

**Disclaimer by the Austrian Research Promotion Agency (FFG):**

The present text of a consortium agreement constitutes a model agreement that needs to be adapted to the relevant project requirements, the intentions of the contracting parties and the desired legal effects. It provides suggestions for possible and recommendable regulations but is not suitable for direct use. Appropriate legal support is recommended when drawing up a consortium agreement for a concrete project. This sample agreement does not constitute a recommendation to use this text as a consortium agreement nor does the FFG accept any liability for the use of this model agreement. This agreement text is to provide users with a check list of the possible contents of a consortium agreement without however making any claims about completeness or accuracy.

## Consortium Agreement

on collaboration within the Project “.....<sup>1</sup>”  
Project Number<sup>2</sup>: XXXXXX

concluded between

**Name/Company**  
**Address**  
**Company Register Number**

(hereinafter referred to as “Consortium Leader”)

and

**Name/Company**<sup>3</sup>

*[please list the names of all contracting parties]*

(collectively referred to as “Project Partners”)

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<sup>1</sup> Insert project title

<sup>2</sup> eCall project number or FFG project number.

<sup>3</sup> All Project Partners must be named as contracting parties. The contracting parties are to be defined in full in Annex./D, i.e. **exact company name, address, company register number** (for persons please give date of birth). The FFG is not a contracting party.

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## 1. DEFINITION OF TERMS

1.1 **Project Partners** are all legal or natural persons<sup>4</sup> that are part of the consortium, including the Consortium Leader.

The **Consortium Leader** is the Project Partner coordinating the consortium.<sup>5</sup>

**Third parties** shall be all legal or natural persons that are not part of the consortium.

**Funding Contract** is the contract concluded for the entire consortium between the FFG and the Consortium Leader<sup>6</sup> which constitutes an agreement for the contractual research project.

**Funding Application** is the application submitted by the Consortium Leader<sup>7</sup> - for the entire consortium - to the FFG for funding of the contractual research project.

**Collaborations** may be concluded between two or more Project Partners in order to regulate the legal relationship between these two or more Project Partners for the contractual research project in more detail.

**Research and Development Results** are results, intellectual property rights, copyrights, know-how, trade and business secrets or technical improvements that have existed prior to the start of the project or are being developed in parallel or will be obtained as part of the contractual research project.

**Intellectual Property Rights (IPR)** arise if research and development results are registered, e.g. for a patent, utility model, protection certificate, plant variety right, mask work right, trademark or design.

**Existing Research and Development Results (Pre-Existing Intellectual Property Rights)** are research and development results that have already existed prior to the start of the project or have been developed during the research project, i.e. not as part of the contractual research project, and that are required or expedient for the contractual research project.

**New Research and Development Results (New Intellectual Property Rights)** are research and development results obtained as part of the contractual research project.

**Use** of research and development results denotes non-commercial use and application (research, teaching, publication).

**Exploitation** of research and development results denotes commercial use and application (licensing, granting of access rights against payment).

**Access Rights** shall include the licensing rights, the right or permission to use existing or new research and development results granted to the Project Partners that are required or expedient for the performance of the contractual research project or for the use and/or exploitation of new research and development results. In the context of software, access rights shall not include access to the source code unless expressly agreed in writing.

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<sup>4</sup> Natural persons are usually involved in the project as sole traders or via a contract for work and services.

<sup>5</sup> The Consortium Leader is the point of contact for the FFG.

<sup>6</sup> It is also possible that each Project Partner concludes a separate Funding Contract with the FFG.

<sup>7</sup> It is also possible that each Project Partner submits a separate Funding Application to the FFG.

**Publication** of research and development results shall include all kinds of written or oral publication, including but not limited to publication in print media (journals, abstracts, etc.), electronic media, public access databases, through presentations, scientific work aimed at achieving an academic degree or through lectures, posters or in any other way.

## 2. PREAMBLE<sup>8</sup>

- 2.1 The Consortium Leader has together with the other Project Partners developed a research project for *insert title of research project* (“Research Project”) and submitted a Funding Application to the FFG Programme *insert the relevant funding programme*.
- 2.2 Brief description of the Research Project: (*see Funding Application*).
- 2.3 The provisions of the Austrian Research Promotion Agency (“FFG”) stipulate that a Consortium Agreement must be signed prior to the conclusion of the Funding Contract *and/or payment of funding*.<sup>9</sup>

## 3. SUBJECT MATTER OF THE CONTRACT

- 3.1 The present Consortium Agreement serves to provide the general legal basis for the collaboration of the Project Partners in the Research Project *insert title of research project* according to the project application, the Funding Contract and the provisions of this Consortium Agreement and in compliance with any other requirements<sup>10</sup> specified by the FFG. The mutual rights and obligations of the contracting parties will be stipulated in the following. The most important issues to be regulated include the handling of as well as the use and/or exploitation of existing and new research and development results.

## 4. TERM OF CONTRACT

- 4.1 This Consortium Agreement shall enter into effect upon signature by all Project Partners *optional: and shall be legally binding on all Project Partners upon submission of the Funding Application to the FFG*. This Consortium Agreement is concluded for the entire funding period of the contractual research project.

## 5. CONTACT PERSONS

- 5.1 The Project Partners have listed their contact persons, including their function in the Research Project, in Annex ./A<sup>11</sup>.

Changes to the contact persons shall be notified to all Project Partners and the FFG in writing in good time, stating the reason for the change.

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<sup>8</sup> The Preamble primarily serves to describe the project in general and to present the reasons for drawing up the contract. The inclusion of a Preamble is not required but recommended, since it will be used for clarifying any disputes of interpretation.

<sup>9</sup> Most funding programmes require that a Consortium Agreement must be signed prior to the conclusion of the Funding Contract and/or payment of funding. Delete where applicable.

<sup>10</sup> Other requirements may be specified in the relevant guidelines or other call documents.

<sup>11</sup> Project Partners may also name several contact persons for different functions within the research project (e.g. project manager, contact person for scientific or organisational issues, etc.) in individual cases. It is reasonable to designate contact persons having power of representation (decision-making and signature authority).

- 5.2 The Project Partners will additionally provide each other with the names of the persons involved in the project, including their functions, prior to the start of work. Any subsequent change in the project team shall be notified to the other Project Partners stating the reasons.

## **6. MUTUAL RIGHTS AND OBLIGATIONS OF PROJECT PARTNERS**

### 6.1 Obligations:

All Project Partners of this Agreement expressly declare that they will fulfil all obligations under the Funding Contract concluded with the FFG. The individual Project Partners declare in particular that they will perform all services and obligations assigned to them<sup>12</sup>.

### 6.2 Project performance in accordance with the specifications:

The Project Partners mutually undertake to carry out the Research Project in accordance with the Funding Contract *alternatively: Funding Application taking into account any changes made by the FFG in the course of the funding approval process*<sup>13</sup>. Annex ./B contains all services, work packages, milestones and work steps to be carried out by the individual Project Partners together with the associated time schedules, project plans, expenditure and resources<sup>14</sup>. The Research Project shall be managed in accordance with the generally accepted principles of project management<sup>15</sup>.

### 6.3 Reporting on progress:

The Project Partners shall at regular intervals<sup>16</sup> provide each other with reports about the progress of the research work in the joint Research Project<sup>17</sup> after the start of the project. These reports shall contain the results and findings from the work carried out so far and clearly indicate whether the work progress is in line with the specified time schedule. Every Project Partner may request that a report be discussed at a meeting at which all Project Partners are present<sup>18</sup>.

