



**Energy related multidisciplinary  
Knowledge Alliance aiming to introduce  
an innovative training programme**

**CONSORTIUM AGREEMENT**

**May 2013**

## **e-nspiration CONSORTIUM AGREEMENT**

**Relating to the ERASMUS PILOT PROJECTS FOR THE DEVELOPMENT OF KNOWLEDGE ALLIANCES**

**Grant Agreement Number: EAC-2012-0534**

**Project Number: EAC-S03-2012-061**

**Project Acronym: "e-nspiration – Energy related multidisciplinary Knowledge Alliance aiming to introduce an innovative training programme".**

**Among:**

- **Montanuniversität Leoben**, having its offices at Franz-Josef-Straße 18, A-8700 Leoben, Austria (**acting as Project Coordinator/Lead Partner**);
  - Hereinafter referred to as "**MUL**"
  - Represented for the signature of this Project Co-operation Agreement by its authorized representative Dr. Martha Mühlburger (Vice-Rector).
- **Jernkontoret**, having its offices at Box 1721, SE-111 87 Stockholm, Sweden
  - Hereinafter referred to as "**JK**"
  - Represented for the signature of this Project Co-operation Agreement by its authorized representative Dr. Gert Nilson (Vice President).
- **Institute of Materials and Machine Mechanics** – Slovak Academy of Science, having its offices at Račianska 75, SK-83102 Bratislava, Slovakia
  - Hereinafter referred to as "**IMMS**"
  - Represented for the signature of this Project Co-operation Agreement by its authorized representative Dr. Simančík František (Director).
- **Karlstad University**, having its offices at SE-651 88 Karlstad, Sweden
  - Hereinafter referred to as "**KaU**"
  - Represented for the signature of this Project Co-operation Agreement by its authorized representative Prof. Jan van Stam (Dean).
- **Buderus Edelstahl GmbH**, having its offices at Buderusstraße 25, D-35576 Wetzlar, Germany
  - Hereinafter referred to as "**BE**"
  - Represented for the signature of this Project Co-operation Agreement by its authorized representative Johann Weigand (Director).
- **Verein Offenes Lernen TALKADEMY**, having its offices at Meytensg. 35/6, A-1130 Wien, Austria
  - Hereinafter referred to as "**TALK**"
  - Represented for the signature of this Project Co-operation Agreement by its authorized representatives Gerhilde Meissl-Egghart (President) and Klaus Hammermüller (CFO)
- **The Austrian Society for Metallurgy and Materials**, having its offices at Franz-Josef-Straße 18, A-8700 Leoben, Austria
  - Hereinafter referred to as "**ASMET**"
  - Represented for the signature of this Project Co-operation Agreement by its authorized representative Dr. Bruno Hribernik (Managing Director).

**(Hereinafter together referred to as "the Parties")**

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## WHEREAS

1. In the framework of the **Pilot Projects for the Development of Knowledge Partnerships**, the **Parties** have submitted a Proposal for a Project entitled "e-nspiration", hereafter referred to as "**the Project**";
2. **The Project** has been selected for funding by the European Commission;
3. **The Parties**, who have acceded to or accepted the rules of ERASMUS PILOT PROJECTS FOR THE DEVELOPMENT OF KNOWLEDGE ALLIANCES (Action No. EAC-2012-0534). **The Parties** wish to define in addition thereto certain of their rights and obligations inter se with respect to carrying out of **the Project**.

Therefore the **Parties** hereby agree as follows:

## Article 1 DEFINITIONS

**Parties:** means the Parties signing this Cooperation Agreement.

**Coordinator or Lead Partner** refers to Montanuniversität Leoben.

**Project:** means the entire project as described in the work-plan referred to in Annex A to this Agreement.

**Project Deliverables:** means the reports/project results referred to in Annex A of this Agreement.

**Project Documents:** means

- a) CALL FOR PROPOSALS – DG EAC No EAC/S03/2012 Pilot projects for the development of knowledge partnerships/knowledge alliances (including all Annexes and related documents);
- b) e-nspiration GRANT APPLICATION FORM FOR "Pilot projects for the development of Knowledge Partnerships" (EAC/S03/2012) submitted on June 28<sup>th</sup>, 2012 (including all Annexes);
- c) e-nspiration Grant Agreement No. EAC-2012-0534; Project No. EAC-S03-2012-061 (including all Annexes).

