

# Seventh Framework Programme (FP7)

## ERC - ANNEX II - Single Beneficiary

### *Support for frontier research*

## GENERAL CONDITIONS

II.1. Definitions .....	2
PART A - IMPLEMENTATION OF THE <i>PROJECT</i> .....	4
SECTION 1 – GENERAL PRINCIPLES .....	4
II.2 Specific performance obligations of the beneficiary .....	4
II.3 Specific performance obligations of the <i>principal investigator</i> .....	7
SECTION 2 - REPORTING AND PAYMENTS .....	8
II.4 Reports .....	8
II.5 Approval of reports, time-limit for payments .....	10
II.6 Payment modalities .....	12
SECTION 3 - IMPLEMENTATION .....	13
II.7 Subcontracting .....	13
II.8 Suspension of the <i>project</i> .....	13
II.9 Confidentiality .....	14
II.10 Communication of data for evaluation, impact assessment and standardisation purposes ..	15
II.11 Information to be provided to Member States or Associated Countries .....	15
II.12 Information and communication .....	16
II.13 Processing of personal data .....	17
PART B - FINANCIAL PROVISIONS .....	18
SECTION 1 – GENERAL FINANCIAL PROVISIONS .....	18
II.14 Eligible costs of the <i>project</i> .....	18
II.15 Identification of direct and indirect costs .....	20
II.16 Upper funding limits .....	20
II.17 Receipts of the <i>project</i> .....	20
II.18 The financial contribution of <i>the Union</i> .....	21
II.19 Pre-financing provided by the Agency .....	21
SECTION 2 – GUARANTEE FUND AND RECOVERIES .....	22
II.20 Guarantee fund .....	22
II.21 Reimbursement and recoveries .....	23
SECTION 3 – CONTROLS AND SANCTIONS .....	24
II.22 Financial audits and controls .....	24
II.23 Technical audits and reviews .....	25
II.24 Liquidated damages .....	26
II.25 Financial penalties .....	27

PART C - INTELLECTUAL PROPERTY RIGHTS, USE AND DISSEMINATION.....	27
SECTION 1 - FOREGROUND .....	27
II.26 Ownership.....	27
II.27 Transfer.....	28
II.28 Protection.....	28
II.29 <i>Use</i> .....	29
II.30 <i>Dissemination</i> .....	29
SECTION 2 – ACCESS RIGHTS .....	29
II.31 <i>Background covered</i> .....	29
II.32 Principles .....	29
PART D - FINAL PROVISIONS .....	30
II.33 Requests for amendments and termination.....	30
II.34 Approval of amendments and termination .....	31
II.35 Termination of the <i>grant agreement</i> or the participation of the <i>beneficiary</i> at the initiative .. of the <i>Agency</i> .....	32
II.36 Financial Contribution after termination and other termination consequences.....	33
II.37 Force majeure .....	34
II.38 Assignment.....	34
II.39 Liability .....	34

## 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 Union*, under the terms or on the basis of which it makes a financial contribution to all or part of the FP7;
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. "*ERC*" means the European Research Council as established by the *Specific Programme Ideas* consisting of the ERC Scientific Council and a dedicated implementation structure;
7. "*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;
8. "*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;
9. "*Specific Programme Ideas*" means the Specific Programme "Ideas" for *the Union* activities in the area of "frontier research", implementing FP7;
10. "*irregularity*" means any infringement of a provision of European Community and European Union 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 Union or budgets managed by it through unjustified expenditure;
11. "*principal investigator*" means the individual that may assemble a *team* to carry out the *project* under his/her scientific guidance;
12. "*public body*" means any legal entity established as such by national law, and international organisations;
13. A legal entity is qualified as "*non-profit*" when considered as such by national or international law;
14. "*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;
15. "*SMEs*" mean micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC in the version of 6 May 2003;
16. "*supplementary agreement*" means the agreement requested by the *grant agreement* that covers the minimum contractual relation between the *principal investigator* and the *beneficiary* (the legal entity hosting and engaging him/her);
17. "*team*": means the individual team that consists of a single *principal investigator* and, as appropriate, other individuals, members of the team;
18. "*team members*" mean contributing investigators to the *project* under the scientific guidance of the *principal investigator*;
19. "*third country*" means a State that is not a Member State;

20. "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.