### 6.4 Exchange of information:

The Project Partners shall exchange any information that is required to carry out the Research Project and coordinate their activities where required. In this context they shall

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<sup>12</sup> The Funding Contract usually requires the Consortium Leader to transfer the obligations under the Funding Contract to the Project Partners.

<sup>13</sup> The research project finally approved need not necessarily be completely identical with the Funding Application. The Funding Application is only decisive if the Funding Contract has not yet been concluded. If the Funding Contract has already been concluded the alternative formulation is to be deleted.

<sup>14</sup> Unless this information has already been included in the Funding Application or in another way.

<sup>15</sup> This provision may be described in more detail in individual cases.

<sup>16</sup> These reports should reasonably be prepared in accordance with the reporting regulations of the relevant funding programme so that they can be simultaneously submitted to the FFG. The term "at regular intervals" may also be replaced by another formulation, e.g. "after completion of each project part specified in Annex./B and after the end of the project" etc.

<sup>17</sup> The exchange of project-specific internal reports between the Project Partners must be adjusted to the individual circumstances and may be complemented by project controlling, risk management or quality control, if required.

<sup>18</sup> The level of detail of this provision also depends on the number of Project Partners involved and may be regulated in more detail in individual cases.

also be obliged to participate in work meetings.

6.5 Internal communication:

The Project Partners consider internal communication within the consortium via email as binding if such communication can be verified through an electronic acknowledgment of receipt.

6.6 Subcontracting:

Work may be subcontracted only to the extent permitted by the FFG. If a Project Partner subcontracts work, the subcontractor must be previously approved by the other Project Partners, who, however, may refuse their consent only for important reasons relating to the subcontractor. All subcontracts (for work or services) must include a provision that the other Project Partners are entitled to enter into the subcontract for the event that the Project Partner who has concluded the subcontract (for work or services) withdraws, or is expelled, from the consortium.

6.7 Project changes:

Substantial changes in the performance or financing of the project shall be immediately notified to the Consortium Leader, who shall in turn immediately inform the FFG.

6.8 Non-contestation of intellectual property rights:

The Project Partners agree for the duration of the Research Project not to contest any pre-existing or new intellectual property rights, neither by revocation action nor by contestation during the application process nor in any other way. The Project Partners also undertake for the duration of the Research Project to refrain from anything that might help third parties contest pre-existing or new intellectual property rights.

6.9 Correct cost accounting:

Every Project Partner shall be responsible for ensuring that the project costs budgeted by them are eligible for funding and are correctly accounted for. If Project Partners contribute own funds or receive funds from third parties, these shall also be included in cost accounting. The FFG provides a checklist for this purpose at <https://www.ffg.at/recht-finanzen/kostenleitfaden>.

## 7. COLLABORATION

7.1 Additional collaboration agreements between two or more Project Partners may be concluded within the consortium.

7.2 Regulations of collaboration agreements that are in conflict with regulations of this Consortium Agreement or the Funding Contract shall not have any legal effect towards the FFG and the other Project Partners.

## 8. CONTRIBUTIONS<sup>19</sup> (CASH AND IN-KIND CONTRIBUTIONS) OF PROJECT PARTNERS AND PAYMENT MODALITIES

8.1 The financing contributions of the individual Project Partners are listed in the overall cost sheet or in the financing table of the Funding Application (Annex ./E)<sup>20</sup>.

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<sup>19</sup> Please note that not all costs are eligible for funding by the FFG. Reference is made to the relevant FFG or RTI Guideline or Special Guideline and the applicable Cost Guidelines containing detailed provisions on eligible costs.

- 8.2 All Project Partners shall make the cash and in-kind contributions listed in Annex ./E<sup>21</sup> by the specified due dates. Annex ./E also contains the funding amounts assigned to the individual Project Partners<sup>22</sup>.
- 8.3 Administration and distribution of funds by the Consortium Leader:
- 8.3.1 The entire funding will be paid into an account (e.g. fiduciary account, escrow account or other secured account) specifically opened for this purpose by the Consortium Leader.
- 8.3.2 The Consortium Leader shall immediately forward the funding payments received to the Project Partners in accordance with the allocation rules specified in Annex./E. Any transfer fees incurred shall be borne by the relevant Project Partner. If the Consortium Leader fails to forward the payments within five working days of receipt of payment the Project Partners shall be entitled to charge default interest of X.X %.
- 8.3.3 The Consortium Leader shall return all payments of non-eligible costs already forwarded to the Project Partners to the FFG.
- 8.4 In-kind contributions (e.g. personnel, materials)<sup>23</sup> shall be valued as follows:  
XXX
- 8.5 In-kind contributions (e.g. personnel, materials) provided by Project Partners must be substantiated by documentary evidence (e.g. time records for personnel, machines and facilities) for reporting purposes.
- 8.6 The Project Partners shall bear any costs they incur in performing this Research Project themselves.
- 8.7 Unforeseeable project costs shall be borne by the Project Partners on a pro-rata basis<sup>24</sup>.
- 8.8 Investments for project purposes can be made by one or more Project Partners<sup>25</sup>. If larger investments are made for project purposes these shall be included in an investment list.

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<sup>20</sup> The regulations can be formulated in more detail. If the contributions (financial and/or in-kind contributions) of the individual consortium partners have not yet been agreed this sentence should be deleted and replaced by an applicable regulation. The following points should be regulated: type of contribution, value of contribution, evidence of in-kind contributions, due dates, funding amounts of individual Project Partners, if required. If the funding amounts are transferred only to the Consortium Leader, who then forwards them: fiduciary account, allocation, transfer modalities, handling of transfer fees, default interest.

<sup>21</sup> Annex./E will usually be an Annex to the Funding Application. It shall set out the contributions (in-kind and financial) to be provided and the associated time schedule. Annex./E shall lay down the amount of the residual financing for each Project Partner.

<sup>22</sup> At this point (depending on the provisions of the funding programme) you may also add the ratio between public funding and the contributions provided by the Project Partners or the ratio between financial contributions (e.g. residual financing) and in-kind contributions of the Project Partners.

<sup>23</sup> Please specify the relevant valuation rules. See also Reporting Guidelines.

<sup>24</sup> The term "pro-rata" may have to be defined in more detail in individual cases.

<sup>25</sup> When making an investment (or placing a subcontract – see Section 6.6) the Project Partners must always check whether they are subject to procurement law provisions.

- 8.9 Investments shall be the property of the Project Partner having made the relevant investment. If several Project Partners share the investment costs, the Project Partners shall have co-ownership in proportion to their investment share.

## **9. REPORTING REQUIREMENTS AND INFORMATION RIGHTS OF THE FFG AND OTHER INSTITUTIONS**

- 9.1 The Project Partners shall meet the reporting requirements specified in the call documents and in the Funding Contract to the FFG and, if applicable, to certain public institutions such as the Federal Audit Office (or regional audit offices) or institutions of the European Union. Each individual Project Partner shall be responsible for meeting these obligations.  
Reports must give the FFG sufficient insight into the work carried out or to be carried out. The results obtained must be presented in a clear and transparent way.
- 9.2 The Project Partners shall grant the FFG, the funding providers and, if applicable, the institutions of the European Union access to all project documents.
- 9.3 The reporting, information and disclosure obligations to the institutions mentioned in the Funding Contract shall remain in full force and effect for the agreed period or at least 10 years after expiration of the contract<sup>26</sup>.
- 9.4 If a Project Partner does not fulfil these obligations or fails to do so in a proper and timely manner he/she shall indemnify and hold harmless the other Project Partners in respect of any damage or loss arising therefrom.
- 9.5 Confidentiality obligations shall not constitute grounds for refusal to disclose project-relevant information to the FFG or any of the other institutions mentioned above.