**Consortium Agreement or Agreement:** means this agreement including its annexes.

**Change of Control:** means any change in the control exercised over a Party. Such control may result in particular from:

- direct or indirect holding of a majority of the share capital of the Party or a majority of the voting rights to the latter's shareholders or associates, or
- direct or indirect holding in fact or in law of decision-making powers in the Party.

**Force Majeure:** means any unforeseeable and insuperable event affecting the carrying out of the project by one or more Parties.

**Defaulting Party:** means a Party which the Project Policy Board (PPB) has identified to be in breach of this Agreement and/or the Contract.

**Knowledge:** means the results, including information, whether or not they can be protected, arising from this project, as well as copyrights or rights pertaining to such results following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

**Pre-Existing Know-How:** means the information, which is held by the Parties prior to the conclusion of this Agreement and necessary for carrying out the project, as well as copyrights or



rights pertaining to such information following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

**Access rights:** means licenses and user rights to Knowledge or Pre-Existing Know-How.

**Use:** means the direct or indirect utilization of Knowledge in project activities or for developing, creating and marketing a product or process or for creating and providing a service.

**Consortium Budget:** means the allocation of all resources in cash and in kind for the activities as defined in Annex A and Annex C.

**Project Share** of a Party: shall mean that Party's share of the total budgeted cost of the Project as shown in Annex C.

**Software terminology:**

- a. "API" or "Application Programming Interface" shall mean an interface or other means provided for by a Software application, component or library for the purpose of interfacing or interaction of other Software with such application, component or library.
- b. "Software" shall mean software programs, either in "Object Code", i.e. in machine-readable, compiled and/or executable form, or in "Source Code", i.e. in human readable form.
- c. "Software information" shall mean technical information used, or useful in, or relating to the design, development, use or maintenance of any version of a software program.
- d. "Software documentation" shall mean software information in documentary form.

**Dissemination:** means the disclosure of Knowledge by any appropriate means.

**Subcontract:** means an agreement to provide services relating to tasks required for the project and which cannot be carried out by the Party itself, concluded between a Party and one or more subcontractors for the specific needs of the Project.

**Subcontractor:** means a third party carrying out minor tasks not relating to the core work of the Project, by means of a subcontract with one or more of the Parties.

**Contract:** means the Grant Agreement No. EAC-2012-0534; Project No. EAC-S03-2012-061 (including all Annexes) signed between the Coordinator/Lead Partner and the European Commission.

**Legitimate interest** means any interest, in particular of a commercial nature, of a Party which may be invoked in the cases provided for in this Agreement provided that the Party demonstrates that the damage to that interest is likely, given the circumstances, to cause a specific prejudice that is disproportionate, considering the objectives of the provision in respect of which it is invoked.

Unless the context otherwise requires, words and expressions defined in the Grant Agreement and in the Proposal Preparation documents have the respective meanings attributed to them when used in this Agreement.

## **Article 2 PURPOSE AND SCOPE OF THE PARTNERSHIP**

This Agreement governs the rights and obligations of the Parties with respect to the partnership to be carried out for the Project.

The scope of the Project is defined in the **Full Project Proposal**. The Full Project Proposal forms an integral part of this Agreement by reference only.

The Parties shall carry out the Project and their respective tasks under the Project in accordance with the conditions set out in the Project Documents as well as in this Agreement.

Provisions may be added to this Agreement to expand or clarify other aspects, provided that none of them contradicts any of the provisions of the Project Documents and this Agreement.

### **Article 3 COMING INTO FORCE - DURATION**

This Agreement shall enter into force following its signature by all Parties and shall have retroactive effect from December 11<sup>th</sup>, 2012.

This Agreement shall thereafter remain into force for the duration of the Project which is defined:

- Until the fulfilment or termination of the Project and complete discharge of all obligations of the Parties under the Contract and/or under this Agreement as well as any amendment or extension thereof; or
- Until this Agreement is terminated under any cases under Article 10;

Whichever occurs first.

