

Agreement on Mutual Cooperation in Preparing and Creating a New Proposal of a Large Research Infrastructure for the Purposes of the Ex-Ante International Assessment of Large Research Infrastructures of the Czech Republic in 2021

concluded pursuant to the provisions of Section 1746 (2) of Act No. 89/2012 Coll., the Civil Code, as amended, by and between the following research organisations:

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(Hereinafter separately only as the “**Contracting Party**” and jointly as the “**Contracting Parties**” or the “**Consortium**”)

PREAMBLE

Since 2010, the Ministry of Education, Youth and Sports of the Czech Republic (hereinafter only as the “MEYS”) has been mapping the unique research and infrastructure capacities which are, in the Czech Republic or with the participation of the Czech Republic abroad, operated and made available to users on the principle of an open access policy. The output of this activity consists in a strategic document, the so-called Roadmap of Large Research Infrastructures of the Czech Republic, which also represents the concept of supporting large research infrastructures of the Czech Republic from public funds.

Large research infrastructures are unique facilities with high knowledge and technological complexity, operated on the principle of an open access to their capacities. Thus, host institutions operate large research infrastructures to be used by all their potential users. Large research infrastructures enable their user communities to achieve completely breakthrough knowledge in the areas of basic and applied research, as well as the development of advanced technologies with high potential for application in innovative products and services with high added value.

The Ministry of Education, Youth and Sports provides targeted support for these large research infrastructures to finance their operating costs. Until now, the investment needs of large research infrastructures have been financed by the Ministry of Education, Youth and Sports with the help of the European Structural and Investment Funds from the relevant operating programmes, whereas this method of funding investment needs has also been announced for the 2021+ programming period.

In association with the forthcoming update of the Roadmap of Large Research Infrastructures of the Czech Republic in 2023, the MEYS will also carry out an ex-ante assessment of new proposals for large research infrastructures, which thus have the opportunity to be newly included in the above-mentioned roadmap. The relevant update will consist in launching a new multi-annual framework for the support of large research infrastructures from public funds in the Czech Republic in the period from 2023 to 2029.

The Contracting Parties hereby declare their interest in jointly submitting a new proposal for a large research infrastructure as part of the ex-ante assessment and thus applying for its inclusion in the Roadmap of Large Research Infrastructures in the Czech Republic.

The large research infrastructure consists of the Single Point Access (SPA) resources managed by a “leading host institution” and the capacities of individual nodes (NODES). The capacities of individual nodes are expressed as separate tangible and intangible resources of a node, including staff and co-operators, know-how, information resources, research results, and databases of a unique nature intended primarily for research purposes. The nodes serve as the basic building blocks of the distributed large research infrastructure. In the event of a positive result of the ex-ante assessment and the provision of support by the MEYS, the Contracting Parties will operate individual nodes as host institutions under the organisational support of the main applicant, the proposer of the new large research infrastructure.

For this purpose, the Contracting Parties have agreed on the fundamental principles and arrangements to be followed in their mutual cooperation set out below.

Article 1

Subject Matter and Objectives of the Cooperation

1. The subject matter of this Agreement on Mutual Cooperation in Preparing and Creating a New Proposal of a Large Research Infrastructure entitled the “**Research Infrastructure for 21st Century Mechanical Engineering (RIME21)**” for the purposes of the International Assessment of Large

Research Infrastructures of the Czech Republic in 2021 (hereinafter only as the “Agreement”) consists in the regulation of certain rights and obligations of the Contracting Parties and the establishment of general principles of mutual cooperation in preparing a joint proposal for the purposes of the ex-ante assessment of new proposals for large research infrastructures of the Czech Republic (hereinafter only as the “Proposal”), which may be submitted solely in accordance with the specified thematic areas defined in Annex No. 2 of the call for submission of the documentation for the International Assessment of Large Research Infrastructures in the Czech Republic in 2021.

