# SCOPE OF APPLICATION AND AGREEMENT DOCUMENTS

# These Consortium Agreement Terms shall apply to Joint Actions funded by Business Finland, the parties of which have entered into a separate consortium agreement. These Consortium Agreement Terms shall constitute an integral part of the consortium agreement, and together with the other appendices shall form the entire agreement between the Parties (jointly ‘Consortium Agreement’).

# DEFINITIONS

## **Background** means all substances, equipment, methods, information, inventions, databases, software, photographs or written or artistic works or any related Intellectual Property Rights created outside the Joint Action and owned by the Party and to which the Party has a right to grant access rights under this Consortium Agreement. Background shall not be regarded as Results of the Joint Action.

## **Industry Project** means the projects referred to in the Consortium Agreement, in which only Industry Parties are funded by Business Finland or funded by the Industry Party only.

## **Intellectual Property Rights** mean all forms of intellectual property protection, including patents, utility models, trademarks, copyrights, chip topography rights, design rights (including unregistered design rights), as well as know-how and applications for the same.

## **Joint Action** means jointly all projects specified in the Consortium Agreement consisting of one or several Public Research Projects and several Industry Projects funded by Business Finland.

## **Joint Action Plan** means the joint project plan in Appendix 1 of the Consortium Agreement for the Public Research Project(s) and the Industry Projects funded by Business Finland.

## **Project Plan** means that part of the work under each Public Research Project, which is part of the Joint Action Plan.

## **Public Research Project** means the projects specified in the Consortium Agreement, in which only Research Parties are funded by Business Finland.

## **Results** mean all material, equipment, written methods, information, inventions, databases, software, photographs written and artistic works generated in the Joint Action, as well as any Intellectual Property Rights relating thereto.

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# RESPONSIBILITIES OF THE PARTIES

## Each Party undertakes to cooperate, perform and fulfil all of its obligations under this Consortium Agreement and its appendices.

## …………. is acting as the coordinator of its Public Research Project and as the reporting Party in the Joint Action and reports to Business Finland on the implementation of cooperation in the Joint Action. Each Party shall report on its own contribution to such cooperation to ………… not later than ……… (..) days prior to the date, on which ………… is obliged to report on it to Business Finland.

## A Party may subcontract some of the project work in accordance with Business Finland Funding Terms. The Party is responsible for the work of its subcontractors as they would be for its own. The Party shall ensure that the subcontractor transfers its title in the Results to the Party and commits in writing to complying with the provisions of this Consortium Agreement concerning Confidential Information, Results and Background.

# COMPOSITION OF THE STEERING GROUP

##  A steering group is appointed for the Joint Action. Each Party to the Consortium Agreement shall appoint one representative to the steering group. A representative of Business Finland shall be entitled to attend to the steering group meetings. The steering group shall nominate a chairperson from amongst its members.

##  The Research Party/-ies funding the Public Research Project may appoint experts and individual members representing the exploiting organisations. The members representing other than the signatories of the Consortium Agreement shall sign the confidentiality agreement appended to this Consortium Agreement.

##  The Parties are entitled to change or replace the representative with any other authorised person. Other Parties shall be notified of the changes of representatives in writing. An expert member or an individual member representing an exploiting organisation cannot authorise others to represent them.

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4.4 Any new Party to a project is subject to the written consent of the beneficiary concerned.

 A new Party becomes a Party to this Consortium Agreement by signing an Accession

 Document complying with the model in this Consortium Agreement.

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# DECISION MAKING IN THE STEERING GROUP AND THE TASKS OF THE STEERING GROUP

## The steering group has quorum when in case of the Joint Action …………….’s representative or in the case of the Public Research Project the beneficiary of that Public Research Project and at least half of the appointed members from both the Research Parties and Industry Parties participating in the Joint Action or respectively in that Public Research Project are present. The decisions of the steering group are made unanimously. With the exception of experts and the other individual members, each member of the steering group shall have one vote. A Party, who has breached the Consortium Agreement does not have a vote. The Parties not funding or not providing other forms of contribution to the project concerned shall not have a vote in any matters concerning that project. The steering group has an advisory role. The Party´s written consent is required for any amendments to its liabilities, obligations or rights. The Parties shall approve its meeting and decision-making practices of in its first meeting of the steering group.

