

CONSORTIUM AGREEMENT

for

**HYDROGEN VALLEY ESTONIA
(EESTI VESINIKUORG)**

CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is made on 18 April 2023, hereinafter referred to as the Effective Date

Between:

Estonian Association of Hydrogen Technologies (in Estonian **MTÜ Eesti Vesinikutehnoloogiate Ühing**) (abbreviation **H2EST**, also the **Coordinator**), established under the laws of Estonia, registry code 80401368, located at Valukoja 23, Tallinn 11415, Estonia, represented by management board member Marek Alliksoo,

Eesti Energia AS (abbreviation **Enefit**), established under the laws of Estonia, registry code 10421629, located at Lelle 22, Tallinn 11318, Estonia, represented by management board members Raine Pajo and Kristjan Kuhi,

Aktiaselts TALLINNA SADAM (abbreviation **Tallinna Sadam**), established under the laws of Estonia, registry code 10137319, located at Sadama tn 25, Tallinn 15051, Estonia, represented by chairman of the management board Valdo Kalm and management board member Andrus Ait,

AS Alexela (abbreviation **Alexela**), established under the laws of Estonia, registry code 10015238, located at Roseni tn 11, Tallinn 10111, Estonia, represented by management board member Marti Hääl,

Tartu Ülikool (abbreviation **UT**), established under the laws of Estonia, registry number 74001073, located at Ülikooli tn 18, Tartu 50090, Estonia, represented (with power of attorney) by director of the institute of chemistry Enn Lust,

hereinafter, jointly or individually, referred to as "Parties" or "Party",

relating to the joint initiative entitled **Hydrogen Valley Estonia** (in Estonian **Eesti Vesinikuorg**), in short **HVE**.

Whereas:

- (i) the Parties, having considerable experience in the field concerned, are interested in establishing a nationwide strategy, governance and integration to REPower European hydrogen value chains;
- (ii) the Parties are interested in working together to realize joint objectives;
- (iii) the Parties wish to foster the integration in other European hydrogen value chains;
- (iv) the Parties wish to specify or supplement binding commitments among themselves.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1 Purpose

The purpose of this agreement (referred to also as "**Consortium Agreement**") is to set out, within the framework of the cooperation of a sectoral initiative, the circle of HVE participants and their functions, their rights and responsibilities for the functioning of HVE in the field of hydrogen, and the relations between the participants within the framework of HVE.

The aim of this Consortium Agreement is also to specify with respect to the joint activities under HVE (referred to as "**Project(s)**") the relationship among the Parties, in particular concerning the organization of the work between the Parties, the management of such Projects and the rights and obligations of the Parties.

The purpose of establishing HVE is to become a driver of the hydrogen economy in Estonia by accelerating the energy transition and independency of the whole country. The intention is for HVE to become the go-to party to get involved in hydrogen topics in Estonia. The strategic goals of HVE are as follows:

- a) shared knowledge development through (international) information exchange;
- b) acceleration of innovation through cooperation in programmes and shared innovation challenges;
- c) better access to labour through shared promotion of hydrogen economy and technology, also education, training, reskilling and upskilling;
- d) implementation of synergies between projects in terms of planning, hydrogen volumes and offtake security;
- e) better international positioning through shared value propositions within the Large-Scale Hydrogen Valley along the North Sea Baltic corridor, including:
 - (i) fostering economic opportunities for international collaboration, hydrogen export, and EU subsidy schemes;
 - (ii) attracting funding by finding new participants or making use of (inter)national funds and subsidies.

2 Entry into force, duration and termination

2.1 Entry into force

An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

A new entity becomes a Party to the Consortium Agreement upon signature of the accession document (Attachment 2) by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

2.2 Duration and termination

HVE is founded without term. This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under this Consortium Agreement.

However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.

2.3 Survival of rights and obligations

The provisions relating to intellectual property, access rights, dissemination and confidentiality, for the time period mentioned therein, as well as for liability, applicable law and settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Steering Group and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

3 Responsibilities of Parties

3.1 General principles

HVE is founded as a structural unit of H2EST.

All Parties, except H2EST, who have signed this Consortium Agreement related to the development of HVE, who are involved in its financing, management and implementation for the development of HVE are “**Partners**” in the HVE.

Each Partner has a right to name their representative to “**Steering Group**”. Members of the Steering Group are representatives of Partners at executive level.

Each Partner has a right to name their representative to “**Management Team**”. Members of the Management Team are representing and acting on behalf of the Partner at managerial level.

A team who contributes on everyday basis to HVE’s strategy and working packages, and is implementing the goals of HVE consists of a director (“**HVE Director**”) and project managers is a “**Secretariat**”.

All legal entities who have been accepted to support the implementation of HVE and are not Partners, are members of the “**Support Group**”.

Each Partner has defined its affiliate(s) in their company group that are involved in hydrogen industry and might offer substantial value to implementing HVE and its Projects and they are listed in Attachment 3. Those affiliates are referred to as “**Linked Third Parties**”

HVE is developed and managed according to it’s strategy, work plan and budget as agreed with the Partners.

Each Party undertakes to take part in the efficient implementation of HVE and its Projects, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under this Consortium Agreement as may be reasonably required from it and in a manner of good faith. Each Party undertakes to notify promptly, in accordance with the governance structure of HVE or the Project, any significant information, fact, problem or delay likely to affect HVE or the Project. Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

3.2 Partners

The Partners are responsible for the work in the knowledge-driven working packages of HVE like production, distribution and storage, end use, policy and education and skills. A working group structure with a lead per working group and other working group members will be set up.

If necessary, separate agreements are concluded for the use of the Partners’ resources, which determine the rights and obligations of the Partners, based on the principles set forth in the Consortium Agreement. Information, know-how, etc., which, in the opinion of the Partner, is

considered to be a trade secret is not the subject of this Agreement or/and a separate agreement concluded with the Partner on the basis thereof.

All Partners contribute financially to HVE's activities with a set equal annual fee by each Partner. The sum is agreed for each year by the Steering Group.

3.3 Steering Group

Steering Group's role is setting the strategic development scope of HVE, owning or being part of the core HVE's Projects and guiding the fulfilment of HVE's working plan. Contributing directly to the strategy and working plan formation and fulfilment and realization of the national roadmap.

The Steering Group is responsible for decisions on the strategy and governance of HVE. All members in the Steering Group are equal. The Steering Group takes decisions on a strategic level.

