of doubt, a Party shall not publish Foreground or Background of another 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 8.3.1 is not considered as an approval.

8.3.3 Cooperation obligations

The Parties undertake to cooperate 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.

Regarding dissertations and amalgam of Fore- or Background of the author and other Parties:

The content of the dissertation shall be communicated to the Parties, whose Foreground or Background is amalgamated with the Foreground or Background of the author of the dissertation, no later than three (3) months before the dissertation is planned to be handed in. After such notification the Party shall have thirty (30) calendar days in which it may request the modification or deletion of certain passages violating its legitimate

interests and/or require that the defence of the dissertation be closed to the public where legally possible and the defence attendees be bound by confidentiality obligations. If the author of the dissertation finds that it is not possible to accommodate a request of modification or deletion without lowering the standard of the dissertation, and if it is not legally possible to close the defence to the public, the dissertation can be submitted as planned without alterations.

8.3.4 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 covered

In accordance with and subject to the provisions of the EC-GA, any Party may enter in Attachment 1 any specific Background excluded from the obligation to grant Access Rights in accordance with the provisions of this Consortium Agreement. All other Background except that listed in Attachment 1 shall be available for the granting of Access Rights in accordance with the provisions of this Consortium Agreement.

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 As provided in the EC-GA Article II.32.3. Parties shall inform the Consortium 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.
- 9.2.3 If the Board considers that the restrictions have such impact, which is not foreseen in the Consortium Plan, it may decide to update the Consortium Plan accordingly.
- 9.2.4 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 Article II.32.7.

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

9.4 Access Rights for Use

9.4.1 Access Rights to Foreground if Needed for Use of a Party's own Foreground including for third-party research shall be granted on Fair and Reasonable Conditions (see definition in Annex II). A third Party shall not be granted direct Access to Foreground generated by other Parties unless those Parties explicitly agree to it. Access Rights for internal research activities shall be granted on a royalty-free basis.

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

9.4.3 Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on Fair and Reasonable Conditions.

9.5 Access Rights for Affiliated Entities

9.5.1 Affiliated Entities have Access Rights under the conditions of the EC-GA Article II.34.3.

9.5.2 In addition, Affiliate Entities shall also enjoy Access Rights if they can show that:

- they hold a licence on Foreground developed by a Party they are affiliated to; and
- they Need Access Rights in order to Use such Foreground; and
- they are established in a Member State or an Associated Country; and
- they are listed in [Attachment 3 (Listed Affiliated Entities)] to this Consortium Agreement.

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

9.5.4 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 Consortium Agreement as if such Affiliated Entities were Parties.

- 9.5.5 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.
- 9.5.6 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.
- 9.5.7 Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.
- 9.5.8 Further arrangements with Affiliated Entities may be negotiated in separate agreements.

9.6 Additional Access Rights

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

9.7 Access Rights for Parties entering or leaving the Consortium

- 9.7.1 **New Parties entering the Consortium.** All Foreground developed before the accession of the new Party shall be considered to be Background with regard to said new Party.
- 9.7.2 **Parties leaving the Consortium.** Access Rights granted to a leaving Party
 - 9.7.2.1 **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 Board to terminate its participation in the Consortium.
 - 9.7.2.2 **Non-defaulting Party:** A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Foreground developed until the date of the termination of its participation. It may request Access Rights within the period of time specified in Art. 9.4.2.
- 9.7.3 **Access Rights to be granted by any leaving Party:** Any Party leaving the Project shall continue to grant Access Rights pursuant to the EC-GA and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

9.8 Specific Provisions for Access Rights to Software

9.8.1 Definitions relating to Software

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

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

- (a) where the Work or Derivative Work is Software) that the Source Code or other formats preferred for modification be made available as of right to any third party on request, whether royalty-free or not;
- (b) that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
- (c) that a royalty-free licence relating to the Work or Derivative Work be granted to any third party.

For the avoidance of doubt, any Software licence that merely permits (but does not require any of) the things mentioned in (a) to (c) is not a Controlled Licence (and so is an Uncontrolled Licence).

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

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

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

9.8.2. General Principles

- 9.8.2.1 For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software as far as not modified by this Article 9.8.
- 9.8.2.2 Parties' Access Rights to Software do not include any right to receive Source Code or Object Code ported to a certain hardware platform or any right to receive Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.
- 9.8.2.3 The intended introduction of Intellectual Property (including, but not limited to Software) under Controlled Licence Terms in the Project requires the approval of the Board to implement such introduction into the Consortium Plan.

9.8.3. Access to Software

- 9.8.3.1 Access Rights to Software which is Foreground shall comprise:

- Access to the Object Code; and,
- where normal use of such an Object Code requires an Application Programming Interface (hereafter API), Access to the Object Code and such an API; and,
- if a Party can show that the execution of its tasks under the Project or the Use of its own Foreground is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary.

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

9.8.4. Software licence and sublicensing rights

9.8.4.1 Object Code

9.8.4.1.a **Foreground - Rights of a Party** : Where a Party has Access Rights to Object Code and/or API which is Foreground for Use, such Access shall, in addition to the access for Use foreseen in Article 9.4, as far as Needed for the Use of the Party's own Foreground, comprise the right:

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

provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to use Object Code and API for its own Foreground. If it is intended to use the services of a third party for the purposes of this Article 9.8.4.1.a, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Article 9.2 of this Consortium Agreement.

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

- to maintain such product/service;
- to create for its own end-use interacting interoperable software in accordance with the Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC).