## **PART A - IMPLEMENTATION OF THE *PROJECT***

### **SECTION 1 – GENERAL PRINCIPLES**

#### **II.2 Specific performance obligations of the beneficiary**

The *beneficiary* shall:

- a) ensure that the work as specified in Annex I is carried out;
- b) ensure that the work is performed under the scientific guidance of the *principal investigator*;
- c) carry out the work to be performed, as identified in Annex I taking into consideration the specific role of the *principal investigator*. 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 the work;
- d) enter into a *supplementary agreement* with the *principal investigator*, which shall stipulate the applicable law to this *supplementary agreement* and the country in which disputes arising from this *supplementary agreement* shall be settled. It shall further specify that the *beneficiary* shall:
  - i) support the *principal investigator* in the management of the *team* and provide reasonable administrative assistance to the *principal investigator*, in particular as regards:
    - a. the timeliness and clarity of financial information,
    - b. the general management and reporting of finances,
    - c. the advice on internal *beneficiary* strategies and *ERC* or *Commission* policies,
    - d. the organisation of *project* meetings as well as the general logistics of the *project*.
  - ii) provide research support to the *principal investigator* and his/her *team members* throughout the duration of the *project* in accordance with Annex I, in particular as regards infrastructure, equipment, products and other services as necessary for the conduct of the research;
  - iii) ensure that the *principal investigator* and his/her *team members* enjoy, on a royalty-free basis, access rights to the *background* and the *foreground* needed for their activities under the *project* as specified in Annex I;

- iv) guarantee adequate contractual conditions to the *principal investigator*, in particular as regards:
  - a. the provisions for annual, sickness and parental leaves,
  - b. the occupational health and safety standards,
  - c. the general social security scheme, such as pension rights.
- v) ensure the necessary scientific autonomy to the *principal investigator*, in particular as regards:
  - a. the selection of other *team members*, hosted and engaged by the *beneficiary* or other legal entities, in line with profiles needed to conduct the research, including the appropriate advertisement;
  - b. control over the budget in terms of its use to achieve the scientific objectives;
  - c. the authority to deliver scientific reports to the *Agency*;
  - d. the authority to publish as senior author and invite as co-authors only those who have contributed substantially to the reported work.
- vi) inform the *principal investigator* on any circumstances affecting the implementation of the *project* or leading potentially to a suspension or termination of the *grant agreement*;
- vii) subject to the observance of applicable national law and to the agreement of the *Agency*, transfer the *grant agreement* as well as any pre-financing of the grant not covered by an accepted cost claim to a new *beneficiary*, should the *principal investigator* request to transfer the entire *project* or part of it to this new *beneficiary*. The *beneficiary* shall submit a substantiated request for amendment or notify the *Agency* in case of its objection to the transfer.
- e) ensure that any agreement or contract related to the *project*, entered into between the *beneficiary* and any third party contain provisions that this third party, including the auditor providing the certificate on the financial statements or on the methodology, shall have no rights vis-à-vis *the Union* under this *grant agreement*;
- f) ensure that the rights of the *Agency*, 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 financial contribution of *the Union*, on the same terms and conditions as those indicated in this *grant agreement*;
- g) ensure that the conditions applicable to it under Articles II.4.5, II.10, II.11, II.12, II.13, II.14 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*;
- h) inform the *Agency* in due time of:
  - i) the name(s) and contact details of the main contact person(s) who shall provide administrative support to its work, as well as any change to that information;
  - ii) any event which might affect the implementation of the project and the rights of *the Union*;

- iii) any change in its legal name, address and of its legal representatives, and any change with regards 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;
  - iv) any circumstance affecting the conditions of participation referred to in the *Rules for Participation*<sup>1</sup>, the *Financial Regulation*<sup>2</sup> and its *Rules of Application*<sup>3</sup> 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*.
- i) provide the *Commission*, including the European Anti-Fraud Office (OLAF), the *Agency* and the Court of Auditors directly with information requested in the framework of controls and audits;
  - j) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this *grant agreement* and inform the *Agency* 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*;
  - k) ensure that it complies with the provisions of the State aid framework;
  - l) carry out the *project* in accordance with fundamental ethical principles;
  - m) endeavour in consultation with the *principal investigator* to promote equal opportunities between men and women in the implementation of the *project*;
  - n) 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<sup>4</sup>, in particular concerning the working conditions, transparency of recruitment processes, and career development of the researchers recruited for the *project*.
  - o) 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*.
  - p) designate a legal entity appointed representative (LEAR) as the authorised person to perform the role and tasks stipulated in its document of appointment. If a LEAR has

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<sup>1</sup> European Parliament and Council Regulation (EC) No 1906/2006 of 18 December 2006 OJ L391, 30.12.2006, p.1.

<sup>2</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ L298, 26.10.2012, p.1.