Members of the Steering Group shall have the opportunity to get a closer understanding of the development of the hydrogen economy, a better network of partners to develop the value chains with, better access to international players to develop business cases with and a better connection to government in order to help develop a fitting legislative framework.

Steering Group members may propose new members to be approved by the Steering Group.

3.4 Management Team

The Management Team is collectively responsible for the quality of the content scope, strategy, governance and international aspects of HVE. Steering Group's decisions are prepared by the Management Team. The Management Team is also the sparring partner for the project implementation teams.

3.5 Secretariat

The Secretariat focuses on hydrogen projects, subsidies, the network and also on communication. The Secretariat is acting independently when fulfilling their tasks for HVE and no member of the Secretariat shall act on behalf of selected Partners' interest but only for the joint interests of HVE members.

3.6 Support Group

HVE aims to actively involve the Support Group members in working packages. HVE will jointly assess, together with the Support Group members, where their knowledge and added value to the HVE lie. Based on this, HVE will invite Support Group members to actively participate in the working packages for developing HVE.

All companies who are members of the Support Group contribute financially to HVE's activities with a set annual fee by each member. The sum is agreed for each year by the Steering Group. Public organizations and non-governmental organizations are not expected to pay a fee if the Steering Group has not decided otherwise.

3.7 Linked Third Parties

Those affiliates of Partners that have been listed in Attachment 3 shall have the right to get involved in the Projects as they are involved in hydrogen industry and might offer substantial value to implementing HVE and its Projects.

Linked Third Parties do not require to be part of the Support Group nor named as Partners and do not need to pay annual fees.

3.8 Involvement of third parties when implementing Projects

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to affiliated entities) in the Project remains responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement.

3.9 Role of H2EST

As HVE is founded as a separate structural unit of H2EST, the Parties have agreed that it is necessary for H2EST to adopt specific principles for a good corporate governance to increase transparency and risk mitigation.

H2EST agrees not to adopt any decisions regarding its structural unit HVE and all required resolutions and changes are subject to mutual resolutions by Partners.

The appointed HVE Director, a member of the Secretariat, shall be appointed as a management board member of H2EST.

The Steering Group shall agree and require for H2EST to adopt an internal procedure for a four-eyes principle – that a certain activity, (a decision, transaction, etc.) must be approved by at least two people. Before the Steering Group has not agreed on the proposal for the internal procedure for financial transactions in H2EST for HVE transactions, the Partners or any third party is not obliged to pay the set annual fee in Section 6.1 and no payouts shall be made. The Partners reserve the right to propose to H2EST that appointed Partner from the Steering Group shall name a representative who will be informed of all monetary transactions for HVE or regarding HVE's actions. That representative shall exercise a right to ask information and seek clarity or also inform Management or Steering Group of any unclarity or potential deviation risk.

To achieve more wider transparency and risk mitigation, the Steering Group shall reserve a right to propose to H2EST to introduce a dual mutual representation of management board members for the transactions regarding HVE. If a change in the articles of association and on commercial registry card is required, then H2EST shall adopt the resolutions in order to make the necessary changes.

3.10 Conflict of interests

Conflict of interest occurs when a Partner or a member of a Steering Group or a Secretariat, within the framework of their duties or tasks, makes a decision, participates in the making of such decision or influences the decisions of the employer in a way that affects (i) their own economic interests, (ii) those of their close relatives or (iii) their own or close relative's related legal persons.

Upon occurrence of a conflict of interest, one must recuse oneself from the relevant decision-making process or operation and the recusal must be recorded at least in a format reproducible in writing. In every case, the person must notify the participants in the decision-making process of the conflict of interest and describe it, after which it is recorded and an immediate decision is taken as to whether the person can participate in discussion, voting, or decision-making on the matter, and if they cannot be present, they must leave for the time.

3.11 Using the HVE name umbrella

Each Party and member of the Support Group has the right to disclose its affiliation with HVE and being a member of it. It is justified to use the name HVE when the member is informing of

its activities related to the hydrogen sector, HVE and its activities, assuming those are in accordance with the purpose and goals of HVE.

3.12 Breach

In the event that a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement, the Coordinator or, if the Coordinator is in breach of its obligations, the Party appointed by the Steering Group/General Assembly, will give formal notice to such Party requiring that such breach will be remedied within 30 calendar days from the date of receipt of the written notice by the Party.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Steering Group/General Assembly may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

“Defaulting Party” means a Party which the General Assembly has identified to be in breach of this Consortium Agreement as specified in Section 3.12 of this Consortium Agreement.

4 Liability towards each other

4.1 No warranties

In respect of any information or materials supplied by one Party to another under this Consortium Agreement, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. Therefore, the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials.

4.2 Limitations of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act or by a breach of confidentiality.

For any remaining contractual liability for implementing a Project under HVE, a Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's maximum grant amount as identified in the grant agreement or grant decision provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability.

4.3 Damage caused to other parties

Each Party shall be solely liable for any loss, damage or injury to Party resulting from the performance of the said Party's obligations by it or on its behalf under this Consortium Agreement.

4.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure.

Each Party will notify the competent Consortium Bodies of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

5 Governance structure

5.1 General structure

The structure of HVE distinguishes between the internal structure of HVE and the structure of the functioning of HVE when implementing its Projects.

The structure of the functioning of HVE captures the principles of the functioning of the network of relations between the Partners, Steering Group, Management Team, Support Group, Secretariat, Linked Third Parties and HVE, and the legal basis for its operation is this Consortium Agreement.

The organizational structure of the Consortium when implementing the Projects shall comprise the following Consortium Bodies:

- (a) General Assembly as the ultimate decision-making body of the consortium;
- (b) Executive Board as the supervisory body for the execution of the Project which shall report to and be accountable to the General Assembly;
- (c) The Coordinator is the legal entity acting as the intermediary between the Parties and the funding authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it with the grant agreement and this Consortium Agreement.

“Consortium Body” means any management body described in the governance structure section of this Consortium Agreement.

5.2 General operational procedures for Consortium Bodies in managing HVE

5.2.1 Steering Group

In order for the Partners to participate in the management of HVE, a collegial decision-making body – Steering Group is established. All Partners have the right to appoint one member to the Steering Group.

