

GUIDELINES ON AMENDMENTS TO FP6 CONTRACTS

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GUIDE TO AMENDING FP6 CONTRACTS

The process for making amendments to FP6 contracts is rather different from that you may have been used to under FP5 projects. This note provides the basic principles followed for all instruments. It deals mainly with two principal questions, the form of the amendment and the process for approval (explicit or tacit). It explains the general rule in points 1 and 2 followed by the exceptions and special cases in the remaining points. It includes model letters and explanations for using them. Although contracts with a single contractor are treated more simply the basic principles apply to them too.

This document concerns the model contract adopted by Commission Decision C(2003)799 of 17 March and modified by Decision Commission C(2003)3834 of 23 October 2003 as well as the model contracts for human resources and mobility (HRM) actions adopted by Commission Decision C(2003)2567 of 18 July 2003 and the modifications made to them by Commission Decisions C(2003)3834 of 23 October 2003 and C(2004) XX dated 29 April 2004..

Amendments to contracts under FP6 must be **in writing** and **requested by the coordinator on behalf of the consortium** or **proposed by the Commission**. The Commission's approval of requests from the consortium can be **tacit** or **explicit**.

1. FORM OF AMENDMENT

Article 10, paragraph 1 of the Model Contract¹ (**Amendments**) states:

“Any request for amendment to the contract shall be submitted in accordance with Article 11. Proposals for amendments submitted by the coordinator are requested on behalf of the consortium. The coordinator shall ensure that adequate proof of the consortium's agreement to such a request exists and is made available in the event of an audit.”

And **paragraph 3**:

“All amendments to the contract shall be in writing.”

Article 11, paragraph 1 of the Model Contract² (**Communication**) states:

1. Requests for amendments and any communication foreseen by the contract shall identify the nature and details of the request or communication and be submitted in writing by means of registered mail with acknowledgement of receipt to the following addresses:

*For the Commission: Commission of the European Communities
DG [name]
[B-1049 Brussels
Belgium] [Luxembourg]*

For the coordinator: [contact address]

¹ For HRM mono contractor version, Article 8 of the contract states:

“Any request for amendment to the contract shall be submitted in accordance with Article 9.

1.1. Cases where the consortium initiates the amendment

The **general rule** is that amendments to the contract will be effected by **exchange of letters**.

The amendment is composed of two documents: a letter from the consortium requesting the amendment and another letter signed by the Commission approving the request. The content of both letters must clearly show that there is agreement between the parties. This means that **the request from the consortium must clearly indicate the modifications requested and the letter of the Commission must agree to the modifications proposed**. The wording of both letters must be unambiguous.

The request from the consortium can be signed either by the coordinator on behalf of the consortium (the general case) or (exceptionally) by all contractors. In either case the letter must be signed by the legally authorised representatives of the signatories. Article 10.1 of the contract clearly indicates that proposals for amendments submitted by the coordinator are requested on behalf of the consortium and that the coordinator shall ensure that adequate proof of the consortium's agreement to such a request exists. Therefore, any request for amendment signed by the coordinator commits the consortium. The **written request should explicitly state that the request is made on behalf of the consortium or should clearly indicate that the modifications are requested in accordance with Article 10.1 of the contract**.

The **procedure** to implement an amendment by **exchange of letters** is the following: the consortium makes a written amendment request by means of registered mail with acknowledgement of receipt to the Commission's address indicated in the contract. If this written request is accepted, a letter of agreement, signed by the Commission, will be sent confirming the modifications. The amendment comes into force upon the date of acceptance by the Commission of the modifications, with effect from that date, unless another date is requested and agreed.

If the Commission does not agree with the request proposed but could agree with a new **request which includes some modifications, or when the request from the consortium is not perfectly clear**, the Commission will **reject this request** and send the coordinator a proposed model request containing those changes the Commission might be ready to accept if the consortium were to formalise its request on those grounds. The original request is rejected and the proposed model for a new request does not constitute an offer from the Commission to amend the contract.

Then either:

The Commission shall undertake to approve or reject any request for an amendment within 45 days of its receipt. The absence of a response from the Commission within 45 days of receipt of such a request, or any other period provided for in the contract, does not constitute approval of the request except where expressly foreseen in Annex III.