9.8.4.1.c **Background** : For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API which is Background for Use, Access Rights exclude the

right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.4.2 Source Code

9.8.4.2.a **Foreground - Rights of a Party** : Where, in accordance with Article 9.8.3, a Party has Access Rights to Source Code which is Foreground for Use, Access Rights to such Source Code, as far as Needed for the Use of the Party's own Foreground, shall comprise a worldwide right to use, to make copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service.

If it is intended to use the services of a third party for the purposes of this Article 9.8.4.2.a, the Parties shall agree on the terms thereof, with due observance of the interests of the Party granting the Access Rights as set out in Article 9.2 of this Consortium Agreement.

9.8.4.2.b **Foreground – Rights to grant sublicences to end-users** : In addition, Access Rights, as far as Needed for the Use of the Party's own Foreground, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software. Further sublicensing of Source Code is explicitly excluded.

9.8.4.2.c **Background** :For the avoidance of doubt, where a Party has Access Rights to Source Code which is Background for Use, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.5 Specific formalities

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

Section 10: Non-disclosure of information

10.1 All information in whatever form or mode of transmission, 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", 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 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 EC-GA, for a period of 5 years after the end of the Project:

- (a) not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- (b) not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
- (c) to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- (d) 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.

10.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.

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:

- (a) the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- (b) the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- (c) 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;
- (d) the disclosure or communication of the Confidential Information is foreseen by provisions of the EC-GA;
- (e) the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
- (f) the Confidential Information was already known to the Recipient prior to disclosure.

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
- (a) notify the Disclosing Party, and
 - (b) comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.
- 10.8** The confidentiality obligations under this Consortium Agreement and the EC-GA shall not prevent the communication of Confidential Information to the European Commission.

Section 11: Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and

| | |
|----------------------|---|
| Attachment 1 | Background excluded |
| Attachment 2 | Accession document |
| Attachment 3 | Listed Affiliated Entities |
| Attachment 4 | Initial list of Parties (for notices) |
| Attachment 5 | List of Third Parties to which transfer of Foreground is possible without prior notice to other Parties |
| Attachment 6a and 6b | Confidentiality Agreement |
| Attachment 7a and 7b | Project Monitoring Report (template) |

In case the terms of this Consortium Agreement are in conflict with the terms of the EC-GA, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.

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

11.2 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 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

11.3.1 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 Co-ordinator based on the initial list of members and other contact persons in Attachment 4

11.3.2 **Formal notices:** If it is required in this Consortium Agreement (Article. 9.7.2.1.1 and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

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

11.3.4 Any change of persons or contact details shall be notified immediately by the respective Party to the Co-ordinator. The address list shall be accessible to all concerned.

11.4 Assignment and amendments

11.4.1 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.

11.4.2 Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Article 6.4.3.2 require a separate agreement 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.

11.8 Settlement of disputes

- 11.8.1 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.
- 11.8.2 The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties.
- 11.8.3 The award of the arbitration will be final and binding upon the Parties.
- 11.8.4 Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief or to enforce an arbitration award in any applicable competent court of law.

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 or counterparts or accession forms the day and year first above written.

Authorised to sign on behalf of

- (1) **INSTITUT MAX VON LAUE – PAUL LANGEVIN, France**
(hereinafter referred to as “the Co-ordinator”)

Signature(s)

A handwritten signature in black ink, appearing to read 'Andrew Harrison', with a stylized flourish at the end.

Name(s) Andrew HARRISON

Title(s) Prof -

NMI3-II-II FP7 Consortium Agreement to Grant Agreement 283883

Authorised to sign on behalf of

(2) **SCIENCE AND TECHNOLOGY FACILITIES COUNCIL, UK**

Signature(s)

A handwritten signature in blue ink that reads "Ruth Taheri". The signature is written in a cursive style with a period at the end.

Name(s)

RUTH TAHERI

Title(s)

COMMERCIAL MANAGER

NMI3-II-II FP7 Consortium Agreement to Grant Agreement 283883

Authorised to sign on behalf of

(3) TECHNISCHE UNIVERSITÄT MÜNCHEN, Germany

Signature(s)

 TECHNISCHE UNIVERSITÄT MÜNCHEN
TUM Legal Office - ZA 5
EU-Rechtsangelegenheiten
Katrin Hörmann
80290 München

Name(s) Ulrike Ronchetti or Katrin Hörmann LL.M.Eur.

Title(s) Legal Representative

Authorised to sign on behalf of

(4) FORSCHUNGSZENTRUM JUELICH GMBH, Germany

Signature(s)



Name(s)

ppa Dr. Ralf Raue

i.V. Prof. Dr. Dieter Richter

Title(s)

Head of Technology Transfer

Head of JCNS

Authorised to sign on behalf of

(5) PAUL SCHERRER INSTITUT, Switzerland

Signature(s)



Name(s)

Dr. Kurt N. Clausen

5232 Villigen PSI, Schweiz

Dr. Stefan Janssen

Title(s)

Department head NUM-PSI

NMI3-representative PSI

Authorised to sign on behalf of

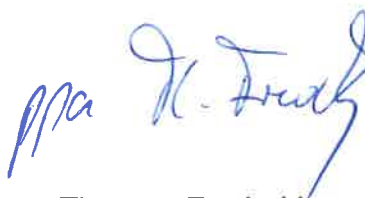
(6) **HELMHOLTZ-ZENTRUM BERLIN FUER MATERIALIEN UND ENERGIE GMBH,
Germany**

Signature(s)



