FP7 Grant Agreement - Annex II  General Conditions

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II.1. Definitions

1. "access rights" means licences and user rights to foreground or background;

2. "affiliated entity" means any legal entity that is under the direct or indirect control of a beneficiary, or under the same direct or indirect control as the beneficiary, control taking any of the following forms:
   
   (a) the direct or indirect holding of more than 50% 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.

3. "associated country" means a third country which is party to an international agreement with the Community, under the terms or on the basis of which it makes a financial contribution to all or part of the Seventh Framework Programme;

4. "background" means information which is held by beneficiaries prior to their accession to this agreement, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to this agreement, and which is needed for carrying out the project or for using foreground;

5. "dissemination" means the disclosure of foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of foreground in any medium;

6. "fair and reasonable conditions" means appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the foreground or background to which access is requested and/or the scope, duration or other characteristics of the use envisaged;

7. "foreground" means the results, including information, whether or not they can be protected, which are generated under the project. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection;

8. "use" means the direct or indirect utilisation of foreground in further research activities other than those covered by the project, or for developing, creating and marketing a product or process, or for creating and providing a service;

9. "third country" means a State that is not a Member State;
10. "irregularity" means any infringement of a provision of Community law or any breach of obligation resulting from an act or omission by a beneficiary which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by them through unjustified expenditure;

11. "public body" means any legal entity established as such by national law, and international organisations;

12. A "non-profit" legal entity is qualified as such when recognised by national or international law;

13. "research organisation " means a legal entity established as a non-profit organisation which carries out research or technological development as one of its main objectives;

14. "SMEs" mean micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC in the version of 6 May 2003;

Part A IMPLEMENTATION OF THE PROJECT

SECTION 1 – GENERAL PRINCIPLES

II.2. Organisation of the consortium and role of coordinator

1. All the beneficiaries together form the consortium, whether or not they enter into a separate written consortium agreement. Beneficiaries are represented towards the Commission by the coordinator, who shall be the intermediary for any communication between the Commission and any beneficiary, with the exceptions foreseen in this grant agreement.

2. The Community financial contribution to the project shall be paid to the coordinator who receives it on behalf of the beneficiaries. The payment of the Community financial contribution to the coordinator discharges the Commission from its obligation on payments.

3. The coordinator shall:

a) administer the Community contribution regarding its allocation between beneficiaries and activities, in accordance with this grant agreement and the decisions taken by the consortium. The coordinator shall ensure that all the appropriate payments are made to the other beneficiaries without unjustified delay;

b) keep the records and financial accounts making it possible to determine at any time what portion of the Community financial contribution has been paid to each beneficiary for the purposes of the project;

c) inform the Commission of the distribution of the Community financial contribution and the date of transfers to the beneficiaries, when required by this grant agreement or by the Commission;

d) review the reports to verify consistency with the project tasks before transmitting them to the Commission;

e) monitor the compliance by beneficiaries with their obligations under this grant agreement.
The coordinator may not subcontract the above-mentioned tasks.

4. **Beneficiaries** shall fulfil the following obligations as a *consortium*:

a) provide all detailed data requested by the *Commission* for the purposes of the proper administration of this *project*;

b) carry out the *project* jointly and severally vis-à-vis the *Community*, taking all necessary and reasonable measures to ensure that the *project* is carried out in accordance with the terms and conditions of this *grant agreement*.

c) make appropriate internal arrangements consistent with the provisions of this *grant agreement* to ensure the efficient implementation of the *project*. When provided for in Article 1.4 these internal arrangements shall take the form of a written *consortium agreement* (the "*consortium agreement*"). The *consortium agreement* governs inter alia the following:

   i. the internal organisation of the *consortium* including the decision making procedures;
   
   ii. rules on dissemination and use, and access rights;
   
   iii. the distribution of the *Community financial contribution*;
   
   iv. the settlement of internal disputes, including cases of abuse of power;
   
   v. liability, indemnification and confidentiality arrangements between the *beneficiaries*.

d) engage, whenever appropriate, with actors beyond the research community and with the public in order to foster dialogue and debate on the research agenda, on research results and on related scientific issues with policy makers and civil society; create synergies with education at all levels and conduct activities promoting the socioeconomic impact of the research.

e) allow the *Commission* to take part in meetings concerning the *project*.

**II.3. Specific performance obligations of each beneficiary**

Each *beneficiary* shall:

a) carry out the work to be performed, as identified in Annex I. However, where it is necessary for the implementation of the *project* it may call upon third parties to carry out certain elements, according to the conditions established in Article II.7 or any special clause in Article 7. The *beneficiary* may use resources that are made available by third parties in order to carry out its part of the work;

b) ensure that any agreement or contract entered into between the *beneficiary* and any third party contain provisions that this third party, including the auditor providing the certification of costs or on the methodology, shall have no rights in respect of the *Commission* under this *grant agreement*;

c) ensure that the rights of the *Commission* and the Court of Auditors to carry out audits are extended to the right to carry out any such audit or control on any third party whose costs are reimbursed in full or in part by the *Community financial contribution*, on the same terms and conditions as those indicated in this *grant agreement*;
ensure that the conditions applicable to it under Articles II.10, II.11, II.12, II.13 and II.22 are also applicable to any third party whose costs are claimed under the project according to the provisions of this grant agreement;

e) ensure that the tasks assigned to it are correctly and timely performed;

f) inform the other beneficiaries and the Commission through the coordinator in due time of:

- the names of the person(s) who shall manage and monitor its work, and its contact details as well as any changes to that information;
- any event which might affect the implementation of the project and the rights of the Community;
- any change in its legal name, address and of its legal representatives, and any change with regard to its legal, financial, organisational or technical situation including change of control and, in particular, any change of status as regards non-profit public bodies, secondary and higher education establishments, research organisations and SMEs;
- any circumstance affecting the conditions of participation referred to in the Rules for Participation, the Financial Regulation and its implementing rules or of any requirements of the grant agreement, especially if and when any eligibility criteria cease(s) to be met during the duration of the project.

g) provide the Commission and Court of Auditors directly with all information requested in the framework of controls and audits;

h) take part in meetings concerning the supervision, monitoring and evaluation of the project which are relevant to it;

i) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this grant agreement and inform the other beneficiaries and the Commission of any unavoidable obligations which may arise during the duration of the grant agreement which may have implications for any of its obligations under the grant agreement;

j) ensure that they comply with the provisions of the State aid framework;

k) carry out the project in accordance with fundamental ethical principles;

l) endeavour to promote equal opportunities between men and women in the implementation of the project;

m) have regard to the general principles of the Commission Recommendation of 11 March 2005 on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers, in particular concerning the working conditions, transparency of recruitment processes, and career development of the researchers recruited for the project;

n) take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the project.
SECTION 2 – REPORTING AND PAYMENTS

II.4. Reports and deliverables

1. The consortium shall submit a periodic report to the Commission for each reporting period within 60 days after the end of each respective period. The reporting shall comprise:

   a) an overview, including a publishable summary, of the progress of work towards the objectives of the project, including achievements and attainment of any milestones and deliverables identified in Annex I. This report should include the differences between work expected to be carried out in accordance with Annex I and that actually carried out,

   b) an explanation of the use of the resources, and

   c) a financial statement (Form C - Annex VI), from each beneficiary together with a summary financial report consolidating the claimed Community contribution of all the beneficiaries in an aggregate form, based on the information provided in Form C by each beneficiary.

2. The consortium shall submit a final report to the Commission within 60 days after the end of the project. The report shall comprise:

   a) a final publishable summary report covering results, conclusions and socio-economic impact of the project.

   b) a report covering the wider societal implications of the project, including gender equality actions, ethical issues, efforts to involve other actors and spread awareness as well as the plan for the use and dissemination of foreground.

3. The coordinator shall submit a report on the distribution of the Community financial contribution between beneficiaries. This report must be submitted 30 days after receipt of the final payment of the Community financial contribution.

4. A certificate on the financial statements shall be submitted for claims of interim payments and final payments when the amount of the Community financial contribution claimed by a beneficiary under the form of reimbursement of costs is equal to or superior to € 375,000, when cumulated with all previous payments for which a certificate on the financial statements has not been submitted. This certificate must be forwarded in the form of a detailed description verified as factual by its external auditor (Form D - Annex VII). However, for projects of a duration of 2 years or less, the certificate on the financial statements shall be submitted only for claims on final payments when the amount of the Community financial contribution claimed by a beneficiary is equal to or superior to € 375,000 when cumulated with all previous payments.