All amendments to the contract shall be in writing."

2 For HRM mono contractor version, Article 9 of the contract

a) a **new request** is proposed by the consortium based on the modifications indicated by the Commission (or a completely new request not based on that proposal), to which the Commission may indicate its acceptance by return mail, or

b) the consortium does not make a new request, the original proposal remains rejected and the contract does not change.

In most cases when the request includes more than one modification to the contract it must be considered a package that cannot be separated into several requests unless it is very clear that the request is composed of separate requests. Therefore, when the Commission does not agree with the request proposed but could agree with a new **request which includes some of the proposed modifications** it cannot accept only some of the modifications proposed and reject the others (except where the initial request explicitly states that it contains separate requests that can be approved independently). The procedure indicated above must be followed for such cases (i.e. a new valid request must be submitted).

It is recommended that the coordinator contact the Commission project officer before submitting its amendment request clarifying at this stage which changes the Commission might be ready to accept and even discussing the wording of the consortium request in order to simplify the approval process. Those aspects which would need further reflection or might be immediately rejected could be included in a separate request, thus facilitating the approval of those amendments that are immediately acceptable.

An amendment to change the coordinator is a special case that, in some circumstances, requires the signature of every contractor. This case is specifically treated in point 4 of this note.

1.2. Cases where the Commission initiates the amendment

There are only a limited number of cases where the Commission might initiate an amendment. The procedure to be followed in these cases is different since the contract does not confer on the coordinator the power to accept amendment requests from the Commission on behalf of the consortium.

Where the Commission considers that the project is not being carried out according to contract, the Commission services indicate to the consortium the areas of weakness that must be improved and the suggested changes it would be prepared to consider to allow the continuation of the project. Since it is the consortium that drafts the modifications and sends an amendment request to the Commission, the amendment is really initiated by the consortium and not by the Commission. Therefore, the coordinator can submit, on behalf of the consortium, a request for amendment. (This might occur where changes to the technical annex (Annex I to the contract) are recommended following a technical review of the project.)

In the exceptional cases where the Commission proposes an amendment a single document amendment will be prepared and signed by the Commission and a time limit will be established for the acceptance of the amendment by the consortium. The Commission services send two signed copies of the amendment per contractor to the coordinator for signature.

The amendment can be signed using one of the following methods:

a) by the coordinator explicitly stating that it signs on behalf of all contractors, if the consortium agrees to the changes and has given the coordinator the authority to sign on their behalf. If this option is used, the coordinator must print clearly below the signature:

- “for the coordinator on behalf of all contractors”
- name of the legal entity
- name of legal representative
- the corporate seal, if necessary.

The coordinator will sign and distribute one copy per contractor and one for the Commission and destroy the others.

OR

b) by all contractors. If this option is used, each contractor must print clearly below the signature:

- name of the legal entity
- name of legal representative
- the corporate seal, if necessary.

The coordinator shall collect one signed copy from each contractor and send them back to the Commission.

If the Commission fails to receive the signed copies of the amendment within the time-limit specified, the Commission’s offer to amend the contract will expire and the contract remains unchanged. Because such amendments are typically used to rectify incorrect contract data, the consortium should be aware that in some cases failure to agree to the amendment could have financial consequences or could result in a termination due to breach of a contractual obligation.

2. APPROVAL OF REQUESTS FOR AMENDMENTS

The **general rule** is set out in **Article 10, paragraph 2³ (Amendments)** of the Model Contract which states:

“The Commission shall undertake to approve or reject any request for an amendment within 45 days of its receipt. The absence of a response from the Commission within 45 days of receipt of such a request, or any other period provided for in the contract, does not constitute approval of the request, except for any modification or evolution of the consortium as foreseen in Article 3.”

The general rule is that any amendment to the contract needs the **explicit approval** of the Commission.

3 For HRM mono contractor version, Article 8 of the core contract

Therefore, except in cases of proposed amendments related to modifications of the consortium⁴ (that is treated separately in point 3 below), the absence of a response from the Commission within 45 days of receipt does **not constitute approval of the request**.

