

Seventh Framework Programme

SLHC-PP

Preparatory Phase of the Large Hadron Collider Upgrade

<http://cern.ch/SLHC-PP>

CONSORTIUM AGREEMENT

**Version 1
February 25th, 2008**

CONSORTIUM AGREEMENT

Between,

the EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH (CERN), an International Organization at 1211 Geneva 23, Switzerland, (hereafter referred to as "the Co-ordinator"), and duly represented by its Director-General Dr. Robert Aymar

and,

UNIVERSITY OF SCIENCE AND TECHNOLOGY (AGH-UST) whose address is 30 Al. Mickiewicza, 30059 Krakow, Poland, duly represented by its Vice rector Prof. Jerzy Lis;

COMMISSARIAT A L'ENERGIE ATOMIQUE (CEA-Saclay), whose address is Bâtiment le Ponant D, 25 rue Leblanc, 75015 Paris, France, duly represented by Dr. Jean-Paul Duraud, Deputy Director Direction des Sciences de la Matière ;

CENTRO DE INVESTIGACIONES ENERGÉTICAS, MEDIOAMBIENTALES Y TECNOLÓGICAS (CIEMAT), whose address is 22 Avenida Complutense, 28040 Madrid, España, duly represented by its General Director Dr. Juan Antonio Rubio Rodríguez;

CENTRE NATIONAL DE LA RECHERCHE SCIENTIFIQUE, whose registered office is at 3 rue Michel Ange, 75794 Paris, France, duly represented by its Director of IN2P3 Prof. Michel Spiro, hereafter referred to as "CNRS";

CZECH TECHNICAL UNIVERSITY PRAGUE (CTU), whose address is 4 Zikova, 16636 Praha 6, Czech Republic , duly represented by its Rector Prof. Vaclav Havlicek;

DEUTSCHES ELEKTRONEN SYNCHROTRON (DESY), whose address is 85 Notkesstrasse, 22607 Hamburg, Germany, duly represented by its Scientific Director Prof. Rolf Dieter Heuer;

EIDGENOESSISCHE TECHNISCHE HOCHSCHULE ZÜRICH (ETH ZÜRICH), whose address is 101 Raemistrasse, 8092 Zürich, Switzerland, duly represented by its Vice President of Research Prof. Peter Chen;

STICHTING VOOR FUNDAMENTEEL ONDERZOEK DER MATERIE (FOM-NIKHEF), whose address is 659 Van Vollenhovenlaan, 3527 JP Utrecht, Netherlands, duly represented by its Director Prof. Frank Linde;

GESELLSCHAFT FUER SCHWERIONENFORSCHUNG MBH (GSI), whose address is 1 Planckstrasse, 64291 Darmstadt, Germany, duly represented by its Scientific Director Prof. Horst Stoecker;

IMPERIAL COLLEGE OF SCIENCE, TECHNOLOGY AND MEDICINE (Imperial), whose address is Exhibition Road, South Kensington Campus, SW7 2AZ London,

United Kingdom, duly represented by its Senior Contracts Negotiator – Europe, Mr. Matthew Rackley;

ISTITUTO NAZIONALE DI FISICA NUCLEARE (INFN), whose address is 40 Via Enrico Fermi, 00044 Frascati, Italy, duly represented by its President Prof. Roberto Petronzio;

PAUL SCHERRER INSTITUTE (PSI), whose address is Villigen PSI, 5232 Switzerland, duly represented by its Acting Director Mr. Martin Jermann;

SCIENCE AND TECHNOLOGY FACILITIES COUNCIL (STFC), whose address is Polaris House North Star Avenue, SN1 1SZ Swindon, united Kingdom, duly represented by its Head of Commercial Development, Ms. Linda Baines;

RHEINISCHE FRIEDRICH-WILHELMS UNIVERISTAAT BONN (UBONN), whose address is 3 Regina Pacis Weg, 53113 Bonn, Germany, duly represented by its Financial Director Mr. Franz Joseph Jacobs;

UNIVERSITE DE GENEVE (UNIGE), whose address is 24 Rue du General Dufour, 1211 Genève 4, duly represented by its Vice Rector Prof. Pierre Spierer;

The UNIVERSITY OF SHEFFIELD (USFD) incorporated by Royal Charter (company number RC000667) whose address is Western Bank, Sheffield, S10 2TN, UK, duly represented by its Research Development Manager Ms. Gill Wells;

hereafter individually and collectively referred to as the “Party” or the “Parties” respectively, including the “Co-ordinator”;

WHEREAS the Co-ordinator, on behalf of the other Parties, has submitted a proposal to the Commission as part of the Seventh Framework Program of the European Community for Research, Technological Development and Demonstration Activities under the funding Scheme of “Collaborative Project” for the funding and execution of a project called SLHC-PP (hereinafter referred to as “the Project”);

WHEREAS the Commission has favourably evaluated the Project and has entered into negotiations to carry out the Project under Grant Agreement 212114;

WHEREAS the Parties shall now enter into a Consortium Agreement specifying, inter alia, the liabilities which they have to each other with regard to the Project and the Grant Agreement;

It is agreed as follows:

ARTICLE 1: DEFINITIONS

Terms defined in the Grant Agreement, including its Annexes, shall have the same meaning in this Agreement. Terms defined in the Grant Agreement or in this Agreement are capitalized.

"Agreement" means this Agreement including its Annexes and Amendments thereto made in accordance with Article 25 of this Agreement.