   The Commission may, at its sole discretion, accept at the request of a beneficiary, that it submits a certificate on the methodology, which it used to prepare its claims with regard to both personnel and overhead costs, and the related control systems. This certificate must be forwarded in the form of a detailed description verified as factual by its external auditor (Form E - Annex VII). When this certificate is accepted by the Commission, the requirement to provide an intermediate certificate on the financial statements for claims of interim payments shall be waived.

   Certificates on financial statements shall certify that the costs claimed and the receipts declared during the period for which it is provided, as well as the declaration of the interests yielded by the pre-financing meet the conditions required by this grant agreement. Where third parties’ costs
are claimed under the grant agreement, such costs shall be certified in accordance with the provisions of this Article. The auditor shall include in its certification that no conflict of interest exists between it and the beneficiary in establishing this certificate.

Certificates on the financial statements and on the methodology shall be prepared and certified by an external auditor and shall be established in accordance with the terms of reference attached as Annex VII to this grant agreement. Each beneficiary is free to choose any qualified external auditor, including its usual external auditor, provided that the cumulative following requirements are met:

i) the auditor must be independent from the beneficiary;

ii) the auditor must be qualified to carry out statutory audits of accounting documents in accordance with national legislation implementing the 8th Council Directive on statutory audits of annual accounts and consolidated accounts\(^1\) or any Community legislation replacing this Directive. Beneficiaries established in third countries shall comply with national regulations in the same field and the certificate on the financial statement provided shall consist of an independent report of factual findings based on procedures specified by the Community.

Public bodies, secondary and higher education establishments and research organisations may opt for a competent public officer to provide their certificate on financial statements and on the methodology, provided that the relevant national authorities have established the legal capacity of that competent public officer to audit that entity and that the independence of that officer, in particular regarding the preparation of the financial statements, can be ensured.

Certification by external auditors according to this Article does not affect the liability of beneficiaries nor the rights of the Community arising from this grant agreement.

5. The consortium shall transmit the reports and other deliverables through the coordinator to the Commission by electronic means. In addition, Form C, must be signed by the authorised person(s) within the beneficiary’s organisation, and the certificates on the financial statements and on the methodology must be signed by an authorised person of the auditing entity, and the original shall be sent to the Commission.

6. The reports submitted to the Commission for publication should be of a suitable quality to enable direct publication and their submission to the Commission in publishable form indicates that no confidential material is included therein.

7. Deliverables identified in Annex I shall be submitted as foreseen therein.

8. The Commission may be assisted by external experts in the analysis and evaluation of the reports and deliverables.

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II.5. Approval of reports and deliverables, time-limit for payments

1. The Commission shall evaluate project reports and deliverables required by the provisions of Annex I and disburse the corresponding payments within 105 days of their receipt unless the time-limit, the payment or the project has been suspended.

2. Payments shall be made after the Commission's approval of reports and/or deliverables. The absence of a response from the Commission within this time-limit shall not imply its approval. The Commission may reject reports and deliverables even after the time-limit for payment. Approval of the reports shall not imply recognition of their regularity or of the authenticity of the declarations and information they contain and do not imply exemption from any audit or review.

3. After reception of the reports the Commission may:

   a) approve the reports and deliverables, in whole or in part or make the approval subject to certain conditions.

   b) reject the reports and deliverables by giving an appropriate justification and start the procedure for termination of the grant agreement in whole or in part.

   c) suspend the time limit if the reports or appropriate deliverables have not been supplied, or are not complete or if some clarification or additional information is needed or there are doubts concerning the eligibility of costs claimed in the financial statement and/or additional checks are being conducted. The suspension will be lifted from the date when the last report, deliverable or the additional information requested is received by the Commission.

   The Commission shall inform the consortium in writing via the coordinator of any such suspension and the conditions to be met for the lifting of the suspension.

   Suspension shall take effect on the date when notice is sent by the Commission.

   d) suspend the payment at any time:

      • if the work carried out does not comply with the provisions of the grant agreement;

      • if a beneficiary has to reimburse to its national state an amount unduly received as state aid;

      • if the provisions of the grant agreement have been infringed or if there is a suspicion thereof, in particular in the wake of any audits and checks carried out;

      • if there is a suspicion of irregularity committed by one or more beneficiary(ies) in the performance of the grant agreement. Only the portion destined for the beneficiary(ies) suspected of irregularity will be suspended.

      • if there is a suspected or established irregularity committed by one or more beneficiary(ies) in the performance of another grant agreement funded by the general budget of the European Communities or by budgets managed by them. In such cases, suspension of the payments will occur where the irregularity (or suspected irregularity) is of a serious and systematic nature which is likely to affect the performance of the current grant agreement.
If the Commission suspends the payment the consortium shall be duly informed of the reasons why payment in whole or in part will not be made.

4. The Commission may proceed with an interim payment in part if some reports or deliverables are not submitted as required, or only partially or conditionally approved. The reports and deliverables due for one reporting period which are submitted late will be evaluated together with the reports and deliverables of the next reporting period.

5. On expiry of the time-limit for approval of the reports and payments, and without prejudice to suspension by the Commission of this time-limit, the Commission shall pay interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euros, plus three and a half points. The reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union.

This provision shall not apply to beneficiaries that are public bodies of the Member States of the European Union.

Interest on late payment shall cover the period from the final date of the period for payment, exclusive, up to the date when the payment is debited to the Commission's account, inclusive. The interest shall not be treated as a receipt for the project for the purposes of determining the final grant. Any such interest payment is not considered as part of the Community financial contribution.

6. The suspension of payment by the Commission may not be considered as late payment.

7. At the end of the project, the Commission may decide not to make the payment of the corresponding Community financial contribution subject to one month's written notice of non-receipt of a report, a certificate on the financial statement or other project deliverable.

8. The Commission shall inform the coordinator of the amount of the final payment of the Community financial contribution justifying this amount. The coordinator shall have two months from the date of receipt to give reasons for any disagreement. After the end of this period such requests will no longer be considered and the consortium is deemed to have accepted the Commission's decision. The Commission undertakes to reply in writing within two months following the date of receipt, giving reasons for its reply. This procedure is without prejudice to the beneficiary's right to appeal against the Commission's decision.

II.6. Payment modalities

1. The Commission shall make the following payments:
   a. a pre-financing in accordance with Article 6,
   b. for projects with more than one reporting period, the Commission shall make interim payments of the Community financial contribution corresponding to the amount accepted for each reporting period.
   c. the Commission shall make a final payment of the Community financial contribution corresponding to the amount accepted for the last reporting period plus any adjustment needed.
Where the amount of the corresponding Community financial contribution is less than any amount already paid to the consortium, the Commission shall recover the difference.

Where the amount of the corresponding Community financial contribution is more than any amount already paid to the consortium, the Commission shall pay the difference as the final payment within the limit of Article 5.1.

2. The total amount of the pre-financing and interim payments shall not exceed 90% of the maximum Community financial contribution.

3. Payments by the Commission shall be made in euros.

4. Costs incurred in currencies other than the Euro shall be reported in Euro, using for all costs, either the conversion rate published by the European Central Bank that would have applied on the date that the actual costs were incurred, or the rate applicable on the first day of the month following the end of the reporting period.

5. The bank account mentioned in Article 5.4 shall allow that the Community financial contribution and related interest are identified. Otherwise, the accounting methods of the beneficiaries or intermediaries must make it possible to identify the Community financial contribution and the interest or other benefits yielded.

6. Any payment may be subject to an audit or review and may be adjusted or recovered based on the results of such audit or review.

7. Payments by the Commission shall be deemed to be effected on the date when they are debited to the Commission's account.

SECTION 3 – IMPLEMENTATION

II.7. Subcontracting

1. A subcontractor is a third party which has entered into an agreement on business conditions with one or more beneficiaries, in order to carry out part of the work of the project without the direct supervision of the beneficiary and without a relationship of subordination.

Where the beneficiary enters into a subcontract to carry out some parts of the tasks related to the project, it remains bound by its obligations to the Commission and the other beneficiaries under the grant agreement and retains sole responsibility for carrying out the project and for compliance with the provisions of the grant agreement.

Provisions of this grant agreement applying to subcontractors shall also apply to external auditors who certify financial statements or a methodology.