3. ADDITION OR TERMINATION OF A CONTRACTOR'S PARTICIPATION

This point covers amendments to the contract following the addition of a new contractor (Article 3 of the contract) as well as amendments to the contract following termination of a contractor's participation. Termination of a contractor's participation includes cases where a contractor requests the termination of its own participation with the agreement of consortium (Article II.15.1), and cases where the consortium requests that a contractor's participation be terminated without its agreement (Article II.15.2). The process to be followed for changes of coordinator is set out in point 4.

EVOLUTION OF THE CONSORTIUM

Article 15, paragraph 1 of the Rules for Participation (Changes in consortium membership) states:

*The consortium must notify **any change** of its membership to the Commission, which may object within six weeks of the notification. New participants shall accede to the contract in accordance with the terms of Article 12(2).*

ENLARGEMENT OF THE CONSORTIUM

Article 3 of the model contract (**Evolution of the consortium**) states:

The *consortium* may be enlarged to include other legal entities, which shall accede to the *contract* by means of Form B (set out in Annex V). The *Commission* is deemed to have accepted this legal entity as a *contractor* in the *consortium*, if it does not object within six weeks of receipt of Form B. Any new *contractor* shall comply with the participation rules established by the *Rules for Participation*. This is subject to any condition required by the *Financial Regulation* or other formalities that may be required by any other provision of this *contract*.

They shall assume the rights and obligations of *contractors* as established by the *contract* with effect from the date of their accession to the *contract*. *Contractors* leaving the *consortium* shall be bound by the provisions of the *contract* regarding the terms and conditions applicable to the termination of their participation.

⁴ The case foreseen in Article III. 4.1 – Suspension and prolongation of the project, of some HRM actions (Marie Curie Intra-European Fellowships, Marie Curie Outgoing International Fellowships, Marie Curie Incoming International Fellowships, Marie Curie Chairs, Marie Curie European Reintegration Grants, - Marie Curie International Reintegration Grants) is also an exception.

This Article- states: “*In addition to the provisions of Article II.5.2, the contractor can propose to suspend part, or all, of the project due to personal, family (including parental leave) or professional reasons of the researcher not foreseen in Annex I. When such a suspension request does not result in an extension exceeding by 30% the duration of the project indicated in Article 2 of the contract, a failure to respond by the Commission within 45 days constitutes approval of the request. The request of suspension by the contractor must be accompanied by the necessary justifications. The extension of the project will be equal to the period of suspension*”

CONTRACT AMENDMENT FOLLOWING TERMINATION OF A CONTRACTOR'S PARTICIPATION

Article II.15 of the contract – Termination of the *contract* and participation of *contractors*

1. Any contractor may request the termination of its participation in the contract. The request must be submitted by the coordinator in accordance with Article 11.1 and must be received by the Commission 60 days before the end of the duration of the project.

When submitting such a request, the coordinator is deemed to act on behalf of the consortium.

2. The consortium may request the Commission to terminate the participation of any contractor. The coordinator shall include with any such request, the consortium's proposal for reallocation of the tasks of that contractor, the reasons for doing so and the opinion of the contractor whose participation is requested to be terminated.

3. In the cases foreseen in paragraphs 1 and 2, the Commission may agree or object within six weeks of receipt of such a request. Where the Commission does not object within this period, it is deemed to have approved the request on the last date of this delay. Notwithstanding this approval, a written amendment to the contract shall be formalised by the Commission.

Termination of the participation of the contractor shall take effect on the date of Commission's approval.

Article 3 paragraph 2, last sentence of the Model Contract (Evolution of the *consortium*) states:

Contractors leaving the consortium shall be bound by the provisions of the contract regarding the terms and conditions applicable to the termination of their participation.

3.1. VALID REQUEST

3.1.1. Enlargement of the consortium

To add a new contractor to the consortium, the coordinator must send a written request for an amendment to the contract on behalf of the consortium, indicating the nature or details of the request, by means of registered mail with acknowledgement of receipt. This request is composed of Form B (duly signed by the coordinator and the proposed new contractor), together with all the documents listed in Form B namely:

1. Contract Preparation Form (CPF) duly completed and signed by the new *contractor* including its financial reports and legal documents where foreseen by the CPF;
2. modified Annex I to the *contract* describing the work to be performed by the new *contractor*; and
3. where the new *contractor* is proposed by the *consortium* following a competitive call, the documents required by the relevant Annex III relating to competitive calls. If a competitive call has not been carried out to select this/these *contractor(s)*, justification

for selection of this *contractor* and, where necessary, justification for not having used a competitive call must also be submitted.