### **Article 4 PROJECT MANAGEMENT**

The Parties shall establish a Project Policy Board (PPB) composed of one representative of each of them. Each partner shall have one vote. The official representative of a partner (or a substitute) may attend and vote at any meeting of the PPB.

The PPB shall be chaired by the Coordinator being also denominated "Project Leader".

The Co-ordinator shall convene meetings of the PPB at any time whenever it is necessary.

The Co-ordinator shall also convene meetings upon written request of any Party in case of an emergency situation.

Any decision requiring a vote at the PPB must be identified as such on the Agenda.

Additionally any decision required to be taken by the PPB may be taken by telephone conferences and/or via mail/fax.

The Co-ordinator shall draft the minutes of each meeting to formalize in writing all decisions taken and shall dispatch them to all Parties within 15 calendar days.

The minutes shall be considered as accepted by the other Parties if, within eight calendar-days from receipt thereof, none of them has objected in writing to the Co-ordinator.

The PPB shall be in charge of notably, in accordance with the rules laid down in the Project Documents.

- a) making proposals to the Parties for the review and/or amendment of terms to this Agreement;
- b) deciding to suspend all or part of the Project;
- c) in case of default of a Party, agreeing on actions to be taken against the Defaulting Party (as defined in Article 10), and making proposals to other Parties to assign the Defaulting Party's tasks, and if appropriate to agree upon a new entity to join the Project for that purpose;
- d) deciding upon the entering into the Project of new Parties and other new Knowledge Alliance Partners;
- e) deciding upon major changes in the tasks assigned to the Parties and more generally in the Project itself and insure full compliance with provisions of the Project Documents in case of amendments.

The PPB, under the responsibility of its Project Leader, shall ensure that the present Project fully comply at all times with any rules laid down in the Project Documents.

The decision-making process within the PPB has been determined between the Parties as follows:

- a) The PPB shall not deliberate and decide validly unless two-thirds (2/3) of its Parties are present or represented.
- b) Each Party of the PPB present or represented in the meeting shall have one vote. In the case of a tied vote the Coordinator has an additional vote.
- c) Defaulting Parties may not vote.
- d) Decisions shall be taken by a majority of votes.

## **Article 5 EXECUTION OF THE CO-OPERATION & SUBCONTRACTING**

Without prejudice to any other obligations under this Agreement, the Parties shall take all necessary measures to perform, fulfil, promptly and in due time all their obligations so that the Project is carried out in accordance with the terms and conditions of the Project Documents and this Agreement.

The Parties shall provide the Co-ordinator with the deliverables, information, and reports as the Co-ordinator requires in order to perform its duties under the Contract and this Agreement.

Each Party undertakes:

- a) to notify the Co-ordinator and each of the other Parties of any delay in performance or of any event that may impact the Project;
- b) to inform the Co-ordinator of relevant communications it receives from third parties in relation to the Project;
- c) to ensure the accuracy of any information or materials it supplies to the other Parties and promptly correct any error therein of which it is notified. The recipient Party shall be responsible for the use to which it puts such information and materials;
- d) not to use knowingly any proprietary rights of a third party for which such Party has not acquired the corresponding right of use and/or to grant licenses;
- e) to act at all times in good faith and in a manner that reflects the good name, goodwill and reputation of the other Parties and in accordance with good business ethics;
- f) to participate in a co-operative manner to the different project meetings (including PPB).

The Parties shall ensure that the work to be performed, as identified in Annex A and Annex B, can be carried out by them. However, where it is necessary to subcontract certain elements of the work to be carried out, this should be clearly identified in the Full Project Proposal. During the implementation of the Project, the Parties may subcontract other minor services, which do not represent core elements of the Project work, which cannot be directly assumed by them and where this proves necessary for the performance of their work under the Project.

## **Article 6 FINANCIAL PROVISIONS & PAYMENTS**

### **Article 6.1 General Principles**

The financial contribution of the European Union to the Project shall be distributed by the Coordinator according to:

- the Consortium Budget as included in Annex C;
- the approval of the reports (including the financial reports) by the European Commission, and

- the provisions of payment in Article 6.2.