2. Where it is necessary for the beneficiaries to subcontract certain elements of the work to be carried out, the following conditions must be fulfilled:

- subcontracts may only cover the execution of a limited part of the project;
- recourse to the award of subcontracts must be duly justified in Annex I having regard to the nature of the project and what is necessary for its implementation;
recourse to the award of subcontracts by a beneficiary may not affect the rights and obligations of the beneficiaries regarding background and foreground;

- Annex I must indicate the task to be subcontracted and an estimation of the costs;

Any subcontract, the costs of which are to be claimed as an eligible cost, must be awarded according to the principles of best value for money (best price-quality ratio), transparency and equal treatment. Framework contracts between a beneficiary and a subcontractor, entered into prior to the beginning of the project that are according to the beneficiary's usual management principles may also be accepted.

3. Beneficiaries may use external support services for assistance with minor tasks that do not represent per se project tasks as identified in Annex I.

II.8. Suspension of the project

1. The coordinator shall immediately inform the Commission of any event affecting or delaying the implementation of the project.

2. The coordinator can propose to suspend the whole or part of the project if force majeure or exceptional circumstances render its execution excessively difficult or uneconomic. The coordinator must inform the Commission without delay of such circumstances, including full justification and information related to the event, as well as an estimation of the date when the work on the project will begin again.

3. The Commission may suspend the whole or part of the project where it considers that the consortium is not fulfilling its obligations according to this grant agreement. The coordinator shall be informed without delay of the justification for such an event and the conditions necessary to reinstate the work again. The coordinator shall inform the other beneficiaries. This suspension takes effect 10 days after the notification to the coordinator.

4. During the period of suspension, no costs may be charged to the project.

5. The suspension of the whole or part of the project may be lifted once the parties to the grant agreement have agreed on the continuation and, as appropriate, any necessary modification, including extension of the duration of the project, has been identified by means of a written amendment.

II.9. Confidentiality and classified information

1. During the project and for a period of five years after its completion or any other period thereafter as established in the consortium agreement, the beneficiaries undertake to preserve the confidentiality of any data, documents or other material that is identified as confidential in relation to the execution of the project (“confidential information”). The Commission undertakes to preserve the confidentiality of "confidential information" until five years after the completion of the project. Upon a duly substantiated request by a beneficiary, the Commission may agree to extend this period regarding specific confidential information.

Where confidential information was communicated orally, its confidential character must be confirmed by the disclosing party in writing within 15 days after disclosure.

2. Paragraph 1 no longer applies where:
- the confidential information becomes publicly available by means other than a breach of confidentiality obligations;

- the disclosing party subsequently informs the recipient that the confidential information is no longer confidential;

- the confidential information is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality;

- the disclosure or communication of the confidential information is foreseen by other provisions of this grant agreement or the consortium agreement;

- the disclosure or communication of confidential information is required by the national law of one of the beneficiaries and this exception to the confidentiality requirement is foreseen in the consortium agreement;

3. The beneficiaries undertake to use such confidential information only in relation to the execution of the project unless otherwise agreed with the disclosing party.

4. Notwithstanding the preceding paragraphs, the treatment of classified data, documents or other material (“classified information”) must follow the applicable rules established by the relevant Community legislation, including the Commission’s internal rules for handling such classified information.

II.10. Communication of data for evaluation, impact assessment and standardisation purposes

1. Beneficiaries shall provide, at the request of the Commission, the data necessary for:
   - the continuous and systematic review of the specific programme and the Seventh Framework Programme;
   - the evaluation and impact assessment of Community activities, including the use and dissemination of foreground.

   Such data may be requested throughout the duration of the project and up to five years after the end of the project.

   The data collected may be used by the Commission in its own evaluations but will not be published other than on an anonymous basis.

2. Without prejudice to the provisions regarding protection of foreground and confidentiality, the beneficiaries shall, where appropriate, during the project and for two years following its end, inform the Commission and the European standardisation bodies about foreground which may contribute to the preparation of European or international standards.

2 As certain national laws (for example regarding freedom of information) may provide that proprietary information made available under a confidentiality requirement must nevertheless be made public in case access is requested, the beneficiaries should inform each other of the existence of such national laws and make appropriate arrangements in the consortium agreement.

II.11. Information to be provided to Member States or Associated Countries

1. The Commission shall, upon request, make available to any Member State or Associated country any useful information in its possession on foreground, provided that the following conditions are met:

- the information concerned is relevant to public policy;
- the beneficiaries have not provided sound and sufficient reasons for withholding the information concerned;
- the applicable Community rules on classified information do not prohibit such action.

2. As stipulated in the Rules for Participation, the provision of information pursuant to paragraph 1 shall not transfer to the recipient any rights or obligations and the recipient shall be required to treat any such information as confidential unless it becomes duly public, or it was communicated to the Commission without restrictions on its confidentiality.

II.12. Information and communication

1. The beneficiaries shall, throughout the duration of the project, take appropriate measures to engage with the public and the media about the project and to highlight the Community financial support. Unless the Commission requests otherwise, any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc), must specify that the project has received Community research funding and display the European emblem. When displayed in association with a logo, the European emblem should be given appropriate prominence. This obligation to use the European emblem in respect of projects to which the [European Community] [European Atomic Energy Community] contributes implies no right of exclusive use. It is subject to general third-party use restrictions which do not permit the appropriation of the emblem, or of any similar trademark or logo, whether by registration or by any other means. Under these conditions, beneficiaries are exempted from the obligation to obtain prior permission from the Commission to use the emblem. Further detailed information on the EU emblem can be found on the Europa web page.

Any publicity made by the beneficiaries in respect of the project, in whatever form and on or by whatever medium, must specify that it reflects only the author’s views and that the Community is not liable for any use that may be made of the information contained therein.

2. The Commission shall be authorised to publish, in whatever form and on or by whatever medium, the following information:

- the name of the beneficiaries;
- contact addresses of beneficiaries;
- the general purpose of the project in the form of the summary provided by the consortium;
- the amount and rate of the Community financial contribution granted to the project;
- the geographic location of the activities carried out;
- the list of dissemination activities and/or of patent (applications) relating to foreground;
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– the details/references and the abstracts of scientific publications relating to foreground
and, where provided pursuant to Article II.30, the published version or the final manuscript
accepted for publication;

– the publishable reports submitted to it;

– any picture or any audiovisual or web material provided to the Commission in the
framework of the project.

The consortium shall ensure that all necessary authorisations for such publication have been
obtained and that the publication of the information by the Commission does not infringe
any rights of third parties.

Upon a duly substantiated request by a beneficiary, the Commission may agree to forego
such publicity if disclosure of the information indicated above would risk compromising the
beneficiary’s security, academic or commercial interests.

II.13. Processing of personal data

1. All personal data contained in the grant agreement shall be processed in accordance with
of individuals with regard to the processing of personal data by the Community institutions
and bodies and on the free movement of such data. Such data shall be processed by the
controller solely in connection with the implementation and follow-up of the grant agreement
and the evaluation and impact assessment of Community activities, including the use and
dissemination of foreground, without prejudice to the possibility of passing the data to the
bodies responsible for inspection and audit in accordance with Community legislation and this
grant agreement.

2. Beneficiaries may, on written request, gain access to their personal data and correct any
information that is inaccurate or incomplete. They should address any questions regarding the
processing of their personal data to the Controller. Beneficiaries may lodge a complaint
against the processing of their personal data with the European Data Protection Supervisor at
any time.

3. For the purpose of this grant agreement, the “Controller” shall be the contact for the
Commission identified in Article 8.1.

Part B FINANCIAL PROVISIONS

SECTION 1 – GENERAL FINANCIAL PROVISIONS

II.14. Eligible costs of the project

1. Costs incurred for the implementation of the project shall meet the following conditions in
order to be considered eligible:

a) they must be actual;

b) they must be incurred by the beneficiary;

c) they must be incurred during the duration of the project, with the exception of costs
incurred in relation to final reports and reports corresponding to the last period as well as
certificates on the financial statements when requested for the last period and final reviews if applicable, which may be incurred during the period of up to 60 days after the end of the project or the date of termination whichever is earlier;

d) they must be determined in accordance with the usual accounting and management principles and practices of the beneficiary. The accounting procedures used in the recording of costs and receipts shall respect the accounting rules of the State in which the beneficiary is established. They shall permit the direct reconciliation between the costs and receipts for the implementation of the project;

e) they must be used for the sole purpose of achieving the objectives of the project and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness;

f) they must be recorded in the accounts of the beneficiary;

g) they must be indicated in the estimated overall budget in Annex I.