2. The Proposal will be submitted in the initial phase within the ex-ante assessment of new proposals for large research infrastructures, which has been organised by the MEYS on the principle of international peer-review since 2014. The Proposal is to be submitted in the form prescribed by the MEYS. The Proposal will focus on the area of Physical Sciences and Engineering, specifically on the defined thematic area according to Annex No. 2 “Unique Facilities and Functionalities for Mechanical Engineering Applications of the 21st Century”. The proposal of the large research infrastructure RIME21 is based on the basic floor plan (thematic, organisational, and professional) of the integrated National Competence Centres – NCC Engineering (NCCE) and NCC Mechatronics and Smart Technologies for Engineering (NCC MESTEC).

Article 2

Terms and Conditions of Cooperation. Partnership Principles

1. Under the terms and conditions specified in this Agreement, the Contracting Parties hereby undertake to jointly participate in preparing and creating the Proposal and to provide any co-operation subsequently in the course of the assessment procedure.
2. Within the mutual cooperation under this Agreement, the Contracting Parties, shall in particular:
 - a) Make any reasonable efforts in its participation in preparing and creating the Proposal;
 - b) Provide all necessary cooperation within the appropriate deadlines and the necessary quality for preparing and processing the Proposal;
 - c) Ensure the sufficient staffing on their part so that all necessary activities are covered – e.g. designation of a contact person responsible for effective communication with other contracting parties, and especially with the coordinating Contracting Party, as well as establishing suitable conditions for their employees involved in preparing the Proposal, etc.;
 - d) Provide one another with the information necessary for the successful preparation and processing of the Proposal, as well as consult with one another on those activities which overlap or fall within the competence framework of another Contracting Party;
 - e) Immediately inform the coordinating Contracting Party of all facts which have or could have a significant impact on preparing of the Proposal, and of any other facts decisive in the fulfilment of obligations arising from this Agreement.
3. In addition, the Contracting Parties hereby agree that the mutual cooperation shall follow these principles:
 - a) The Contracting Parties will act towards third parties / entities in such a manner that the interests of the other Contracting Parties are not subject to any harm;
 - b) Owing to its strategic importance, the Contracting Parties dedicate their key technologies and key / excellent researchers in the defined scientific and professional domains to the preparation of the Proposal, according to the selection and profiling of individual nodes of the distributed large research infrastructure RIME21;
 - c) In the context of the activities carried out, the Contracting Parties will seek to contribute to the development of the good reputation of the entire Consortium and its individual members;

- d) The Contracting Parties shall refrain from any activity which could, to a significant extent, jeopardise the success of the Proposal in the context of the assessment or would be of a directly competitive nature;
 - e) The Contracting Parties will act responsibly, proactively, ethically and professionally in their participation in preparing and creating the Proposal;
 - f) The Contracting Parties will provide mutual assistance with the preparing and creating the Proposal according to their capacities.
4. The individual Contracting Parties shall be responsible for the management of any potential risks.

Article 3

Consortium and the Role of the Coordinator

1. The Contracting Parties have agreed that preparing and drafting the Proposal will be coordinated by Brno University of Technology through its the Faculty of Mechanical Engineering acting as the so-called *Leading Host Institution* (hereinafter only as the “Coordinator”).
2. The Coordinator may, in particular:
 - a) Instruct the other Contracting Parties to provide cooperation;
 - b) Require the other Contracting Parties to fulfil the obligations undertaken in accordance with this Agreement;
 - c) Act externally as a representative of the Consortium, in particular the Coordinator may sign and submit the Proposal to the ex-ante international assessment on behalf of the Consortium
3. The Coordinator shall communicate with the other Contracting Parties mainly through designated contact persons and for this purpose, the Coordinator shall keep a list of them. It is the responsibility of each Contracting Party to notify the Coordinator of any change of contact person without undue delay.