A valid request must contain all the information required under the circumstances.

3.1.2. Contract amendment following termination of a contractor's participation

A written request for the termination of a contractor's participation must be submitted by the coordinator, acting on behalf of the consortium, in accordance with Article 11.1. The request should explicitly state that it is made on behalf of the consortium and include the reasons for termination and the consortium's proposal for reallocation of the tasks of that contractor.

Where Article II.15.1 applies (the contractor itself requests the termination of its participation with the agreement of the consortium), the request from the consortium must include a letter of agreement from the contractor leaving the consortium and must be received by the Commission at least 60 days before the end of the duration of the project.

Where Article II.15.2 applies (the consortium requests the termination of a contractor's participation without its agreement), the request from the consortium must include a letter from the contractor whose participation is requested to be terminated containing its opinion.

3.2. TREATMENT OF A NON-VALID REQUEST

If a request is in any way deficient, the Commission services will send a letter specifying which documents or pieces of information are missing or incomplete, stating that the request does not fulfil the conditions of the contract (Article 3 in case of enlargement and Article II.15 in case of termination) and indicating that the request submitted is not a valid request.

3.3. APPROVAL OR REJECTION OF A VALID REQUEST

If the Commission does not respond within 6 weeks from receipt of a valid request (= 42 days after the date of acknowledgement of receipt by the Commission postal services) **the proposed changes to the contract are accepted**. The date of entry into force of the amendment to the contract, in the absence of any response, will be the 42nd day from receipt, with effect from this date, unless another date has been specified in the consortium's request.

Although the termination and/or the amendment are legally in force, according to the contract a **letter of confirmation** from the Commission is required in the case of termination but not for cases of enlargement of the consortium.

The Commission **may explicitly approve** the request before the end of the time-limit. In this case, the Commission services will send a letter **approving** the termination or the introduction of the new partner and indicating the date from which it is effective (unless otherwise agreed this will be the date of the signature of the letter from the Commission).

The Commission may also **reject** the request before the end of the time-limit. In such cases, a letter of rejection will be sent to the coordinator.

3.4. THE PARTICIPATION OF A CONTRACTOR IS TERMINATED BY THE COMMISSION AT ITS OWN INITIATIVE

The Commission can terminate the participation of a contractor in accordance with the provisions of Article II.15.5 or Article II.16.2 of the contract. In such cases, the letter of termination from the Commission amends the contract, changing the composition of the consortium. Therefore, it is not necessary to make a new formal amendment to remove this contractor. The termination letter itself amends the contract. Nevertheless, the coordinator must then request a modification of Annex I to reallocate the tasks of the contractor whose participation is terminated and Article 1.2 of the contract should also be modified. These aspects require a separate amendment to the contract.

4. CHANGE OF COORDINATOR

4.1. FORM OF AMENDMENT

There are four possibilities:

- Coordinator remains in the consortium but as a normal contractor
- Participation of coordinator is terminated at its own request
- Participation of coordinator is terminated at the request of the other contractors,
- Participation of coordinator is terminated at the initiative of the Commission.

4.1.1. Coordinator remains in the consortium

The coordinator requests the amendment on behalf of the consortium and the amendment is effected by exchange of letters procedure referred to in point 1.A.

If the new coordinator proposed is not yet a member of the consortium, the request must be signed by both the former and the proposed coordinator and must include Form B and all the documents referred to in it, as explained in point 3. In this case it is particularly important that the new Form A4 and the financial information required by the CPF not be forgotten.

4.1.2. Participation of the coordinator is terminated at its request

In this case two requests should be submitted: a request for termination of the coordinator's participation in the contract and a request for redistribution of coordinator's tasks. The procedures in Article II.15.1 referred to in point 3 of this note apply.

If the new coordinator proposed is not yet a member of the consortium, the request must be signed by both former and proposed coordinator and must include Form B and all the documents referred to in it, as explained in point 3. In this case it is particularly important that the new Form A4 and the financial information required by the CPF not be forgotten.