A Party shall be funded only for its tasks carried out in accordance with the Project Documents and this Agreement.

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the European Commission. Neither the Co-ordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the European Commission.

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

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

A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by the European Commission or by the PPB. Furthermore a Defaulting Party shall bear any reasonable and justifiable costs occurring to the other Parties in order to perform its tasks. Any additional costs which are not covered by the Defaulting Party shall in principle be apportioned to the remaining Parties pro rata to their share in the total costs of the Project as identified in the Consortium Budget.

## **Article 6.2 Payments**

In particular, the Co-ordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references;
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts;
- undertake to keep the Community financial contribution to the Project separated from its normal business accounts, its own assets and property.

The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following:

- **Pre-financing:** The pre-financing will be paid in two instalments. The first instalment (25% of each partner's funding amount) will be transferred immediately after signature of this Agreement, provided that the Co-ordinator has received the signed form containing the bank details from the respective Party. The 2<sup>nd</sup> instalment (next 25%) will be paid after the Co-ordinator received a signed financial report (covering the first 9 project months) and containing all requested accompanying documents like certified invoices, time sheets, other certificates, etc. and if the first 25% of the corresponding budget of the respective Party has already been spent.
- The final payment will be transferred to each Party immediately after the Co-ordinator received the final payment from the European Commission. Essential condition for the transmission of the final payment is that the signed 2<sup>nd</sup> financial report together with all reporting and supporting documents has been provided by the respective Party in time to the Co-ordinator.

The Co-ordinator is entitled to withhold any payments due to a Party identified to be in breach of its obligations under this Agreement or the Contract. The Co-ordinator is entitled to recover any payments already paid to a Defaulting Party or if the eligible and accepted funding amount (by the European Commission) of a Party is lower in comparison with the payments already received.



## Article 7 CONFIDENTIALITY

During the term of the Project and for a period of two years thereafter, the Parties shall treat as confidential any information in whatever form or mode of transmission, which is disclosed by a Partner (the "Disclosing Partner") to any other Partner (the "Recipient") in connection with the Project during its implementation and to which has been explicitly marked as "Confidential", or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the latest as confidential information.

Accordingly, each Party undertakes that:

- a) the receiving Party shall not use any such information for any purpose other than in accordance with the terms of this Agreement, and
- b) the receiving Party shall not disclose any such confidential information to any third party except with the disclosing Party's prior written consent, and
- c) such information shall neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication have not been specifically authorized in writing by the disclosing Party.
- d) If the receiving Party is required by law (pursuant to legal proceedings, subpoena, or other similar process) to disclose any confidential information, the receiving Party shall promptly notify the disclosing Party in writing.

It shall be at the discretion of the disclosing Party as to which of its information may be disclosed under this confidentiality undertaking.

Disclosure of confidential information pursuant to this confidentiality undertaking in no case, shall be construed as granting to the receiving Party, expressly or implicitly, any license, proprietary right, title or interest whatsoever with respect to the confidential information.

No obligation of confidentiality shall apply to any such information:

- a) has come into the public domain prior to, or after the disclosure thereof and in such case through no wrongful act of the receiving Party; or
- b) is already known to the receiving Party, as evidenced by written documentation in the files of the receiving Party, or
- c) has been lawfully received from a third party without restrictions or breach of this Agreement; or
- d) has been or is published without violation of this Agreement; or
- e) is independently developed in good faith by employees of the receiving Party who did not have access to the Confidential information, or
- f) is required to be disclosed in order to comply with applicable laws or regulations or with a court or administrative order.

The Parties shall impose the same obligations on their employees, who obtain knowledge of confidential information, as far as legally possible even for the time after the end or after the termination of employment.

The Parties shall also impose the same obligations on their Affiliates and subcontractors.

As well it is agreed and understood that the signature of a confidentiality agreement, in terms not less protective than the ones above, shall be a condition precedent to any third party to attend any meeting of the PPB.

Disclosure of information necessary because of the engagement of subcontractors, or for the application of patents, or other industrial property protection in order to be able to develop or to



manufacture and to have manufactured industrial products incorporating certain work results of this cooperation shall not constitute a breach of this Article.