<sup>3</sup> Commission Delegated Regulation (EU) 1268/2012 of 29.10.2012 on the rules of application of the Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, OJ L 362, 31.12.2012, p.1.

<sup>4</sup> OJ L075, 22.03.2005, p67.

already been appointed, the beneficiary agrees that the role and tasks of this LEAR are replaced by those stipulated in the document of appointment in force on the date of signature of this grant agreement

### **II.3 Specific performance obligations of the *principal investigator***

The *supplementary agreement* shall specify that:

1. the *principal investigator* shall:

- a) take all appropriate steps towards the effective supervision of the scientific and technological execution of the *project*;
- b) be in charge of the scientific reporting and contribute effectively to the financial management reporting on the *project*;
- c) inform the *beneficiary* in due time of any event or change in circumstances which are likely to have an effect on the performance of the *grant agreement*, inter alia:
  - a planned transfer of the *project* to a new *beneficiary*;
  - any modification relating to the information having served as a basis to the signature of the *supplementary agreement* referred to in Article 2 of the *grant agreement*;
  - any modification relating to the information having served as a basis for the award of the ERC grant;
  - any personal grounds affecting the implementation of the *project*.
- d) respect the confidentiality rules in accordance with Article II.9 of the *grant agreement*;
- e) acknowledge the support of *the Union* for an *ERC* grant in any *dissemination* activities, such as in related publications or other media in accordance with Article II.12.

2. the *principal investigator* shall respect the intellectual property rights of the *beneficiary* during and after the *project*;

3. the *principal investigator* shall propose in writing to the *beneficiary* in the case he/she is determined to transfer the *project* or part of it to a new *beneficiary* to which extent the *project* shall be transferred. He/she shall also make in writing a proposal to the *beneficiary* on the modalities of the transfer arrangement with the new *beneficiary*.

4. the *principal investigator* shall provide to the *beneficiary*, in the case of transfer to the new *beneficiary*, a statement describing in detail the results of the conducted research up to the time of transfer of the *project* and he/she shall transmit a copy of this statement to the *Agency*.

## **SECTION 2 - REPORTING AND PAYMENTS**

### **II.4 Reports**

1. Except for the last scientific reporting period, the *principal investigator* on behalf of the *beneficiary* shall submit a **periodic scientific report** to the *Agency* within 60 days after the end of each respective period. The scientific report shall inform the *Agency* about the scientific progress of the work and shall include achievements and outputs resulting from the *project*, such as publications and a declaration of any major change of scientific strategy.
2. The *principal investigator* on behalf of the *beneficiary* shall submit a **final scientific report** to the *Agency* within 60 days after the end of the *project*. The scientific report shall present the final results and conclusions of the *project*, describe their use and dissemination, and include concrete achievements, such as publications.
3. The scientific reports shall contain a publishable part of a suitable quality to enable direct publication. Its submission to the *Agency* indicates that no confidential material is included therein.
4. The *beneficiary* shall submit a **periodic financial management report** to the *Agency* for each reporting period within 60 days after the end of each respective period. The report comprises:
  - i) an explanation of the use of the resources in relation with the scientific work carried out, and
  - ii) a financial statement in the form of a duly completed Annex IV.
5. A **certificate on the financial statements** shall be submitted for claims of interim payments and final payments when the amount of the financial contribution of *the Union* claimed by the *beneficiary* under the form of reimbursement of costs is equal to or superior to EUR 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 (Annex V-a). However, for *projects* of 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 financial contribution of *the Union* claimed by the *beneficiary*, in the form of reimbursement of costs, is equal to or superior to EUR 375 000 when cumulated with all previous payments.

Certificates on the financial statements shall certify that the costs claimed and the *receipts* declared during the period for which they are provided, 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 certificate that no conflict of interest exists between itself and the *beneficiary* in establishing this certificate.

The *Commission* may, at its sole discretion, accept at the request of a *beneficiary* that it submits a **certificate on the methodology** for the calculation of costs, which it used to prepare its claims with regard to personnel costs, and the related control system. This

certificate must be forwarded in the form of a detailed description verified as factual by its external auditor (Annex V-b). 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 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 V to this *grant agreement*. The *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 account and consolidated accounts<sup>5</sup> or any European Union legislation replacing this Directive. The *beneficiary* established in *third countries* shall comply with national regulations in the same field and the certificate on the financial statements provided shall consist of an independent report of factual findings based on procedures specified by the *Commission*.

*Public bodies*, secondary and higher education establishments and *research organisations* may opt for a competent public officer to provide their certificate on the 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.