## **10. PROJECT COMMITTEE<sup>27</sup>**

- 10.1 The Project Partners shall form a Project Committee for joint decision making. The Project Committee shall consist of the Project Partners and the Consortium Leader and shall meet at regular intervals, but at least every six months<sup>28</sup>.
- 10.2 The Consortium Leader shall convene and chair the meetings of the Project Committee.
- 10.3 The invitation to the meeting shall be sent to the Project Partners at least seven work days prior to the meeting, stating the agenda.
- 10.4 Extraordinary meetings of the Project Committee may be convened at the request of two Project Partners.
- 10.5 The meetings shall be recorded in minutes by the Consortium Leader. The minutes shall be sent immediately to all Project Partners. The minutes shall be adopted at the beginning of the next meeting.
- 10.6 The Project Committee shall be quorate if at least two thirds of the Project Partners are present. Resolutions shall be adopted by a simple majority of votes. Every Project Part-

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<sup>26</sup> The funding period is generally specified in the call documents. The specified obligations remain in full force and effect for the period stipulated in the Funding Contract and the General Funding Guidelines.

<sup>27</sup> We strongly recommend setting up a decision-making body. Different or more detailed provisions may be defined for the organisation, powers and voting modalities of this body.

<sup>28</sup> The Project Committee may also be required to meet at other intervals, e.g. quarterly.

ner shall be entitled to one vote. In the event of a tie the Consortium Leader shall have the casting vote. All issues requiring a resolution must be included in the agenda, except when all Project Partners take part in the meeting.

- 10.7 Resolutions may also be adopted by circular resolution via email, fax or telephone conference provided that all Project Partners have received the proposed resolution. Otherwise, the quorum provisions specified in Section 10.6 shall apply.
- 10.8 Every Project Partner may designate a representative to exercise his/her voting rights. *[Option: This also applies to voting by circular].* Any change in the person authorised to represent the Project Partner shall be notified to the other Project Partners in writing.
- 10.9 The Project Committee shall have the following duties:
  - 10.9.1 The Project Committee shall decide on the admission or exclusion of a Project Partner and/or the Consortium Leader. In the event of exclusion, the Project Partner or Consortium Leader concerned shall not be entitled to participate in the vote.
  - 10.9.2 The Project Committee shall adopt resolutions according to Section 21.3 (project termination).
  - 10.9.3 The Project Committee shall monitor whether the Consortium Leader transfers the funding to the individual Project Partners as agreed.
  - 10.9.4 The Project Committee shall support the Consortium Leader in preparing the reports to the FFG and approve these reports.
  - 10.9.5 The Project Committee shall adopt resolutions on joint publications.
  - 10.9.6 The Project Committee shall deal with all matters that have or may have a substantial influence on the research project. The Project Committee may fulfil additional duties in this context.

## **11. RIGHTS AND DUTIES OF THE CONSORTIUM LEADER**

- 11.1 The Consortium Leader shall have the following duties:
  - 11.1.1 Coordinate communication between the Project Partners, including but not limited to planned publications;
  - 11.1.2 Manage the Research Project<sup>29</sup> and ensure overall coordination of the projects involved. In this context the Consortium Leader may also refuse acceptance of work packages/reports and demand improvements. The Consortium Leader shall also monitor the progress of the project based on the time plan and thematic specifications;
  - 11.1.3 Draw up and distribute minutes of Project Committee meetings,
  - 11.1.4 Coordinate and distribute all project-relevant documents and information within the consortium, including but not limited to the Funding Contract;

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<sup>29</sup> The Consortium Leader may be responsible for the overall management of the research project in terms of organisational/financial and thematic/professional management. These two duties may alternatively be assigned to project managers from the consortium who are to be designated separately.

- 11.1.5 Represent the consortium towards the FFG and fulfil all reporting requirements to the FFG in accordance with the Funding Contract;
- 11.1.6 Cooperate with the Project Committee and enforce its resolutions.
- 11.2 The Consortium Leader shall be entitled to receive information from all Project Partners on a continuous basis.

## **12. EXCLUSION AND ADMISSION OF PROJECT PARTNERS OR CONSORTIUM LEADER, INSOLVENCY AND LIQUIDATION**

- 12.1 Project Partners may be excluded with immediate effect by a unanimous resolution of the Project Partners; the FFG must be immediately notified thereof.

The following may be reasons for exclusion<sup>30</sup> giving 30 days notice:

- 12.1.1 The Project Partner/Consortium Leader has repeatedly or seriously violated the provisions of the Consortium Agreement and continues to act in a non-compliant manner despite a warning and having been granted a reasonable grace period;
- 12.1.2 The Project Partner/Consortium Leader fails to perform his/her duties in due time or fails to fulfil his/her financial obligations despite a warning and having been granted a reasonable grace period;
- 12.1.3 The Project Partner/Consortium Leader takes an action which causes the funding to be suspended, ceased or reclaimed;
- 12.1.4 Bankruptcy proceedings are initiated against the assets of the relevant Project Partner/Consortium Leader or the initiation of bankruptcy proceedings is rejected due to lack of assets.
- 12.2 The exclusion of the Project Partner or Consortium Leader shall automatically terminate any collaborations concluded with them.
- 12.3 The excluded Project Partner/Consortium Leader must continue to fulfil his/her reporting, information and disclosure obligations specified in the Funding Contract.
- 12.4 Financial obligations entered into for the period until the effective date of exclusion shall remain in full force and effect. The cash and in-kind contributions already provided to the project will not be refunded in the event of exclusion.
- 12.5 The excluded Project Partner/Consortium Leader shall bear any additional costs incurred by the other Project Partners as a result of his/her exclusion.
- 12.6 Any access rights to pre-existing and new intellectual property rights granted to the excluded Project Partner/Consortium Leader during the course of the project shall expire on the date of exclusion. The excluded Project Partner/Consortium Leader shall return all documents and data received or provide evidence of their destruction.
- 12.7 All access rights to pre-existing and new intellectual property rights granted by the excluded Project Partner/Consortium Leader to other Project Partners during the course of the project shall remain in full force and effect after the date of exclusion until the end of the project or beyond if required.
- 12.8 Any other mutual claims arising from this Consortium Agreement (e.g. confidentiality,

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<sup>30</sup> Delete as applicable.

publications etc.) shall remain unaffected by the exclusion.

- 12.9 In the event of exclusion of a Project Partner or the Consortium Leader the Consortium Agreement concluded with the other consortium partners shall remain valid.
- 12.10 If the Consortium Leader has been excluded the remaining consortium partners shall immediately propose a new Consortium Leader to the FFG. The proposed Consortium Leader must agree to enter into the Consortium Agreement and shall submit all documents required by the FFG. The appointment of a new Consortium Leader shall require the prior approval of the FFG.
- 12.11 The admission of a new Project Partner shall in any case require the prior approval of the FFG and an amendment to the Funding Contract by mutual agreement.
- 12.12 If the share of the excluded Project Partner is taken over by the remaining Project Partners the relevant rights and duties under the Funding Contract and the Consortium Agreement shall be distributed among them.
- 12.13 The FFG must be notified immediately if the fundamental goals of the project can no longer be achieved due to the exclusion of a Project Partner.
- 12.14 The Project Partners shall, subject to the approval of the FFG, use their best efforts to take over the shares of a Project Partner who is in liquidation or insolvency. In this case they shall also assume the corresponding obligations and receive the corresponding payments by the FFG in accordance with the Funding Contract on a pro-rata basis.