Any parent company or affiliated company shall not be considered as third party provided such parent and/or affiliated company undertake to enter into obligations similar to the provisions of Articles 8, 9 and 10.

Any deliverable/report, which includes the results, that is required to be submitted to the European Commission shall be submitted on the conditions of confidentiality at least to the extent imposed by such Authority.

The Agreement cancels and supersedes all prior understandings and undertakings of the Party relating to the confidential information exchanged or received in the framework of this Agreement pursuant to the Project.

## **Article 8 INTELLECTUAL PROPERTY RIGHTS**

### **Article 8.1 Ownership and Protection of Knowledge**

Knowledge shall be the property of the Party generating it.

Where the Knowledge information is or incorporates or is intended to be or to incorporate a software technology, a software development or a software product, the Parties agree that each Party may take appropriate actions to protect Software results developed by such Party under the Project by such rights as are available under such Party's national legal system including without limitation copyright or any other similar statutory right, and to protect such Software results to the extent reasonably possible as proprietary information.

If, in the course of carrying out work on the Project, a joint intervention, design or work is made (and at least two Parties are contributors), and if the features of such joint invention, design or work are such that it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining in force the protection of the relevant intellectual property right, the Parties concerned agree that they may jointly apply to obtain and/or maintain the relevant rights and shall strive to set up amongst themselves appropriate agreements in order to do so as well as in order to determine utilisation` conditions of such joint inventions by each Party to the appropriate separate agreement.

So long as any such rights are in force, the Parties concerned shall be entitled to use, without owing any financial compensation to or requiring the consent of the other Party concerned, and to license such rights, save as otherwise provided for in the appropriate separate agreement.

In the case where a Party ("Originator") would decide in its sole discretion that it does not intend to seek adequate and effective protection of certain of its Knowledge from the Project, then, the Originator shall inform in writing the other Parties, through the Coordinator, and any Party interested in applying to obtain and maintain such protection shall advise the other Parties, including the Originator, through the Coordinator and in writing within one month of receipt of relevant notice. In the absence of reaction of the other Parties, this Party undertakes to negotiate in good faith with the Originator any appropriate agreement in order to determine utilisation`s conditions of such Knowledge between this Party and the Originator.

In case several Parties are interested in so applying, they shall strive to set up amongst themselves and with the Originator appropriate agreements in order to do so as well as in order to determine utilisation`s conditions of such Knowledge by the interested Parties and the Originator.

The foregoing shall be without prejudice to the Access Rights of all Parties that will remain applicable in accordance with Article 8.4 on Access Rights and with the terms and conditions of any appropriate separate agreements negotiated between the interested Parties.



## **Article 8.2 Publication of Knowledge**

A Party may not publish Knowledge generated by another Party or any Pre-Existing Know How of such other Party, even if such Knowledge or Pre-Existing Know How is amalgamated with such Party's Knowledge, without the other Party's prior written approval.

For the avoidance of doubt, for the period of secrecy needed for a successful patent application, there cannot be any publication during such period without the prior written approval of the Party owner of Knowledge.

A Party shall provide the other Parties with a 15 calendar days prior notice of any planned publication on its Knowledge and, if requested, with copy of relevant publication data. Adequate publication references shall be given in the publication.

Unless it has granted prior written publication approval, any Party may object to the publication within 7 calendar days from receipt of the data, if it considers and can reasonably show that the protection of its own Knowledge could thereby be adversely affected.

Objection shall be made by the issuing Party, with a copy to all the other Parties. An objecting Party shall use its reasonable endeavours to make suggestions for modifications that would, if adopted, make the publication or communication possible.

## **Article 8.3 Dissemination of Knowledge after the end of the Project**

If dissemination of Knowledge does not adversely affect its protection or use and subject to legitimate interests, the Parties shall ensure further dissemination of their own Knowledge as provided under this Agreement.

## **Article 8.4 Access Rights in the scope of the Project or outside the scope of the Project**

Each Party shall take appropriate measures to ensure that it can grant Access Rights and fulfil the obligations under the Contract and this Agreement notwithstanding any rights of its employees, or any person it assigns or engages to perform its own tasks for the Project.

The Parties agree that Access Rights are granted on a non-exclusive and a non-transferable basis.