Certificates by external auditors according to this Article do not affect the liability of the *beneficiary* nor the rights of *the Union* arising from this *grant agreement*.

6. The *beneficiary* shall submit the reports to the *Agency* using the electronic exchange system set up by the *Commission*. In particular:
  - the financial statement form must be transmitted and electronically signed through the electronic exchange system by the authorised person(s) within the *beneficiary's* organisation.
  - The certificates on the financial statements and on the methodology must be hand-signed by an authorised person of the auditing entity on paper and the *beneficiary* shall keep the originals according to Article II.22.3. A scanned copy of the certificates shall be transmitted through the electronic exchange system. In the case of certificates on the methodology, the request for eligibility and the certificates have to be submitted directly to the *Commission* via the functional mailboxes as indicated in the Guidance Notes for Auditors and Beneficiaries on FP7 audit certification issues.

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<sup>5</sup> Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

7. The layout and content of the reports shall conform to the instructions and guidance notes established by the *Commission*.
8. The *Agency* may be assisted by external experts in the analysis and evaluation of the reports.

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

1. At the end of each reporting period, the *Agency* will evaluate scientific and / or financial management reports referred to in Article II.4.

Payments will be disbursed within 90 days of the receipt of the financial management reports unless the time-limit, the payment or the *project* has been suspended.

2. Payments shall be made after the *Agency's* approval of the financial management reports. The absence of a response from the *Agency* within this time-limit shall not imply its approval. However, the *Agency* should send a written reply to the *beneficiary* in accordance with paragraph 3. The *Agency* may reject financial management reports 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 *Agency* may:
  - a) approve the reports, in whole or in part, or make the approval subject to certain conditions;
  - b) reject the reports by giving an appropriate justification and, if appropriate, start the procedure for termination of the *grant agreement* in whole or in part;
  - c) suspend the **time limit** if one or more of the reports 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 submitted report or the additional information requested is received by the *Agency*, or where the *Agency* decides to proceed with an interim payment in part in accordance with paragraph 4.

The *Agency* shall inform the *beneficiary* in writing 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 *Agency*.

- d) suspend **the payment** at any time, in whole or in part for the amount intended to the *beneficiary*:
  - if the work carried out does not comply with the provisions of the *grant agreement*;
  - if the *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 or presumption thereof, in particular in the wake of any audits and checks provided for in Articles II.22 and II.23;

- if there is a suspicion of *irregularity* committed by the *beneficiary* in the performance of the *grant agreement*;
- if there is a suspected or established *irregularity* committed by the *beneficiary* in the performance of another *grant agreement* funded by the general budget of the European Union or by budgets managed by it. 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*.

When the *Agency* suspends the payment the *beneficiary* shall be duly informed of the reasons why payment in whole or in part will not be made.

4. The *Agency* may proceed with an interim payment in part if any financial management report is not submitted as required, or only partially or conditionally approved. The financial management report due for one reporting period which is submitted late will be evaluated together with the financial management report of the next reporting period.
5. On expiry of the time-limit for approval of the financial management reports and payments, and without prejudice to suspension by the *Agency* of this time-limit, the *Agency* shall pay interest on the late payment, according to the conditions foreseen in the *Financial Regulation* and its *Rules of Application*, 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 the *beneficiary* which is a *public body* 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 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 financial contribution of *the Union*.

6. The suspension of the time-limit, of payment or of the *project* by the *Agency* may not be considered as late payment.
7. At the end of the *project*, the *Agency* may decide not to make the payment of the corresponding financial contribution of *the Union* subject to one month's written notice of non-receipt of a report, or a certificate on the financial statements.
8. The *Agency* shall inform the *beneficiary* of the amount of the final payment of the financial contribution of *the Union* and shall justify this amount. The *beneficiary* shall have two months from the date of the notification to give reasons for any disagreement. After the end of this period such requests will no longer be considered and the *beneficiary* is deemed to have accepted the *Agency's* decision. The *Agency* 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 *Agency's* decision.

## II.6 Payment modalities

1. The *Agency* shall make the following payments:

- a) a **pre-financing** in accordance with Article 6,
- b) for *projects* with more than one reporting period, the *Agency* shall make **interim payments** of the financial contribution of *the Union* corresponding to the amount accepted for each financial management reporting period.
- c) the *Agency* shall make a **final payment** of the financial contribution of *the Union* corresponding to the last financial management reporting period plus any adjustment needed.

Where the amount of the corresponding financial contribution of *the Union* is less than any amount already paid to the *beneficiary*, the *Agency* or the *Commission* shall recover the difference.