### **13. EXISTING RESEARCH AND DEVELOPMENT RESULTS (PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS)<sup>31</sup>**

- 13.1 The Project Partners shall contribute to the conduct of the research project existing research and development results (pre-existing intellectual property rights) necessary or expedient for the conduct of the research project, and grant corresponding access rights. The same applies to research and development results that arise alongside the present research project and that are necessary or expedient for the conduct of the research project.
- 13.2 Existing research and development results shall remain the property of the Project Partner contributing them, unless the Project Partners concerned expressly agree otherwise.
- 13.3 Contributed existing research and development results shall be accessible to the other *or claiming* Project Partners and shall be available to them to exploit and/or use for commercial and non-commercial purposes free of charge, on a non-exclusive basis, without restriction in time, including outside the present research project, unless agreed otherwise below (Section 13.4).
- 13.4 If:

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<sup>31</sup> Specify how (licences, user authorisations or user rights or the entire assignment of rights permanently or for a specific period of time) and to whom pre-existing intellectual property rights are to be made available. Is this to be in return for payment, and if so, subject to what conditions? Who bears the costs of any assignment of rights? How are future "dependent inventions" within the meaning of Sec. 50 of the Patent Act to be handled? Please list all pre-existing intellectual property rights in Annex./C: Existing research and development results. If these are know-how or unprotected research and development results, a confidentiality notice should be entered in the list. etc.

- 13.4.1 the contributing Project Partner labels the existing research and development results upon or immediately after disclosure as secret and specific know-how to which it is entitled, or
- 13.4.2 the existing research and development results have already been filed for an intellectual property right by the contributing partner or for which an intellectual property right has already been granted to the Project Partner,
- such shall only be available for exploitation or use for commercial purposes by the other *or claiming* Project Partners outside the contractual research project with the express written consent of the contributing Project Partner. The extent of the use and/or exploitation shall be determined according to the agreement to be concluded, which may also include a reasonable fee.
- 13.5 If existing research and development results are necessary or expedient for the commercial exploitation of newly created research and development results (new intellectual property rights), the claiming Project Partner shall in any event be granted a right of access to such, subject to the agreement of a reasonable fee.
- 13.6 If existing research and development results are necessary or expedient for the non-commercial use of newly created research and development results, such shall be made available free of charge to the claiming partner unless such is in conflict with confidentiality or competition interests<sup>32</sup> of the contributing partner.
- 13.7 Existing research and development results are listed in Annex ./C. Annex ./C shall be extended during the research project by the addition of research and development results created during the project. The Project Partners undertake to state in Annex ./C any third-party user or exploitation rights or other restrictions that prevent the use of existing research and development results.
- 13.8 Contributed existing intellectual property rights shall be maintained at the expense of the contributing Project Partner, unless agreed otherwise.
- 13.9 Contributed existing research and development results shall not be assigned to third parties during the conduct of the research project nor may third parties be granted an exclusive licence (or user right) or the right to sublicense such. After the end of the project, before assignment or grant of such an exclusive licence (or a user right), it must be ensured that the Project Partners can have the necessary access right for the use or exploitation of newly created research and development results.

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<sup>32</sup> Competitive interests are to be defined by the Project Partners in more detail in accordance with the conditions of the individual case (e.g. competing enterprises, customers, etc.).

#### **14. NEW RESEARCH AND DEVELOPMENT RESULTS (NEW INTELLECTUAL PROPERTY RIGHTS)<sup>33</sup>**

- 14.1 Each Project Partner shall be obliged to register and maintain the research and development results developed within the framework of the research project as a patent/utility model in its own name and at its own expense, if such are protectable inventions. The same shall apply mutatis mutandis to other intellectual property rights capable of registration.<sup>34</sup> New know-how, technical innovations or business and trade secrets shall be kept secret.
- 14.2 Each Project Partner shall be the owner of the research and development results developed by it within the framework of the research project. It shall also be entitled to the use and/or exploitation thereof. The Project Partners undertake to use and/or to exploit the new research and development results obtained as far as possible. The Project Partners acknowledge that the FFG is entitled to make suggestions for use and exploitation to the Project Partners.<sup>35</sup>
- 14.3 New intellectual property rights necessary for carrying out this research project shall be contributed to the project free of charge, i.e. a non-exclusive, non-transferable and non-sub-licensable access right to the necessary or conducive new intellectual property rights shall be granted to the other *or claiming* Project Partners free of charge, limited to the duration of the research project.
- 14.4 If new research and development results are filed for intellectual property rights or made accessible to third parties by means of license rights or authorisations or rights to use the work, such shall be notified to the Project Partners and the FFG in the course of the reporting.
- 14.5 The grant of an exclusive licence, an exclusive user right or the transfer of title to the new research and development results during the research project, whether to third parties or other Project Partners, shall require the prior consent of the FFG and all Project Partners.

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<sup>33</sup> Specify how (licences, work user authorisations or work user rights or the entire assignment of rights permanently or for a specific period of time) and to whom new intellectual property rights are to be made available. Is this to be in return for payment, and if so subject to what conditions? Who bears the costs of any assignment of rights? In the event of a collaboration with a research institution, note Section 2.2.2 of the Union framework for state aid for research and development and innovation (OJ 2014/C 198/01). In such a case, the Community framework contains requirements for handling new intellectual property rights.

<sup>34</sup> The following intellectual property rights can be registered: trademark rights, design rights, patents, utility models, protection certificates, mask work rights, plant variety rights.

<sup>35</sup> The General Programmes contain requirements for the regulation of the exploitation of research and development results. There are also programmes, however, that do not lay down any requirements. In the case of cooperative research projects (Thematic Programmes), the requirement is that there must be a balanced allocation of the intellectual property rights and access to the results between the parties involved in accordance with the individual interests, the work effort and the financial and other contributions to the project (e.g. residual financing of the costs of research institutions through enterprises involved in the project). In addition, there are projects where the rights are held by the BMVIT.

A distinction must be made between whether a research institution has an interest in exploitation or not. In the latter case, the results of the research institution's activity are to be published (publications, teaching courses) (Thematic Programmes).

- 14.6 The entire assignment of rights (grant of an exclusive licence, an exclusive user right or transfer of title) to new research and development results to third parties or other Project Partners shall within the first three years after the end of the project be possible only following prior notification of the FFG and all Project Partners.<sup>36</sup> The Project Partners and/or FFG shall in such a case be entitled within four weeks after receipt of the information to acquire title thereto or the use thereof (if research and development results are not accessible to transfer of title) by means of a right of first refusal (pro rata) hereby granted.<sup>37</sup>
- 14.7 Project partners can grant each other reciprocal exploitation rights to new intellectual property rights in accordance with contracts to be concluded separately, agreeing a reasonable payment. If a Project Partner demands the grant of an exploitation right from another Project Partner, it shall be granted such subject to the agreement of reasonable payments, unless such is in conflict with the owner's own competitive interests.
- 14.8 Joint inventions, other joint research and development results:
- 14.8.1 In the event of joint inventions by the Project Partners, the intellectual property rights shall be registered jointly, unless a separate application is advantageous for technical or other reasons.
- 14.8.2 The reciprocal shares of the co-owners shall be determined by mutual consent in writing in a separate agreement on the basis of the contributions made by the Project Partners (financial contributions, in-kind contributions, inventor's share) (these shares shall also be the basis for the registration of the intellectual property right).
- 14.8.3 This agreement shall also lay down which Project Partner shall lead the registration of the intellectual property right and assume responsibility for the maintenance of the right. In addition, a fundamental intellectual property right strategy (selection of the intellectual property right registration process, countries in which protection is to be requested) shall be agreed.<sup>38</sup>
- 14.8.4 The cost of registration and maintenance of the intellectual property right shall be borne pro rata by each co-owner.
- 14.8.5 In the event of the exploitation of further developments of the joint invention, the other Project Partners who were co-owners shall be entitled to be identified as co-inventors of the underlying invention.
- 14.8.6 Each co-owner can use or exploit the joint intellectual property right for commercial and non-commercial purposes itself or through the grant of licences. If a licence is granted, however, the licensee shall be prohibited from granting sublicences (with the exception of enterprises affiliated to the licensee pursuant to Sec. 228 of the Commercial Code) or to assign licence rights. If a licence is granted to third parties, this shall require the consent of the co-owner affected, to the extent that its competitive interests are affected. If Project Partners as co-owners commercially exploit the rights themselves, or if licences are granted to

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<sup>36</sup> In certain programmes, the assignment of new intellectual property rights is subject to the consent of the FFG.