Name(s)

Title(s) **Prof. Dr. Ing. Anke Kaysser-Pyzalla**
Scientific Director/Chief Executive



Thomas Frederking
Hauptabteilung Administration
Prokurist

Authorised to sign on behalf of

(7) **COMMISSARIAT A L'ENERGIE ATOMIQUE ET AUX ENERGIES ALTERNATIVES
CEA, France**

Signature(s)

Name(s)

Title(s)


Yves CARISTAN
Directeur des Sciences de la Matière



Authorised to sign on behalf of

(8) **HELMHOLTZ-ZENTRUM GEESTHACHT ZENTRUM FÜR MATERIAL- UND KÜSTENFORSCHUNG GMBH, Germany**

Signature(s)

| | | |
|----------|---|---|
| |  |  |
| Name(s) | Prof. Dr. Wolfgang Kaysser | Michael Ganß |
| Title(s) | Director | Director |

Helmholtz-Zentrum Geesthacht
Zentrum für Material- und Küstenforschung GmbH

14. FEB. 2012

Authorised to sign on behalf of

(9) Centre for Energy Research, Hungarian Academy of Sciences

**[former name: MAGYAR TUDOMANYOS AKADEMIA KFKI ATOMENERGIA
KUTATOINTEZET, Hungary]**

Signature(s)



Name(s) Dr. Ákos Horváth

Title(s) Deputy General Director

Authorised to sign on behalf of

(11) represented by beneficiary (9)

**[former name: IZOTOPKUTATO INTEZET – MAGYAR TUDOMANYOS AKADEMIA,
Hungary]**

Signature(s)

Name(s)

Title(s)

Authorised to sign on behalf of

(10) Wigner Research Centre for Physics of the Hungarian Academy of Science

**[former name: SZILARDTESTFIZIKAI ES OPTIKAI KUTATOINTEZETE – MAGYAR
TUDOMANYOS AKADEMIA, Hungary merged with beneficiary (9)]**

Signature(s)

Name(s)



Dr. Péter József LÉVAI

Title(s)

Director General

Authorised to sign on behalf of

(12) TECHNISCHE UNIVERSITEIT DELFT, The Netherlands

Signature(s)

A handwritten signature in blue ink, consisting of a large, stylized initial 'V' followed by a horizontal line and a small dash.

Name(s) Prof. Dr. T.H.J.J. van der Hagen

Title(s) dean of the faculty of Applied Sciences

Authorised to sign on behalf of

(13) NUCLEAR PHYSICS INSTITUTE OF THE ASCR VVI, Czech Republic

Signature(s)



Name(s)

Ing. Jan Dobeš, CSc.

Title(s)

NMI3-II-II FP7 Consortium Agreement to Grant Agreement 283883

Authorised to sign on behalf of

(14) CONSIGLIO NAZIONALE DELLE RICERCHE, Italy

Signature(s)



Name(s)

Prof. Alberto Morgante
Direttore

Title(s)

Authorised to sign on behalf of

(15) KØBENHAVNS UNIVERSITET, Denmark

Signature(s)



1/2-2012

Name(s) Anna Haldrup

Title(s) Vice President

University of Copenhagen

Central Administration
Research and Innovation



NMI3-II-II FP7 Consortium Agreement to Grant Agreement 283883

Authorised to sign on behalf of

(16) DANMARKS TEKNISKE UNIVERSITET, Denmark

Signature(s)

A handwritten signature in blue ink, appearing to read "Claus Kiehn".

Name(s)

Title(s)

Authorised to sign on behalf of

(17) UNIVERSIDAD DE ZARAGOZA, Spain

Signature(s)

  **Universidad
Zaragoza**

Name(s) M^ˆBLANCA ROS LATIENDA

Title(s) VICERRECTOR FOR RESEARCH

Authorised to sign on behalf of

(18) EUROPEAN SPALLATION SOURCE, Sweden

Signature(s)



Name(s)

COLIN CARLILE

Title(s)

CEO & DGA ESSAB

Attachment 1: Background excluded

Background excluded from Access Rights:

| | | |
|-----|--|---|
| (1) | INSTITUT MAX VON LAUE – PAUL LANGEVIN, France (hereinafter referred to as “the Co-ordinator”) | Background that has been and/or will be developed outside of the Project to which the ILL due to third party rights is not able to grant access rights. |
| (2) | SCIENCE AND TECHNOLOGY FACILITIES COUNCIL, UK | STFC excludes from its obligation to grant access rights to any information which is developed outside of the specific department involved in this project (ISIS) or is outside the scope of this Project. |
| (3) | TECHNISCHE UNIVERSITAET MUENCHEN, Germany | For the avoidance of doubt Technische Universitaet Muenchen will only make available Background of the Forschungsneutronenquelle Heinz Maier-Leibnitz (FRM II) , Prof. Winfried Petry. The following Background shall be expressly excluded: 1. Background that has been and/or will be created and developed by personnel and/or scientist and/or students at Technische Universität München not directly involved in the Project; 2. Background that has been and/or will be developed outside of the Project to which Technische Universität München due to third party rights is not able to grant access rights. |
| (4) | FORSCHUNGSZENTRUM JUELICH GMBH, Germany | For the avoidance of doubt Forschungszentrum Jülich GmbH will only make available Background of its Jülich Centre for Neutron Science (JCNS). The following Background shall explicitly be excluded: 1. Background which has been created and developed by personnel and/or scientists and/or students at JCNS not directly involved in carrying out the Project; 2. Background which Forschungszentrum Jülich GmbH due to third party rights is not able to grant Access Rights to. |