"Annexes" means the following Annexes which form an integral part of this Agreement:

- Annex 1: the Grant Agreement
- Annex 2: Consortium Budget
- Annex 3: Access Rights
- Annex 4: Project Management Plan

"Consortium Budget" means the respective Project Shares and the distribution of the Community funding as it will be agreed by the Parties from time to time.

"Governing Board" means the Governing Board established in accordance with Article 5 of this Agreement.

"Grant Agreement" means Grant Agreement Nr. 212114 including its annexes and any amendments thereto, by and between the Commission and the Parties for the implementation of the Project.

"Defaulting Party" means a Party breaching its obligations under the Grant Agreement or this Agreement.

"Management Team" means the Project Coordinator, his Deputy and the Administrative Manger appointed in accordance with Article 4.5 of this Agreement.

"Project Co-ordinator" means the Project Co-ordinator appointed by the Co-ordinator in accordance with Article 4 of this Agreement.

"Project" means the Project called "SLHC-PP".

"Project Deliverables" means Project Deliverables defined in the Grant Agreement or otherwise agreed by the Parties including Reports, financial statements and certificates on financial statements.

"Project Share" means for each Party the estimated contribution as shown in Annex 2 (Consortium Budget) as it may be amended from time to time.

"Project Work" means the work to be carried out by the Parties as defined in Annex I (Description of Work) to the Grant Agreement.

"Reports" mean Reports to be submitted by the Parties in accordance with the Grant Agreement or the Project Management Plan as the case may be.

“Project Management Plan” means the Project Management Plan as it may be adopted by the Steering Committee from time to time. The Project Management Plan once it has been adopted and any amendments thereto will be attached to this Agreement as Annex 4.

“Software” means:

- software programs, being sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression and in any code form;
- software information i.e. technical information used or usable in or relating to the design, development, use or maintenance of any version of a software program;
- software documentation.

Software may be either in:

- “Source Code” meaning *software* in human readable form, or in
- “Object Code” meaning *software* in machine readable, compiled or executable form.

“Steering Committee” means the Steering Committee established in accordance with Article 6 of this Agreement.

“Work Package” means each Work Package as defined in Annex 1 (Description of Work) to the Grant Agreement.

“Work Package Leader” designates each person responsible for coordinating the Project Work within a given Work Package.

ARTICLE 2: PURPOSE, PRIORITY AND DURATION

- 2.1 This Agreement sets out the obligations, rights and liabilities of the Parties regarding the Project and supplements those set out in the Grant Agreement.
- 2.2 In case of contradiction between the provisions of the Grant Agreement and this Agreement, the former shall prevail.
- 2.3 Following its signature by the Parties, this Agreement shall be deemed to have come into force as of the date of signature of the Grant Agreement and shall continue in full force and effect until complete discharge of all obligations undertaken by the Parties under the Grant Agreement and this Agreement.

For an acceding Party, this Agreement shall enter into force on the date specified in the accession form B following its signature by the authorized representatives of the Co-ordinator and the acceding Party.

ARTICLE 3: ORGANISATION OF THE PROJECT

The Organisational structure of the Project shall comprise the following bodies:

- a Governing Board as the ultimate decision making body representing all Parties and
- a Steering Committee as the executive body representing the Management Team and the Work Package Leaders.

The day-to-day management of Project is entrusted to the Coordinator and the Work Package Leaders.

The interaction (including reporting mechanisms) between the Governing Board, the Steering Committee, the Management Team and the Work Package Leaders, shall be as defined hereunder and in Annex I (Description of Work) to the Grant Agreement.

ARTICLE 4: CO-ORDINATOR

- 4.1 The Co-ordinator shall, in co-ordination with the Governing Board and the Steering Committee, administer the Grant Agreement, ensure the scientific management and direction of the Project and liaise between the Parties and the Commission. To this effect, the Co-ordinator shall discharge on behalf of the Parties such duties as are defined by the Grant Agreement and/or this Agreement. The Parties agree that CERN acts as Co-ordinator for the Project.
- 4.2 The Co-ordinator's tasks shall be as specified in the Grant Agreement including its Annex 1 (Description of Work), and in particular:
- (a) negotiation and signature of the Grant Agreement;
 - (b) relationship and correspondence with the Commission;
 - (c) keeping the Parties informed without delay of any event, decision or correspondence related to the Project or the Grant Agreement;
 - (d) administration, preparation of minutes and follow-up of the meetings and of decisions taken by the Governing Board or the Steering Committee and any other administrative task;
 - (e) final review of Reports;

- (f) overall supervision of progress relative to the time schedules and Project Deliverables;
 - (g) collection and submission to the Commission of Project Deliverables and any other Project-related documents;
 - (h) monitoring of the compliance by the Parties of their obligations under the Grant Agreement,
 - (i) to manage the Community financial contribution and its allocation to the Parties.
- 4.3 The Parties are deemed to approve the terms of the Grant Agreement. Following signature of the Grant Agreement the Co-ordinator shall not submit proposals for changes to the Grant Agreement to the Commission, or accept proposals for changes to the Grant Agreement from the Commission, nor perform any act which implies a financial or other commitment for any Party without the previous written consent of the Party(ies) concerned.
- 4.4 The liability of the Co-ordinator for the tasks specified in this Article 4 shall be deemed included in, and shall be limited to, its liability as a Beneficiary under Annex II (General Conditions) to the Grant Agreement.
- 4.5 The Co-ordinator shall carry out its tasks through the Management Team comprising the Project Co-ordinator, its Deputy and the Administrative Manager. All members of Management Team shall be appointed by the Co-ordinator for one year terms which shall be automatically renewed unless the Governing Board requests the replacement of one of the Management Team members. The responsibilities of the Management Team shall be as described in particular in Annex I (Description of Work) to the Grant Agreement.