Where the amount of the corresponding financial contribution of *the Union* is more than any amount already paid to the *beneficiary*, the *Agency* shall pay the difference as the final payment within the limit of Articles 5.1 and II.20.

2. The total amount of the pre-financing and interim payments shall not exceed 90% of the maximum financial contribution of *the Union* defined in Article 5.
3. Payments by the *Agency* shall be made in Euro.
4. Costs shall be reported in Euro. The *beneficiary* with accounts in currencies other than the Euro shall report costs by using, either the conversion rate published by the European Central Bank that would have applied on the date that the actual costs were incurred, or its rate applicable on the first day of the month following the end of the financial management reporting period. The *beneficiary* with accounts in Euro shall convert costs incurred in other currencies according to its usual accounting practice.
5. N/A.
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 *Agency* 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 the *beneficiary*, 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 *Agency* and the *Commission* 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 *beneficiary* to subcontract certain elements of the work to be carried out, the following conditions must be fulfilled:
  - a subcontracts may only cover the execution of a limited part of the *project*;
  - b 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;
  - c recourse to the award of subcontracts by the *beneficiary* may not affect the rights and obligations of the *beneficiary* regarding *background* and *foreground*;
  - d Annex I must indicate the tasks 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. Subcontracts concluded on the basis of framework contracts entered into between the *beneficiary* and a subcontractor, prior to the beginning of the *project* in accordance with the *beneficiary's* usual management principles may also be accepted.

3. The *beneficiary* 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 *beneficiary* shall immediately inform the *Agency* of any event affecting or delaying the implementation of the *project*.
2. The *beneficiary* 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 *beneficiary* must inform the *Agency* 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 *Agency* may suspend the whole or part of the *project* where it considers that the *beneficiary* is not fulfilling its obligations according to this *grant agreement*. The *beneficiary* and the *principal investigator* shall be informed without delay of the justifications for such an event and the conditions necessary to reinstate the work again. This suspension takes effect 10 days after the receipt of the notification by the *beneficiary*.
4. During the period of suspension, no costs may be charged to the *project* for carrying out any part of the *project* that has been suspended.
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 of the *project* 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

1. During the *project* and for a period of five years after its completion or any other period agreed in the *supplementary agreement*, the *beneficiary* and the *principal investigator* 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 *Agency* undertakes to preserve the confidentiality of "*confidential information*" until five years after the completion of the *project*. Upon a duly substantiated request by the *beneficiary*, the *Agency* 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 law or by other provisions of this *grant agreement* or the *supplementary agreement*;
  - the disclosure or communication of *confidential information* is required by the national law of the *beneficiary*.
3. The *beneficiary* undertakes 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 data, documents or other material which are classified (“*classified information*”) or subject to security restrictions or export- or transfer- control, must follow the applicable rules established by the relevant national and European Community and European Union legislation for such information, including the *Commission's* internal rules for handling such *classified information*<sup>6</sup>. Where the *beneficiary* is established in an *Associated country*, any security agreements between that *Associated country* and *the Union* shall also apply.

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

1. The *beneficiary* shall provide, at the request of the *Agency* and the *Commission*, the data necessary for:
  - the continuous and systematic review of the *Specific Programme Ideas* and FP7;
  - the evaluation and impact assessment of activities of *the Union*, 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 *Agency* and the *Commission* in their 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 *beneficiary* shall, where appropriate, during the *project* and for two years following its end, inform the *Agency* and the European standardisation bodies about *foreground* which may contribute to the preparation of European or international standards.

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

1. The *Agency* shall, upon request, make available to any Member State or *Associated country* any useful information in its possession on *foreground*, provided that the following cumulative conditions are met:
  - the information concerned is relevant to public policy;
  - the *beneficiary* has not provided sound and sufficient reasons for withholding the information concerned;
  - the applicable European Community and European Union law on *classified information* does 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 *Agency* without restrictions on its confidentiality.

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<sup>6</sup> Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 OJ L 317, 3.12.2001, p. 1.

## II.12 Information and communication

1. The *beneficiary* and the *principal investigator* 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 financial support of *the Union*. Unless the *Agency* 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 research funding from *the Union* and display the European emblem and the ERC logo.

When displayed in association with a logo, the European emblem and the ERC logo should be given appropriate prominence. This obligation to use the European emblem and ERC logo in respect of *projects* to which *the Union* 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, the *beneficiary* and *principal investigator* are exempted from the obligation to obtain prior permission from the *Agency* to use the emblem. Further detailed information on the EU emblem can be found on the Europa web page.