| | | |
|-----|---|--|
| (5) | PAUL SCHERRER INSTITUT, Switzerland | <p>The Paul Scherrer Institut (PSI) excludes from its obligation to grant Access Rights:</p> <ul style="list-style-type: none"> • All Background, including patents, patents pending, know-how, data, information, trademarks, software, designs and models, which have been developed by the PSI units "ASQ", "LNS", "LDM", "LMU" as well as any other unit of PSI not directly involved in the NMI3-II Project during the term of the project and outside the scope of it; • All Background, including patents, patents pending, know-how, data, information, trademarks, software, designs and models, which is covered by specific written research or development agreements with other involved partners for which PSI, due to third party rights, is not able to grant Access Rights to or from whom PSI needs to get permission to grant Access Rights to. |
| (6) | HELMHOLTZ-ZENTRUM BERLIN FUER MATERIALIEN UND ENERGIE GMBH, Germany | <p>The HZB excludes from its obligation to grant access rights to pre-existing know-how the know-how which HZB due to third party rights is not able to grant access rights</p> |
| (7) | COMMISSARIAT A L'ENERGIE ATOMIQUE ET AUX ENERGIES ALTERNATIVES (CEA), France (and CNRS) | <p>CEA and CNRS exclude from their obligation to grant Access Rights:</p> <ul style="list-style-type: none"> • any Background of CEA and CNRS which is not explicitly generated by the CEA and CNRS's Joint Research Unit involved in carrying out the Project, the Laboratoire Léon Brillouin (LLB), • information which is developed by the LLB during the term of the Project, but outside the scope of it, • information which is covered by specific written research or development agreements with third parties for which CEA and CNRS, due to third party rights, are not able to grant Access Rights to or from whom CEA and CNRS need to get permission to grant Access Rights to. |

| | | |
|------|---|--|
| | | It is understood that CEA is also acting on behalf of the legal entity CNRS under this Consortium Agreement which is party to the Laboratoire Léon Brillouin (LLB) (a Joint Research Unit of CEA and CNRS) involved in carrying out the Project and which shall have therefore the same rights and obligations than CEA under this Consortium Agreement unless expressly stated otherwise. |
| (8) | HELMHOLTZ-ZENTRUM GEESTHACHT ZENTRUM FÜR MATERIAL- UND KÜSTENFORSCHUNG GMBH, Germany | For the avoidance of doubt all Background is excluded other than <ul style="list-style-type: none"> - Background created within and hold by the Departments Structural Research on New Materials and Structural Research on Macromolecules within the Division Materials Physics (head: Prof. Andreas Schreyer) at the Institute of Materials Research of HZG, and - Background which HZG due to third party rights is not able to grant access rights to. |
| (9) | CENTRE FOR ENERGY RESEARCH, HUNGARIAN ACADEMY OF SCIENCES Former "MAGYAR TUDOMANYOS AKADEMIA KFKI ATOMENERGIA KUTATOINTEZET", Hungary | NONE |
| (10) | WIGNER RESEARCH CENTRE FOR PHYSICS OF HUNGARIAN ACADEMY OF SCIENCES Former "SZILARDTESTFIZIKAI ES OPTIKAI KUTATOINTEZETE – MAGYAR TUDOMANYOS AKADEMIA", Hungary | NONE |

| | | |
|------|---|--|
| (11) | Represented by beneficiary (9), "IZOTOPKUTATO INTEZET – MAGYAR TUDOMANYOS AKADEMIA", Hungary | NONE |
| (12) | TECHNISCHE UNIVERSITEIT DELFT, The Netherlands | All Background generated by the TU-Delft, including its employees, agents, or representatives to the extent not needed for the implementation of the NMI3-II-Project and to the extent not generated by employees, agents or representatives directly involved in the NMI3-II-Project are excluded from Access Rights. All Background which the TU-Delft, due to existing or future third party rights, is unable to grant access rights to. |
| (13) | NUCLEAR PHYSICS INSTITUTE OF THE ASCR VVI, Czech Republic | NPI excludes from its obligation to grant Access Rights: 1. Any Background of NPI which is not explicitly generated by the NPI research groups involved in carrying out the Project. 2. Information which is developed by NPI during the term of the Project, but outside the scope of it, 3. Information which is covered by specific written research or development agreements with third parties for which NPI, due to third party rights, is not able to grant Access Rights to, or from whom NPI needs to get permission to grant Access Rights to. |
| (14) | CONSIGLIO NAZIONALE DELLE RICERCHE, Italy | For the avoidance of doubt CNR will only make available Background of the INFN/CNR. The following Background shall be expressly excluded: 1. Background that has been and/or will be created and developed by personnel and/or scientist and/or students at INFN/CNR not directly involved in the Project; 2. Background that has been and/or will be developed outside of the Project to which INFN/CNR due to third party rights is not able to grant access rights. |