## The steering group

1. specifies the objectives of the Joint Action and the Public Research Project(s);
2. confirms the Project Plan, cost estimate, financing plan, members of the steering group and any changes to the Public Research Project(s) in accordance with the Business Finland Funding Terms
3. supervises the implementation of the co-operation in the Joint Action;
4. monitors the implementation of other contribution than funding given to the Public Research Project(s) by a Party.

## Any change in the Joint Action Plan, Project Plan, cost estimate, time schedule, reporting date and of any other significant changes, especially in the key personnel resources for the implementation of the Joint Action shall be notified without delay to the steering group by the Party concerned.

## The Parties funding the Public Research Project shall confirm the Project Plan, cost estimate, financing plan and members of the steering group in the first meeting of the steering group. The decisions made in the first meeting of the steering group and any significant changes in the Public Research Project shall be approved by Business Finland and all Parties funding that Public Research Project.

# PAYMENTS IN THE PUBLIC RESEARCH PROJECT

## A detailed account of the Public Research Project funding, the funding shares of the Parties and the payment schedule are specified in this Consortium Agreement. The sums do not include value-added tax (VAT). The Research Parties shall invoice the Industry Parties in accordance with the time schedule agreed in this Consortium Agreement.

## Payment shall be made within ……. (..) days of the date of the invoice. Any late payments are subject to the annual interest for late payment in accordance with the Finnish Interest Act (633/1982). Collection charges shall be invoiced separately.

## If the objectives or the timetable of this Consortium Agreement are amended, the cost estimate and funding shares shall be amended accordingly.

# CONFIDENTIALITY AND DATA PROTECTION

## All information received by a Party from another Party whether orally, in writing, or in electronic or any other form shall be deemed confidential provided, that such information is clearly marked as confidential. The Party disclosing oral information intended as confidential information shall, at the time of disclosure, state that the information is confidential and within ……… (..) days provide confirmation in writing of its confidential nature (hereinafter ‘**Confidential Information’**). The Parties shall not exchange or transfer to another Party any personal data as defined in the EU general data protection regulation (2016/679), unless otherwise agreed in writing by the Parties.

## The Parties undertake to treat Confidential Information confidential, undertake not to disclose Confidential Information to third parties and undertake not to use Confidential Information for purposes other than the fulfilment of their rights and obligations under this Consortium Agreement. The Parties shall have a right to disclose Confidential Information to such experts and individual members of the steering group and to subcontractors, who are under a confidentiality obligation according to law or who have agreed in writing to comply with the confidentiality obligations of this Consortium Agreement, if such disclosure is required to fulfil their obligations under this Consortium Agreement.

## The confidentiality obligation does not, however, apply to information that:

(a) was in the public domain or generally available to the public at the time of disclosure,

(b) has become part of the public domain or generally available to the public subsequent to disclosure of the Confidential Information through no fault of the receiving Party,

(c) was known to the receiving Party before receiving the information from the disclosing Party,

(d) was obtained from a third party without any confidentiality obligations,

(e) has been developed independently or together with a third party without breach of the confidentiality obligations of this Consortium Agreement, or

(f) has to be disclosed or made public under law or other statute or decision by Business Finland or order of a court of law or other authority.

## The obligations of Section 7 shall remain in effect for a period of …… (..) years from the disclosure of Confidential Information, however no more than …….. (..) years from the termination of this Consortium Agreement.

# PUBLICATION OF RESULTS

## The Research Party shall publish its Results and data in accordance with the Business Finland Funding Terms.

## The Parties shall have a right to review any publications containing Results during the Joint Action and for a period of …… (..) year(s) after the Joint Action. Any requests to publish shall be submitted to the Parties. The publication shall be deemed approved, unless the Party has objected to the publication within …… (..) days from the receipt of a written publication request. In its written response, the Party may request the publication to be changed, if it contains Confidential Information of that Party or prevents that Party from patenting the Background and/or Results or registering other Intellectual Property Rights. The Party shall explicitly indicate the necessary changes. The Parties agree to collaborate in order to safeguard publication without unreasonable delay. If changes are requested to the publication due to the registering of Intellectual Property Rights, the Results may be published after the protection has been filed for, but no later than …… (..) months after the request to publish. Results that have once been approved for publication may be published again without the publication review procedure.