Notwithstanding point a), beneficiaries may opt to declare average personnel costs if certified in accordance with a methodology approved by the Commission and consistent with the management principles and usual accounting practices of the beneficiary. Average personnel costs charged to this grant agreement by a beneficiary having provided a certification on the methodology are deemed not to significantly differ from actual personnel costs.

Such a certification shall be issued in accordance with the provisions laid down in Article II.4 and Annex VII, unless it has already been submitted for a previous grant agreement under the Seventh Framework Programme and the methodology certified has not changed.

2. Costs incurred by third parties in relation to resources they make available free of charge to a beneficiary, can be charged by the beneficiary provided they meet the conditions established in paragraphs 1 and 3, mutatis mutandis and claimed in accordance with Article II.17.

3. The following costs shall be considered as non-eligible and may not be charged to the project:

a) identifiable indirect taxes including value added tax,

b) duties,

c) interest owed,

d) provisions for possible future losses or charges,

e) exchange losses, cost related to return on capital,

f) costs declared or incurred, or reimbursed in respect of another Community project,

g) debt and debt service charges, excessive or reckless expenditure.

II.15. Identification of direct and indirect costs
1. Direct costs are all those eligible costs which can be attributed directly to the project and are identified by the beneficiary as such, in accordance with its accounting principles and its usual internal rules.

With regard to personnel costs, only the costs of the actual hours worked by the persons directly carrying out work under the project may be charged. Such persons must:

– be directly hired by the beneficiary in accordance with its national legislation,
– work under the sole technical supervision and responsibility of the latter, and
– be remunerated in accordance with the normal practices of the beneficiary.

Costs related to parental leave for persons who are directly carrying out the project are eligible costs provided that they are mandatory under national law.

2. Indirect costs are all those eligible costs which cannot be identified by the beneficiary as being directly attributed to the project but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the project. They may not include any eligible direct costs.

Indirect costs shall represent a fair apportionment of the overall overheads of the organisation. They may be identified according to one of the following methods:

a) Based on the real indirect costs of the beneficiary.

For this purpose, a beneficiary is allowed to use a simplified method of calculation of its full indirect eligible cost at the level of its legal entity if it is in accordance with its usual accounting and management principles and practices. Use of such a method is only acceptable where the lack of analytical accounting or the legal requirement to use a form of cash-based accounting prevents detailed cost allocation. The simplified approach must be based on actual costs derived from the financial accounts of the period in question.

b) A beneficiary may opt for a flat rate of 20% of its total direct eligible costs, excluding its direct eligible costs for subcontracting and the costs of reimbursement of resources made available by third parties which are not used on the premises of the beneficiary.

c) Non-profit public bodies, secondary and higher education establishments, and research organisations and SMEs, which are unable to identify with certainty their real indirect costs for the project, when participating in funding schemes which include research and technological development and demonstration activities, as referred to in the table of Article II.16, may opt for a flat-rate of 60% of the total direct eligible costs excluding costs for subcontracting and the costs of reimbursement of resources made available by third parties which are not used on the premises of the beneficiary. If these beneficiaries change their status during the life of the project, this flat rate shall be applicable up to the moment they lose their status.

In the case of coordination and support actions, the reimbursement of indirect eligible costs for every beneficiary may reach a maximum 7% of the direct eligible costs, excluding the

4 NOTE: The rate established in this indent will apply for grants awarded under calls for proposals closing before 1 January 2010. The Commission shall establish, for grants awarded under calls closing after 31 December 2009, an appropriate level of flat rate which should be an approximation of the real indirect costs concerned but not lower than 40%, at that moment a special clause will be adopted and inserted in subsequent grant-agreements.
direct eligible costs for subcontracting and the costs of reimbursement of resources made available by third parties which are not used on the premises of the beneficiary.

3. The beneficiary shall apply the option chosen in all grant agreements under the Seventh Framework Programme.

However, any beneficiary that has opted for the possibilities described in b) and c) for reimbursement of its indirect costs in a previous grant agreement funded under the Seventh Framework Programme may opt in this grant agreement for one of the methods described in a). However, it must then use that method in subsequent grant agreements established under the Seventh Framework Programme.

II.16. Upper funding limits

1. For research and technological development activities, the Community financial contribution may reach a maximum of 50% of the total eligible costs. However, for beneficiaries that are non-profit public bodies, secondary and higher education establishments, research organisations and SMEs, the rate may reach a maximum of 75% of the total eligible costs. If these beneficiaries change their status during the life of the project, this reimbursement rate shall be applicable up to the moment they lose their status.

2. For demonstration activities, the Community financial contribution may reach a maximum of 50% of the total eligible costs.

3. For coordination and support actions, the Community financial contribution may reach a maximum of 100% of the total eligible costs.

4. For other activities not covered by paragraphs 1, 2 and 3, inter alia, management activities including certificates on the financial statements and certifications of the methodology, training, coordination, networking and dissemination (including publications), the contribution may reach a maximum of 100% of the total eligible costs.

Paragraphs 1 to 4 shall apply also in the case of projects where flat rate financing or lump sum financing is used for the whole or for part of the project.

5. Management of the consortium activities includes:

− maintenance of the consortium agreement, if it is obligatory,
− the overall legal, ethical, financial and administrative management including, for each of the beneficiaries, obtaining the certificates on the financial statements or on the methodology and costs relating to financial audits and technical reviews
− implementation of competitive calls by the consortium for the participation of new beneficiaries, where required by Annex I of this grant agreement,
− any other management activities foreseen by the annexes, except coordination of research and technological development activities.

6. For training activities, the salary costs of those being trained are not eligible costs under this activity.

The table illustrates the maximum rates of Community financial contribution for the activities relating to the funding schemes below:
II.17. Receipts of the project

Receipts of the project may arise from:

a) Resources made available by third parties to the beneficiary - financial transfers or contributions in kind which are free of charge:

i. shall be considered a receipt of the project if they have been contributed by the third party specifically to be used on the project.

ii. shall not be considered a receipt of the project if their use is at the discretion of the beneficiary's management.

b) Income generated by the project:

i. shall be considered receipts for the beneficiary when generated by actions undertaken in carrying out the project and from the sale of assets purchased under the grant agreement up to the value of the cost initially charged to the project by the beneficiary;

ii. shall not be considered a receipt for the beneficiary when generated from the use of foreground resulting from the project.

II.18. Community financial contribution

The "Community financial contribution" to the project shall be defined as the amount determined as follows:

1. By applying the upper funding limits indicated in Article II.16, per activity and per beneficiary to the costs accepted by the Commission and/or to the flat rates and/or lump sums.
2. The Community financial contribution shall be calculated by reference to the cost of the project as a whole and its reimbursement shall be based on the reported costs of each beneficiary.

3. The Community financial contribution cannot give rise to any profit for any beneficiary. For this purpose, at the time of the submission of the last financial statement, the final amount of the Community financial contribution will take into account any receipts of the project received by each beneficiary. For each beneficiary, the Community financial contribution cannot exceed the eligible costs minus the receipts for the project.

4. The total amount of payments by the Community shall not exceed in any circumstances the maximum amount of the Community financial contribution referred to in Article 5.

II.19. Interest yielded by pre-financing provided by the Commission

1. Pre-financing remains the property of the Community.

2. The Commission shall recover from the coordinator, for each reporting period following the implementation of the agreement, the amount of interest generated by pre-financing which exceeds EUR [50,000]5

SECTION 2 – GUARANTEE FUND

II.20. Financial responsibility

The financial responsibility of each beneficiary shall be limited to its own debt, subject to Article II.21.

II.21. Guarantee fund

1. Beneficiaries shall contribute to the Guarantee Fund (hereinafter the Fund) established in order to manage the risk associated with non-recovery of sums due to the Community by beneficiaries of grant agreements under the 7th Framework Programme. The contribution of beneficiaries of this grant agreement shall be offset from the initial pre-financing, under the terms and conditions established in Article 6.

2. The Fund shall be deposited in a bank (hereinafter the Bank) chosen by the Community represented by the Commission, acting as executive agent on behalf of the beneficiaries of grant agreements under the 7th Framework Programme.