ARTICLE 5: GOVERNING BOARD

- 5.1 The Governing Board shall be composed of the Management Team and one designated duly authorized representative of each Party or his proxy. Each Party shall notify the Co-ordinator forthwith of any change of its duly authorized representative or proxy.
- 5.2 Each representative shall have one vote it being understood that the Management Team as a whole shall have one vote and shall be deemed to represent CERN.
- 5.3 At its first meeting the Governing Board shall elect its chairperson for one year, such term being renewable for further one (1) year periods. The Governing Board

shall meet at least once a year or more often in case of a motivated written request by the Project Co-ordinator or a third of all Parties to this Agreement.

- 5.4 All meetings shall be convened by the Co-ordinator (Administrative Manager) liaising with the chairperson, who shall give at least fourteen (14) calendar days prior written notice to the Parties and who shall include the agenda in the notice. Shorter notice may be given subject to prior approval thereof by all Parties and items may be added to the agenda during the meeting if so agreed by all Parties present and voting at the meeting.

Minutes of the meetings of the Governing Board shall be transmitted within seven (7) calendar days by the Co-ordinator (Administrative Manager) liaising with the chairperson to all Parties. They shall be considered as accepted if within (14) fourteen calendar days from receipt no Party has objected in writing to the chairperson.

- 5.5 Subject to Article 5.6 below, decisions shall be taken by a majority of the votes of the Governing Board members present and voting, except in the cases mentioned below in 5.8 b) to 5.8 g) where decisions shall be taken by two thirds majority with exception of the Defaulting Party for decisions under 5.8 f). In case of a tie, the vote of the chairperson shall prevail.

Any decision by a majority vote shall be subject to two thirds of the Governing Board members being present or represented and voting. In case this quorum is not reached, another extraordinary Governing Board meeting may be convened within thirty(30) calendar days where the decision may be re-submitted to a vote

- 5.6 Except in case of default, a Party whose rights or obligations regarding their Background or Foreground, their Project Share or Project Work will be directly affected by a decision may veto such decision.

- 5.7 Decisions may be taken, without a meeting, by e-mail, provided that prior written notice of the matter to be decided upon has been given to all Governing Board members and that all Governing Board members have given their written approval of the proposal to vote by e-mail; and that the decision so taken is approved by the Governing Board members that would have been required to take that decision at a meeting where all entitled to vote would have been present or represented and voting.

- 5.8 The Governing Board, with due respect to the Grant Agreement including Annex I (Description of Work) thereto, shall in particular:

- (a) appoint Work Package Leader following a proposal by the Project Co-ordinator;
- (b) approve or reject Project Deliverables on the basis of recommendations of the Project Co-ordinator reflecting the view of the Work Package Leader concerned;

- (c) amend the Project Work and the Project Share, re-allocate Community funding and amend the Consortium Budget accordingly;
 - (d) make proposals to the Parties for any other amendment to the Grant Agreement or this Agreement;
 - (e) resolve disputes regarding publications and press releases concerning the Project in accordance with Article 14;
 - (f) require the Co-ordinator to issue notices of termination to a Defaulting Party, re-assign that Party's Project Share and Work and request the Commission to accept termination of the Grant Agreement in respect of a Defaulting Party;
 - (g) decide on withdrawal and accession of Parties;
 - (h) request a change of any member of the Management Team;
 - (i) require the Co-ordinator to issue notices of termination to a Party subject to Force Majeure , re-assign that Party's Project Share and Work and request the Commission to accept termination of the Grant Agreement in respect of a that Party;
- 5.9 For the avoidance of doubt, any decision properly taken by the Parties, or by any governing body, pursuant to the provisions of this Agreement, which imposes an obligation on a Party, shall be deemed to be an obligation contained in this Agreement and to which the provisions of this Agreement shall therefore apply.

ARTICLE 6: STEERING COMMITTEE

- 6.1 The Steering Committee shall be composed of the Project Co-ordinator, his Deputy, the Administrative Manager and all Work Package Leaders.
- 6.2 Each Work Package Leader and each member of the Management Team shall have one vote.
- 6.3 The Steering Committee shall be chaired by the Project Co-ordinator or his Deputy. The Steering Committee shall meet as often as deemed necessary by its members and typically four (4) times a year.
- 6.4 All meetings shall be convened by the Co-ordinator (Administrative Manager), who shall give at least fourteen (14) calendar days prior written notice and who shall include the agenda in the notice. Shorter notice may be given subject to prior

approval thereof by all Steering Committee members and items may be added to the agenda during the meeting if so agreed by all Steering Committee members present at the meeting.

Minutes of the meetings of the Steering Committee shall be transmitted within seven (7) calendar days by the Co-ordinator to all Steering Committee members. They shall be considered as accepted if within fourteen (14) calendar days from receipt no member has objected in writing to the chairperson.

- 6.5 Decisions shall be taken by a majority of two-thirds of the votes of the Steering Committee members present and voting it being understood that the Steering Committee shall endeavour to reach consensus on its decisions wherever possible.

Any decision by a two-thirds majority vote shall be subject to two-thirds of the Steering Committee members being present or represented and voting. In case this quorum is not reached, another extraordinary Steering Board meeting may be convened within thirty (30) calendar days where the decision may be re-submitted to a vote.

- 6.6 Decisions may be taken, without a meeting, by e-mail, provided that prior written notice of the matter to be decided upon has been given to all Steering Committee members and that all Steering Committee members have given their written approval of the proposal to vote by e-mail; and that the decision so taken is approved by the Steering Committee members that would have been required to take that decision at a meeting where all entitled to vote would have been present or represented and voting.