| | | |
|------|---|--|
| (15) | KØBENHAVNS UNIVERSITET, Denmark | UCPH hereby excludes from its obligation to grant Access Rights to Background all Background generated by UCPH apart from that generated by the UCPH research groups of Prof. Kim Lefmann who are directly involved in carrying out the Project. Access Rights will only be provided upon written request if Needed for the Project. |
| (16) | DANMARKS TEKNISKE UNIVERSITET, Denmark | For the avoidance of doubt DTU will only make available Background generated by Development Engineer Peter Willendrup and other staff directly involved in carrying out the Project. The following Background shall be expressly excluded: 1. Background that has been and/or will be created and developed by personnel and/or scientist and/or students at DTU not directly involved in the Project; 2. Background that has been and/or will be developed outside of the Project to which DTU due to third party rights is not able to grant access rights. |
| (17) | UNIVERSIDAD DE ZARAGOZA, Spain | The University of Zaragoza (UNIZAR) excludes from its obligations to grant Access Rights: 1.- Background that has been/or will be created and developed by personnel and /or scientist and/or students at UNIZAR not directly involved in the Project. 2.- Background which is developed by UNIZAR during the term of the Project , but outside the scope of it. 3.- All background which UNIZAR, due to existing or future third party rights, is unable to grant access rights to. |
| (18) | EUROPEAN SPALLATION SOURCE, Sweden | |

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

Attachment 2: Accession document

This being to grant accession of a new Party to the Integrated Infrastructure Initiative for Neutron Scattering and Muon Spectroscopy (NMI3-II) Consortium Agreement, version [..., YYYY-MM-DD]

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE EC-GA]

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].

Institut Max von Laue – Paul Langevin, France hereby certifies that the Consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the Consortium starting [date].

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

For and on behalf of:

[INSTITUT MAX VON LAUE – PAUL LANGEVIN, France]

Signature(s)

Name(s)

Title(s) Director

Attachment 3: Listed Affiliated Entities

| | | |
|-----------------|--|------|
| (1) | INSTITUT MAX VON LAUE – PAUL LANGEVIN, France (hereinafter referred to as “the Co-ordinator”) | NONE |
| (2) | SCIENCE AND TECHNOLOGY FACILITIES COUNCIL, UK | NONE |
| (3) | TECHNISCHE UNIVERSITAET MUENCHEN, Germany | NONE |
| (4) | FORSCHUNGSZENTRUM JUELICH GMBH, Germany | NONE |
| (5) | PAUL SCHERRER INSTITUT, Switzerland | NONE |
| (6) | HELMHOLTZ-ZENTRUM BERLIN FUER MATERIALIEN UND ENERGIE GMBH, Germany | NONE |
| (7) | COMMISSARIAT A L’ENERGIE ATOMIQUE ET AUX ENERGIES ALTERNATIVES CEA, France | NONE |
| (8) | HELMHOLTZ-ZENTRUM GEESTHACHT ZENTRUM FÜR MATERIAL- UND KÜSTENFORSCHUNG GMBH, Germany | NONE |
| (9) | CENTRE FOR ENERGY RESEARCH, HUNGARIAN ACADEMY OF SCIENCES Former name: <i>MAGYAR TUDOMANYOS AKADEMIA KFKI ATOMENERGIA KUTATOINTEZET</i> , Hungary | NONE |
| (10) | WIGNER RESEARCH CENTRE FOR PHYSICS OF THE HUNGARIAN ACADEMY OF SCIENCES Former name: <i>SZILARDTESTFIZIKAI ES OPTIKAI KUTATOINTEZETE – MAGYAR TUDOMANYOS AKADEMIA</i> , Hungary | NONE |
| (11) | Represented by beneficiary (9) <i>IZOTOPKUTATO INTEZET – MAGYAR TUDOMANYOS AKADEMIA</i> , Hungary | NONE |
| (12) | TECHNISCHE UNIVERSITEIT DELFT, The | NONE |

| | | |
|------|---|------|
| | Netherlands | |
| (13) | NUCLEAR PHYSICS INSTITUTE OF THE ASCR VVI, Czech Republic | NONE |
| (14) | CONSIGLIO NAZIONALE DELLE RICERCHE, Italy | NONE |
| (15) | KØBENHAVNS UNIVERSITET, Denmark | NONE |
| (16) | DANMARKS TEKNISKE UNIVERSITET, Denmark | NONE |
| (17) | UNIVERSIDAD DE ZARAGOZA, Spain | NONE |
| (18) | EUROPEAN SPALLATION SOURCE, Sweden | NONE |

Attachment 4: Initial list of Board Members

BOARD MEMBERS

Party # 1: INSTITUT MAX VON LAUE – PAUL LANGEVIN, France

Project Status: Project Co-ordinator
Name & Title: Professor Helmut Schober
Position: Science Director
Tel. + 33 (0)4 76 20 72 06
Fax + 33 (0)4 76 20 76 88
E-mail: schober@ill.fr
City, Country: Grenoble, France

Party #2: SCIENCE AND TECHNOLOGY FACILITIES COUNCIL, UK

Project Status: Access Activity Co-ordinator
Name & Title: Doctor Philip King
Position: Deputy Head Spectroscopy and support Division
Tel. + 44 12 35 446117
Fax + 44 12 35 445720
E-mail: philip.king@stfc.ac.uk
City, Country: Didcot, UK

Party #3: TECHNISCHE UNIVERSITAET MUENCHEN, Germany

Project Status: Access Activity Co-ordinator
Name & Title: Doctor Jürgen Neuhaus
Position: Deputy scientific director
Tel. + 49 89 289 12187
Fax + 49 89 289 14995
E-mail: jneuhaus@frm2.tum.de
City, Country: Garching, Germany

Party #4: FORSCHUNGSZENTRUM JUELICH GMBH, Germany

Project Status: Access provider via TUM
Name & Title: Doctor Rainer Bruchhaus
Position: Deputy Head of JCNS
Tel. + 49 89 289 10745
Fax + 49 89 289 10799
E-mail: r.bruchhaus@fz-juelich.de
City, Country: Garching, Germany