3. Interest generated by the Fund shall be added to it and shall be used in priority by the Commission for transfer from or recovery from the Fund referred to in paragraph 4 (hereinafter the Operations).

5 This amount shall be the one established in the final version of the Implementing Rules of the Financial Regulation which is currently under revision.
Operations may be undertaken from 1st January 2007 until the day of the final payment of the last grant agreement under the 7th Framework Programme (hereinafter the Period). At the end of the Period, any remaining interests shall become the property of the Community.

Where interest is insufficient to cover Operations, contributions to the Fund may be used within a limit never exceeding 20% of their value, and within a limit not exceeding 1% of the Community financial contributions due to beneficiaries other than those referred to in paragraph 6, last indent at the end of the Period. Beyond these limits or after the Period, the Commission shall directly recover from beneficiaries any amount owed to the Community.

4. Subject to paragraph 3, the Commission shall implement the following Operations on the Fund:

a. where a beneficiary in an on-going grant agreement under the 7th Framework Programme owes money to the Community and does not transfer it to the coordinator at the latest 45 days after receipt of a written request from the Commission, and where the remaining beneficiaries agree to implement the said grant agreement identically regarding its objectives, the Commission shall order the Bank to directly transfer an equivalent amount to the coordinator. Amounts transferred from the Fund shall be regarded as Community financial contribution.

b. where a beneficiary in any terminated or completed grant agreement under the 7th Framework Programme owes money to the Community, the Commission shall recover effectively from the Fund the amounts due.

Following an Operation, the Commission shall issue against the defaulting beneficiary a recovery order to the benefit of the Fund. The Commission may offset that recovery order against any pending payment due by the Community to the said beneficiary or adopt a recovery decision in accordance with Article II.25

5. At the moment of final payment, the amount contributed to the Fund under this project shall be returned to the beneficiaries via the coordinator, subject any offsetting of amounts due to the Community.

6. If contributions of beneficiaries of grant agreements under 7th Framework Programme have been used, the Commission shall deduct from the amount to be returned to each of the beneficiaries of this project an amount equal to:

\[ \text{contribution of this project} \times \text{Fund index} \]

The “Fund index” shall equal the ratio “contribution used”/”total contributions to the fund”, as established at the end of each month by the Bank to be applied during the following month. The applicable “Fund index” shall be that of the month [in which the project ends][in which the final payment is effected].

That deduction shall not exceed one per cent of the Community financial contribution due to a beneficiary and shall not apply to amounts due to public bodies or legal entities whose participation in the grant agreement is guaranteed by a Member State or an Associated country, and higher and secondary education establishments.
SECTION 3 – CONTROLS, RECOVERIES AND SANCTIONS

II.22. Financial audits and controls

1. The Commission may, at any time during the grant agreement and up to five years after the end of the project, arrange for financial audits to be carried out, by external auditors, or by the Commission departments themselves including OLAF. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the Commission. Such audits may cover financial, systemic and other aspects (such as accounting and management principles) relating to the proper execution of the grant agreement. They shall be carried out on a confidential basis.

2. The beneficiaries shall make available directly to the Commission all detailed information and data that may be requested by the Commission or any representative authorised by it, with a view to verifying that the grant agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it. This information and data must be precise, complete and effective.

3. The beneficiaries shall keep the originals or, in exceptional cases, duly authenticated copies –including electronic copies-, of all documents relating to the grant agreement for up to five years from the end of the project. These shall be made available to the Commission where requested during any audit under the grant agreement.

4. In order to carry out these audits, the beneficiaries shall ensure that the Commission's departments and any external body(ies) authorised by it have on the spot access at all reasonable times, notably to the beneficiary's offices, to its computer data, to its accounting data and to all the information needed to carry out those audits, including information on individual salaries of persons involved in the project. They shall ensure that the information is readily available on the spot at the moment of the audit and, if so requested, that data be handed over in an appropriate form.

5. On the basis of the findings made during the financial audit, a provisional report shall be drawn up. It shall be sent by the Commission or its authorised representative to the beneficiary concerned, who may make observations thereon within one month of receiving it. The Commission may decide not to take into account observations conveyed or documents sent after that deadline. The final report shall be sent to the beneficiary concerned within two months of expiry of the aforesaid deadline.

6. On the basis of the conclusions of the audit, the Commission shall take all appropriate measures which it considers necessary, including the issuing of a recovery order regarding all or part of the payments made by it and the application of any applicable sanction.

7. The European Court of Auditors shall have the same rights as the Commission, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.

8. In addition, the Commission may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities’ financial interests against fraud and other irregularities\footnote{OJ L 292, 15.11.1996, p.2.} and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May
II.23. Technical reviews

1. The Commission may initiate a technical review at any time during the implementation of the project and up to the date of the final payment. The aim of a technical review shall be to assess the work carried out under the project over a certain period, inter alia by evaluating the project reports and deliverables relevant to the period in question. Such reviews may cover scientific, technological and other aspects relating to the proper execution of the project and the grant agreement.

2. With respect to the Description of work (Annex I), the review shall objectively establish:

- the degree of fulfilment of the project work plan for the relevant period and of the related deliverables
- the continued relevance of the objectives and breakthrough potential with respect to the scientific and industrial state of the art,
- the resources planned and utilised in relation to the achieved progress, in a manner consistent with the principles of economy, efficiency and effectiveness,
- the management procedures and methods of the project,
- the beneficiaries' contributions and integration within the project,
- the expected potential impact in economic, competition and social terms, and the beneficiaries' plans for the use and dissemination of foreground.

3. The review shall be deemed to be initiated on the date of receipt by the beneficiary(ies) of the relevant letter sent by the Commission.

4. Any such review shall be carried out on a confidential basis.

5. The Commission may be assisted in the technical review by external scientific or technological experts. Prior to the carrying out of the evaluation task, the Commission shall communicate to the beneficiaries the identity of the appointed experts. The beneficiary(ies) shall have the right to refuse the participation of a particular external scientific or technological expert on grounds of commercial confidentiality.

6. The review may be carried out remotely at the expert's home or place of work or involve sessions with project representatives either at the Commission premises or at the premises of beneficiaries. The Commission or the external scientific or technological expert may have access to the locations and premises where the work is being carried out, and to any document concerning the work.

7. The beneficiaries shall make available directly to the Commission all detailed information and data that may be requested by it or the external scientific or technological expert with a view to verifying that the project is being properly implemented and performed in accordance with the provisions of this grant agreement.

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17 OJ L 136, 31.5.1999

18 OJ L 136, 31.5.1999
8. A report on the outcome of the review shall be drawn up. It shall be sent by the Commission to the beneficiary concerned, who may make observations thereon within one month of receiving it. The Commission may decide not to take into account the observations conveyed after that deadline.

9. An ethics audit may be undertaken at the discretion of the Commission Services.

10. On the basis of the experts' formal recommendations the Commission will inform the coordinator of its decision:
   - to allow the project to continue without modification or with minor modifications after approval of the deliverables or;
   - to consider that the project can only continue with major modifications or;
   - to initiate the termination of the grant agreement or of the participation of any beneficiary according to Article II. 38.

II.24. Liquidated damages and financial penalties

A. Liquidated damages

1. A beneficiary that is found to have overstated any amount and which has therefore received an unjustified financial contribution from the Community shall, without prejudice to any other measures provided for in this grant agreement, be liable to pay damages, hereinafter "liquidated damages". Liquidated damages are due in addition to the recovery of the unjustified financial contribution from the beneficiary.

2. Any amount of liquidated damages shall be proportionate to the overstated amount and the unjustified part of the Community contribution. The following formula shall be used to calculate liquidated damages:

   \[
   \text{Liquidated damages} = \text{unjustified financial contribution} \times \left( \frac{\text{overstated amount}}{\text{total amount claimed}} \right)
   \]

   The calculation of any liquidated damages shall only take into consideration the period relating to the beneficiary’s claim for the Community financial contribution for that period. It shall not be calculated in relation to the entire Community financial contribution.

3. The Commission shall inform the beneficiary which it considers liable to pay liquidated damages in writing of its claim by way of a registered letter with acknowledgement of receipt. The beneficiary shall have a period of 30 days to answer the Community's claim.

4. The procedure for repayment of unjustified financial contribution and for payment of liquidated damages will be determined in accordance with the provisions of Article II.25. Liquidated damages will be deducted from any further payment or will be subject to recovery by the Commission.