- 6.7 The Steering Committee, with due respect to the Grant Agreement including Annex 1 (Description of Work) thereto, shall in particular:

- (a) ensure the implementation of decisions taken by the Governing Board;
- (b) monitor the progress of the work and review Project Deliverables;
- (c) assist the Co-ordinator in ensuring compliance by the Parties of their obligations under the Grant Agreement;
- (d) take executive decisions on administrative and scientific issues,
- (e) adopt or amend the Project Management Plan;
- (e) determine the publications subject to review, review and, as the case may be, prepare publications and press releases;
- (f) prepare meetings and decisions to be taken by the Governing Board and submit the corresponding proposals;
- (g) require the Co-ordinator to issue notices requiring remedy of a breach by a Defaulting Party under this Agreement.

ARTICLE 7: RESPONSIBILITIES OF EACH PARTY

- 7.1 Each Party shall accede to the Grant Agreement in accordance with the procedures and timescales defined therein.
- 7.2 Each Party shall promptly supply the Management Team or the Work Package Leaders, as the case may be, with all such information as they may require to fulfil their obligations under the Grant Agreement or this Agreement or as the Commission may otherwise request.
- 7.3 Each Party shall use reasonable endeavours:
- (i) itself, or as applicable, jointly with other Parties, to participate actively and to perform on time the Project Work assigned to it and to make available rights and information on time to other Parties and the Commission as required under the Grant Agreement or under this Agreement;
 - (ii) to promptly notify the Project Co-ordinator of any delay or difficulty in performance or any non-compliance by itself or other Parties of their obligations under the Grant Agreement;
 - (iii) to inform the Project Co-ordinator of any disputes with another (other) Party(ies);
 - (iv) to prepare and present Reports, financial statements or any other Project Deliverables to be submitted to the Commission under the Grant Agreement in the required format and in sufficient time to enable the Co-ordinator to submit them to the Commission in accordance with the timescales specified in the Grant Agreement taking into account any review to be carried out prior to such submission in accordance with the Grant Agreement or this Agreement;

If the Co-ordinator does not receive Project Deliverables in accordance with applicable timescales he shall be entitled to defer the submission of such Project Deliverables and to submit only the Project Deliverables received within the applicable timescales.

- 7.4 Each Party agrees not to use knowingly, as part of, or in the design of, any Project Deliverable, any proprietary rights (such as intellectual property rights or proprietary information) of a third party for which the Party concerned has not acquired the right to grant user licenses to the other Parties in accordance with the Grant Agreement and with this Agreement.

- 7.5 Each Party shall use reasonable endeavours to ensure the accuracy of any information or materials it supplies to any of the other Parties and promptly to correct any error therein of which it is notified.
- 7.6 Each Party agrees to comply with the Grant Agreement with respect to subcontracting of its Project Work. Subcontracting shall not release the Party concerned from its liability for the performance of its obligations under the Grant Agreement and this Agreement, including the sub-contracted obligation(s). Each Party shall be exclusively liable for its subcontractors, and shall hold the other Parties free and harmless from and indemnify them for any loss or damage, including legal costs, arising from any claim in relation to its subcontract(s).

ARTICLE 8: FUNDING AND PAYMENTS

- 8.1 The Co-ordinator shall distribute any funding received from the Commission according to the following principles:
- the distribution shall reflect the Consortium Budget as set out in Annex 2 to this Agreement as it may be amended from time to time,
 - the distribution of funding shall be subject to the approval by the Commission of Project Deliverables including costs statements,
 - the distribution of funding shall be subject to the provisions of the Grant Agreement and of this Article 8.
- 8.2 Each Party shall be solely liable for its financial statements to the Commission and the acceptance thereof by the Commission. Each Party shall hold the other Parties, including the Co-ordinator free and harmless from any liability arising in connection with its financial statements.

- 8.3 If a Party's justified eligible costs are lower than its Project Share such Party shall receive funding corresponding to its justified eligible costs.
- No Party shall receive funding in excess of its Project Share.
- 8.4 Where a Party withdraws from the Project or this Agreement in accordance with Article 20 or where this Agreement is terminated in respect of a Party, such Party shall refund to the Co-ordinator all funding received by it which does not correspond to duly justified, eligible cost.
- 8.5 Each Party shall bear its own costs incurred in connection with the performance of the Grant Agreement as stated in Annex 2 to this Agreement. Each Party shall ensure that it has at all times the necessary funds available to fulfil its obligations under the Grant Agreement and this Agreement.
- 8.6 The Co-ordinator shall receive all payments made by the Commission. The Co-ordinator undertakes to keep payments made under the Grant Agreement on an account separated from its normal business accounts and its own assets and property.
- 8.7 In case a Party does not provide the Co-ordinator with its Project Deliverables in accordance with the requirements of the Grant Agreement and this Agreement, such Party shall not receive any payment hereunder, until he provides the Project Deliverables in accordance with such requirements or unless the Governing Board decides otherwise. The Governing Board shall be informed about any withholding of payments hereunder.
- 8.8 Payments due in accordance with this Article 8 shall be transferred by the Co-ordinator without undue delay exclusive of bank transfer charges directly to the accounts of the Parties. To this effect the Parties shall notify the Co-ordinator all necessary bank information as well as any modification thereof.
- 8.9 In circumstances not created by a negligent act or omission of the Co-ordinator, where it is not reasonably possible for the Co-ordinator to ensure the timely transfer of payment because of problems in correctly identifying the account or the amount to be transferred to a Party, the Co-ordinator shall transfer the amount concerned as soon as reasonably feasible.
- 8.10 The Co-ordinator shall use reasonable endeavours to notify Parties promptly of the date and amount transferred to their bank accounts.