<sup>37</sup> This right of first refusal is to be given more detailed wording in the individual case.

<sup>38</sup> In the individual case, this provision can be given much more concrete form by the parties (e.g. grant of powers of attorney for representation, representation in return for a fee or free of charge, etc.)

third parties, a reasonable fee shall be paid to the other co-owners. A separate agreement on this shall be concluded.

- 14.8.7 The above provisions shall also apply mutatis mutandis to other intellectual property rights.
- 14.8.8 If other new research and development results are developed jointly for which no intellectual property right can be registered (e.g. copyright, know-how), the exploitation rights to such shall be available to all Project Partners for exploitation. Section 14.8.6 shall apply mutatis mutandis.
- 14.9 In any event, the Project Partners shall ensure, and take all conceivable precautions and enter into all written agreements, that they can make use without restriction of inventions and other research and development results (in particular copyright) that are effected or developed by employees, agents or third party contractors.<sup>39</sup>
- 14.10 The Project Partners shall inform each other without delay of the content of invention notifications by their employees and of applications for intellectual property rights in Austria and abroad, by sending the corresponding documents. The communication can be made by email, by fax or by post in original or on data carriers. In any event, the Project Partners reciprocally undertake to maintain the secrecy of the invention notifications and application for intellectual property rights of the other Project Partner prior to the publication of the registration and to refrain from any actions that are detrimental to novelty (e.g. publications).<sup>40</sup>
- 14.11 Payments for service inventions<sup>41</sup> shall be borne by the Project Partner who is entitled to the ownership of the research and development results. The amount of the payment shall be in a reasonable ratio to the commercial exploitability of the service invention. The same shall apply to any post hoc claims.<sup>42</sup>
- 14.12 If a Project Partner fails to register its intellectual property right, fails to pursue such or waives such, it shall notify the other Project Partners thereof; this obligation shall in particular apply if the Project Partner concerned is bankrupt, in composition proceedings or in liquidation. The other Project Partners shall be entitled to register the intellectual property right for themselves pro rata. If a Project Partner refuses the pro rata assumption of the intellectual property right offered, this share shall accrue to the remaining Project Partners. The conditions for such an assignment of the intellectual property right

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<sup>39</sup> Please note that students who participate in a research project are not regarded as university employees unless they are in an employment relationship. This means that a student retains all the inventor rights to an invention he or she makes. The provisions concerning service inventions are not applicable. Hence if students participate in the research project, a separate agreement concerning the assignment of any intellectual property rights arising in return for a reasonable payment is to be concluded.

<sup>40</sup> Pursuant to Sec. 3 of the Patent Act (PatG), patents can only be filed if the invention has novelty. Sec. 3 (1) of the Act reads as follows: "An invention shall be considered to be new if it does not form part of the state of the art. The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use or in any other way, before the priority date of the application".

<sup>41</sup> Pursuant to Sec. 6 (1) et seq. of the PatG, service inventions are inventions made during an employment relationship. For these inventions, a service invention remuneration pursuant to Sec. 8 et seq. of the PatG is payable in most cases.

<sup>42</sup> Post-hoc claims are changes to the amount of the remuneration within the meaning of Sec. 10 of the PatG.

shall be agreed separately. The assigning Project Partner shall effect all necessary actions and issue all necessary declarations required for the assignment of the intellectual property right, in particular also in authenticated form. The assigning Project Partner shall receive a non-exclusive, non-transferable, non-sublicensable licence free of charge with/without restriction in time<sup>43</sup> for use for *research purposes / teaching / commercial exploitation*<sup>44</sup>. The same shall apply mutatis mutandis to other research and development results that are not capable of protection (e.g. copyright or know-how).

14.13 The provisions of the above paragraph shall also apply mutatis mutandis if a Project Partner does not wish to register intellectual property rights for specific countries requested by other Project Partners.

14.14 If the use of new intellectual property rights of another Project Partner is necessary for the use or exploitation of a Project Partner's new intellectual property rights, the former shall grant the latter a right of access to such in return for payment of a reasonable fee.<sup>45</sup>

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<sup>43</sup> If the licence granted is to be limited in time, this restriction must be defined.

<sup>44</sup> Delete as appropriate.

<sup>45</sup> The determination of a reasonable payment is of special importance if the assigning undertaking is a university, university of applied sciences or another public sector institution. The collaboration between undertakings and research institutions (attributable to the state as defined by state aid law) is regulated in Sec. 2.2.2 of the Union framework for state aid for research and development and innovation (OJ 2014/C 198/01):

A project is considered to be carried out through effective collaboration where at least two independent parties pursue a common objective based on the division of labour and jointly define its scope, participate in its design, contribute to its implementation and share its financial, technological, scientific and other risks, as well as its results. One or several parties may bear the full costs of the project and thus relieve other parties of its financial risks. The terms and conditions of a collaboration project, in particular as regards contributions to its costs, the sharing of risks and results, the dissemination of results, access to and rules for allocation of IPR, must be concluded prior to the start of the project. Contract research and provision of research services are not considered to be forms of collaboration.

Where collaboration projects are carried out jointly by undertakings and research organisations or research infrastructures, the Commission considers that no indirect State aid is awarded to the participating undertakings through those entities due to favourable conditions of the collaboration if **one** of the following conditions is fulfilled:

- the participating undertakings bear the full cost of the project.
- the results of the collaboration which do not give rise to IPR may be widely disseminated and any IPR resulting from the activities of research organisations or research infrastructures are fully allocated to those entities.
- any IPR resulting from the project, as well as related access rights are allocated to the different collaboration partners in a manner which adequately reflects their work packages, contributions and respective interests.
- the research organisations or research infrastructures receive compensation equivalent to the market price for the IPR which result from their activities and are assigned to the participating undertakings, or to which participating undertakings are allocated access rights. The absolute amount of the value of any contribution, both financial and non-financial, of the participating undertakings to the costs of the research organisations or research infrastructures' activities that resulted in the IPR concerned, may be deducted from that compensation

If none of the previous conditions are fulfilled, the Member State may rely on an individual assessment of the collaboration project. There may also be no State aid where the assessment of the contractual agreement between the partners leads to the conclusion that any intellectual property rights to the results as well as access rights to the results are allocated to the different partners of the collaboration and adequately reflect their respective interests, work packages, and financial and other contributions to the

- 14.15 In the event of the insolvency or liquidation of one of the Project Partners, the other Project Partners shall do everything possible to ensure that they dispose of all necessary existing and new research and development results that are necessary for the further conduct or conclusion of the research project.
- 14.16 The Project Partners shall grant each other an irrevocable licence or use right free of charge to all new research and development results for the purposes of research and teaching. This shall also apply if this research has been conducted jointly with third-party enterprises or other research institutions and is commercially exploited or carried out within the framework of contract research. In particular, the Project Partners shall also be entitled to exploit new research and development results within the framework of EU research projects. Any restrictions with respect to legitimate interests of a Project Partner, in particular legitimate competition and confidentiality interests, with respect to the use of the new research and development results shall be regulated separately in the individual case.