5. The Commission shall be entitled to liquidated damages in respect of any overstated amount which comes to light after the grant agreement has been completed, in accordance with the provisions of paragraphs 1 to 4.
B. Financial penalties

1. A beneficiary that has been guilty of making false declarations or has been found to have seriously failed to meet its obligations under this grant agreement shall be liable to financial penalties of between 2% and 10% of the value of the Community financial contribution received by that beneficiary. The rate may be increased to between 4% and 20% in the event of a repeated offence within five years following the first infringement.

2. In the cases of paragraph 1, beneficiaries shall be excluded from all grants for a maximum of two years from the date the infringement has been established.

3. The provisions in this Article shall be without prejudice to any administrative or financial sanction that may be imposed on any defaulting beneficiary in accordance with the Financial Regulation or to any other civil remedy to which the Community or any other beneficiary may be entitled. Furthermore, these provisions shall not preclude any criminal proceedings which may be initiated by the Member States' authorities.

II.25. Reimbursement to the Commission and recovery orders

1. Where an amount, paid by the Commission to the coordinator in his capacity of recipient of all payments, is to be recovered under the terms of this grant agreement, the coordinator undertakes to repay the Commission the sum in question, on whatever terms and by whatever date it may specify, even if the coordinator has not been the final recipient of the amount due. In the latter case, if payment has not been made by the due date, the Commission reserves the right to recover directly the amount due from the final recipient.

2. If the obligation to pay the amount due is not honoured by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article II.5. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date on which the Commission receives full payment of the amount owed, inclusive.

   Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

3. If payment has not been made by the due date, sums owed to the Commission may be recovered by offsetting them against any sums owed to the beneficiary concerned, after informing the latter accordingly, or by calling in the guarantee mechanism provided for in Article II.21. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Communities, the Commission may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required.

4. The beneficiary understands that under Article 256 of the Treaty establishing the European Community, Articles 164 and 192 of the Treaty establishing the European Atomic Energy Community and as provided by the Financial Regulation, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States.
SECTION 1 – FOREGROUND

II.26. Ownership

1. Foreground shall be the property of the beneficiary carrying out the work generating that foreground.

2. Where several beneficiaries have jointly carried out work generating foreground and where their respective share of the work cannot be ascertained, they shall have joint ownership of such foreground. They shall establish an agreement regarding the allocation and terms of exercising that joint ownership.

However, where no joint ownership agreement has yet been concluded, each of the joint owners shall be entitled to grant non-exclusive licences to third parties, without any right to sub-licence, subject to the following conditions:

a) at least 45 days prior notice must be given to the other joint owner(s); and

b) fair and reasonable compensation must be provided to the other joint owner(s).

3. If employees or other personnel working for a beneficiary are entitled to claim rights to foreground, the beneficiary shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under this grant agreement.

II.27. Transfer

1. Where a beneficiary transfers ownership of foreground, it shall pass on its obligations regarding that foreground to the assignee including the obligation to pass those obligations on to any subsequent assignee.

2. Subject to its obligations concerning confidentiality such as in the framework of a merger or an acquisition of an important part of its assets, where a beneficiary is required to pass on its obligations to provide access rights, it shall give at least 45 days prior notice to the other beneficiaries of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the foreground to permit them to exercise their access rights.

However, the beneficiaries may, by written agreement, agree on a different time-limit or waive their right to prior notice in the case of transfers of ownership from one beneficiary to a specifically identified third party.

3. Following notification in accordance with paragraph 2, any other beneficiary may object within 30 days of the notification or within a different time-limit agreed in writing, to any envisaged transfer of ownership on the grounds that it would adversely affect its access rights.

6 The joint owners may of course agree not to continue with joint ownership but decide on an alternative regime (for example, a single owner with access rights for the other beneficiaries that transferred their ownership share).
Where any of the other beneficiaries demonstrate that their access rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between the beneficiaries concerned.

4. Where a beneficiary intends to transfer ownership of foreground to a third party established in a third country not associated to the Seventh Framework Programme, the Commission may object to such a transfer of ownership of foreground, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations.

In such cases, the transfer of ownership shall not take place unless the Commission is satisfied that appropriate safeguards will be put in place.

In projects funded by the European Atomic Energy Community, security considerations must be understood as being the defence interests of the Member States within the meaning of Article 24 of the Treaty establishing the European Atomic Energy Community.

II.28. Protection

1. Where foreground is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection, having due regard to its legitimate interests and the legitimate interests, particularly the commercial interests, of the other beneficiaries.

Where a beneficiary which is not the owner of the foreground invokes its legitimate interest, it must, in any given instance, show that it would suffer disproportionately great harm.

2. Patent applications relating to foreground, filed by or on behalf of a beneficiary must include the following statement to indicate that said foreground was generated with the assistance of financial support from the Community:

The work leading to this invention has received funding from the [European Community's] [European Atomic Energy Community's] Seventh Framework Programme ([FP7/2007-2013] [FP7/2007-2011]) under grant agreement n° [xxxxxx].

Furthermore, all patent applications relating to foreground filed before the end of a reporting period shall be reported in the plan for the use and dissemination of foreground, including sufficient details/references to enable the Commission to trace the patent (application). Any such filing arising after the final report must be notified to the Commission including the same details/references.

3. Where the foreground is capable of industrial or commercial application and its owner does not protect it and does not transfer it to another beneficiary, to an affiliated entity established in a Member State or Associated country or to any other third party established in a Member State or Associated country along with the associated obligations in accordance with Article II.27, no dissemination activities relating to said foreground may take place before the Commission has been informed. The Commission must be informed at the latest 45 days prior to the intended dissemination activity.

In such cases, the Community may, with the consent of the beneficiary concerned, assume ownership of that foreground and adopt measures for its adequate and effective protection.

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7 This statement will have to be translated into the language of the patent filing. Translations in all Community languages will be provided.
The beneficiary concerned may refuse consent only if it can demonstrate that its legitimate interests would suffer disproportionately great harm.

In the event the Community assumes ownership, it shall take on the obligations regarding the granting of access rights.

II.29. **Use**

1. The beneficiaries shall use the foreground which they own or ensure that it is used.

2. The beneficiaries shall report on the expected use to be made of foreground in the plan for the use and dissemination of foreground. The information must be sufficiently detailed to permit the Commission to carry out any related audit.

II.30. **Dissemination**

1. Each beneficiary shall ensure that the foreground of which it has ownership is disseminated as swiftly as possible. If it fails to do so, the Commission may disseminate that foreground.

2. Dissemination activities shall be compatible with the protection of intellectual property rights, confidentiality obligations and the legitimate interests of the owner(s) of the foreground.

   In projects funded by the European Atomic Energy Community, dissemination activities shall also be compatible with the defence interests of the Member States within the meaning of Article 24 of the Treaty establishing the European Atomic Energy Community.

3. At least 45 days prior notice of any dissemination activity shall be given to the other beneficiaries concerned, including sufficient information concerning the planned dissemination activity and the data envisaged to be disseminated.

   Following notification, any of those beneficiaries may object within 30 days of the notification to the envisaged dissemination activity if it considers that its legitimate interests in relation to its foreground or background could suffer disproportionately great harm. In such cases, the dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests.

   The beneficiaries may agree in writing on different time-limits to those set out in this paragraph, which may include a deadline for determining the appropriate steps to be taken.

4. All publications or any other dissemination relating to foreground shall include the following statement to indicate that said foreground was generated with the assistance of financial support from the Community:

   The research leading to these results has received funding from the [European Community]'s [European Atomic Energy Community]'s Seventh Framework Programme ([FP7/2007-2013] [FP7/2007-2011]) under grant agreement n° [xxxxxx].

   Any dissemination activity shall be reported in the plan for the use and dissemination of foreground, including sufficient details/references to enable the Commission to trace the

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8 This statement will have to be translated into the language of the dissemination activity. Translations in all Community languages will be provided.
activity. With regard to scientific publications relating to foreground published before or after the final report, such details/references and an abstract of the publication must be provided to the Commission at the latest two months following publication. Furthermore, an electronic copy of the published version or the final manuscript accepted for publication shall also be provided to the Commission at the same time for the purpose set out in Article II.12(2) if this does not infringe any rights of third parties.

**SECTION 2 – ACCESS RIGHTS**

**II.31. Background covered**

Beneficiaries may define the background needed for the purposes of the project in a written agreement and, where appropriate, may agree to exclude specific background.