## In the Public Research Project any doctoral thesis, dissertations or other works with similar effect that may be prepared in connection with the Public Research Project shall be public documents. The review procedure described above shall be applied to the theses, doctoral dissertations or other similar work. Copyright to any thesis, dissertation or other similar work shall always be vested in the author or creator of the said work.

# TITLE IN THE RESULTS

## Subject to Section 9.2 title in the Results shall be vested in the Party, who has created, invented or generated the Results. If two or more Parties have jointly generated the Results in the research work within the scope of this Consortium Agreement, and their contributions form an indivisible part of the Results, the Results shall be jointly owned by the Parties in proportion to their contribution to them. The terms and conditions of joint ownership will be agreed upon separately between the joint owners.

## In the Public Research Project title in the Results shall be always vested in the Research Party, that is beneficiary in the Public Research Project to which the research work relates, also in case that an Industry Party performs work in the Project Plan of that Research Party.

## If the rights of the employees of the Party to the Results are not assigned by effect of law to the Party, the Party is responsible for ensuring that any person participating in the Joint Action assigns his or her rights to the Results to the extent required by the Consortium Agreement by approving this Consortium Agreement or through other assignment made in writing.

## Any assignment of ownership of Results between the Parties, as well as the compensation and other terms and conditions relating thereto, is subject to separate agreement between the Parties concerned. The value of any financial or other contribution of a Party, which contributed to the creation of the Results of the other Party, shall be taken into account in the compensation.

# USE AND EXPLOITATION OF BACKGROUND AND RESULTS

## The Parties shall grant to each other a free-of-charge non-exclusive access rights, including the right to modify, to such Background, Results and data as are necessary for other Parties to carry out their duties in the Joint Action. The access rights are only granted for the duration of the Joint Action and for the performance of the work in the Joint Action. The Party granting the access rights may require that a separate agreement be made on the access rights prior to granting it.

## The owner of the Results decides on the protection and transfer of its Results. Any exploitation of the Results shall be separately agreed in writing between the Parties concerned. If the exploitation of the Research Party’s Results during the Public Research Project is desired, such exploitation is subject to the following conditions: such exploitation does not (i) hinder the attainment of the said Public Research Project’s objectives, (ii) cause it to be terminated or (iii) otherwise lead to a decrease in funding for it.

## The Industry Parties that have provided funding or other forms of necessary contribution to the Public Research Project shall have the right to negotiate on the exploitation of the Research Parties’ inventions, databases and software generated in that Public Research Project. The exploitation of the said Results shall be requested in writing within …… (..) months after the presentation of the Results in question to the steering group, or in the absence of such presentation, within ….. (..) months after the termination of the Public Research Project. The owner of the said Results has the obligation to negotiate during …. (..) months after the expiration of the said …… (..) months period and the right to negotiate simultaneously on the exploitation of the Results also with third parties.

## Access rights to the other Party’s Background and the Research Party’s Results are contingent upon the requesting Party’s payment of its share of the funding and compliance with its other obligations under the Consortium Agreement. Access rights shall not include the right to sublicense the Background or Results to a third party.

# RESEARCH PARTIES’ RESEARCHER MOBILITY

# A Research Party shall have the right to post an employee abroad in order to carry out research work for the Public Research Project. The obligations related to access rights set forth in this Consortium Agreement shall apply to the Results of researcher mobility only to the extent permitted by the agreement on researcher mobility entered into between the recipient and the organisation hosting the researcher abroad, however, in accordance with the Business Finland Funding Terms.

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# LIABILITY

## The Parties shall perform the duties assigned to them in the Joint Action with due care. The Parties make no warranties concerning the Results, data or Background, and the use thereof shall take place at the user’s own risk.