## **15. PUBLICATIONS, SCIENTIFIC EXPLOITATION**

- 15.1 Every Project Partner shall to the best of his/her abilities present oral and written scientific/technical publications because such publications contribute to documenting their scientific expertise. Results of basic research must be published as a matter of principle.
- 15.2 Publications shall be subject to compliance with the contractual confidentiality provisions and other restrictions (see, e.g. Sections 14.10, 14.16). The Project Partners shall ensure that none of their project staff presents such publications.
- 15.3 The Project Partners shall be entitled to publish research and development results obtained from work carried out by themselves.
- 15.4 The Consortium Leader may publish results from basic research without restrictions. Such publications must be made available to the Project Partners.<sup>46</sup>
- 15.5 Publications in the field of applied research require the consent of the Project Partners. Such consent may only be refused for good cause in writing (suggesting modifications) within four weeks of receipt of the planned publication, failing which consent shall be deemed to be granted. The planned publication shall be transmitted in electronic form via email or on data carriers.
- 15.6 The Project Partners shall, to the best of their ability, participate in the publication of any fundamental results which do not harm their interests.
- 15.7 The Project Partner disclosing a publication shall include the names of all Project Partners involved "as co-operating partners" unless individual Project Partners do not wish to be mentioned. The fact that the research was carried out under the Programme XXX and was sponsored by the Federal Government must be mentioned in a prominent place in the publication<sup>47</sup>.

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project. If the conditions are not fulfilled, the Commission will consider the full value of the contribution of the research organisation to the project as aid to undertakings.

<sup>46</sup> Make available on data carrier or via email.

<sup>47</sup> If the project receives funding in the name and for the account of the Federal Government.

- 15.8 Students participating in projects shall be entitled to use their research results, e.g. for bachelor, master, diploma or doctoral theses. Non-disclosure regulations shall be agreed in writing prior to the start of work by the student. Embargo periods shall be kept as short as possible with a maximum of 5 years. Confidential information (know-how, business and trade secrets) and information whose publication would be harmful to the Project Partners should not be included in bachelor, master, diploma and doctoral theses if possible.

## **16. DEFENCE OF INTELLECTUAL PROPERTY RIGHTS**

- 16.1 The Project Partners will inform each other of any violations of pre-existing and new intellectual property rights and defend them to the best of their ability.
- 16.2 In the event of joint new intellectual property rights each Project Partner shall individually be entitled to defend the IP right. The other Project Partners must be sufficiently informed thereof.

## **17. CONFIDENTIALITY OBLIGATION**

- 17.1 The Project Partners undertake to keep confidential any technical knowledge, know-how, trade and business secrets, data and information, documents, evaluations, technical specifications etc. ("Confidential Information"). Confidential Information shall be taken to mean all information designated as such orally or in writing or whose confidentiality is derived from the circumstances<sup>48</sup>. This obligation shall apply to any "Confidential Information" contributed to or resulting from the research project or made accessible in the course of the project. Any knowledge and ideas which have not been used during the project must also be treated as "Confidential Information".
- 17.2 All persons involved in the research project (employees, subcontractors, etc.) must be expressly included in the confidentiality obligation. The confidentiality obligation for employees shall be defined such that, to the extent permitted by law, the obligation remains in full force and effect even after the end of the employment relationship. The Project Partners shall be liable for any breach of the confidentiality obligation caused by persons involved in the research project as if they had themselves violated the obligation.
- 17.3 This confidentiality obligation shall include but not be limited to the duty not to use Confidential Information in any way for purposes other than for the performance of the contract without the prior express consent of the Project Partners and to disclose such information only to persons who must be involved to ensure the proper performance of the contract.
- 17.4 The confidentiality obligation with respect to Confidential Information exchanged between the Project Partners in performing the present contract or obtained in the course of the project shall remain valid beyond the term of this contract for an indefinite period of time/but at least for XX years unless such information is publicly available.
- 17.5 Any breach of the confidentiality obligation shall incur a contractual penalty of EUR XXX

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<sup>48</sup> The terms "secret" and "confidential" should be interpreted broadly and not only within the meaning of the Security of Information Act (InfoSiG), i.e. the confidentiality obligation also applies to proposals and projects that are not classified according to the InfoSiG. Trade secrets also include information that may influence the stock prices of the Project Partners.

per case<sup>49</sup>.

- 17.6 Confidential Information shall not include information:
- 17.6.1 which was generally known at the time of signing this Agreement,
  - 17.6.2 which has become generally known at a later date, but not through a breach of this confidentiality obligation,
  - 17.6.3 which has been known to the recipient of the information prior to the conclusion of this Agreement,
  - 17.6.4 which has been received from a third party entitled to disclose the information,
  - 17.6.5 which must be disclosed due to statutory obligations,
  - 17.6.6 which has been developed independently of existing findings; the Project Partner who has independently developed such information must provide relevant evidence,
  - 17.6.7 or which is defined as not being confidential by mutual written agreement of the Project Partners.
- 17.7 The confidentiality obligation shall not keep any of the Project Partners from disclosing information to the FFG and other authorised bodies and institutions and does not release the Project Partners from their reporting, information and disclosure obligations.

## 18. DATA PROTECTION

- 18.1 The Project Partners expressly declare that they will carry out the project in compliance with the requirements and provisions of Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) as well as the Federal Act on the protection of natural persons with regard to the processing of personal data (Datenschutzgesetz – DSG).<sup>50</sup>

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<sup>49</sup> It is up to you to agree on a contractual penalty. Generally, the amount of the penalty should be reasonable; unreasonably high penalties may be reduced by a judge pursuant to judicial discretion.

<sup>50</sup> It is pointed out that the direct applicability of the GDPR to consortia (and all other institutions processing personal data) gives rise to a range of data protection obligations which must be observed during project implementation in particular. General obligations arise from the GDPR and the DSG and almost identical obligations concerning funding management arise from the Federal Research Organisation Act (FOG). Particular reference should be made in this context to the issues concerning processors and joint controllers:

If substantial parts of funding and project management are related to the processing of personal data, i.e. if the main purpose of the project is to process personal data, this will be considered as processing on behalf of a controller within the meaning of Art. 28 GDPR. This, however, will only rarely be the case in consortium agreements. The processing activities within consortia will usually be considered to be carried out by joint controllers within the meaning of Art. 26 GDPR, since the consortium partners are jointly responsible for particular processing activities (e.g. joint databases, joint preparation of expert opinions etc.). In these cases the consortium partners will have to conclude a joint controller agreement.

**Please note:** The Project Partners must carry out a critical data processing and data flow analysis within the project in order to assess which constellations relevant to data protection law actually exist between the individual project partners.