Party #5: PAUL SCHERRER INSTITUT, Switzerland

Project Status: Access Activity Co-ordinator
Name & Title: Doctor Stefan Janssen
Position: Head of PSI User Office
Tel. + 41 56 310 2875
Fax + 41 56 310 3294
E-mail: stefan.janssen@psi.ch
City, Country: Villigen, Switzerland

Party #6: HELMHOLTZ-ZENTRUM BERLIN FUER MATERIALIEN UND ENERGIE GMBH, Germany

Project Status: Access Activity Co-ordinator
Name & Title: Doctor Thomas Gutberlet
Position: Head of User Coordination Neutrons
Tel. + 49 30 8062 421 69
Fax + 49 30 8062 428 24
E-mail: thomas.gutberlet@helmholtz-berlin.de
City, Country: Berlin, Germany

Party #7: COMMISSARIAT A L'ENERGIE ATOMIQUE ET AUX ENERGIES ALTERNATIVES CEA, France

Project Status: Access Activity Co-ordinator
Name & Title: Doctor Christiane Alba-Simionesco
Position: Director Laboratoire Léon Brillouin
Tel. + 33 1 69 08 52 41
Fax + 33 1 69 08 95 36
E-mail: llb-sec@cea.fr
City, Country: Gif sur Yvette, France

Party #8: HELMHOLTZ-ZENTRUM GEESTHACHT ZENTRUM FÜR MATERIAL-UND KÜSTENFORSCHUNG GMBH, Germany

Project Status: Access provider via TUM
Name & Title: Professor Andreas Schreyer
Position: Director, Institute of Materials Research
Tel. + 49 4152 87 12 54
Fax + 49 4152 87 13 38
E-mail: andreas.schreyer@hzg.de
City, Country: Geesthacht, Germany

Party #9/#10: **Centre for Energy Research, Hungarian Academy of Science/ Wigner research Centre for Physics of Hungarian Academy of Sciences**

Project Status: Access Activity Co-ordinator
Name & Title: Doctor Rozsa Baranyai
Position: Head of the Neutron Physics Research Group
Tel. + 36 1 392 22 96
Fax + 36 1 395 92 93
E-mail: baranyai.rozsa@energia.mta.hu
City, Country: Budapest, Hungary

Party #12: **TECHNISCHE UNIVERSITEIT DELFT, The Netherlands**

Project Status: Access Activity Co-ordinator
Name & Title: Doctor Menno Blaauw
Position: Head of facilities and service department
Tel. + 31 15 278 35 28
Fax + 31 15 278 83 03
E-mail: M.Blaauw@tudelft.nl
City, Country:, Delft, the Netherlands

Party #13: **NUCLEAR PHYSICS INSTITUTE OF THE ASCR VVI, Czech Republic**

Project Status: Access Activity Co-ordinator
Name & Title: Doctor Pavol Mikula
Position: Head of the Neutron Physics Department
Tel. + 420 2 6617 35 53
Fax + 420 2 2094 01 41
E-mail: mikula@ujf.cas.cz
City, Country: Rez Praha, Czech Republic

Party #14: **CONSIGLIO NAZIONALE DELLE RICERCHE, ITALY**

Project Status: **Beneficiary** & Italian community representative
Name & Title: Francesco Sacchetti
Position:
Tel. +
Fax +
E-mail:
City, Country:

Party #15/ #16: **KØBENHAVNS UNIVERSITET/ DANMARKS TEKNISKE UNIVERSITET, Denmark**

Project Status: **Beneficiary**
Name & Title: Kim Lefmann / Peter Willendrup
Position:
Tel. +
Fax +
E-mail:
City, Country:

Party #17: UNIVERSIDAD DE ZARAGOZA, Spain
Project Status: **Beneficiary** & Spanish community representative
Name & Title: Javier Campo
Position:
Tel. +
Fax +
E-mail:
City, Country:

Party #18: EUROPEAN SPALLATION SOURCE, Sweden
Project Status: **Beneficiary**
Name & Title: Dimitri Argyriou
Position:
Tel. +
Fax +
E-mail:
City, Country: Sweden

Attachment 4a: List of JRA coordinators & Networking Coordinator

JOINT RESEARCH ACTIVITY CO-ORDINATORS

Party #2: SCIENCE AND TECHNOLOGY FACILITIES COUNCIL, UK

Project Status: JRA Co-ordinator WP17 (Muons)

Name & Title: Doctor Steven Cottrell

Tel. + 44 1235 44 53 52

E-mail: s.p.cottrell@rl.ac.uk

City, Country: Didcot, UK

Party #2: SCIENCE AND TECHNOLOGY FACILITIES COUNCIL, UK

Project Status: JRA Co-ordinator WP21 (Detectors)

Name & Title: Doctor Nigel Rhodes

Tel. + 44 1235 44 54 91

E-mail: nigel.rhodes@stfc.ac.uk

City, Country: Didcot, UK

Party #6: HELMHOLTZ-ZENTRUM BERLIN, Germany

Project Status: JRA Co-ordinator WP18 (Imaging)

Name & Title: Doctor Nikolay Kardjilov

Tel. + 49 (0)30 8062 422 998

E-mail: kardjilov@helmholtz-berlin.de

City, Country: Berlin, Germany

Party #7: COMMISSARIAT A L'ENERGIE ATOMIQUE ET AUX ENERGIES ALTERNATIVES CEA, France

Project Status: JRA Co-ordinator WP20 (Soft & bio materials)