ARTICLE 9: CONFIDENTIALITY

9.1 The term “Confidential Information” shall mean any data, documents or other material disclosed in relation to this Agreement or the Grant Agreement and which has been identified as confidential by an appropriate marking or legend, or when disclosed orally, has been identified as confidential at the time of disclosure and confirmed in writing within fourteen (14) calendar days there from.

9.2 With respect to Confidential Information the receiving Party agrees:

- to keep confidential and not, without prior permission in writing by the disclosing Party (which permission not to be unreasonably withheld), disclose Confidential Information to any third party, or use it for any purpose other than the performance of its obligations under the Grant Agreement or this Agreement;
- to limit the circle of recipients of Confidential Information on a need-to-know basis and to ensure that the recipients are aware and comply with the obligations as defined in this Article 9;
- to continue to comply with its obligations as defined in this Article 9 for a period of five (5) years from the date of termination of this Agreement;
- on termination of this Agreement to return Confidential Information to the disclosing Party;

provided always that:

- (i) the obligation of confidentiality shall not extend to any information which the receiving Party can demonstrate:
 - (a) was at the time of receipt published or otherwise generally available to the public, or
 - (b) has after receipt by the receiving Party been published or become generally available to the public other than through a breach of its confidentiality obligations by the receiving Party, or
 - (c) is no longer considered confidential information by the disclosing Party, or
 - (d) was rightfully disclosed without any obligation of confidentiality to the receiving Party by a third Party who is in lawful possession thereof and under no obligation of confidentiality, or
 - (e) disclosure of confidential information is foreseen under the Grant Agreement or this Agreement.
- (ii) nothing in this Article 9 shall prevent the communication of information to the Commission or to any Affiliate or to any third Party permitted under the Grant Agreement or insofar as required by law or necessary for the carrying out of the Grant Agreement or of this Agreement and it being understood

that in such case(s) the receiving Party shall obtain similar undertakings of confidentiality as are contained in this Article 9.

ARTICLE 10: LIABILITY

- 10.1 With respect to information or materials supplied by a Party to another Party under the Grant Agreement or this Agreement, the supplying Party shall be under no obligation or liability other than as stated in or resulting from Article 7.5 of this Agreement and no warranty or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or fitness for a particular purpose of such information or materials or the absence of any infringement of any proprietary rights of third parties through the possession or use of such information or materials. The recipient Party shall be entirely responsible for its use of such information or materials and shall hold the other Parties free and harmless and indemnify them for any loss or damage with regard thereto.
- 10.2 Without prejudice to Articles 10.1 and 10.4 of this Agreement, each Party shall indemnify the other Parties, within the limits set out in this Agreement, against all loss, damage or injury resulting from negligent acts or omissions of itself, its employees or its agents. Except in case of gross negligence or wilful damage, the obligation to indemnify shall not extend to claims for indirect or consequential loss or damage, including but not limited to loss of profit, revenue or contracts.
- 10.3 If the Commission, in accordance with the provisions of the Grant Agreement claims any reimbursement, indemnity or payment of damages from one or several Parties:
- (a) each Party whose acts or omissions have caused or contributed to the claim being made shall indemnify each of the other Parties against such claim provided always that the total limit of liability of that Party to the other Parties collectively in respect of any and all claims by the Commission under the Grant Agreement shall not exceed the amount of that Party's Project Share. Any excess amount which may be due to the Commission shall be apportioned between all Parties including the defaulting Party(ies) pro rata to their Project Shares; and
 - (b) in the event that it is not possible to determine which Party or Parties have caused or contributed to the claim being made, the amount due to the Commission shall be apportioned between the Parties pro rata to their Project Shares.
- 10.4 Without prejudice to Article 10.3 each Party shall be solely liable for any loss, damage or injury to third Parties resulting from carrying out its Project Work or from entering into contracts with third parties and shall hold the other Parties free and harmless and indemnify them for any loss and damage with regard thereto.

- 10.5 Except in case of gross negligence and wilful damage each Party's aggregate liability under this Agreement shall not exceed twice that Party's Project Share.

ARTICLE 11: DEFAULT AND TERMINATION

- 11.1 Without prejudice to Article 11.3, in the event of a breach by a Party of its obligations under the Grant Agreement or this Agreement the Co-ordinator shall upon decision of the Steering Committee issue a notice by registered letter in accordance with Article 6.7 (g) of this Agreement requiring the breach to be remedied. The Co-ordinator shall give a copy of the notice to the Commission.
- 11.2 If the breach is irremediable or is not remedied within thirty (30) calendar days of the date of receipt by the Party concerned or if any of the events enumerated in article II.38.1 of Annex II (General Conditions) to the Grant Agreement occur, the Co-ordinator shall, if so decided by the Governing Board as per Article 5.8, request the Commission to terminate the Grant Agreement with respect to the Defaulting Party, unless the Commission has already done so.
- 11.3 This Agreement shall be deemed terminated with respect to a Defaulting Party on the day of termination of the Grant Agreement with respect to such Defaulting Party, provided always that:
- (i) without prejudice to any other rights of the other Parties in those circumstances, the rights and licences granted to the Defaulting Party by the other Parties pursuant to the Grant Agreement or this Agreement shall cease immediately but the rights and licences granted by the Defaulting Party to the other Parties and their sub-contractors shall remain in full force and effect;
 - (ii) the Project Share and Project Work of the Defaulting Party shall be re-assigned to a Party or Parties (who agree(s) to be bound by this Agreement), are selected by the Governing Board and acceptable to the Commission, preferably to one or more of the remaining Parties;
 - (iii) the Defaulting Party shall be liable and indemnify the other Parties for all resulting additional direct cost incurred by them including any reasonable direct cost increase (if any) resulting from the re-assignment of the Defaulting Party's Project Work.
 - (iv) such termination is without prejudice to the Defaulting Party's liabilities accrued until the date of termination.