- 18.2 The Project Partners expressly agree that information in connection with the present contract, the funding and the management of the contractual cooperation may be disclosed to relevant third parties.
- 18.3 Relevant third parties shall include the funding provider, other funding agencies, the relevant federal ministries, controlling bodies established for controlling and monitoring the appropriate use of public funding as well as EU institutions. They shall also include controlling bodies of the Consortium Leader and their tax and legal consultants. The Project Partners shall obtain any declarations of consent under the Data Protection Act that are required to provide the information requested by the FFG.
- 18.4 The Project Partners acknowledge that the personal data collected during initiation and performance of the contract which are necessary for the performance of a task carried out by the FFG in the public interest (Art 6 (1) (e) GDPR), for compliance with a legal obligation (Art 6 (1) (c) GDPR) or for safeguarding the legitimate interests pursued by the controller or by a third party (Art 6 (1) (f) GDPR) may be used by the funding provider and funding agency for the initiation and performance of the contract, for carrying out the tasks assigned to the FFG and for control purposes. It is possible that, in the context of such use, data have to be transmitted or disclosed to other parties, including but not limited to bodies and agents of the federal (regional) government, the Court of Audit and the European Union or another authorised third party. The legal basis for this use shall be compliance with a legal obligation (Art 6 (1) (c) GDPR) or the performance of a task carried out in the public interest (Art 6 (1) (e) GDPR). If several federal (regional) bodies and/or funding providers wish to grant funding to the same funding recipient for the same project (albeit with a different purpose) and need to coordinate with each other, this shall be done either on the basis of a legal obligation according to Art 6 (1) (c) GDPR or for safeguarding the legitimate interests pursued by the controller or by a third party (Art 6 (1) (f) GDPR).<sup>51</sup>

## **19. RECIPROCAL LIABILITY AND WARRANTY**

- 19.1 The Project Partners are aware of the risks associated with the conduct of the research. They shall apply all the care that is necessary for the reasonable conduct of the research and shall make every effort to achieve the planned results. The Project Partners assure each other that they shall provide the research results in accordance with the state of science and technology at the time of the provision and in compliance with international standards for comparable research projects.

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<sup>51</sup> Sec. 2 (g) FOG provides an important legal basis for lawful processing according to Art. 6 (1) (c) GDPR for both the FFG and the consortium partners.

This provision expressly allows recipients of Art. 89 funding, contractors and Art. 89 funding agencies to process the following data for the purpose of implementation, documentation, recording, monitoring and auditing of Art. 89 funding (Sec. 2 (b) (2)) and contracts: data describing the project in more detail such as title, duration, topic and classification; details on all persons involved in the project such as employment contracts, employment relationship, time records, absences, salary statements, qualification and career steps, travel activities and presentations; details on economic and entrepreneurial activity before and after payment of the entire Art. 89 funding (Sec 2 (b) (2)) or the entire remuneration, including company data, structural data and performance data and other cost statements.

The processing of personal data within project and funding management will thus, in most cases, be subject to lawful processing according to Art. 6 GDPR in conjunction with Sec. 2 (g) FOG.

- 19.2 However, the Project Partners cannot assume any further liability or guarantee the achievement of the envisaged results. Nor do they guarantee that the envisaged research results can be exploited industrially or commercially. In particular, the Project Partners shall not be liable reciprocally with respect to the research results for lost profit or other financial losses or for other losses incurred by consortium partners or third parties that arise in connection with the use of the research and development results. If the envisaged research and development results are not achieved, none of the Project Partners shall be entitled to the return of contributions provided.
- 19.3 The Consortium Leader shall not be liable for losses that result from a delayed disbursement of public funding payments by the FFG to the Consortium Leader for budgetary reasons.
- 19.4 The Project Partners shall not guarantee or be liable to each other for the completeness and accuracy of the information provided. This shall not apply to cases of intent or gross negligence. Each Project Partner shall remedy the defects notified to it within a reasonable period.
- 19.5 The Project Partners shall be liable to each other for compliance with the statutory provisions and official conditions.
- 19.6 They shall also be liable to each other for compliance with the provisions of the Funding Contract and all other contractual provisions. In particular, each Project Partner shall be liable for the provision of its monetary and in-kind contributions in good time as set out in Annex./E,<sup>52</sup> at the due date specified therein.<sup>53</sup> In the event of performance default, the Project Partner shall be set a reasonable grace period in writing. If the grace period expires without effect, the Project Partner in default shall bear the costs of substitution by another Project Partner or a third party, provided that substitution is possible and approved by the FFG.
- 19.7 If public funding money is used for the joint research, such shall be used in accordance with the Funding Contract and the funding conditions, and all other relevant provisions shall be complied with. In accordance with the FFG specifications, all Project Partners shall be jointly and severally liable for the repayment of the funding in the event of the occurrence of a ground for repayment to the FFG (Sec. 891 of the General Civil Code, ABGB), which can be limited to the amount of the funding they receive.<sup>54</sup> If a Project Partner infringes the funding conditions or the Funding Contract, and if such leads to reductions, termination, repayment or suspension of funding, it shall indemnify and hold all other Project Partners harmless in full for all resulting disadvantages, irrespective of the extent of fault.
- 19.8 If other claims are asserted by a third party under the contractual research project, all Project Partners shall be liable jointly and severally to the third party. If such a claim is asserted against one or more Project Partners, the partner causing such shall be liable in the internal relationship with strict liability. Such partner shall indemnify and hold the

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<sup>52</sup> Annex./E will usually be an Annex to the Funding Application. It shall set out the contributions (in kind or financial) to be provided and the associated time schedule. Annex./E shall lay down the amount of the residual financing for each Project Partner.

<sup>53</sup> If desired, a contractual penalty can be agreed for delayed performance.

<sup>54</sup> This provision shall be deleted if the FFG concludes a separate funding contract with each partner or if only one partner receives funding that it does not pass on to the other partners.

other Project Partners completely harmless.

- 19.9 If several Project Partners are responsible for a claim, these Project Partners shall be liable in accordance with the preceding provisions to the extent to which they participated in the causation of the claim. If the extent to which they participated in the causation of the claim cannot be determined, these Project Partners shall be liable in equal shares.
- 19.10 Liability for losses resulting from force majeure shall be excluded, the Project Partner claiming such being responsible for providing evidence of the existence of force majeure.

## **20. PROHIBITION ON ENTICEMENT**

- 20.1 The Project Partners shall reciprocally only contact those employees and consultants of the other Project Partner that are identified by name in this contract as contact persons. In particular, the Project Partners shall for the duration of the project and for a period of [...] <sup>55</sup> after the end of the project refrain from anything that might lead to the departure of an employee or consultant of another Project Partner; in particular they shall refrain from any attempt at enticement <sup>56</sup> or from entering into an employment relationship with such persons.

## **21. TERMINATION OF CONTRACT**

- 21.1 Regular termination of contract:

This Consortium Agreement shall terminate upon expiry of the contract period specified in Section 4 or upon successful completion of the contractual research project.

- 21.2 Retroactive termination of contract:

The present Consortium Agreement shall terminate with retroactive effect if the funding provider does not issue a positive funding decision or if no Funding Contract is concluded.

- 21.3 Premature termination of contract:

This Consortium Agreement shall terminate prematurely if the project committee unanimously decides to abort the research project with the approval of the FFG.

- 21.4 Withdrawal:

21.4.1 If a Project Partner withdraws from the Consortium Agreement all collaboration agreements concluded with the relevant Project Partner shall terminate automatically <sup>57</sup> (see Section 7).

21.4.2 Project Partners are not allowed to withdraw from this Consortium Agreement during the project period unless all Project Partners agree and the FFG is notified immediately. This shall not apply to withdrawal for good cause, which is possi-

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<sup>55</sup> It should be noted that an excessively long period may be contrary to honest practices and could therefore be null and void.

<sup>56</sup> If no prohibition on enticement is to be agreed, this provision should be deleted.