## Each Party is liable to the other Parties or to third parties for any damages or loss that the Party claiming compensation may prove to have been caused wilfully or due to negligence of another Party. Notwithstanding the above, the Parties shall not be liable for indirect or consequential damages or losses caused in the execution of the Joint Action towards the other Parties, with the exception of damages arising from the breach of the confidentiality obligations of this Consortium Agreement. Indirect loss refers to damage caused by: the reduction or interruption in production or turnover; other loss arising because the Results cannot be used as intended; loss of profit arising because a contract with a third party has been lost or breached; loss due to damage to property other than Results, or other similar loss that is difficult to foresee. The aggregate liability of a Party under the Consortium Agreement shall be limited to ………………. euros (€……….). Limitation of liability shall not apply to damages caused wilfully or due to gross negligence or to the obligation of a Party to pay back funding or part of it in accordance with the decision of Business Finland.

## A Party is not liable for any delay or non-performance of its obligations due to force majeure. Any event, which prevents or renders the performance of the Joint Action unreasonably difficult within the time specified, shall be considered force majeure. Such events include, but are not limited to, war, insurrection, natural disaster, interruption in the general energy supply, fire, strike, embargo, material restriction imposed by the government budget or by the government on the activities of a Party or Business Finland, the termination of employment, serious illness or accident of a person who is essential for the execution of the Joint Action, or other equally significant and uncommon reason beyond a Party’s control. A delay on the part of a subcontractor for the above reason shall also be deemed to constitute force majeure.

## The Parties shall not be responsible for any defects or delays caused by another Party nor for any delays or damages by a subcontractor that are due to force majeure.

## A Party is entitled to postpone its performance or terminate the Consortium Agreement, if an event of force majeure results in delay. The Consortium Agreement may be terminated only if the delay is essential.

# TERMINATION OF AGREEMENT

## If a Party is in material breach of the Consortium Agreement and fails to remedy the breach within ….. (..) days of being notified of the breach in writing, the non-defaulting Parties have the right to jointly terminate the Consortium Agreement with immediate effect in respect of the defaulting Party.

##  Any access rights granted to the defaulting Party under this Consortium Agreement prior to the termination shall cease immediately upon termination. The defaulting Party shall return all Background, Results and Confidential Information received pursuant to this Consortium Agreement without delay.

## Any access rights granted to the non-defaulting Parties by the defaulting Party under this Consortium Agreement shall remain in force regardless of termination of the Consortium Agreement.

## 13.4 If a Party becomes evidently insolvent or subject to liquidation, debt reorganization or restructuring or bankruptcy, the other Parties shall be entitled to jointly terminate the Consortium Agreement in respect of that Party. The provisions of the Section 13.2 regarding a defaulting Party shall apply to that Party.

# ASSIGNMENT OF AGREEMENT OR A PART THEREOF

## No Party shall, without the prior written consent of the other Parties, assign or transfer the Consortium Agreement in whole or in part to a third party.

# SETTLEMENT OF DISPUTES AND APPLICABLE LAW

## The Parties agree to use reasonable endeavours to amicably settle any disputes arising under this Consortium Agreement.

## Failing to reach an amicable settlement, the Party shall submit the dispute to the District Court of Helsinki as the first instance, except for such matters for intellectual property and copyright, which has been enacted to be within the jurisdiction of the Market Court.

## The Consortium Agreement shall be construed and governed by the laws of Finland.

# VALIDITY OF CONSORTIUM AGREEMENT

## The Consortium Agreement shall enter into force upon its signature by the Parties. The Consortium Agreement shall take retroactive effect from the commencement date(s) of the Joint Action and Public Research Project(s) and continue in force until their termination. The Consortium Agreement will, however, terminate, if the Business Finland’s all funding for the Industry Project and/or Public Research Project(s) is discontinued.

## The Consortium Agreement shall remain in force until the termination of the Joint Action and Public Research Project(s) with the exception of obligations that due to their nature are intended to continue in force beyond the termination of the Consortium Agreement.

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# INVALIDITY OF TERMS

## If one or more of the provisions of this Consortium Agreement are found to be invalid, the validity and enforceability of the remaining provisions of this Consortium Agreement shall not in any way be affected or impaired. The Parties shall replace the invalid provision by a new provision that meets the intention of the Parties when signing this Consortium Agreement.

# AGREEMENT AND AMENDMENTS THERETO

## This Consortium Agreement shall supersede all the previous negotiations, agreements and documents relating to the Joint Action.

## Amendments and changes to the Consortium Agreement shall be valid only if made in writing and signed by an authorised signatory of each of the Parties.