Any publicity made by the *beneficiary* or the *principal investigator* in respect to the *project*, in whatever form and on or by whatever medium, must specify that it reflects only the author's views and that *the Union* is not liable for any use that may be made of the information contained therein.

2. The *Agency* and the *Commission* shall be authorised to publish, in whatever form and on or by whatever medium, the following information:
  - the name of the *beneficiary*, *principal investigator*, or other *team members*;
  - contact address of the *beneficiary*;
  - the general purpose of the *project* in the form of the summary provided by the *beneficiary*;
  - the amount and rate of the financial contribution of *the Union* granted to the *project*;
  - after the final payment, the amount and rate of the financial contribution of *the Union* accepted by the *Agency*;
  - the geographic location of the activities carried out;
  - the list of *dissemination* activities and/or patent (applications) relating to *foreground*;
  - the details/references and the abstracts of scientific publications relating to *foreground* and, where provided pursuant to article II.30.3, 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 *Agency* in the framework of the *project*.

The *beneficiary* shall ensure that all necessary authorisations for such publication have been obtained and that the publication of the information by the *Agency* or the *Commission* does not infringe any rights of the *principal investigator*, *team members* or third parties.

Upon a duly substantiated request by the *beneficiary*, the *Agency* or 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 Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the institutions and bodies of *the Union* 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 activities of *the Union*, including the *use* and *dissemination* of the *foreground*, without prejudice to the possibility of passing the data to the bodies in charge of a monitoring or inspection task in accordance with European Community and European Union legislation and this *grant agreement*.
2. The *beneficiary* may, on written request, gain access to its personal data and correct any information that is inaccurate or incomplete. It should address any questions regarding the processing of personal data to the Controller. The *beneficiary* may lodge a complaint against the processing of its personal data with the European Data Protection Supervisor at any time.
3. For the purposes of this *grant agreement*, the Controller identified in Article 8.5 shall be the contact for the *Agency*.

## **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 at 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. The *beneficiary's* internal accounting and auditing procedures must permit direct reconciliation of the costs and receipts declared in respect of the *project* with the corresponding financial statements and supporting documents;
  - 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*; in the case of any contribution from third parties, they must be recorded in the accounts of the third parties;
  - g) they must be indicated in the estimated overall budget in Annex I.

Notwithstanding point a) of the first subparagraph, *beneficiaries* may opt to declare average personnel cost if the following cumulative criteria are fulfilled:

- a) The average personnel cost methodology shall be the one declared by the *beneficiary* as its usual cost accounting practice; as such it shall be consistently applied to all the participations of the *beneficiary* in the Framework Programmes.
- b) The methodology shall be based on the actual personnel costs of the *beneficiary* as registered in its statutory accounts, without estimated or budgeted elements;
- c) The methodology shall exclude from the average personnel rates any ineligible cost item as referred to in paragraph 3 and any costs claimed under other costs categories in order to avoid double funding of the same costs;

- d) The number of productive hours used to calculate the average hourly rates shall correspond to the usual management practice of the *beneficiary* provided that it reflects the actual working standards of the *beneficiary*, in compliance with applicable national legislation, collective labour agreements and contracts and that it is based on auditable data.

*Beneficiaries* may submit a certified methodology for approval by the *Commission* on the basis of the criteria referred to in points (a) to (d) of the second subparagraph.

Such a certificate shall be issued in accordance with the provisions laid down in Article II.4 and the relevant part of Annex V-b, unless it has already been submitted for a previous *grant agreement* under the Seventh Framework Programme and the methodology certified has not changed.

Average personnel costs charged on the basis of methodologies which comply with the criteria referred to in points (a) to (d) of the second subparagraph shall be deemed not to differ significantly from actual costs.

SME owners who do not receive a salary and other natural persons who do not receive a salary shall charge as personnel costs a flat rate based on the ones used in the People Specific Programme for researchers with full social security coverage, adopted by Council Decision No 2006/973/EC<sup>6a</sup>, and specified in the annual Work Programme of the year of the publication of the call to which the proposal has been submitted<sup>6b</sup>.

The value of the personal work of those SME owners and natural persons shall be based on a flat rate to be determined by multiplying the hours worked in the project by the hourly rate to be calculated as follows:

{Annual living allowance corresponding to the appropriate research category published in the 'People' Work Programme of the year of the publication of the call to which the proposal has been submitted / standard number of annual productive hours} multiplied by {country correction coefficient published in the 'People' Work programme of the year of the publication of the call /100}

The standard number of productive hours is equal to 1 575. The total number of hours claimed for European Union projects in a year cannot be higher than the standard number of productive hours per SME owner/natural person.