<sup>57</sup> Please delete if the provisions of a collaboration agreement are to remain in force throughout the project period.

ble at any time. Good cause shall include but not be limited to the initiation of bankruptcy proceedings over the assets of the withdrawing party or another Project Partner, a Project Partner's incapacity to continue provision of services or the violation of contractual provisions by a Project Partner with respect to the withdrawing party.

- 21.4.3 Financial obligations entered into for the period until the effective date of withdrawal shall remain in full force and effect. The cash and in-kind contributions already provided to the project will not be refunded in the event of withdrawal.
  - 21.4.4 The withdrawing Project Partner shall bear any additional costs incurred by the other Project Partners as a result of his/her withdrawal.
  - 21.4.5 Any access rights to pre-existing and new intellectual property rights granted to the withdrawing Project Partner during the course of the project shall expire on the date of withdrawal. The withdrawing Project Partner shall return all documents and data received or provide evidence of their destruction.
  - 21.4.6 All access rights to pre-existing and new intellectual property rights granted by the withdrawing Project Partner to other Project Partners during the course of the project shall remain in full force and effect after the date of withdrawal until the end of the project or beyond if required or expedient.
  - 21.4.7 Any other mutual claims arising from this Consortium Agreement (e.g. confidentiality, publications etc.) shall remain unaffected by the withdrawal. In the event of withdrawal of a Project Partner the Consortium Agreement concluded with the other consortium partners shall remain valid.
  - 21.4.8 If the Consortium Leader withdraws the remaining Project Partners and the Consortium Leader shall immediately propose a new Consortium Leader to the FFG. The proposed Consortium Leader must agree to enter into the Consortium Agreement and shall submit all documents required by the FFG. The appointment of the new Consortium Leader and withdrawal of the old Consortium Leader shall only take effect after approval by the FFG.
  - 21.4.9 If the share of the withdrawing Project Partner is taken over by the remaining Project Partners the rights and duties under the Funding Contract and the Consortium Agreement shall be distributed among them.
  - 21.4.10 The FFG must be notified immediately if the fundamental goals of the project can no longer be achieved due to the withdrawal of a Project Partner.
  - 21.4.11 The admission of a new Project Partner shall in any case require the prior approval of the FFG and an amendment to the Funding Contract by mutual agreement.
  - 21.4.12 The Project Partners shall, subject to the approval of the FFG, use their best efforts to take over the shares of a Project Partner who is in liquidation or insolvency. In this case they shall also assume the corresponding obligations and receive the corresponding payments by the FFG in accordance with the Funding Contract on a pro-rata basis.
- 21.5 The Project Partners must continue to fulfil their reporting, information and disclosure obligations specified in the Funding Contract despite the termination of the contract.

## 22. CONTRACT DOCUMENTS<sup>58</sup>

22.1 The following documents shall form integral parts of this Consortium Agreement. They shall be binding on all Project Partners:<sup>59</sup>

- Funding Application dated XX.XX.XXXX
- Funding Contract signed by the FFG on insert date of Funding Contract, including all documents that form an integral part of the Contract, together with the project plan and any documents submitted subsequently on XX.XX.XXXX<sup>60</sup>, including but not limited to the obligations, conditions and reporting obligations mentioned therein.
- Call documents, e.g. Guidelines insert name of call document of the relevant funding programme<sup>61</sup>
- [Collaboration agreements concluded with the individual Project Partners]<sup>62</sup>.

22.2 If provisions of this Consortium Agreement are in conflict with the Funding Contract (or Funding Offer) the provisions of the Funding Contract shall prevail. The conflicting provisions of the Consortium Agreement shall not have any legal effect towards the funding provider and the FFG.

## 23. JURISDICTION

23.1 Any disputes in connection with this Agreement shall be subject to the exclusive jurisdiction of the competent court in Vienna, Eisenstadt, Graz, Klagenfurt, Innsbruck, Linz, St. Pölten, Bregenz, Salzburg<sup>63</sup>.

## 24. APPLICABLE LAW

24.1 This Agreement shall be governed by Austrian law with the exception of the conflict of laws provisions.

## 25. CONCLUDING PROVISIONS

25.1 If a provision of this Agreement is or becomes invalid the validity of the remaining provisions of this Agreement shall remain unaffected. The invalid provision(s) shall be replaced by a provision which comes closest to the intentions of the Project Partners and the economic effect of the invalid provision(s) within the statutory limits.

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<sup>58</sup> The contract documents shall prevail in the following order of priority:

1) Funding Contract and General Funding Conditions of the Federal Government 2) Funding Contract of the Provincial Government, if applicable, 3) Reporting Guideline, 4) Funding Application, 5) Consortium Agreement, 6) Collaboration Agreement

<sup>59</sup> Additional documents may be added here if required. The relevant information can be found in the call documents of the funding programme.

<sup>60</sup> Select as appropriate.

<sup>61</sup> If available.

<sup>62</sup> If applicable.

<sup>63</sup> Delete as applicable. You may also include the following arbitration clause: "Any disputes in connection with this Agreement shall be finally settled by the permanent arbitral tribunal of the Commercial Chamber in Vienna, by the arbitral tribunal in Innsbruck, Linz or Graz in accordance with the applicable rules of arbitration by a sole arbitrator/an arbitration panel".

- 25.2 This Agreement contains all the terms agreed between the Project Partners. No ancillary verbal agreements have been made. A legal dispute over the amount of licence fees payable for pre-existing or new intellectual property rights shall not prevent the Project Partners from exercising the intellectual property rights concerned.
- 25.3 The Project Partners are not entitled to transfer or assign rights and obligations under this Consortium Agreement in whole or in part without the prior written consent of the other Project Partners. The consent of the other Project Partners shall not be withheld on unreasonable grounds.
- 25.5 Modifications or amendments to this Consortium Agreement must be made in writing to be valid. This also applies to the removal of the requirement of the written form.
- 25.6 The parties shall bear their own costs for consulting services incurred in the preparation and negotiation of the Consortium Agreement, the Funding Application and the Funding Contract.
- 25.7 This Consortium Agreement shall be signed by all Project Partners and confirmed to the FFG. A copy must be sent to the FFG only upon request.

**Disclaimer by the Austrian Research Promotion Agency (FFG):**

The present text of a consortium agreement constitutes a model agreement that needs to be adapted to the relevant project requirements, the intentions of the contracting parties and the desired legal effects. It provides suggestions for possible and recommendable regulations but is not suitable for direct use. Appropriate legal support is recommended when drawing up a consortium agreement for a concrete project. This sample agreement does not constitute a recommendation to use this text as a consortium agreement nor does the FFG accept any liability for the use of this model agreement. This agreement text is to provide users with a check list of the possible contents of a consortium agreement without however making any claims about completeness or accuracy.

## 26. EXECUTION AND SIGNATURE

26.1 This Agreement is executed in XX counterparts and each Project Partner shall receive one copy.

**Annexes:**

- Annex ./A: List of contact persons per Project Partner
- Annex./B: Work packages to be provided by the Project Partners
- Annex./C: Existing research and development results
- Annex./D: List of Project Partners
- Annex./E: Financial contributions of Project Partners and Cost Plan: overview plan of costs per year and cost type

Name of Project Partner<sup>64</sup>:

Place, on .....

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[Signature]

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[Name in block letters]

Name of Project Partner<sup>65</sup>:

Place, on .....

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[Signature]

---

[Name in block letters]

<sup>64</sup> Please insert the name of the Project Partner and affix the signature of an authorised signatory (please add name of signatory in block letters) and the stamp of the company/institute, if available.

<sup>65</sup> Please insert the name of the Project Partner and affix the signature of an authorised signatory (please add name of signatory in block letters) and the stamp of the company/institute, if available.