ARTICLE 12: FORCE MAJEURE

- 12.1 If a Party is subject to force majeure it shall immediately notify the Co-ordinator in writing thereof, giving details, including the expected duration of the force majeure.

It shall immediately notify the Co-ordinator in writing when the force majeure ceases.

- 12.2 The Party who is subject to force majeure shall, during the continuance of the force majeure not be considered to be in breach of its obligations under this Agreement or the Grant Agreement insofar as they are affected by the force majeure and subject to making all reasonable efforts to minimize the consequences of the force majeure on the Project.
- 12.3 If the force majeure continues for a consecutive period of no less than sixty (60) calendar days, the Governing Board may decide to terminate this Agreement with respect to the Party subject to force majeure subject always to the Commission's agreement to terminate the Grant Agreement with respect to that Party.

ARTICLE 13: ACCESS RIGHTS

- 13.1 For the purpose of this Agreement, the terms Background and Foreground shall be deemed to include software.
- 13.2 For the purpose of this Article 13 Access Rights are deemed needed if:
- without such Access Rights the Project Work concerned would be impossible, significantly delayed or require significant additional resources,
 - without such Access Rights the Use of Foreground would be technically or legally impossible.
- 13.3 The Parties agree that:
- Access Rights hereunder shall be granted on a non-exclusive basis,
 - unless stipulated otherwise, Access Rights hereunder shall not include the right to sub-license,
 - Access Rights for Software shall not include access to source code unless stipulated otherwise or unless such access is needed for the execution of the Project.
- 13.4 The Parties have identified and listed in Annex 3 the Background for which they will not grant Access Rights. Each Party shall inform the other Parties as soon as reasonably possible of any conditions or restrictions in relation to its Background.
- 13.5 Access Rights shall be granted upon written request. The Party requesting Access Rights shall submit its request directly to the Party requested to grant Access Rights, with a copy to the Co-ordinator stating the need and the extent of the Access Rights requested. Access Rights shall be subject to a written agreement between the Parties concerned defining the terms and conditions of such access

provided always that such terms and conditions shall be in accordance with the Grant Agreement and this Agreement.

- 13.6 Access Rights to Background or to Foreground needed by a Party to carry out work under the Project shall be granted on a royalty free basis.
- 13.7 Access rights to Background or to Foreground needed by a Party for commercial Use of its own Foreground shall be granted under reasonable and non-discriminatory conditions. Each Party shall be entitled to grant to any other Party or to any third Party a license to use any minor amount of Foreground by another Party unavoidably incorporated into-, or amalgamated with its own, taking into account however the legitimate interest of the owner of such Foreground.
- 13.8 Access Rights to Background or to Foreground needed by a Party for use for internal research or teaching purposes shall be granted on a royalty free basis.

ARTICLE 14: PUBLICATIONS

- 14.1 Without prejudice to Articles 14.2 and 14.3 of this Agreement, any publication relating to Project determined by the Steering Committee to be subject to prior agreement of the Steering Committee shall be submitted to the Co-ordinator in view of its review by the Steering Committee. The review by the Steering Committee of any such publication shall take into account any objection made by a Party in accordance with Article 14.3 but otherwise not be unreasonably withheld.
- 14.2 A Party's publication of Foreground generated by another Party or of any Background of such other Party, even if such Background or Foreground is amalgamated with such Party's Foreground, shall be subject to the other Party's prior written approval not to be unreasonably withheld. If the other Party opposes the publication it shall indicate its reasons for doing and request modifications or specific modalities of publication taking into account possible protection of intellectual property rights. In case of disagreement between the Parties concerned regarding a publication, the case shall be submitted to the Governing Board for arbitration.
- 14.3 Each Party shall provide the other Parties through the Co-ordinator with a thirty (30) calendar day prior notice of any planned publication on its Foreground with copy of all relevant information.

Unless it has granted prior written approval, any Party may object to the publication within fourteen (14) calendar days from receipt of the notification, if it considers and can reasonably demonstrate that the protection/exploitation of its own Foreground could thereby be adversely affected.

Such objection shall be notified to the Co-ordinator with a copy to the requesting Party and shall include either a request for modification or for postponement in the light of a possible protection of intellectual property rights. In case of disagreement between the Parties concerned regarding a publication, the case shall be submitted to the Governing Board for arbitration.

All publications shall include the following disclaimer "the SLH-PP project is funded by the European Commission under the FP7 Research Infrastructures grant agreement no 212114. This document contains material, which is the copyright of certain SLH-PP beneficiaries and the European Commission, and may not be reproduced or copied without permission. The information herein does Commission is not responsible for any use that might be made of data appearing herein. The SLH-PP beneficiaries do not warrant that the information contained herein is capable of use, or that use of the information is free from risk, and information."

- 14.4 The foregoing provisions shall also apply to publications for a degree. However in this case, approval shall be sought at least ninety (90) calendar days before the latest date on which, pursuant to the qualification procedures, the contents of the planned publication can be altered. The Parties concerned shall take all necessary measures to ensure the timely submission, examination, and defence of publication for a degree. Any disputes shall be resolved within ninety (90) calendar days.