Steering Group performs the following duties:

- a) supervises the activities of HVE;
- b) approves the annual budget and strategy and working programme of HVE;
- c) decides on joining new partners with HVE;
- d) decides on the exclusion of the Partner from HVE;
- e) appoints permanent staff, including members of the Secretariat;
- f) approves members of the Support Group;
- g) approves mutual projects' list for HVE;
- h) decides on other issues arising from the Consortium Agreement;
- i) decides on transactions that go beyond the scope of HVE's daily activities.

Steering Group has the right to authorize some or all of the duties (e), (f), (g) to the Management Team for deciding.

Meetings of the Steering Group shall take place at least once in every quarter of the calendar year.

All decisions shall be adopted by the Steering Group by a simple majority, meaning getting more than half of the votes. Except for (i) the merger of new partner and (ii) the decision on the exclusion of a Partner from HVE and (iii) authorizing duties to the Management Team for deciding, which requires unanimity minus one decision, meaning consensus is achieved if there is only one dissenter.

The Steering Group may adopt its decisions by electronic voting.

The minutes of the Steering Group meeting will be shared with the Management Team, Support Group and Secretariat for informational purpose.

A hydrogen-related company, public or third sector organization wishing to become HVE's new Partner shall submit an application to the Steering Group. The new partner has to join the Consortium Agreement.

The Steering Group has the freedom to occasionally invite Support Group members or externals to the Steering Group or Management Team meetings according to the topics on the agenda. The guests shall have no voting rights.

Partner may withdraw from the Consortium Agreement by forwarding an application to HVE at least six months in advance. All members of the Steering Group shall need to be immediately informed of the application received.

The Partner withdrawing from the Consortium Agreement undertakes to bear all obligations assumed to the HVE (both financial and non-monetary). The Steering Group may release the Partner from such obligation by a decision. The Steering Group shall decide on the exclusion of a Partner from HVE and related issues within 3 months from the date of receipt of the application from the Partner.

If, as a result of the withdrawal of a Partner, HVE incurs damage, the Partner withdrawing from HVE is obliged to compensate HVE for such damage, except for loss of profit.

HVE's relationships with Partners are determined through projects to be coordinated or carried out. If necessary, the procedure for the implementation (coordination) of the project is determined in each specific case by separate agreements between the Partners involved. Unless the Partners agree otherwise, the project coordinator is H2EST.

5.2.2 Management Team

Each Partner has a right to name their one representative to Management Team. It is allowed and advised to name the person(s) substituting the main representative in case they cannot attend the meeting.

The Management Team shall establish their position on topics prepared by the Secretariat before sending them for deciding to Steering Group. The main areas for discussions for the Management Team are the following:

- a) appointing members of the Secretariat, approving the members of Support Group;
- b) managing operational parts of working program and projects;
- c) deciding on other issues arising from the Consortium Agreement or appointed by the Steering Group.

5.2.3 Support Group

An interested party that wishes to be a member of the Support Group shall need to have an ambition in the hydrogen industry and their plans and activities should be in line with HVE's purpose and goals.

Members of the Support Group shall have the opportunity to be involved in working packages and have access to information regarding developments for hydrogen industry in Estonia. Members' initiative and involvement should be driven by the aim to establish new collaborations and Projects within the scope of HVE.

5.2.4 Secretariat

The internal structure of HVE engages Secretariat and project groups working towards HVE's goals.

The everyday economic activities of HVE are managed by H2EST through the Secretariat. H2EST concludes the contract for services or work with the HVE Director and project members of the Secretariat after they have been appointed by the Steering Group. Secretariat performs the following duties:

- a) prepares the annual budget and financial plan of the HVE;
- b) is engaged in operational planning of HVE's activities;
- c) develops a planning and control cycle with clear annual plans, priorities and goals and formulates and supports the vision, strategy and objectives of HVE;
- d) prepares, implements and monitors the year/policy plan, including the financial and content reports;
- e) manages Secretariat;
- f) performs tasks according to the approved budget and working plan;
- g) HVE Director represents HVE in HVE's related activities among external stakeholders;
- h) performs other implementing tasks necessary for the performance of the Consortium Agreement.

The Secretariat anticipates and schedules developments and stimulates synergy between policy subjects, project subjects and knowledge transfer. They make connections between the members and various policy programs. Also, they create support for agreements with ministries and other authorities and initiates cooperation with key persons from different networks, including non-governmental organizations. In addition, share lessons that are learned from practical experiences.

A distinction is made between permanent and temporary staff. The latter are involved in the implementation of specific projects. Temporary employment relationships may also involve experts or groups of experts necessary for the development and work of the HVE.

5.3 General operational procedures for Consortium Bodies in the Projects

5.3.1 General

Regulation for operational procedures in the Projects is derived from the often used and accepted DESCA (Development of a Simplified Consortium Agreement) model in EU framework programme Horizon Europe.

If not agreed otherwise by the Partners, then representative in the General Assembly (ultimate decision-making body of the Consortium in Projects) is the same as in the Steering Group. The representative(s) in the Executive Board (supervisory body for the execution of the Project(s) which shall report to and be accountable to the General Assembly) is(are) the same as for the Management Team. The Coordinator in the HVE (the legal entity acting as the intermediary between the Parties and the funding authority) is H2EST. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it with and the grant agreement and this Consortium Agreement and any other agreements related to Project(s).

5.3.2 Representation in meetings

Any Party which is a member of a Consortium Body (hereinafter referred to as "**Member**"):

- should be present or represented at any meeting;
- may appoint a substitute or a proxy to attend and vote at any meeting;

and shall participate in a cooperative manner in the meetings.

5.3.3 Preparation and organization of meetings

5.3.3.1 Convening meetings

The chairperson of a Consortium Body shall convene meetings of that Consortium Body.

	Ordinary meeting	Extraordinary meeting
General Assembly	At least once a year	At any time upon written request of the Executive Board or 1/3 of the Members of the General Assembly
Executive Board	At least quarterly	At any time upon written request of any Member of the Executive Board

5.3.3.2 Notice of a meeting

The chairperson of a Consortium Body shall give notice in writing of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated below.

	Ordinary meeting	Extraordinary meeting
General Assembly	45 calendar days	15 calendar days
Executive Board	14 calendar days	7 calendar days

5.3.3.3 Sending the agenda

The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body a written (original) agenda no later than the minimum number of days preceding the meeting as indicated below.

General Assembly	21 calendar days, 10 calendar days for an extraordinary meeting
Executive Board	7 calendar days

5.3.3.4 Adding agenda items:

Any agenda item requiring a decision by the Members of a Consortium Body must be identified as such on the agenda.