4.1.3. Participation of the coordinator is terminated at the request of the other contractors

In these cases the Commission can accept requests from the members of the consortium for the termination of coordinator's participation. The request must be signed by the remaining contractors and include a letter from the coordinator containing its opinion and a proposal for redistribution of the coordinator's tasks. If any of these elements is missing, the request will be rejected.

If the Commission agrees with the consortium's request, it will terminate the coordinator's participation in accordance with Article II.15.3 or Article II.16.2 of the contract. In the latter case the Commission will consider that the consultations in Article II.16.1 and 16.4 have already been completed. The Commission will send a letter of termination to the former coordinator. This letter amends the contract by changing the composition of the consortium. Therefore, it is not necessary to make a new formal amendment to remove the coordinator. However, for the redistribution of tasks and other associated changes, a second letter accepting the proposed amendment will be sent to the new coordinator copied to other contractors.

If the new coordinator proposed is not yet a member of the consortium, the request must include Form B and all the documents referred to in it, as explained in point 3.

4.1.4. Participation of the coordinator is terminated by the Commission at the latter's initiative

A letter of termination will be sent by the Commission to the coordinator which amends the contract accordingly. The other contractors will be advised of the termination and will be asked for a proposal in the form of a request, signed by all of them, to amend the contract to designate a new coordinator and to redistribute the coordinator's tasks. If the Commission agrees with the requested amendment, an amendment letter will be sent to the new coordinator copied to other contractors. The Commission could assist the contractors on the preparation of their request on the basis of consultations. If an agreement cannot be reached between all the contractors and the Commission the contract must be terminated.

4.2. APPROVAL OF REQUESTS

Explicit **approval** by the Commission is applicable for every change of coordinator.

Tacit approval is **not** foreseen, in any of the following possible combinations:

- The coordinator changes within the consortium (both former and new coordinator were already contractors and both stay)
- The new coordinator is not yet a contractor and the former coordinator stays in the consortium as a contractor
- The new coordinator is not yet a contractor and the participation of the former coordinator is terminated
- The participation of the coordinator is terminated and the new coordinator was already a contractor.

5. REQUEST INCLUDING MORE THAN ONE MODIFICATION TO THE CONTRACT: SOME THAT CAN BE APPROVED TACITLY AND SOME REQUIRING EXPLICIT APPROVAL

What would happen if the Commission services did not answer such a request?

On the one hand, tacit approval is an exception and applies only to those cases foreseen explicitly in the contract. On the other hand, when the request includes more than one modification it must be considered a package with all aspects interlinked that cannot be separated into several requests. Therefore, the Commission cannot accept some of the modifications proposed and reject others. That is, the tacit approval procedure does not apply in such cases.

Where an amendment request is clearly composed of separate requests, then the problem does not exist as every request must be treated separately but the consortium will be aware that some requested modifications may be accepted and others rejected so the requested changes can **not** be interdependent.

6. CHANGE OF NAME AND LEGAL DETAILS OF A CONTRACTOR

When legal details (such as simply the name or address of a contractor, or the change of authorised legal representative) are changed no formal contract amendment is needed

However, the Commission has to receive all the legal documents concerning the change. A letter to confirm to the coordinator that the change has been received and acknowledged by the Commission may be sent.

If however a new entity has been created an amendment to the contract to include this entity is needed and will follow rules identified in point 3 of this note.

7. CASE WHERE AN ENTITY LISTED IN ARTICLE 1.2 OF THE CONTRACT DOES NOT ACCEDE TO THE CONTRACT

The legal entity has never been a contractor and therefore the termination of its participation is not needed.

Nevertheless, in these cases, Article 1.2 of the contract and the Annex I to the contract must be modified to reallocate the task initially foreseen to be performed by this entity and possibly to include a new contractor to take over those tasks. A request for amendment must be submitted by the coordinator on behalf of the consortium that follows the procedures described in point 3.