The Parties also agree that, if not otherwise provided in this Agreement or granted by the owner of Knowledge or Pre-Existing Know-How in an appropriate separate agreement, the Access Rights shall not include the right to grant sub-licenses, except for Affiliates.

Access Rights in the scope of the Project: The Parties agree that the Access Rights on the Pre-Existing Know How and on the Knowledge needed for carrying out the Project shall be granted on a royalty-free basis only for the purpose of the carrying out of the Project.

Access Rights out of the scope of the Project for use of a Party's own Knowledge: the Party/Parties holding the Knowledge (and/or Pre-Existing Know-How) undertakes to negotiate in good faith with another Party, any appropriate separate agreement to organise Access Rights' conditions of the latter to its Knowledge (and Pre-Existing Know-How).

## **Article 9 WARRANTY / LIABILITY**

In supplying any information or materials to any of the other Parties each Party undertakes to use all reasonable endeavours to ensure the accuracy thereof and (in the event of any error therein) promptly on being notified to correct the same, but the supplying Party shall be under no further obligation or liability in respect of the same, and no warranty condition or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or fitness for purpose of such information or materials. The recipient Party shall therefore in any event, be entirely responsible for any use whatsoever of such information or materials.



A Party's aggregate liability towards the other Parties collectively shall be limited to the Party's share of total costs of the Project provided such damage was not caused by a wilful act or gross negligence.

No Party shall be responsible to another for indirect or consequential loss or damages such as but not limited to loss or profit, revenue or loss of contracts.

Each Party shall be solely liable for any loss incurred by, or damage or injury to third parties resulting from implementation by such Party of the Project, in accordance with any applicable law.

Each Party shall remain fully responsible for the performance of any part of its Work Package, or for the performance of its obligations by any Subcontractor.

Therefore said Party shall ensure that (a) such Subcontracts fully comply with the requirements of the Project Documents as well as the requirements of this Agreement; (b) the other Parties' Access Rights (as described in Article 8.4 of the present Agreement) are fully preserved; and (c) the third party shall have no access to any other Party's Knowledge or Pre-Existing Know-How without the latter's prior written consent that such subcontracts fully comply in any case with the present Agreement and appropriate separate agreement(s) negotiated by said Party for Access Rights to any other Party's Knowledge or Pre-Existing Know-How.

Subject to cases of force majeure and to any applicable legislation, the Parties shall use reasonable endeavours to achieve the results aimed at by the Project Documents.

## **Article 10 TERMINATION – RIGHT TO WITHDRAW**

This Agreement expires automatically with the fulfilment or termination of the Project and complete discharge of all obligations of the Parties under the Contract and/or this Agreement.

In the event of a breach by a Party ("the Defaulting Party") of its obligations under this Agreement or the Contract which is irremediable or which is not remedied within 30 calendar days of a written notice from the Co-ordinator requiring that such breach be remedied, then the other Parties may jointly decide to terminate this Agreement with respect to the Defaulting Party following a minimum of 10 day prior written notice by the Co-ordinator.

Should any Party enter into bankruptcy or liquidation or any other arrangement for the benefit of its creditors, then the other Parties may immediately terminate this Agreement with respect to the before mentioned Party. The same provisions shall also apply as indicated in relation with the Defaulting Party.

Such termination shall take place with respect to the Defaulting Party, who shall be deemed to have agreed to the termination of this Agreement in respect of its participation therein, provided always that:

- a) any and all Access Rights granted to the Defaulting Party and its Affiliates by the other Parties under this Agreement shall cease immediately; but any and all Access Rights granted by the Defaulting Party to the other Parties and their Affiliates under this Agreement shall remain in full force and effect;
- b) the tasks of the Defaulting Party shall be assigned to one or several companies and/or entities which are chosen by the other Parties and which agreed to be bound by the terms of the Agreement. The preference shall be granted to one or more of the remaining Parties;
- c) the Defaulting Party shall:
  - i. assume all reasonable direct costs (if any) resulting from the assignment referred to in b) above in comparison with the costs of the tasks of the Defaulting Party as specified in Annex A or Annex B and
  - ii. be liable for any so resulting additional direct cost incurred by the other Parties, up to a total amount which shall not exceed the Defaulting Party's Project Share, and any



any excess amount shall be shared between the Parties (including the Defaulting Party) pro rata to their Project Shares at the time of exclusion of the Defaulting Party.