The value of the personal work shall be considered as a direct eligible cost of the project.

2. Costs incurred by third parties in relation to resources they make available free of charge to the *beneficiary*, can be declared by the *beneficiary* provided they meet the conditions established in paragraph 1 and 3, *mutatis mutandis* and are claimed in conformity 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,

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<sup>6a</sup> OJ L 400, 30.12.2006, p.272.

<sup>6b</sup> For calls published in 2006 the flat rates to be applied are those of the People Work Programme 2007.

- 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 *project* of *the Union* or of *Euratom*,
- 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 *beneficiary*, 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, in proportion to the time dedicated to the *project* provided that they are mandatory under national law.

2. Notwithstanding the application of different methods of reimbursement in other funding schemes, indirect costs which are incurred in direct relationship with the eligible direct costs attributed to the *project* shall be reimbursed by a flat-rate of 20% of the total direct eligible costs, excluding the direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the *beneficiary*.

## **II.16 Upper funding limits**

For activities supported by this *grant agreement*, which are necessary for the conduct of the *project*, the financial contribution of *the Union* may reach a maximum of 100% of the total eligible costs.

These activities may include, inter alia, training, dissemination, management and other specific activities.

## **II.17 Receipts of the *project***

Receipts of the *project* may arise from:

1. Resources made available by third parties to the *beneficiary* by means of financial transfers or contributions in kind which are free of charge:
  - a) shall be considered a *receipt* of the *project* if they have been contributed by the third party specifically to be used on the *project*.
  - b) shall not be considered a *receipt* of the *project* if their use is at the discretion of the *beneficiary's* management.
2. Income generated by the *project*:
  - a) shall be considered a *receipt* 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*;
  - b) shall not be considered a *receipt* for the *beneficiary* when generated from the *use* of *foreground* resulting from the *project*.

## **II.18 financial contribution of *the Union***

1. The financial contribution of *the Union* to the *project* shall be determined by applying the upper funding limits indicated in Article II.16, per activity to the actual eligible costs accepted by the *Agency*.
2. The financial contribution of *the Union* shall be calculated by reference to the cost of the *project* as a whole and its reimbursement shall be based on the accepted costs of the *beneficiary*.
3. The financial contribution of *the Union* can not give rise to any profit for the *beneficiary*. For this purpose, at the time of the submission of the last financial statement, the final amount of the financial contribution of *the Union* will take into account any *receipts* of the *project* received by the *beneficiary*. The financial contribution of *the Union* cannot exceed the eligible costs minus the receipts for the *project*.
4. The total amount of payments by *the Union* shall not exceed in any circumstances the maximum amount of the financial contribution of *the Union* referred to in Article 5.
5. Without prejudice to the right to terminate the *grant agreement* under Article II.35, and without prejudice to the right of the *Agency* and of the *Commission* to apply the penalties referred to in Articles II.24 and II.25, if the *project* is not implemented or is implemented poorly, partially or late, the *Agency* may reduce the grant initially provided for in line with the actual implementation of the *project* on the terms laid down in this *grant agreement*.

## **II.19 Pre-financing provided by *the Agency***

1. Pre-financing remains the property of *the Union* until the final payment.
2. Interest yielded by the pre-financing made to the *beneficiary* shall not be due to *the Union* in accordance with the *Financial Regulation* and its *Rules of Application*.

## **SECTION 2 – GUARANTEE FUND AND RECOVERIES**

### **II.20 Guarantee fund**

1. The financial responsibility of the *beneficiary* shall be limited to its own debt, subject to the following paragraphs.
2. In accordance with Article 6, the *beneficiary* 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 Union* by beneficiaries of grant agreements under FP7. That contribution to be transferred by the *Agency* on their behalf may not be offset against any pending debt they may have towards of *the Union*.
3. *The Fund* is the property of the beneficiaries of on-going grant agreements under FP7. *The Union* represented by the *Commission* shall manage it, as executive agent, on their behalf. *The Fund* shall be deposited in a bank (hereinafter *the Bank*) chosen by *the Union* represented by the *Commission*, in its quality of executive agent.
4. Interest generated by *the Fund* shall be added to it and shall be used by the *Commission* for transfers from or recoveries from *the Fund* referred to in paragraph 1 and 2 of Article II.21 (hereinafter *the Operations*).