Name & Title: Doctor Annie Brulet

Tel. + 33 (0)1 69 08 66 69

E-mail: annie.brulet@cea.fr

City, Country: Gif sur Yvette, France

Party #18: EUROPEAN SPALLATION SOURCE, Sweden

Project Status: JRA Co-ordinator WP19 (Advanced Methods & Techniques)

Name & Title: Ken Andersen

Tel. + +46 (0) 767 726740

E-mail: ken.andersen@esss.se

City, Country: Sweden

NETWORKING ACTIVITY CO-ORDINATORS

Party #3: **TECHNISCHE UNIVERSITAET MUENCHEN, Germany**
Project Status: Networking Activity Co-ordinator
Name & Title: Doctor Jürgen Neuhaus
Position: Deputy scientific director
Tel. + 49 89 289 12 187
E-mail: jneuhau@frm2.tum.de
City, Country: Garching, Germany

Attachment 5:

**List of Third Parties to which transfer of Foreground is possible
without prior notice to other parties**

NONE

Attachment 6a: Confidentiality Agreements

Item One: Template for single event/meeting

Regarding invited attendance at the -----Title of Meeting/Event----- on the -----Date----- organised under the *Integrated Infrastructure Initiative for Neutron Scattering and Muon Spectroscopy* (“NMI3-II”) project funded by the European Commission, Grant Agreement no. 283883:

I hereby agree as follows:

I will keep secret *Confidential Information* which shall include by way of demonstration but not limitation any and all information regarding materials, samples, models, specifications, formulae, data, designs, know-how, inventions, apparatus, methods, techniques, drawings, which shall be disclosed both in advance of, and at the **meeting/event**. The definition of *Confidential Information* shall exclude information which

- has been of public knowledge at the date of disclosure or,
- has been in my possession prior to such disclosure as shown by me through prior written records or,
- has been previously and independently received from any third party without breach of this Agreement.

I hereby further agree to use all *Confidential Information* received hereunder for internal purposes only and I acknowledge that all right and title to any *Confidential Information* remains the property of the NMI3-II project. The disclosure of any *Confidential Information* hereunder shall not be construed as granting of any rights for any purpose.

Place of signature, date

| Title / Full Name (Please use block letters) | Institution / Division | Signature |
|---|------------------------|-----------|
| | | |
| | | |
| | | |
| | | |
| | | |

Attachment 6b: Confidentiality Agreements

Item Two: Template to cover project period or part thereof

This agreement relates to all communications (whether written, oral or otherwise) between the parties named below (“the Parties”) on or after **Date** ____ (notwithstanding the dates of signature of this Agreement). This agreement applies to any supply, communication or exchange of information of any kind (including without limitation know-how, drawings, data, software or other technical or commercial matter etc) relating to the subject matter defined below (all such proprietary information is hereinafter called “*Confidential Information*”).

This agreement relates to the Integrated Infrastructure Initiative for Neutron Scattering and Muon Spectroscopy project (hereinafter called “NMI3-II”) funded by the European Commission, Grant Agreement no. 283883, and **Associate name** _____ (hereinafter called “Associate”). The agreement covers communications of *Confidential Information* between NMI3-II-II and the Associate relating to NMI3-II.

IN ORDER that the Parties may fully collaborate in consideration of the mutual covenants herein contained for the development and advancement of NMI3-II it is

HEREBY AGREED by each Party as follows:

1. “*Confidential Information*” is defined as business and technical information including but not limited to, hardware, novel concepts, know-how and ideas which may or may not have been patented or constitute the basis of patentable inventions, relating to the development and use of NMI3-II for any purpose as owned or controlled by and disclosed from NMI3-II to the Associate, further like information and ideas relating to NMI3-II and owned or controlled by and disclosed from the Associate to NMI3-II in writing, drawing, photograph, recording, specimen or other form of documentation or embodied in deliveries which has been identified as confidential at the time of disclosure or if disclosed verbally confirmed as proprietary at the time of disclosure or within reasonable time thereafter as proprietary in verbal or in writing between the parties.
2. The Associate and NMI3-II shall from time to time disclose to each other certain of their *Confidential Information* relating to NMI3-II
3. This agreement shall come into effect on the date mentioned above and the obligations under this agreement shall remain in effect for a minimum period of 5 years thereafter.
4. All *Confidential Information* which NMI3-II or the Associate receives from the other Party in relation to NMI3-II (whether directly or indirectly) will be regarded as and kept secret and no part of it will be divulged by the receiving party to any third party outside NMI3-II at any time and in any form whatsoever without the prior written consent of the other Party except as outlined in paragraph 7. On each occasion, such consent shall be obtained specifically in writing from the NMI3-II Co-ordinator, the Institut Laue Langevin on the one hand and from the Associate on the other.
5. The Parties agree to take all steps reasonable necessary to protect the secrecy of the *Confidential Information*, and to prevent the *Confidential Information* from falling into the public domain or into the possession of unauthorised persons.
6. The Parties agree that all disclosed *Confidential Information* shall remain the property of the disclosing party. The disclosing Party may use such *Confidential Information* for any purpose without obligation to the receiving party. Nothing contained herein shall be construed as granting or implying any transfer of rights to the receiving party in the *Confidential Information*, or any patents or other intellectual property protecting or relating to the *Confidential Information*.
7. These undertakings of secrecy shall not apply to *Confidential Information* which by reasonable proof –