**II.32. Principles**

1. All requests for access rights shall be made in writing.

2. 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.

3. Without prejudice to their obligations regarding the granting of access rights, beneficiaries shall inform each other as soon as possible of any limitation to the granting of access rights to background, or of any other restriction which might substantially affect the granting of access rights.

4. The termination of the participation of a beneficiary shall in no way affect the obligation of that beneficiary to grant access rights to the remaining beneficiaries.

5. Unless otherwise agreed by the owner of the foreground or background, access rights shall confer no entitlement to grant sub-licences.

6. Without prejudice to paragraph 7, any agreement providing access rights to foreground or background to beneficiaries or third parties must ensure that potential access rights for other beneficiaries are maintained.

7. Exclusive licences for specific foreground or background may be granted subject to written confirmation by all the other beneficiaries that they waive their access rights thereto.

8. However, where a beneficiary intends to grant an exclusive licence to foreground to a third party established in a third country not associated to the Seventh Framework Programme, the Commission may object to the granting of such an exclusive licence, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations.

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9 Such an exclusion may be temporary (e.g. to permit the adequate protection of the background prior to providing access) or limited (e.g. to exclude only one or more specific beneficiaries). As background is by definition considered to be needed for implementation or use, the impact of such an exclusion on the project, particularly regarding an exclusion which does not have a temporary character, should be examined by the beneficiaries.
In such cases, the exclusive licence shall not take place unless the Commission is satisfied that appropriate safeguards will be put in place.

In projects funded by the European Atomic Energy Community, the Commission may also object to the intended grant of any non-exclusive licence to a third party established in a third country not associated to the Seventh Framework Programme on the same conditions as set out in this sub-paragraph. Security considerations shall in case of such projects be understood as being the defence interests of the Member States within the meaning of Article 24 of the Treaty establishing the European Atomic Energy Community.

II.33. Access rights for implementation

1. Access rights to foreground shall be granted to the other beneficiaries, if it is needed to enable those beneficiaries to carry out their own work under the project.

Such access rights shall be granted on a royalty-free basis.

2. Access rights to background shall be granted to the other beneficiaries, if it is needed to enable those beneficiaries to carry out their own work under the project provided that the beneficiary concerned is entitled to grant them.

Such access rights shall be granted on a royalty-free basis, unless otherwise agreed by all beneficiaries before their accession to this agreement.

II.34. Access rights for use

1. Beneficiaries shall enjoy access rights to foreground, if it is needed to use their own foreground.

Subject to agreement, such access rights shall be granted either under fair and reasonable conditions or be royalty-free.

2. Beneficiaries shall enjoy access rights to background, if it is needed to use their own foreground provided that the beneficiary concerned is entitled to grant them.

Subject to agreement, such access rights shall be granted either under fair and reasonable conditions or be royalty-free.

3. An affiliated entity established in a Member State or Associated country shall also enjoy access rights, referred to in paragraphs 1 and 2, to foreground or background under the same conditions as the beneficiary to which it is affiliated, unless otherwise provided for in the consortium agreement. As the access rights referred to in paragraphs 1 and 2 require that access is needed to use own foreground, this paragraph only applies if ownership of foreground was (partially) transferred to an affiliate entity established in a Member State or Associated country. The beneficiaries may provide for additional arrangements regarding such access rights in their consortium agreement, including regarding any notification requirements.

4. A request for access rights under paragraphs 1, 2 or 3 may be made up to one year after either of the following events:

   a) the end of the project; or
b) termination of participation by the owner of the background or foreground concerned.

However, the beneficiaries concerned may agree on a different time-limit\(^{10}\).

**FINAL PROVISIONS**

**II.35. Requests for amendments and termination at the initiative of the consortium**

1. Requests for amendments and termination shall be signed by the legal representative of the parties and submitted in accordance with Article 8. Any request or acceptance by the consortium or a beneficiary(ies) shall be submitted by the coordinator. The coordinator is deemed to act on behalf of all beneficiaries when signing a request, an acceptance or rejection letter concerning an amendment as well as when requesting a termination. The coordinator shall ensure that adequate proof of the consortium’s agreement to such an amendment or termination exists and is made available in the event of an audit or upon request of the Commission.

2. In the case of change of coordinator without its agreement, the request shall be submitted by all other beneficiaries or by one of them representing the others.

3. A request for amendment including more than one modification to the agreement shall be considered a package that cannot be separated into several requests and shall be approved or rejected by the other party as a whole, except where the request explicitly states that it contains separate requests that can be approved independently.

4. Requests for the addition of a new beneficiary shall include a completed Form B (Annex V), duly signed by such new entity. Any addition is subject to the conditions required by the Rules for Participation, the related call for proposals and the Financial Regulation. Such additional entity shall assume the rights and obligations of beneficiaries as established by the grant agreement with effect from the date of their accession specified in the signed Form B.

5. The amendments may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of the beneficiaries.

6. Requests for termination of the participation of one or more beneficiaries shall include:

   - the consortium’s proposal for reallocation of the tasks and budget of that beneficiary,
   - the reasons for requesting the termination,
   - the proposed date on which the termination shall take effect,

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\(^{10}\) This can be a longer or shorter time-limit.
a letter containing the opinion of the beneficiary whose participation is requested to be terminated and

- the reports and deliverables referred to in Article II.4, relating to the work carried out by this beneficiary up to the date on which the termination takes effect, together with a comment of the coordinator on behalf of the consortium on these reports and deliverables and a declaration on distribution of payments to this beneficiary by the coordinator.

In the absence of receipt of such documents, the request shall not be considered as a valid request.

The letter containing the opinion of the beneficiary concerned can be substituted by proof that this beneficiary has been requested in writing to express its opinion on the proposed termination of its participation and to send the reports and deliverables but failed to do so within the time-limit established by that notification. This time-limit shall not be inferior to one month. In this case, if no reports have been submitted with the request for termination, the Commission shall not take into account any further cost claims of that beneficiary and shall not make any further reimbursement for it.

Unless otherwise agreed with the Commission, all the tasks of the beneficiary whose participation is terminated must be reallocated within the consortium.

Consortium requests for termination of the grant agreements shall provide the justification for termination and the reports and deliverables referred to in Article II.4 relating to the work carried out up to the date on which the termination takes effect.

II.36. Approval of amendments and termination requested by the consortium

1. The parties to this grant agreement undertake to approve or reject any valid request for an amendment or termination within 45 days of its receipt. The absence of a response within 45 days of receipt of such a request shall be considered as a rejection.

2. By derogation to paragraph 1, when the consortium requests the addition or the termination of the participation of a beneficiary, the absence of a response from the Commission within 45 days of receipt of such a request constitutes approval, except in cases of absence of the agreement of the beneficiary concerned and in cases of appointment of a new coordinator, which shall require the written approval of the Commission.

Where the Commission does not object within this period, it is deemed to have approved the request on the last day of the time-limit. The Commission undertakes to send a letter for information purposes in case of tacit approval.

Where the request for the addition or removal of a beneficiary is associated with requests for other modifications to the grant agreement which are not directly related to this addition or removal, the whole request shall be subject to written approval by the Commission.

3. The Commission approval of the requested amendment or termination shall be notified to the coordinator, which receives it on behalf of the consortium. In case of termination of the participation of one or more beneficiaries, the Commission shall send a copy to the beneficiary concerned.
4. Amendments and terminations shall take effect on the date agreed by the parties; where there is no date specified they shall take effect on the date of the Commission’s approval.

II.37. Competitive calls

1. When required by the terms of Annex I, the consortium shall identify and propose to the Commission the participation of new beneficiaries following a competitive call in accordance with the provisions of this Article.

2. The consortium shall publish the competitive call at least in one international journal and in three different national newspapers in three different Member States or Associated countries. It shall also be responsible for advertising the call widely using specific information support, particularly Internet sites on the Seventh Framework Programme, the specialist press and brochures and through the national contact points set up by Member States and Associated countries. In addition, the publication and advertising of the call shall conform to any instructions and guidance notes established by the Commission. The consortium shall inform the Commission of the call and its content at least 30 days prior to its expected date of publication.

3. The competitive call shall remain open for the submission of proposals by interested parties for a period of at least five weeks.