Any Member of a Consortium Body may add an item to the original agenda by written notification to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.

General Assembly	14 calendar days, 7 calendar days for an extraordinary meeting
Executive Board	2 calendar days

5.3.3.5

During a meeting the Members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda

5.3.3.6

Meetings of each Consortium Body may also be held by teleconference or other telecommunication means.

5.3.3.7

Decisions will only be binding once the relevant part of the Minutes has been accepted according to Section 5.3.6.

5.3.3.8

Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document, which is then agreed by the defined majority (see Section 5.3.4) of all Members of the Consortium Body. Such a document shall include the deadline for responses.

Decisions taken without a meeting shall be considered as accepted if, within the period set out in article 5.3.5.4, no Member has sent an objection in writing to the chairperson. The decisions will be binding after the chairperson sends to all Members of the Consortium Body and to the Coordinator a written notification of this acceptance.

5.3.4 Voting rules and quorum

5.3.4.1

Each Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum). If the quorum is not reached, the chairperson of the Consortium Body shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members are present or represented.

5.3.4.2

Each Member of a Consortium Body present or represented in the meeting shall have one vote, except when Members are closely related entities, in which case they will share their voting rights. Members x and y are "**closely related entities**" when Member x is:

- under the direct or indirect control of Member y, or
- under the same direct or indirect control of Member y, or
- directly or indirectly controlling Member y.

"Control" may take any of the following forms:

- a) the direct or indirect holding of **50% or more** of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
- b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

However the following relationships between legal entities shall not in themselves be deemed to constitute controlling relationships:

- a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50% of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
- b) the legal entities concerned are owned or supervised by the same public body.

5.3.4.3

A Party which the General Assembly has declared according to Section 3.7 to be a Defaulting Party may not vote.

5.3.4.4

Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast.

5.3.5 Veto rights

5.3.5.1

A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of a Consortium Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.

5.3.5.2

When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting only.

5.3.5.3

When a decision has been made on a new item added to the agenda before or during the meeting, a Member may veto such a decision during the meeting and within 15 calendar days after the draft minutes of the meeting are sent. A Party that is not a Member of a particular Consortium Body may veto a decision within the same number of calendar days after the draft minutes of the meeting are sent.

5.3.5.4

When a decision has been taken without a meeting a Member may veto such a decision within 15 calendar days after written notification by the chairperson of the outcome of the vote.

5.3.5.5

In case of exercise of veto, the Members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its Members.

5.3.5.6

A Party may neither veto decisions relating to its identification to be in breach of its obligations nor to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the consortium or the consequences of them.

5.3.5.7

A Party requesting to leave the consortium may not veto decisions relating thereto.

5.3.6 Minutes of meetings

5.3.6.1

The chairperson of a Consortium Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. They shall send the draft minutes to all Members within 10 calendar days of the meeting.

5.3.6.2

The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has sent an objection in writing to the chairperson with respect to the accuracy of the draft of the minutes.

5.3.6.3

The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

5.4 Specific operational procedures for the Consortium Bodies

5.4.1 General Assembly

In addition to the rules described in Section 5.3, the following rules apply:

5.4.1.1 Members

5.4.1.1.1

The General Assembly shall consist of one representative of each Party (hereinafter “**General Assembly Member**”).

5.4.1.1.2

Each General Assembly Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 5.4.1.2 of this Consortium Agreement.

5.4.1.1.3

The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise in a meeting of the General Assembly.

5.4.1.1.4

The Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 11.12.

5.4.1.2 Decisions

The General Assembly shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. In addition, all proposals made by the Executive Board shall also be considered and decided upon by the General Assembly.

The following decisions shall be taken by the General Assembly:

Content, finances and intellectual property rights

- Proposals for changes to the grant agreement to be agreed by the funding authority
- Changes to the project plan

Evolution of the consortium

- Entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party;
- Withdrawal of a Party from the consortium and the approval of the settlement on the conditions of the withdrawal;
- Identification of a breach by a Party of its obligations under this Consortium Agreement or the grant agreement;
- Declaration of a Party to be a Defaulting Party;
- Remedies to be performed by a Defaulting Party;
- Termination of a Defaulting Party’s participation in the consortium and measures relating thereto;
- Proposal to the funding authority for a change of the Coordinator;
- Proposal to the funding authority for suspension of all or part of the Project;

- Proposal to the funding authority for termination of the Project and the Consortium Agreement.

Appointments

On the basis of the grant agreement, the appointment if necessary of:

- Executive Board Members

5.4.2 Executive Board

In addition to the rules in Section 5.3, the following rules shall apply:

5.4.2.1 Members

The Executive Board shall consist of the Coordinator and the Parties appointed by the General Assembly.

The Coordinator shall chair all meetings of the Executive Board, unless decided otherwise by a majority of two-thirds.

5.4.2.2 Minutes of meetings

Minutes of Executive Board meetings, once accepted, shall be sent by the Coordinator to the General Assembly Members for information.

5.4.2.3 Tasks

5.4.2.3.1

The Executive Board shall prepare the meetings, propose decisions and prepare the agenda of the General Assembly according to Section 5.4.1.2.

5.4.2.3.2

The Executive Board shall seek a consensus among the Parties.

5.4.2.3.3

The Executive Board shall be responsible for the proper execution and implementation of the decisions of the General Assembly.

5.4.2.3.4

The Executive Board shall monitor the effective and efficient implementation of the Project(s).

5.4.2.3.5

In addition, the Executive Board shall collect information at least every 6 months on the progress of the Project(s), examine that information to assess the compliance of the Project(s) with the Consortium Plan and, if necessary, propose modifications of the Consortium Plan to the General Assembly.

5.4.2.3.6

The Executive Board shall:

- support the Coordinator in preparing meetings with the funding authority and in preparing related data and deliverables;
- prepare the content and timing of press releases and joint publications by the consortium or proposed by the funding authority.

5.4.2.3.7

In the case of abolished tasks as a result of a decision of the General Assembly, the Executive Board shall advise the General Assembly on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

5.5 Coordinator

5.5.1

The Coordinator shall be the intermediary between the Parties and the funding authority and shall perform all tasks assigned to it as described in the grant agreement and in this Consortium Agreement.

5.5.2

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations;
- keeping the address list of Members and other contact persons updated and available;
- collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the funding authority;
- transmitting documents and information connected with the Project to any other Parties concerned;
- administering the financial contribution of the funding authority and fulfilling the financial tasks described in Section 6.4;
- providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

If one or more of the Parties is late in submission of any project deliverable, the Coordinator may nevertheless submit the other 'Parties' project deliverables and all other documents required to the funding authority in time.