- (a) is in the possession of the receiving party with free right of disposal to receipts, or
 - (b) is or becomes publicly available through no fault of the receiving party, or
 - (c) is obtained from a source other than the disclosing party in good faith and without similar restriction as to its use or disclosure, or
 - (d) is agreed in writing by the disclosing party to be disclosed by the receiving party to a customer, potential customer or sub-contractor.
8. On demand from one Party, the other Party undertakes to return forthwith all copies of *Confidential Information* reduced to writing (or other permanent form) and to destroy all notes reports or other records to the extent that they contain any *Confidential Information* received under this agreement.
9. The Parties agree that any Confidential Information is made available "as is" and that no warranties of any kind are granted or implied with respect to the quality of Confidential Information, including but not limited to, its fitness for any purpose, non-infringement of third party rights, accuracy, completeness or correctness.
Liability for infringement of confidentiality obligations and any consequential damage resulting therefrom shall be limited to reasonably foreseeable damage.
The aforementioned limitation of liability shall not apply to liability for malicious conduct or intent.
10. This Agreement shall be governed by the substantive laws of Belgium. Any dispute arising out of or in connection with this Agreement shall be subject to jurisdiction of the courts of Brussels, unless amicably settled.
11. There are no collateral agreements. Any alterations, modifications, amendments or supplements must be in writing. This requirement may be waived only in writing.
12. Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions.

Signed by the Associate

| Name and Title of Associate | Date |
|-----------------------------|------|
|-----------------------------|------|

The NMI3-II Coordinator hereby certifies that the NMI3-II Consortium has accepted (in the meeting hold on March 13th, 2012) the conclusion of a Confidentiality Agreement between the Associate and the NMI3-II Consortium.

| Date |
|-----------------------------|
| Coordinator/Project manager |

Attachment 7a: Project Monitoring Report (template for Coord/RTD)

| | | | | |
|--|--|--------------------------------|----------|----------|
| Title (WP#) | | | | |
| Responsible | | | | |
| Period | | | | |
| Activity type | Coord / RTD | | | |
| Tasks & progress | | | | |
| Deviations from Description of work (Annex 1) & corrective action | | | | |
| Deliverable | Due date | Expected/ Achieved Date | | |
| | | | | |
| A) Total Person Months (PM) allocated to project (including facility contribution) per contributing partner (Annex 1, Part A, p.96) B) Total staff effort charged to project per contributing partner (Annex 1, Part B p.32) C) Staff effort charged to project in period (Month n – n+6) | Beneficiary | A | B | C |
| | | | | |
| | | | | |
| Meetings/Conferences/Workshops attended (financed by NMI3-II) | Internal meetings (...participants,organising beneficiary etc) Any external conferences attended? | | | |

Attachment 7b: Project Monitoring Report (template for TAA)

| | | |
|--|--|--|
| Beneficiary Name | | |
| Facility | | |
| Beneficiary Number | | |
| Period | | |
| Activity type | Transnational Access (TAA) | |
| Total beam days of the facility within this period (refer to Annex 1, Part A p.103 and for further information Part B p.37) | | |
| | Requested for whole NMI3-II project | NMI3-II supported till now a) over the whole period Mn-Mn+6 b) in the last 6 months |
| Beam days | | |
| Number of users | | |
| Travel & subsistence cost | | |
| Number of publications in the pipeline | | |
| Publications done up to this period (over the whole project) | | |

Attachment 8: List of Workpackages and respective staff effort supported by the project

(Figures excluding beneficiaries own contribution; grey cells: workpackage leadership)

| Participant no./short name | WP1 | WP2 | WP3 | WP4 | WP5 | WP6 | WP7-16 | WP17 | WP18 | WP19 | WP20 | WP21 | Total person months |
|----------------------------|-----------|-----------|-----------|----------|-----------|-----------|----------|-----------|------------|-----------|------------|------------|---------------------|
| ILL | 36 | | 16 | coord. | | 24 | | | | 16 | 65 | 0 | 157 |
| STFC | | coord. | | | | | x | 24 | 1 | 8 | 14 | 19 | 66 |
| TUM | | 51 | 32 | | 33 | | x | | 24 | 18.5 | 16 | 20 | 194.5 |
| Jülich | | | | | | | | | 16 | 13 | 13 | 19 | 61 |
| PSI | | 4 | | | | | x | 24 | 24 | | | | 52 |
| HZB | | | | | coord. | | x | | 26 | | 18 | 24 | 68 |
| CEA | | | | | | | x | | 28 | | 20 | 7 | 55 |
| HZG | | | | | 2 | | | | | | | | 2 |
| MTA EK [BNC-AEKI] | | | | | | | x | | 5 | | | | 5 |
| Wigner RCP [BNC-RISP] | | | | | | | | | | | | 9 | 9 |
| MTA EK [II HAS] | | | | | | | | | | | | | 0 |
| TUD | | | | | | | x | | 6 | 7 | | | 13 |
| NPI | | | | | | | x | | 4 | | | | 4 |
| CNR | | | | | | | | | | | | 12 | 12 |
| UCPH | | | 30 | | | | | | | | | | 30 |
| DTU | | | 3 | | | | | | | | | | 3 |
| ICMA | | | | | | | | | | 12 | | | 12 |
| ESS | | | | | | | | | | 18.5 | | 0 | 18.5 |
| TOTAL | 36 | 55 | 81 | 0 | 35 | 24 | 0 | 48 | 134 | 93 | 146 | 110 | 762 |