The provisions in relation with the Defaulting Party shall also apply in the events that:

- a) A Party is entitled to withdraw from the Project or to otherwise request the termination of its participation in the Project having obtained the prior written consent of the other Parties (such consent not to be unreasonably withheld).
- b) After the entry into force of this Agreement any third party would acquire, directly or indirectly, the ownership or control of more than 50% of the voting shares of a Party of this Agreement, the other Parties may unanimously decide to terminate this Agreement in respect to such Party.

In case of takeover of any Party's tasks all rights and obligations under the Contract and this Agreement shall in good faith be redistributed among the remaining Parties.

Neither Party shall by reason of withdrawal or termination be relieved from:

- a) Its responsibilities under this Agreement or Contract in respect of that part of that Party's tasks which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or
- b) Any of its obligations or liabilities arising out of such withdrawal or termination.

The provisions of the Articles of this Agreement relating to liability, confidentiality, intellectual property rights and publications shall survive the term or termination of this Agreement for any reason whatsoever for a period of two years.

For the avoidance of doubt, termination or withdrawal shall not affect any rights or obligations incurred prior to the date of termination.

## **Article 11 FORCE MAJEURE**

Force Majeure shall mean any act, event or condition beyond the reasonable control of a Party that was not reasonably foreseeable at the time of execution of this Agreement and is not avoidable under normal circumstances, including but not limited to acts of God, war, riots, acts of Government or any state or political subdivision thereof, fires, floods, explosions of other catastrophes, labour disturbances, freight embargoes or material shortages.

No Party shall be liable for any failure to perform or any delay in performing any of its obligations under this Agreement if such failure or delay arises out of Force Majeure. The Party facing an event of Force Majeure shall promptly notify the Co-ordinator/other Parties and shall use its reasonable endeavours to remedy any default or delay occasioned thereby forthwith upon such event ceasing to apply.

In case of frustration of this Agreement or if the fulfilment of substantial provisions of this Agreement is affected by Force Majeure, the Parties shall endeavour to adapt the Agreement to the new situation. In the event that the Parties do not agree upon such an adaptation within a period of 4 weeks, the Agreement shall, as far as such Party is concerned, be terminated without notice by the Party that cannot reasonably be expected to fulfil this Agreement.

## **Article 12 INSURANCE**

Each Party undertakes to enter into all necessary insurance policies in order to cover all risks arising out of the performance of the tasks allocated to it pursuant to Annex A and/or B (or any decision of the PPB).

## **Article 13 LANGUAGE**

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

## **Article 14 NOTICES**

Any notice to be given under this Agreement shall require documents duly signed and personally delivered or delivered by mail. They shall be addressed to the attention of the main contact person of each Party or to such other address and recipient as a Party may designate in respect of that Party by written notice to the other Parties.

## **Article 15 ANNEXES, CONFLICTS AND INCONSISTENCIES**

The Annexes to this Agreement, which are an integral part thereof, are

Annex A (Grant Agreement No. EAC-2012-0534; Project No. EAC-S03-2012-061)

Annex B (Grant Application Form for “Pilot projects for the development of Knowledge Partnerships”)

Annex C (Project Cost Breakdown)

In the event of conflict or inconsistency between any provision contained in the body of this Agreement and any provision contained in its Annexes, the provisions contained in its Annexes shall prevail.

## **Article 16 ASSIGNMENTS - AMENDMENTS**

Any rights or obligations of the Parties arising from this Agreement may not be assigned or transferred in all or in part to any third party without the other Parties` prior written approval and such consent shall not be unreasonably withheld if to an Affiliate of the assigning Party.

All amendments and modifications to this Agreement require documents duly signed by all Parties.

## **Article 17 SEVERABILITY**

Should any provision of this Agreement prove to be invalid or incapable of fulfilment, or subsequently become invalid or incapable of fulfilment, whether in whole or in part, this shall not affect the validity of the remaining provisions of this Agreement. In such a case, the Parties shall be entitled to demand that a valid and practicable provision be negotiated which most nearly fulfils the purpose of the invalid or impracticable provision.