Article 4

Council

1. For the purposes of strategic direction of the cooperation of the Consortium members, internationalisation, support of RIME21 at the national level and top support of internal management of RIME21, the Consortium shall establish the RIME21 Council (hereinafter only as the “Council”), which shall act as an advisory body to the Consortium. The Council shall elect a Chairman from among its members, who shall subsequently convene and chair the meetings of the Council. However, the Council may be convened by the Coordinator if necessary.
2. The Statute and the Rules of Procedure shall provide more detailed regulation of the functioning of the RIME21 Council. The Coordinator undertakes to submit these documents to all members of the Consortium in the event of the positive ex-ante assessment of the project Proposal as part of the nomination and selection process of the RIME21 Council members. The members of the Council will be selected by the Consortium from among experts engaged in the research, application or public spheres of the relevant fields so that the Council fulfils its advisory function with regard to the strategic mission and the nature of RIME21.

Article 5

Financial Obligations and Contributions to Fulfilling the “Key Performance Indicators”

1. In the initial phase of preparing and creating the Proposal, all own activities shall be funded by the Contracting Parties from their own resources and according to their capacities.
2. In the case of any subsequent phases, the financial obligations of the Contracting Parties shall be determined by mutual agreement in the Partnership Agreement.

3. The Proposal of the new large research infrastructure RIME21 will include the estimated costs for each Consortium member hosting one or more RIME21 nodes, broken down into total costs and eligible costs associated with the MEYS requirement for direct support of an operational and investment nature following the ex-ante assessment. Any eligible expenses with the requirement of direct support will be calculated according to the documents of the Consortium members, up to a limit of CZK 11.2 million of capital expenditures and CZK 15.4 million of non-capital expenditures per node. The Coordinator's estimated eligible costs and expenses associated with the direct support shall also include common costs of an investment and non-investment nature. The common costs shall include (i) costs for the management and provision of the single-site point access function; and (ii) costs for integration (joint) partial projects of the Consortium members and individual calls coordinating user access, which will be drawn on the basis of internal call rules and performance parameters over the period of 2023-2029.
4. The Proposal of the new large research infrastructure RIME21 will contain the expected contributions to the determined target values of the so-called "key performance indicators" of each Consortium member hosting one or more RIME21 nodes.

Article 6

Protection of Confidential Information and Prohibition of Misuse

1. The purpose of this article is to further define the confidential information of the Contracting Parties and to undertake the obligation of the Contracting Parties to maintain the confidentiality of any such confidential information and not to disclose or allow access to third parties, or not to use it for their own benefit or for the benefit of third parties, unless stipulated otherwise in this Agreement. In relation to the confidential information concerning the Proposal, the Contracting Parties undertake to act ethically and in accordance with good morals, as well as they undertake to observe its prohibition of its misuse and to proceed in all respects so as to create a secure space for sharing and exchanging information in order to benefit, to the maximum extent possible, from the mutual cooperation in preparing and creating the Proposal.
2. Confidential information: The Contracting Parties hereby expressly declare that all information relating to the Proposal, regardless of the form and manner of its communication or recording, is considered confidential, or their trade secrets, unless expressly agreed otherwise in a specific case. In particular, the Contracting Parties shall treat as confidential all information of a technical or commercial nature relating to the Proposal which either Contracting Party makes available to the other Contracting Party, unless the providing Contracting Party expressly states at the time of transmission that the information is not of a confidential nature. Furthermore, the which that are or potentially could be competitively significant in relation to other proposals submitted to the International Assessment of Large Research Infrastructures of the Czech Republic in 2021 are considered to be the confidential information.
3. Each Contracting Party undertakes to ensure the confidentiality of all confidential information with due care and not to disclose the confidential information obtained from the other Contracting Party without its prior written consent to a third party, with the exception of other Contracting Parties (permitted sharing of the confidential information within the Consortium). The confidential information may be disclosed only to those staff members of the Contracting Party (employees and other collaborators under the contract, such as consultants, invited experts, etc.) who need to know it in order to properly perform their duties in preparing and creating the Proposal and who are bound by the confidentiality duty to at least the same extent as set forth in this Agreement. The Contracting Parties further undertake not to use the confidential information contrary to its purpose or the purpose of providing it for their own needs or for the benefit of third parties.
4. The obligation to protect confidential information shall not apply to any information already lawfully published and to any information which has been requested by a court, public prosecutor's office or any other competent administrative body under the law.