Nothing in this Agreement shall prevent:

- (a) a publication to qualify for a degree if such publication includes only incidental or minor elements of Background or Foreground of another Party, provided allways that the intention to publish has been promptly notified in writing to the Party concerned ,
- (b) submission of a publication for a degree for assesement and examination by examiners in accordance with applicable laws and with the required confidentiality obligations to ensure in particular that the protection of Foreground is not compromised.

- 14.5 Nothing in this Agreement shall be construed as conferring any rights to the Parties to use the name(s) or logo of the other Parties without prior agreement in writing of the Party(ies) concerned.

- 14.6 Authorship shall be duly acknowledged.

ARTICLE 15: HIRING/SECONDMENT OF PERSONNEL

- 15.1 Subject to Article 15.2 each Party shall be solely responsible for any personnel hired to carry out work under the Project.
- 15.2 In case personnel employed by one Party temporarily carries out work under this Agreement on the premises of another (hereafter referred to as "secondment"), the following provisions shall apply:

- (a) The persons seconded shall be subject to all regulations, including, in particular, safety regulations, applicable on the site of the Party they are seconded to.
- (b) The personnel seconded by a Party to another shall remain employees of the Party having seconded them and such Party, as employer, shall bear exclusive responsibility for the payment of salary and for the procurement of adequate social security and insurance, including third party liability insurance and health insurance.
- (c) Unless otherwise agreed by the Parties concerned, Foreground generated by personnel seconded by a Party to another shall be owned by the Party having seconded such personnel.

ARTICLE 16: COMPLIANCE WITH APPLICABLE LAWS

- 16.1 Each Party shall comply with applicable laws, namely all laws, treaties, rules, regulations or orders of any local, national and other authority having jurisdiction over it or applicable to its Project Work.
- 16.2 Each Party shall hold the others free and harmless from, and indemnify them for any loss or damage resulting from its infringement of applicable laws.

ARTICLE 17: EQUIPMENT MADE AVAILABLE

- 17.1 Each Party shall, under its sole responsibility use and make available such equipment as is necessary to carry out its obligations under the Grant Agreement and this Agreement.
- 17.2 Prior to any equipment being made available by one Party to another the Parties concerned shall agree on the terms and conditions under which such equipment is made available.

ARTICLE 18: NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall create a partnership or agency between the Parties or any of them. Notwithstanding the foregoing the Co-ordinator is entitled to act for the other Parties for the purposes of the Grant Agreement and this Agreement in accordance with the terms of the Grant Agreement and this Agreement.

ARTICLE 19: ASSIGNMENT

Except as otherwise provided in this Agreement, no Party shall, without the prior written consent of the other Parties, partially or wholly assign or otherwise transfer any of its rights and obligations under this Agreement.

ARTICLE 20: WITHDRAWAL/ACCESSION

20.1 No Party shall be entitled to withdraw from or terminate its participation in this Agreement unless:

- (a) that Party has obtained the prior written approval of the Governing Board (such approval not to be unreasonably withheld) and of the Commission; or
- (b) the Grant Agreement is terminated by the Commission or that Party's participation in the Grant Agreement is terminated by the Commission pursuant to the provisions of the Grant Agreement;

provided always that a Party shall not by such withdrawal be relieved from any liability incurred by that Party under the Grant Agreement or this Agreement at the date of withdrawal or from any of its obligations under the Grant Agreement or this Agreement in so far as they survive the withdrawal or termination.

20.2 A third party may accede to this Agreement subject to having obtained the prior written approval of the Governing Board and of the Commission and subject to the third party's acceptance of this Agreement as well as any specific terms and conditions related to the accession and its signature of the Accession Form B.

ARTICLE 21: SURVIVAL OF ARTICLES

Articles of this Agreement shall survive its termination to the extent necessary to enable the Parties to prevail themselves of any rights or obligations which have accrued prior to termination.

ARTICLE 22: SETTLEMENT OF DISPUTES

22.1 All disputes or differences arising in connection with this Agreement which cannot be settled amicably shall be finally settled by arbitration in accordance with the procedure specified below which shall be adapted in the light of the number of Parties involved.

22.2 Within thirty (30) calendar days of written notification by a Party to the other Party of its intention to resort to arbitration, the first Party shall appoint an arbitrator. The second Party shall appoint an arbitrator within three (3) months of the appointment of the first arbitrator. The two arbitrators shall, by joint agreement and within ninety (90) calendar days of the appointment of the second

arbitrator, appoint a third arbitrator, who shall be the Chairman of the Arbitration Committee.

- 22.3 If the second Party fails to appoint an arbitrator or the two arbitrators fail to agree on the selection of a third arbitrator, the second or, as the case may be, the third arbitrator, shall be appointed by the President of the Court of Justice of the European Communities.
- 22.4 Unless otherwise agreed by the Parties concerned within thirty (30) calendar days of the provision of notice referred to in Article 22.2 above, the arbitration proceedings shall take place in Brussels and shall be conducted in English. The Parties shall within one month of the appointment of the third arbitrator agree on the terms of reference of the Arbitration Committee, including the procedure to be followed.
- 22.5 The Arbitration Committee shall faithfully apply the terms of this Agreement. The Arbitration Committee shall set out in the award the detailed grounds for its decision.
- 22.6 The award shall be final and binding upon the Parties, who hereby expressly agree to renounce any form of appeal or revision.
- 22.7 The costs including all reasonable fees expended by the Parties to any arbitration hereunder shall be apportioned by the Arbitration Committee between these Parties.