5.5.3

If the Coordinator fails in its coordination tasks, the General Assembly may propose to the funding authority to change the Coordinator.

5.5.4

The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium, unless explicitly stated otherwise in this Consortium Agreement.

5.5.5

The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement.

5.6 External Expert Advisory Board (EEAB)

An External Expert Advisory Board (EEAB) will be appointed and steered by the Executive Board when needed. The EEAB shall assist and facilitate the decisions made by the General Assembly. The Coordinator will ensure that a non-disclosure agreement is executed between all Parties and each EEAB member. Its terms shall be not less stringent than those stipulated in this Consortium Agreement, and it shall be concluded no later than 30 calendar days after

their nomination or before any confidential information will be exchanged, whichever date is earlier. The Coordinator shall write the minutes of the EEAB meetings and prepare the implementation of the EEAB's suggestions. The EEAB members shall be allowed to participate in General Assembly meetings upon invitation but have not any voting rights.

6 Financial provisions

6.1 General Principles for managing HVE

HVE's activities are financed by:

- a) a budget consisting of projects jointly initiated and managed by HVE; and
- b) other funds received for the intended purpose, including annual fees from Partners and members of the Support Group.

All members who contribute financially to HVE's activities with a set fee shall pay it at latest by the term indicated on the invoice but latest by the end of January each year. The sum is agreed for each year and will be reviewed yearly.

HVE has a budget that is part of the H2EST general budget. The HVE budget must be clearly distinguished from the rest of H2EST's budget in terms of accounting. For the activities of HVE, there must be a separate bank account, where only transactions related to HVE are reflected.

The responsible authorizing officer for the budget is the Director of Secretariat.

The preparation and amendment of the HVE budget is carried out in accordance with the mandate received from the Steering Group.

6.2 Principles for implementing Projects

6.2.1 Distribution of Financial Contribution

The financial contribution of the funding authority to the Project shall be distributed by the Coordinator according to:

- the consortium plan
- the approval of reports by the funding authority, and
- the provisions of payment in Section 6.4.

A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.

6.2.2 Justifying Costs

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 funding authority. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the funding authority.

6.2.3 Funding Principles

A Party that spends less than its allocated share of the budget as set out in the Consortium Plan or – in case of reimbursement via unit costs - implements less units than foreseen in the Consortium Plan will be funded in accordance with its actual duly justified eligible costs only.

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

6.2.4 Return of excess payments; receipts

6.2.4.1

In any case of a Party having received excess payments, the Party has to return the relevant amount to the Coordinator without undue delay.

6.2.4.2

In case a Party earns any receipt that is deductible from the total funding as set out in the Consortium Plan, the deduction is only directed toward the Party earning such income. The other Parties' financial share of the budget shall not be affected by one Party's receipt. In case the relevant receipt is more than the allocated share of the Party as set out in the Consortium Plan, the Party shall reimburse the funding reduction suffered by other Parties.

6.2.5 Financial Consequences of the termination of the participation of a Party

A Party leaving the consortium shall refund all payments it has received except the amount of contribution accepted by the Funding Authority or another contributor. Furthermore, a Defaulting Party shall, within the limits specified in Section 4.2 of this Consortium Agreement, bear any reasonable and justifiable additional costs occurring to the other Parties in order to perform its and their tasks.

6.3 Budgeting

The budget set out in the Consortium Plan shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

6.4 Payments

6.4.1 Payments to Parties are the exclusive tasks of the Coordinator.

In particular, the Coordinator 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 funding authority's financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.
- no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount from which the amounts retained by the funding authority for the guarantee fund (if applicable) and for the final payment have been deducted.

6.4.2

The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following default regulation if the consortium has not agreed otherwise:

- Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the funding authority in separate instalments as agreed below:

A maximum of 40 %	on receipt of Advance Payment. The remaining funding of costs upon invoices regarding eligible costs incurred, aligned with the Description of Action (bi-annually).
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- Funding for costs accepted by the funding authority will be paid to the Party concerned.

The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body to be in breach of its obligations under this Consortium Agreement or the grant agreement or to a Beneficiary which has not yet signed this Consortium Agreement.

The Coordinator is entitled to recover any payments already paid to a Defaulting Party. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the funding authority.

6.5 Project Fee

Subject to the duration, termination and survival provisions of the provisions of this Consortium Agreement, a Project Contribution shall be payable to the Coordinator.

The Project Contribution shall be handled according to the following default regulation for grants under Hydrogen Europe:

If the consortium via Steering Group has not agreed otherwise a fixed amount equivalent to 4 (four) % of the total amount of the attributed grants to the Parties under the Project defined as the maximum Clean Hydrogen Partnership financial contribution to the Project in the grant agreement or grant decision.

Each Party shall contribute, in the applicable percentage referred to above, to the payment of the total consortium's Project Contribution. Each Party's contribution shall amount to an equivalent of the prementioned percentage of its allocated share in the total amount of grants attributed to the Parties under the Project.

The Parties' contribution shall be payable in one single instalment at the beginning of the Project but after the first payment instalment under and by virtue of the grant agreement is received by the Coordinator.

The project contribution is collected in full following the distribution of project pre-financing by the programme office. The payment by consortia partners to the project contribution system is completed upon distribution of the full project pre-financing to individual consortia partners by the Coordinator. Although these are two independent transactions, to optimize and facilitate this process from a financial and administrative viewpoint, it is recommended that all consortium partners agree that these two independent transfers shall be executed in one step.

In that case, the Coordinator shall maintain, from the first payment instalment received under and by virtue of the project grant agreement, an amount equivalent to 4 (four) % of each of the allocated shares of the consortium partners in the total project grant, if not agreed otherwise on this section. The Coordinator shall then transfer the collected project contribution on behalf of their consortium to the Protected Project Fee Account (PPFA) set up uniquely for this purpose by Hydrogen Europe Industry and Hydrogen Europe Research.

The failure of the Coordinator to undergo the above, in accordance with the provisions of this Article, the contribution due by a Party to the Project Contribution shall not constitute a waiver of that Party's obligation to contribute to the Project Contribution and that Party's obligation to contribute to the Project Contribution shall continue to exist and it shall survive the termination of this Agreement. The coordinator, or its contractual substitute, shall be entitled to recover from that Party its contribution due to the Project Contribution.