5. The disclosure of the confidential information to another Contracting Party shall not establish any right to a licence, trademark, patent, right to use or distribute the copyrighted work, or any other intellectual or industrial property right.
6. The obligations of the Contracting Parties set out in this Article, in relation to the confidential information made available / disclosed within the term of this Agreement, shall survive the termination of this Agreement.
7. If classified information is also disclosed by the Contracting Parties pursuant to a special law, handling any such information shall be governed by the applicable legislation.

Article 7

Early Termination of the Agreement

1. Either Contracting Party may unilaterally withdraw from this Agreement solely in the event of a material breach of this Agreement by another Contracting Party. Withdrawal from this Agreement shall be notified by the withdrawing Contracting Party to the other Contracting Parties without undue delay, otherwise within 10 business days, upon the moment when it became aware of the fact establishing the possibility of withdrawal, otherwise its right to withdrawal shall expire. Withdrawal from the Agreement shall become effective upon its served onto the Coordinator to whom all the Contracting Party grant their power of attorney in this respect.
2. This Agreement may be terminated in relation to an individual Contracting Party for a material breach of this Agreement or repeated failure to fulfil the obligations associated with participation in preparing and creating the Proposal. A proposal to terminate the Agreement with a specific Contracting Party may be submitted by any Contracting Party. This proposal shall be decided unanimously by all other Contracting Parties (except the Contracting Party subject to the termination). The act of terminating the Agreement with the relevant Contracting Party shall be performed by the Coordinator to whom all the Contracting Party grant their power of attorney in this respect.
3. Withdrawal from the Agreement in accordance with Section 2005 of Act. No. 89/2012 Coll., the Civil Code, as amended, shall not affect the right to compensation for damage arising from a breach of contractual obligation or an arrangement which, due to its nature, is binding on the Contracting Parties even after the withdrawal from the Agreement, in particular the arrangements on the manner of resolving disputes, the protection of the confidential information, and the prohibition of misuse pursuant to Article 6 of the Agreement. Similarly, in the event of the termination under the preceding paragraph, the obligations to protect the confidential information and prohibit misuse under Article 6 of the Agreement shall remain effective in relation to the confidential information which was made available / disclosed between the Contracting Parties until the termination becoming effective.

Article 8

Final Provisions

1. The Contracting Parties hereby exclude the application of the provisions on the company pursuant to Section 2716 et seq. Act No. 89/2012 Coll., the Civil Code, as amended.
2. In the event that either Contracting Party causes damage to the other Contracting Party by breach of this Agreement, the Contracting Party concerned shall be liable for it in accordance with the general legal regulations.
3. Any rights and obligations not regulated by this Agreement shall be governed by Act No. 89/2012 Coll., the Civil Code, as amended.
4. This Agreement may only be amended in writing; its amendments in any other form shall be excluded. The written form shall be complied with even in legal acts made by electronic means in the form of an electronic document, provided that the document is signed by the appropriate type of the recognised electronic signature according to the requirements of Section 5 et seq. of Act No. 297/2016 Coll., on Services Establishing Trust for Electronic Transactions.

5. The Contracting Parties have agreed that any disputes arising during the performance of the Agreement will be resolved by mutual agreement. If the dispute cannot be resolved by agreement, any disputes arising from the Agreement and in association with it will be decided by the court with substantive and territorial jurisdiction according to the Coordinator's registered office.
6. This Agreement shall enter into force and effect upon signature by the last of the Contracting Parties.
7. This Agreement contains the entire agreement on the subject matter of the Agreement and all the requisites which the Contracting Parties were supposed to and wished to agree in the Agreement and which they consider important for the binding nature of this Agreement. No statement made by the Contracting Parties in the course of the negotiation of this Agreement or any statement made after the conclusion of this Agreement shall be construed in a manner inconsistent with the express provisions of this Agreement and shall not establish any obligation on the part of either Contracting Party.
8. The Contracting Parties hereby expressly confirm that this Agreement is the result of their negotiations and that each of the Contracting Parties has had the opportunity to influence its fundamental terms and conditions.

[SIGNATURE PAGES TO FOLLOW]