ARTICLE 23: GOVERNING LAW

For matters not specifically covered by the terms of this Agreement or where the latter's terms are ambiguous or unclear, reference shall be made to the substantive laws of Belgium exclusively. Such reference is without prejudice to the intergovernmental status any of the Parties may have.

ARTICLE 24: DOCUMENTS – NOTICES

- 24.1 Unless otherwise requested by the Grant Agreement or the Co-ordinator, all documents submitted under the Grant Agreement or this Agreement shall be submitted by e-mail. Unless specified otherwise, any communication or notification "in writing" hereunder may be validly made by e-mail, fax or letter.

24.2 Any notice to be given under this Agreement shall be deemed to have been served when personally delivered or, if transmitted by fax, electronic or digital transmission, when transmitted provided that such transmission is confirmed by receipt of a successful transmission report or confirmed by mail.

24.3 Any notice to be given under this Agreement shall be to the contact person/address identified in the Grant Agreement supplemented by this Agreement. Each Party shall forthwith notify the Co-ordinator of any change in contact person/address.

ARTICLE 25: ENTIRE AGREEMENT – AMENDMENTS

25.1 This Agreement constitutes the entire agreement between the Parties in respect of the Project and supersedes all previous negotiations, commitments and writings concerning the Project.

25.2 Without prejudice to Article 5.9 amendments to this Agreement shall be valid only if made in writing and signed by an authorised representative of each of the Parties.

ARTICLE 26: LANGUAGE

This Agreement is drawn up in English which language shall govern all documents, notices and meetings for its performance and application and/or extension or in any other way relative thereto.

ARTICLE 27: SEVERABILITY

Should any provision of this Agreement be or become invalid or unenforceable this shall not affect the validity of the remaining provisions of this Agreement and the Parties shall agree in good faith on an alternative provision which fulfils the purpose of the invalid or unenforceable one.

SIGNATURES

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorized representatives in separate signature pages the day and year first above written.

EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH (CERN)

Signature(s)

Name(s) Dr. Robert Aymar

Title(s) Director-General

UNIVERSITY OF SCIENCE AND TECHNOLOGY (AGH-UST)

Signature(s)

Name(s) Prof. Jerzy Lis

Title(s) Vice rector

COMMISSARIAT A L'ENERGIE ATOMIQUE (CEA-Saclay)

Signature(s)

Name(s) Dr. Jean-Paul Duraud

Title(s) Deputy Director - Direction des Sciences de la Matière

**CENTRO DE INVESTIGACIONES ENERGÉTICAS, MEDIOAMBIENTALES Y
TECNOLÓGICAS (CIEMAT)**

Signature(s)

Name(s) Dr. Juan Antonio Rubio Rodríguez

Title(s) General Director

CENTRE NATIONAL DE LA RECHERCHE SCIENTIFIQUE (CNRS)

Signature(s)

Name(s) Prof. Michel Spiro

Title(s) Director of IN2P3

CZECH TECHNICAL UNIVERSITY PRAGUE (CTU)

Signature(s)

Name(s) Prof. Vaclav Havlicek

Title(s) Rector

DEUTSCHES ELEKTRONEN SYNCHROTRON (DESY)

Signature(s)

Name(s) Prof. Rolf Dieter Heuer

Title(s) Scientific Director

EIDGENOESSISCHE TECHNISCHE HOCHSCHULE ZÜRICH (ETH ZÜRICH)

Signature(s)

Name(s) Prof. Peter Chen

Title(s) Vice President of Research

**STICHTING VOOR FUNDAMENTEEL ONDERZOEK DER MATERIE (FOM-
NIKHEF)**

Signature(s)

Name(s) Prof. Frank Linde

Title(s) Director

GESELLSCHAFT FUER SCHWERIONENFORSCHUNG MBH (GSI)

Signature(s)

Name(s) Prof. Horst Stoecker

Title(s) Scientific Director

IMPERIAL COLLEGE OF SCIENCE, TECHNOLOGY AND MEDICINE (Imperial)

Signature(s)

Name(s) Mr. Matthew Rackley

Title(s) Senior Contracts Negotiator – Europe

ISTITUTO NAZIONALE DI FISICA NUCLEARE (INFN)

Signature(s)

Name(s) Prof. Roberto Petronzio

Title(s) President

PAUL SCHERRER INSTITUTE (PSI)

Signature(s)

Name(s) Mr. Martin Jermann

Title(s) Acting Director

SCIENCE AND TECHNOLOGY FACILITIES COUNCIL (STFC)

Signature(s)

Name(s) Ms. Linda Baines

Title(s) Head of Commercial Development

RHEINISCHE FRIEDRICH-WILHELMS UNIVERISTAAAT BONN (UBONN)

Signature(s)

Name(s) Mr. Franz Joseph Jacobs

Title(s) Financial Director

UNIVERSITE DE GENEVE (UNIGE)

Signature(s)

Name(s) Prof. Pierre Spierer

Title(s) Vice Rector

UNIVERSITY OF SHEFFIELD (USFD)

Signature(s)

Name(s) Ms. Gill Wells

Title(s) Research Development Manager

ANNEX 1 – Grant Agreement

ANNEX 2 – Consortium Budget

ANNEX 3 – Access Rights

For avoidance of doubt, all background of the CNRS, except that developed by the CNRS/IN2P3/IPNO (i.e. the only research unit involved in the SLHC-PP), is excluded, unless otherwise agreed in specific agreements

ANNEX 4 – Project Management Plan