8. MODEL LETTER -REQUEST FOR AMENDMENT

[insert place and date]

[insert the Commission address indicated in Article 11¹ of the Contract]

REGISTERED WITH ACKNOWLEDGEMENT OF RECEIPT

Dear (*insert name of Commission authorised representative indicated in the contract*),

**Subject: Request for Amendment to Contract No. [insert number]
Project "[insert name]"**

With reference to the above noted contract, I request to modify the contract as follows:

Removal of one or more legal entities from the list in Article 1.2 due to their non-accession to the contract²

The following entit[y][ies] [[is][are] removed from the list in Article 1.2 due to their non-accession to the contract:

- full name and legal form of the contractor(s)

[EVOLUTION OF THE CONSORTIUM³:]

Addition of one or more Contractors⁴

The following entit[y][ies] [[is][are] added as [Contractor] [s] with effect from the date[s] specified in the following table:

| full name and legal form of the contractor [RTD Performer/ SME/ Enterprise grouping/Other enterprise or end user⁵] established in (full address city/state/province/country represented) by (name of legal representative), (function), or her/his/their authorised representative("contractor") | Start date of participation |
|--|------------------------------------|
| | |

Article 1.2 of the contract is modified accordingly.

Termination of a contractor's participation⁶

The participation of the following [Contractor][s] is terminated [from the date[s] specified in the following table]⁷ [from the date of the Commission's signature]:

| Contractor full name | [End date of participation] ⁸ |
|----------------------|--|
| | |

Article 1.2 of the contract is modified accordingly.

Transfer of contractual rights and obligations⁹

[*name of contractor which take over the rights and obligations*] has taken over the rights and obligations of [*initial contractor's name*] as of "[*insert date*]".

Any reference in the contract, including Annex I and the table of the estimated breakdown of costs, to [*initial contractor's name*] shall be deemed to be a reference to [*name of contractor which takes over the rights and obligations*] therefore [*name of contractor which takes over the rights and obligations*] is a member of the consortium identified in Article 1.2.

[Notwithstanding the transfer referred to above, the Commission and/or the Court of Auditors of the European Communities and their authorised representatives shall continue to enjoy the rights referred to in Article 29 of Annex II to the contract¹⁰ in respect of work undertaken by [*initial contractor's name*] which shall continue to be bound by all these provisions of the contract and its Annexes relevant to the effective exercise of these rights.]¹¹

Change of coordinator¹²

[*name of initial coordinator*] will no longer assume the role of *coordinator* of the Project and [*name of new coordinator*] will assume this role from [date].

Change of the start date of the Project

The start date of the project specified in Article 4.2 of the contract¹³ is modified as follows:
New starting date of the project: [insert new start date of the project]

Extension of the duration¹⁴

The duration specified in Article 4.2 of the contract¹⁵ is modified as follows:
New *duration*: [insert new duration]

Change of the Community contribution¹⁶

The maximum Community financial contribution specified in Article 5 of the contract¹⁷ is modified as follows:
[insert new amount in Euros]

Modification of the reporting periods

Article 6 of the contract ¹⁸ is modified as follows:

- P1: from month 1 to month X
- P2: from month X+1 to month Y
- P3: from month Y+1 to month Z
- (...)
- [final]: from month [N+1] to the last month of the *project*

Modification of the frequency of submission of the audit certificates

Article 7.2 of the contract ¹⁹ is modified as follows:

[Reports referred to in Article II.7.3 covering each period shall be submitted at the latest 45 days after the end of each reporting period]²⁰

[Reports referred to in Article II.7.3 shall be submitted at the latest 45 days after the end of the following periods:

- P(x) covering reporting period[s] [from P1 to] P(x)
- P(y) covering reporting period[s] [from P(x+1) to] P(y)
- P (z) covering reporting period[s] [from P(y+1) to] P(z)
- P (last) covering reporting period[s] [from P(n+1) to] the last reporting period of the *project*²¹

Addition of complementary pre-financing

In addition to the pre-financing specified in Article 8.2(a) of the contract²², complementary pre-financing is fixed at [X]²³ EUR. This complementary pre-financing is paid to the coordinator within a maximum of 45 days running from the date of the last signature of this document.

Modification of intermediate pre-financing(s) percentage²⁴

The intermediate pre-financing(s) percentage established in Article 8.2(b) of the contract²⁵ is modified as follows:

New pre-financing percentage: [insert new percentage]

Addition or removal of one or more special clauses

The special clause(s)

| No | Text of the special clause |
|----|----------------------------|
| | |

[is] [are] **removed** from Article 9 of the contract²⁶ of this contract.