7 Intellectual Property for managing HVE

All the intellectual property rights attached in particular to plans, research, documents, software programs, patents, equipment and products developed by either Party, for the purpose of HVE that has been provided within the framework of HVE, remain the permanent exclusive property of that Party. In no case does the making of this Consortium Agreement carry with it the transfer of any intellectual property rights.

The Parties agree not to use, reproduce, modify, translate, adapt, arrange and communicate to third parties, permanently or in any form whatsoever, the plans, research, documents, software programs, patents, equipment, products and any other element to which intellectual property rights are attached without the prior written agreement of the Party in question, this prohibition being valid as much as in Parties domestic countries as abroad.

This Consortium Agreement does not affect the ownership of any background intellectual property. The background intellectual property will remain the property of such Party that contributes such background intellectual property to HVE. No licence to use any background intellectual property is granted or implied by this Consortium Agreement.

The Parties have agreed that in respect of any new inventions in connection with the cooperation under this Consortium Agreement for HVE, the Party having developed such invention may, as it may decide and at its own expense, register and maintain any further protection for that intellectual property, including filing and prosecuting intellectual property right applications for any of the foreground intellectual property. If such new invention is being developed by the Parties together in a cooperation which in general is based upon equal participation of the Parties, the above mentioned steps may only be taken in agreement between the Parties unless one of the Parties waives its rights to any intellectual property right in this respect in which case the other Party may proceed with the above mentioned steps as if the invention was developed solely by that Party.

Each Party shall meet the costs of protecting and maintaining its own intellectual property.

In case of breach of any provisions stated in this section 7 of this Consortium Agreement the Party suffering the breach shall be entitled to claim damages from the Party breaching the obligation stated herein and section 4 of this Consortium Agreement shall apply.

This Section 7 will survive the termination of the Consortium Agreement and expiration thereof and is valid without term with regards to any and all technologies analyzed and exchanged between the Parties during the validity of this Consortium Agreement

8 Results of Projects

8.1 Ownership of Results

Results are owned by the Party that generates them.

8.2 Joint ownership

Joint ownership is governed by grant agreement.

Unless otherwise agreed:

- a) each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research and teaching activities for developing hydrogen economy on a royalty-free basis, and with requiring the prior consent of the other joint owner(s);
- b) each of the joint owners shall be entitled to otherwise exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given: (i) at least 45 calendar days advance notice; and (ii) fair and reasonable compensation.

The Results to be used for the activities cannot contain Confidential Information. The other joint owner shall not unreasonably withhold providing the consent requested.

The joint owners shall agree on all protection measures and the division of related cost in advance.

8.3 Transfer of Results

8.3.1

Each Party may transfer ownership of its own Results following the procedures of the grant agreement.

8.3.2

It may identify specific third parties it intends to transfer the ownership of its Results to in Attachment 3 to this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to a transfer to listed third parties according to the grant agreement.

8.3.3

The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment 3 after signature of this Agreement requires a decision of the Steering Group/General Assembly.

8.3.4

The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, it may be impossible under applicable EU and national laws on mergers and acquisitions for a Party to give the full 45 calendar days prior notice for the transfer as foreseen in the grant agreement.

8.3.5

The obligations above apply only for as long as other Parties still have - or still may request - Access Rights to the Results.

8.4 Dissemination

8.4.1

For the avoidance of doubt, nothing in this Section 8.4 has impact on the confidentiality obligations set out in Section 10.

8.4.2 Dissemination of own Results

8.4.2.1

During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure in the grant agreement subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties at least 45 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the grant agreement in writing to the Coordinator and to the Party or Parties proposing the dissemination within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted. This obligation for prior

noticing may be excused if the Party is subject to the stock exchange rules and the publication contains information that shall require stock exchange announcement first.

8.4.2.2

An objection is justified if

- (a) the protection of the objecting Party's Results or Background would be adversely affected
- (b) the objecting Party's legitimate interests in relation to the Results or Background would be significantly harmed.

The objection has to include a precise request for necessary modifications.

8.4.2.3

If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

8.5

The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted.

8.5.1 Dissemination of another Party's unpublished Results or Background

A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published.

8.5.2 Cooperation obligations

The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree that includes their Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

8.5.3 Use of names, logos or trademarks

Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

9 Access Rights of Projects

The use of intellectual property created before the signing of the Consortium Agreement under the implementation of HVE for the Project shall be agreed upon by the Partners participating in the Project in a separate project contract. The regulation concerning the ownership and right of use of intellectual property in force before the signing of the Consortium Agreement shall remain the same as it was before the signing of the agreement, unless otherwise agreed in the subproject agreement.

9.1 Background included

9.1.1

The Parties shall identify and agree on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.

Anything not identified by the owning Party before the start of Project shall not be the object of Access Right obligations regarding Background.

9.1.2

Any Party may add further own Background during the Project by written notice to the other Parties. However, approval of the General Assembly is needed should a Party wish to modify or withdraw its Background.

9.2 General Principles

9.2.1

Each Party shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party property rights.

9.2.2

Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.

9.2.3

Access Rights shall be free of any administrative transfer costs.

9.2.4

Access Rights are granted on a non-exclusive basis.

9.2.5

Results and Background shall be used only for the purposes for which Access Rights to it have been granted.

9.2.6

All requests for Access Rights shall be made in writing. The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

9.2.7

The requesting Party must show that the Access Rights are needed.

9.3 Access Rights for implementation

Access Rights to Results and Background needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed.

9.4 Access Rights for Exploitation

9.4.1 Access Rights to Results

Access Rights to Results if needed for exploitation of a Party's own Results shall be granted on fair and reasonable conditions.

Access rights to Results for internal research activities shall be granted on fair and reasonable conditions. Any Party that is academic, non-profit and not-for-profit shall be granted Access Rights to Results for internal (non-commercial) research activities on a royalty free basis.

9.4.2

Access Rights to Background if needed for exploitation of a Party's own Results, including for research on behalf of a third party, shall be granted on fair and reasonable conditions.

9.4.3

A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

9.5 Access Rights for Affiliated Entities

Such Access Rights must be requested by the Affiliated Entity from the Party that holds the Background or Results. Alternatively, the Party granting the Access Rights may individually agree with the Party requesting the Access Rights to have the Access Rights include the right to sublicense to the latter's Linked Third Parties (listed in Attachment 3). Access Rights to Affiliated Entities shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.