4. The consortium shall evaluate offers received in the light of the criteria that governed the Commission’s evaluation and selection of the project, defined in the relevant call for proposals, and with the assistance of at least two independent experts appointed by the consortium on the basis of the criteria described in of the Rules for Participation.

5. The consortium shall notify the Commission of the proposed accession of a new beneficiary(ies) in accordance with Article II.35. At the same time, it will inform the Commission of the means by which the competitive call was published and of the names and affiliation of the experts involved in the evaluation. The Commission may object to the accession of any new beneficiary within six weeks of the receipt of the notification.

II.38. Termination of the grant agreement or of the participation of one or more beneficiaries at the Commission’s initiative

1. The Commission may terminate the grant agreement or the participation of a beneficiary in the following cases:

   a) where one or more of the legal entities identified in Article 1 does not accede to this grant agreement.

   b) in case of non-performance or poor performance of the work or breach of any substantial obligation imposed by this grant agreement that is not remedied following a written request to the consortium to rectify the situation within a period of 30 days;

   c) where the beneficiary has deliberately or through negligence committed an irregularity in the performance of any grant agreement with the Commission;

   d) where the beneficiary has contravened fundamental ethical principles;

   e) where the required reports or deliverables are not submitted or the Commission does not approve the reports or deliverables submitted;
f) for major technical or economic reasons substantially adversely affecting the completion of the project;

g) if the use potential of the project results diminishes to a considerable extent;

h) where a legal, financial, organisational or technical change or change of control of a beneficiary calls into question the decision of the Commission to accept its participation;

i) where any such change identified in h) above or termination of the participation of the beneficiary(ies) concerned substantially affects the implementation of the project, or the interests of the Community, or calls into question the decision to grant the Community contribution;

j) in case of force majeure notified in conformity with Article II.40, where any reactivation of the project after suspension is impossible;

k) where the conditions for participation in the project established by the Rules for Participation or as amended by the call for proposals to which the project was submitted are no longer satisfied, unless the Commission considers that the continuation of the project is essential to the implementation of the specific programme;

l) where a beneficiary is found guilty of an offence involving its professional conduct by a judgment having the force of res judicata or if it is guilty of grave professional misconduct proven by any justified means;

m) where further to the termination of the participation of one or more beneficiaries, the consortium does not propose to the Commission an amendment to the grant agreement with the necessary modifications for the continuation of the project including the reallocation of task of the beneficiary whose participation is terminated within the time-limit determined by the Commission, or where the Commission does not accept the proposed modifications.

2. Termination of the participation of one or more beneficiaries at the Commission’s initiative shall be notified to the beneficiary(ies) concerned, with a copy to the coordinator and shall become effective 30 days after its receipt by the beneficiary.

The Commission shall inform the consortium of the effective date of termination.

In the case of termination of the grant agreement, the coordinator shall be notified, who shall in turn notify all the other beneficiaries and the termination shall become effective 45 days after receipt by the coordinator.

3. Within 45 days after the effective date of termination, the beneficiary(ies) whose participation is terminated shall submit (through the coordinator) all required reports and deliverables referred to in Article II.4 relating to the work carried out up to that date. In the absence of receipt of such documents within the above time-limits, the Commission may, after providing 30 days notice in writing of the non-receipt of such documents, determine not to take into account any further cost claims and not to make any further reimbursement and, where appropriate, require the reimbursement of any pre-financing due by the beneficiary(ies).

4. The consortium has up to 30 days after the effective date of termination of the beneficiary’s participation to provide the Commission with information on the share of the Community contribution that has been effectively transferred to such beneficiary since the beginning of the project.
5. In the absence of receipt of such information within the time-limits, the Commission shall consider that the beneficiary whose participation is terminated owes no money to the Commission and that the Community contribution already paid is still at the disposal of the consortium and under its responsibility.

6. Based on documents and information referred to in the paragraphs above, the Commission shall establish the debt owed by the beneficiary whose participation is terminated.

7. Where the participation of one or more beneficiaries is terminated, the beneficiary(ies) whose participation is terminated shall reimburse the amount due to the Commission or transfer it to the consortium as requested by the Commission, within 30 days. The Commission shall send a copy of such a request to the coordinator. In the latter case, the consortium shall inform the Commission at the latest 10 days after the end of this time-limit if the amount was transferred to it.

8. Where the grant agreement is terminated, the Commission shall establish the debt owed by the consortium and notify it to the coordinator.

II.39. Financial contribution after termination and other termination consequences

1. In the event of termination any financial contribution from the Community is limited to those eligible costs incurred and accepted up to the effective date of such termination and of any legitimate commitments taken prior to that date, which cannot be cancelled.

2. By derogation to the above paragraph:
   - in the case of Article II.38.1.a), no costs incurred by the consortium under the project can be approved or accepted as eligible for reimbursement by the Community. Any pre-financing provided to the consortium and any interest generated by the pre-financing must be returned in full to the Commission.
   - in the case of Article II.38.1.b), any financial contribution from the Community is limited to those eligible costs incurred up to the date of receipt of the written request to rectify the breach.

3. In addition, in the cases of Article II.38.1.b), e), d), l) and m) the Commission may require reimbursement of all or part of the Community's financial contribution. In the case of Article II.38.1.b) and m) the Commission shall take into account the nature and results of the work carried out and its usefulness to the Community in the context of the specific programme concerned

4. Reports and deliverables submitted in the framework of a termination are deemed to be submitted at the end of the corresponding reporting period.

5. Where the Community makes a payment after the termination of the participation of a beneficiary or after termination of the grant agreement, this payment shall be considered as a final payment in relation to such beneficiary(ies) or the project, respectively and in any case shall be done through the coordinator.

Notwithstanding the termination of the grant agreement or the participation of one or more beneficiaries, the provisions identified in Articles II.9, II.10, II.11, II.12, II.22, II.23, II.24, II.25, II.35, II.36, II.38, II.41, II.42 and Part C of Annex II continue to apply after the termination of the grant agreement or the termination of the participation of such beneficiary(ies).
II.40. **Force majeure**

1. *Force majeure* shall mean any unforeseeable and exceptional event affecting the fulfilment of any obligation under this *grant agreement* by the parties, which is beyond their control and cannot be overcome despite their reasonable endeavours. Any default of a product or service or delays in making them available for the purpose of performing this *grant agreement* and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute *force majeure*.

2. If any of the *beneficiaries* is subject to *force majeure* liable to affect the fulfilment of its obligations under this *grant agreement*, the *consortium* shall notify without delay the *Commission*, stating the nature, likely duration and foreseeable effects.

3. If the *Community* is subject to *force majeure* liable to affect the fulfilment of its obligations under this *grant agreement*, it shall notify without delay the *consortium*, stating the nature, likely duration and foreseeable effects.

4. No party shall be considered to be in breach of its obligation to execute the *project* if it has been prevented from complying by *force majeure*. Where *beneficiaries* cannot fulfil their obligations to execute the *project* due to *force majeure*, remuneration for accepted eligible costs incurred may be made only for tasks which have actually been executed up to the date of the event identified as *force majeure*. All necessary measures shall be taken to limit damage to the minimum.

II.41. **Assignment**

The *beneficiaries* shall not assign any of the rights and obligations arising from the *grant agreement* except those cases provided for in Article 27 (transfer of *foreground*), without the prior and written authorisation of the *Commission* and the other *beneficiaries*.

II.42. **Liability**

1. The *Community* cannot be held liable for any acts or omissions of the *beneficiaries* in relation to this *grant agreement*. It shall not be liable for any defaults of any products, processes or services created on the basis of *foreground*, including, for instance, anomalies in the functioning or performance thereof.

2. Each *beneficiary* fully guarantees the *Community*, and agrees to indemnify it, in case of any action, complaint or proceeding brought by a third party against the *Community* as a result of damage caused, either by any of its acts or omissions in relation to this *grant agreement*, or by any products, processes or services created by it on the basis of *foreground* resulting from the *project*.

In the event of any action brought by a third party against a *beneficiary* in connection with the performance of this *grant agreement*, the *Commission* may assist the latter upon written request. The costs incurred by the *Commission* in this connection shall be borne by the *beneficiary* concerned.
3. Each *beneficiary* shall bear sole responsibility for ensuring that their acts within the framework of this *project* do not infringe third parties rights.

4. The *Community* cannot be held liable for any consequences arising from the proper exercise of the rights of the *Community* under the *Rules for Participation* or this *grant agreement*. 