The special clause(s)

27/05/2004

| No | Text of the special clause |
|----|----------------------------|
| | |

[is] [are] **added**²⁷ to Article 9 of the contract²⁸.

The special clause(s) set out in Article 9 of the contract²⁹ is **modified**³⁰ as follows:

| No | Text of the special clause |
|----|----------------------------|
| | |

Change of banking details³¹

The Coordinator's banking details indicated in Article 11.3 of the contract³² are amended as follows:

New banking details [insert new banking details].

Modification of Annex I³³

Annex I - Description of work is modified.

[The revised [[Part A] [Part B] [Part C] [Part D] of³⁴] Annex I [dated [insert date]] attached to this letter replaces any former version.]

[The revised page[s] numbered "[]" [through "[]" dated [insert date] attached to this letter shall replace the corresponding page[s] in Annex I to the contract.]

[Addendum No.[] dated [insert date] attached to this letter shall be incorporated as part of Annex I to the contract. In case of conflict between Annex I and any provisions of Addendum No.[] the latter shall prevail.]

[The table of the estimated breakdown of costs included in Annex I is replaced by the table attached to this letter]³⁵

All other provisions of the contract and its annexes remain unchanged.

Yours sincerely,

.....
Authorised representative

8.1. ENDNOTES EXPLAINING THE MODEL LETTERS

NB: The following endnotes provide explanations on the clauses in the letters but should not appear in the signed letters.

All letters should be printed on letterhead.

1 For HRM mono contractor version, Article 9 of the contract.

2 This modification always requires a modification of Annex I to the contract including the table of the estimated breakdown of costs. It could also require an addition of a new contractor. Use the model clauses specified in this document

3 This title is provided for reference only and will not appear in the letters that are sent.

In the cases where the tasks of a participant which leaves the project are assumed by another legal entity the usual legal construction is: Termination of the participation of the contractor leaving /modification of Annex I/ Addition of a participant if the entity assuming the task is not yet a contractor. If there is a transfer of task between two contractors, it will be only a modification of Annex I.

The clause “Transfer of contractual rights and obligations” has a different legal meaning. It is used in cases like merger and acquisition or another change of control or where requested by contractors and appropriate under the circumstances. Legal documents related to the transfer must be provided.

When legal details of a participant (name, address, legal representative) are changed no formal contract amendment is necessary. However, the Commission has to receive all the legal documents concerning the change. A letter will be send to the coordinator to confirm that the change has been received and acknowledged by the Commission.

Note that subcontractors are not participants but remember that an addition or removal of a subcontractor may require a modification of Annex I to the contract including the table of the estimated breakdown of costs.

This modification always implies a modification of Annex I to the contract including the table of the estimated breakdown of costs. Use the model clause specified in this document.

4 If the contractor added is going to be the new coordinator, combine this clause with the clause “change of coordinator”. The request must include Form B and all the documents referred to in it, as explained in point 3 of the Guidelines.

5 Only for Cooperative research and Collective research contracts.

6 This clause will be used only in cases of termination of a contractor’s participation requested by the consortium with or without the agreement of the contractor whose participation is terminated (Article 15 paragraphs 1 and 2). The request must fulfil the conditions establish in the contract, see point 3.1.2 of the Guidelines. This modification

always implies a modification of Annex I to the contract including the table of the estimated breakdown of costs. Use the model clause specified in this document. If the Commission accept the request, the termination must be notified to the coordinator and to the contractor whose participation is terminated. An amendment letter including all the modifications will be sent by the Commission to the coordinator and a different letter including only the termination clause will be sent to the contractor whose participation is terminated.

7 Insert the sentence between brackets when the contractor specifies the effective date for termination in its letter. In any other case the termination is effective on the date of the Commission's signature and the right-hand column of the table will not appear.

8 See footnote 6

9 Legal documents related to the transfer must be provided. If the entity which takes over the rights and obligations is not yet a contractor, the transfer implies that a new legal entity is included and therefore the request must contain Form B and the document specified therein.

10 For HRM mono contractor version, Article 28 of Annex II.

11 Except in the case where the initial contractor does not exist anymore, this statement must appear in this letter and also in a letter from the contractor that transfer its right and obligation.