Affiliated Entities which obtain Access Rights in return fulfil all confidentiality and other obligations accepted by the Parties under this Consortium Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliated Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

9.6 Additional Access Rights

For the avoidance of doubt any grant of Access Rights not covered by the grant agreement or this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

9.7 Access Rights for Parties entering or leaving the consortium

9.7.1 New Parties entering the consortium

As regards Results developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.

9.7.2 Parties leaving the consortium

9.7.2.1 Access Rights granted to a leaving Party

9.7.2.1.1 Defaulting Party

Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the General Assembly to terminate its participation in the consortium.

9.7.2.1.2 Non-defaulting Party

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Results developed until the date of the termination of its participation.

It may request Access Rights within the period of time specified in Section 9.4.3.

9.7.2.2 Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the grant agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

9.8 Specific Provisions for Access Rights to Software

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to software.

Parties' Access Rights to software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

10 Non-disclosure of information

10.1 General principles for handling the information in HVE

The Partners undertake to use the confidential information only and exclusively for the purpose of achieving the result of HVE, including for the Projects under HVE.

Partners undertake not to disclose confidential information to third parties (except to Linked Third Parties), unless this is done purposefully in the interests of HVE and on the basis of an agreement on the disclosure of confidential information.

Any information about the Partner that HVE or its subcontractor receives from the Partner in the course of the activities of HVE and which the Partner designates as confidential upon delivery is considered confidential.

Confidentiality requirements, confidential information and/or a list of documents shall be included as a separate item in the agreements and/or in the contract for services or services concluded for the performance of the ordered work.

Each Partner has the right to determine the degree of confidentiality of the information at its disposal and the circle of recipients, including among other partners of this Consortium Agreement.

Except in cases of mandatory disclosure provided by law, neither HVE nor the Partner(s) shall provide a third party with any property-related or confidential information related to the Consortium Agreement, the activities of a Partner or HVE, related to the ownership or confidential information during the period of validity of the Consortium Agreement and for five years thereafter, unless the Parties agree otherwise.

10.2

All information in whatever form or mode of communication, which is disclosed by a Party (the "**Disclosing Party**") to any other Party (the "**Recipient**") in connection with HVE or its Project during its implementation and which has been explicitly marked as "confidential" at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is "**Confidential Information**".

10.3

The Recipients hereby undertake, for a period of 4 years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party, or destroy (to the extent technically practicable), on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in a machine readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

If the Confidential Information was shared outside the scope of any Project but for the purpose of HVE, then the term shall be 5 years from disclosing the information.

10.4

The recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of HVE or its Project and/or after the termination of the contractual relationship with the employee or third party.

10.5

The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

- the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions by funding authority or in the grant agreement;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
- the Confidential Information was already known to the Recipient prior to disclosure, or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.8 hereunder.

10.6

The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.

10.7

Each Party shall promptly advise the other Party in writing of any unauthorized disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorized disclosure, misappropriation or misuse.

10.8

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure:

- notify the Disclosing Party, and
- comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

11 Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and of the following annexes:

Attachment 1 (Section Signatures)

Attachment 2 (Accession document)

Attachment 3 (List of Linked Third Parties)

In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.

Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated that fulfils the purpose of the original provision.

11.2 No representation, partnership or agency

Except as otherwise provided in Section 5.3.5.4, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, or any other kind of formal business grouping or entity between the Parties.

11.3 Notices and other communication

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator.

Formal notices: If it is required in this Consortium Agreement (Sections 3.12, 9.7.2.1.1, and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be (i) served personally or (ii) sent by mail with recorded delivery with receipt acknowledgement or (iii) digitally signed and sent by e-mail.

Other communication: Other communication between the Parties may also be affected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all Parties.

11.4 Publications

In the Consortium Agreement, publications are understood as the publication of the results obtained as a result of HVE's or its Projects' research and development in any form, including print media, electronic media, through presentations and presentations, etc.

When publishing the results of R&D, it must be indicated that the R&D has taken place within the framework of the HVE. The publication must also refer to the procedure defined by the funding authority.

11.5 Assets incurred (excluding intellectual property)

The assets of HVE belong to H2EST as HVE is its structural unit if not agreed otherwise.

The ownership and management procedures for assets, including intellectual property, acquired or created in the course of joint projects of the Partners and HVE or two or multilateral agreements shall be determined by separate agreements or the respective clauses of an agreement. Disputes shall be resolved in accordance with the legislation of the Republic of Estonia.

In the event of a change in the legal form of the HVE, the options for resolving ownership issues shall be determined by the transitional rules approved (coordinated) by the Partners and in accordance with the applicable legislation.

11.6 Reporting and control

Supervision by Partners is carried out through the Steering Group, where the Secretariat gives regular overviews of actions taken. The Steering Group coordinates the HVE's budget and oversees the implementation of the budget.

In the case of HVE Projects are financed with grants, they shall be monitored in accordance with the procedures established by the funding authority.

11.7 Assignment and amendments

No rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval, except that a Party may assign, transfer, grant any security interest over, hold on trust, novate or sub-contract all or any of its rights or obligations under this Agreement (i) to an affiliate, (ii) in connection with a reorganization, spin-out, public offering or sale (or a combination of the foregoing) of all (or part) of its business to which this Consortium Agreement relates or (iii) for the purpose of securing any of its financing arrangements or any of its affiliates.

11.8 Anti-corruption

For the purposes of this Consortium Agreement, "**Anti-Corruption Laws**" shall mean all applicable Estonian laws and regulations that prohibit tax evasion, money laundering or otherwise dealing in the proceeds of crime or the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any government official or any other person.