## **Article 18 RESTRICTIONS**

The activities contemplated by this Agreement are subject to any mandatory rules or regulations that may be applicable in the countries in which the Parties` activities occur. Nothing in this Agreement shall be deemed to be an agreement to violate such rules and regulations. To the extent any such rules or regulations forbid or restrict any of the activities contemplated hereunder, the Parties agree, that this Agreement shall not obligate either Party to conduct such activity.

## **Article 19 APPLICABLE LAW**

This Consortium Agreement shall be construed according to and governed by the law of Austria.

## **Article 20 SETTLEMENT OF DISPUTES**

In case of dispute or difference between two or among several Parties arising out of or in connection with this Agreement, the Parties shall first endeavour to settle it amicably.

All disputes of differences arising in connection with this Agreement, which cannot be settled amicably shall be subject to the jurisdiction of the appropriate national court of Austria.

## **Article 21 SIGNATURES**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement in 7 original copies.

**Montanuniversitaet Leoben**

**Signature & Stamp**



**Name** Dr. Martha Mühlburger

**Title** Vice rector



**Jernkontoret**

**Signature & Stamp**

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**Name** Dr. Gert Nilson

**Title** Vice President

Ústav materiálov a mechaniky strojov Slovenskej akadémie vied

Signature & Stamp

Name Dr. Karol Iždinský

Title Director



**Karlstad University**

**Signature & Stamp**



**KARLSTAD UNIVERSITY**

Faculty of Health, Science and Technology  
SE-651 88 Karlstad  
SWEDEN

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**Name** Prof. Jan van Stam

**Title** Dean

**Buderus Edelstahl GmbH**

**Signature & Stamp**

Geschäftsführung

04. Juni 2013

35576 WPCZM

Name Johann Weigand

Title Director



**Verein Offenes Lernen TALKADEMY**

**Signature & Stamp**

\_\_\_\_\_  
**Name** Gerhilde Meissl-Egghart

**Title** President

\_\_\_\_\_  
**Name** Klaus Hammermüller

**Title** CFO

talkademy.org  
Verein Offenes Lernen  
Meytensg. 35 / 6 1130 Wien Austria  
ZVR 066113569

**The Austrian Society of Metallurgy and Materials**  
**Signature & Stamp**

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**Name** Dr. Bruno Hribernik

**Title** Managing Director

**ANNEX A (Grant Agreement No. EAC-2012-0534;  
Project No. EAC-S03-2012-061)**

**ANNEX B (GRANT APPLICATION FORM FOR “Pilot  
projects for the development of Knowledge  
Partnerships” (EAC/S03/2012) submitted on June 28<sup>th</sup>,  
2012)**



## **ANNEX C (Project Cost Breakdown)**

## OVERVIEW:

Partner	Travel	Staff	Other	Sub-Total Direct Costs	Sub-Total Indirect Costs 7%	Total Costs	EU Funding 70%
MUL	28.380	76.022	3.720	108.122	7.569	<b>115.691</b>	<b>80.983</b>
JK	15.780	28.328	3.500	47.608	3.333	<b>50.941</b>	<b>35.658</b>
ASMET	15.460	31.370	2.800	49.630	3.474	<b>53.104</b>	<b>37.173</b>
IMMS	15.390	9.144	13.950	38.484	2.694	<b>41.178</b>	<b>28.825</b>
KaU	11.220	37.430	0	48.650	3.406	<b>52.056</b>	<b>36.439</b>
BE	20.370	28.580	800	49.750	3.483	<b>53.233</b>	<b>37.263</b>
TALK	7.440	41.480	0	48.920	3.424	<b>52.344</b>	<b>36.641</b>
	114.040	252.354	24.770	<b>391.164</b>	<b>27.381</b>	<b>418.545</b>	<b>292.982</b>

Please note that the transfer between the different cost categories of a Party cannot exceed 10% of the amount of each heading of estimated eligible costs for which the transfer is intended, and without exceeding the total eligible costs of the corresponding Party.