12 This modification always requires a modification of Annex I and the banking details. Use the model clauses specified in this document. If the new coordinator is not yet a member of the consortium this clause must be combined with the clause "addition of one or more contractors" and both former and proposed coordinators must sign the request (see point 4.1 of the Guidelines above). If the participation of the former coordinator is terminated at the request of the consortium or itself, this clause must be combined with the termination clause. If the participation is terminated at the Commission's initiative the amendment must be preceded by the letter terminating its participation.

13 For HRM mono contractor version, Article 2.2 of the contract.

14 This clause should always be linked to modification of reporting periods (Article 6 of the contract/Article 4 for HRM mono contractor version). In the cases where a period is added a modification of audit certificates submission periods in Article 7.2 is also needed if option 2 of the model contract has been chosen for this Article (Article 5.2 for HRM mono contractor version). If option 1 has been chosen a modification of Article 7.2 (Article 5.2 for HRM mono contractor version) is not required but a modification of special clause 32 is needed when it exists. A modification to Annex I may also be necessary.

15 For HRM mono contractor version, Article 2.2 of the contract.

16 This modification always requires modification of Annex I which includes the table of the estimated breakdown of costs.

17 For HRM mono contractor version, Article 3 of the contract.

18 For HRM mono contractor version, Article 4 of the contract.

19 For HRM mono contractor version, Article 5.2 of the contract.

20 This option (called Option 1 in the model contract) is optional for all instruments and compulsory for IPs and NoEs. If you do not want to use it for IPs or NoE you cannot amend Article 7; you must use the special clause 32.

21 This option (called option 2 in the model contract) is applicable to instruments other than IPs and NoEs.

22 For HRM mono contractor version, Article 6(a) of the contract.

23 [X] = total advance payment previous to this modification – total advance payment after this modification. The total advance payment cannot be superior to 80% of the estimated Community financial contribution indicated in the table of estimated breakdown of costs for the current period in Annex I for instruments without collective responsibility or where the coverage provided by the collective responsibility is deemed insufficient by the Commission to cover its financial interest. This percentage can be increased to a maximum of 85% of the Community contribution if a bank guarantee is provided by each contractor.

²⁴ This clause cannot be used after the end of the first period as the pre-financing percentage must be the same for all periods. If during the project the pre-financing for a certain period is considered insufficient, the clause ***Addition of complementary pre-financing*** can be used following the instructions for the use of this clause.

²⁵ For HRM mono contractor version, Article 6(b) of the contract

²⁶ For HRM mono contractor, Article 7 of the contract.

27 Only the special conditions adopted by Commission decision are available. Any other text must be adopted by new Commission decision.

28 For HRM mono contractor, Article 7 of the contract.

29 For HRM mono contractor, Article 7 of the contract.

30 Special clauses containing options can be modified by selecting a different option established in the standard special clause. Any other modification requires a Commission decision.

31 The signed CPF form A4 is needed.

32 For HRM mono contractor, Article 9.3 of the contract.

33 The different options for this clause cannot be combined; you have to choose one depending on the extent of the modification.

34 These options can only be applied for HRM actions.

35 Use this sentence when only the table is modified. If Annex I is replaced by a new one, including a modification of the table, use only the first option. You must use this option to correct an error regarding the cost model of a contractor. But be aware that Article II. 22.4 of the contract (not applicable to HRM multi contractor) states:

“Each contractor shall apply a cost reporting model in accordance with the principles established in Articles II.19, II.20 and II.21. Where a legal entity may choose a cost reporting model it shall apply that model in all contracts established under the Sixth Framework Programme.

- By derogation to the principle established above, any legal entity eligible to opt for the AC cost model may opt in this contract for the FCF or the FC reporting model even if it has initially opted for the AC reporting model in previous contracts.

However, if it does so, it must use that reporting model consistently in subsequent contracts established under the Sixth Framework Programme.

- By derogation to the principle established above, any legal entity eligible to opt for the FCF cost model may opt in this contract for the FC reporting model even if it has opted earlier for the FCF reporting model in previous contracts. However, if it does so, it must use that reporting model consistently in subsequent contracts established under the Sixth Framework Programme.”

This means that the choice by a particular entity of a new cost model will affect future contracts only and not contracts already underway. Therefore a cost reporting model for one contractor cannot be changed in a particular contract, except in cases where there is a mistake that must be corrected.