Each Party represents, warrants, and covenants that in connection with this Consortium Agreement and the business resulting therefrom:

- (i) it is aware of and will comply with Anti-Corruption Laws;
- (ii) whether directly or indirectly, it has not made, offered, authorised, or accepted and will not make, offer, authorize, or accept any payment, gift, promise, or other advantage, to or for the use or benefit of any government official or any other person

- where that payment, gift, promise, or other advantage would comprise a facilitation payment or otherwise violate the Anti-Corruption Laws;
- (iii) it has maintained and will maintain adequate written policies and procedures to comply with Anti-Corruption Laws or, alternatively, has made itself aware of and shall adhere to Enefit's Code of Ethics (Requirements for tenders / contractual partners under [Policies and guidance notes for tenderers](https://www.energia.ee/-/doc/8644186/hanke-dokumendid/Eetikanouded%20EE%20lepingupartneritele%20alates%2021112022%20ENG.pdf), direct link [https://www.energia.ee/-/doc/8644186/hanke-dokumendid/Eetikanouded EE lepingupartneritele alates 21112022 ENG.pdf](https://www.energia.ee/-/doc/8644186/hanke-dokumendid/Eetikanouded%20EE%20lepingupartneritele%20alates%2021112022%20ENG.pdf));
 - (iv) it has maintained and will maintain adequate internal controls, including but not limited to using reasonable efforts to ensure that all transactions are accurately recorded and reported in its books and records to reflect truly the activities to which they pertain, such as the purpose of each transaction, with whom it was entered into, for whom it was undertaken, or what was exchanged;
 - (v) it will, to its knowledge, retain such books and records for the period required by applicable law or a Party's own retention policies, whichever is longer;
 - (vi) in the event a Party becomes aware it has breached an obligation in this paragraph, it will promptly notify all Parties, subject to the preservation of legal privilege;
 - (vii) it has used and will use reasonable efforts to require any subcontractors, agents, or any other third parties to also comply with the foregoing requirements in this Section 11.8; and
 - (viii) (viii) only a Party (and not its Affiliated Entities or a third party) shall make payments to the other Party, except with that other Party's prior written consent.

Subject to the preservation of legal privilege, during the term of this Consortium Agreement and for seven (7) years thereafter and on reasonable notice, each Party shall have a right to appoint a reputable third-party law or accounting firm and to have the other Party's relevant books and records audited by such law or accounting firm with respect to compliance with this Section 11.8.

Without limitation to any other available remedies, where a Party (the First Party) fails, or its subcontractors, agents, or other third parties engaged by it, fail to comply with this Section 11.8, each other Party (the Second Party), acting in good faith, shall have a right to notify the Management Team/Executive Board in writing of such failure to comply and, if the written notice contains reasonable detail about the failure to comply, the Management Team/Executive Board shall enter into discussions with the First Party with the aim to stop the aforementioned failure. If the First Party's failure is incapable of being cured or, if capable of cure and the First Party does not cure the failure to comply within sixty (60) calendar days following receipt of the written notice by the Management Team/Executive Board, each Second Party shall have the right to terminate its own link to the Consortium Agreement and thus exit this Consortium Agreement on further written notice to the First Party and the Management Team/Executive Board. Nothing in this Consortium Agreement shall require a Party to perform any part of this Consortium Agreement or take any actions if, by doing so, the Party would not comply with the Anti-Corruption Laws. The obligations in this Section 11.8 shall survive the termination or expiry of this Consortium Agreement.

11.9 Mandatory national law

Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

Parties have a common understanding that Parties can only co-operate under this Consortium Agreement as far as this is allowed according to the Estonian legislation.

If a Party is demonstrably no longer allowed under the relevant laws and regulations to take up (a part of) the roles as mentioned in this Consortium Agreement, Parties shall discuss and

investigate which roles the Party is still allowed to take up and will change this Consortium Agreement accordingly. The relevant work plans will be adapted to this in terms of content and finances.

11.10 Language

This Consortium Agreement is drawn up in English. Estonian language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto. The Parties have the right to draw up the documents in English in case it suits the purpose of this Consortium Agreement best.

11.11 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the laws of Estonia excluding its conflict of law provisions.

11.12 Settlement of disputes

The parties shall endeavor to settle their disputes amicably.

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be settled in Harju County Court, Tallinn, Estonia.

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.

The Parties have caused this Consortium Agreement to be duly signed digitally by the undersigned authorised on the date shown in digital signature's certificate.

The authorized persons shall also sign by hand in separate signature pages the day and year first above written. The latter has been agreed to affirm the digital signatures in order to simplify the verification of signing if interested parties do not have access to the software needed for opening and verifying the Estonian digital signatures given.

Estonian Association of Hydrogen Technologies
(signed digitally)

Eesti Energia AS
(signed digitally)
(signed digitally)

Aktiaselts TALLINNA SADAM
(signed digitally)
(signed digitally)

Tartu Ülikool
(signed digitally)

AS Alexela
(signed digitally)

Attachment 1: Section Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement for establishing Hydrogen Valley Estonia (HVE) to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Estonian Association of Hydrogen Technologies (H2EST)

Signature

Name: Marek Alliksoo

Title: management board member

Date: 18.04.2023

Attachment 1: Section Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement for establishing Hydrogen Valley Estonia (HVE) to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Eesti Energia AS

Signature

Name: Raine Pajo

Title: management board member

Date: 18.04.2023

Signature

Name: Kristjan Kuhi

Title: management board member

Date: 18.04.2023

Attachment 1: Section Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement for establishing Hydrogen Valley Estonia (HVE) to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Aktsiaselts TALLINNA SADAM

Signature

Name: Valdo Kalm

Title: chairman of the management board

Date: 18.04.2023

Signature

Name: Andrus Ait

Title: management board member

Date: 18.04.2023

Attachment 1: Section Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement for establishing Hydrogen Valley Estonia (HVE) to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

AS Alexela

Signature

Name: Marti Hääl

Title: management board member

Date: 18.04.2023

Attachment 1: Section Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement for establishing Hydrogen Valley Estonia (HVE) to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Tartu Ülikool

Signature

Name: Enn Lust

Title: director of the institute of chemistry, represented with power of attorney

Date: 18.04.2023

Attachment 2: Accession document

ACCESSION

of a new Party to

Consortium Agreement with Effective Date 18 April 2023

[OFFICIAL NAME OF THE NEW PARTY]

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].

[OFFICIAL NAME OF THE COORDINATOR]

hereby certifies that the consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the consortium starting [date].

This Accession document has been signed digitally by the undersigned authorised on the date shown in digital signature's certificate.

The authorized persons shall also sign by hand on 2 original copies the day and year first above written. The latter has been agreed to affirm the digital signatures in order to simplify the verification of signing if interested parties do not have access to the software needed for opening and verifying the Estonian digital signatures given.

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

Signature(s)

Name(s)

Title(s)

Attachment 3: List of Linked Third Parties for Section 3.7 and simplified transfer according to Section 8.3.2

1. For Partner Eesti Energia AS linked third parties are the following:
 - a) Enefit Green AS, registry code 11184032;
 - b) Enefit Power AS, registry code 10579981.
2. For Partner Tartu Ülikool linked third party is the following:
UniTartu Ventures OÜ, registry code 16124187.