*Operations* may be undertaken from the day of entry into force of the first *grant agreement* under FP7 until the day of the final payment of the last one. At the end of that period, any remaining interest shall become the property of *the Union*.

Where interest is insufficient to cover *Operations*, contributions to *the Fund* may be used within a limit not exceeding 1% of *the* financial contribution of *the Union* due to beneficiaries other than those referred to in paragraph 5, at the end of the period referred to in the above paragraph. Beyond these limits or after that period, the *Agency* or the *Commission* shall recover directly from beneficiaries any amount owed.

5. At the final payment made after the end of the *project*, the amount contributed to *the Fund* under this *grant agreement* shall be returned to the *beneficiary*.

The amount to be returned shall be equal to:

$$\text{“contribution to the Fund under this grant agreement”} \times \text{“Fund index”}$$

The “*Fund index*” is established at the end of each month by *the Bank* to be applied during the following month, and shall equal the following ratio reduced to 1 when superior:

$$\text{Fund index} = (\text{C} + \text{I} + \text{B})/\text{C}$$

where:

C= contributions to *the Fund* of all on-going *projects* when establishing the index

I = cumulated interest generated by *the Fund* since the start of the period

B= (recoveries to the profit of the *Fund*) - (transfers from & recoveries on the *Fund*)

Where following this calculation the amount to be returned to the *beneficiary* is lower than the amount contributed to *the Fund* under this *grant agreement*, that deduction shall not exceed 1% of the financial contribution of *the Union* 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.

The *beneficiary* hereby accepts that the amount to be returned to it is assigned to the payment of any debt due by the *beneficiary* to *the Union* or *Euratom* under this *grant agreement* or under any other obligation irrespective of its origin, without any further formality.

## II.21 Reimbursement and recoveries

1. Where an amount due to *the Union* by the *beneficiary* is to be recovered after termination or completion of any grant agreement under FP7, the *Agency* or the *Commission* shall request by means of a recovery order issued against the *beneficiary* the reimbursement of the amount due. If payment has not been made by the due date, sums owed to *the Union* may be recovered by offsetting them against any sums it owes to the *beneficiary*, after informing the latter accordingly. In exceptional circumstances, justified by the necessity to safeguard the financial interests of *the Union*, the *Commission* may recover by offsetting before the due date of the payment. The *beneficiary's* prior consent shall not be required. Where offsetting is not possible, the *Agency* shall recover effectively from *the Fund* the amounts due
2. Where an amount due by the *beneficiary* has been transferred or recovered from *the Fund*, the *beneficiary* shall reimburse that amount to *the Fund*. For this purpose, the *Agency* or the *Commission* shall issue against the *beneficiary* a recovery order to the benefit of *the Fund*.
3. The *beneficiary* hereby accepts that:
  - any pending payment excluding pre-financing due by *the Union* or *Euratom* to it, irrespective of its origin, is assigned to the payment of the *beneficiary's* debt towards the *Fund*.
  - the *Commission* may adopt a recovery decision in accordance with paragraph 4.
4. The *beneficiary* understands that under Article 299 of the Treaty on the Functioning of the European Union, 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.
5. If the obligation to pay the amount due is not honoured by the date set by the *Agency* or 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 *Agency* or the *Commission* receives full payment of the amount owed is reimbursed in full, inclusive. Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

## **SECTION 3 – CONTROLS AND SANCTIONS**

### **II.22 Financial audits and controls**

1. The *Agency* or the *Commission* may, at any time during the implementation of the *project* 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 *Agency* or the *Commission* services themselves including OLAF. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the *Agency* or 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 *beneficiary* shall make available directly to the *Agency* or the *Commission* all detailed information and data that may be requested by the *Agency* or the *Commission* or any representative authorised by them, 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 *beneficiary* 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 *Agency* or to the *Commission* where requested during any audit under the *grant agreement*.
4. In order to carry out these audits, the *beneficiary* shall ensure that the *Agency*, the *Commission's* services and any external body(ies) authorised by any of them 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 *Agency* or the *Commission* or the authorised representative to the *beneficiary*, who may make observations thereon within one month of receiving it. The *Agency* or 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* within two months of expiry of the aforesaid deadline.
6. On the basis of the conclusions of the audit, the *Agency* or the *Commission* shall take all appropriate measures which it considers necessary, including the issuing of recovery orders regarding all or part of the payments made and the application of any applicable sanction.
7. The European Court of Auditors shall have the same rights as the *Agency* and the *Commission*, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.

8. In addition, the *Agency* or 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<sup>7</sup> and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>8</sup>, and Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>9</sup>.

## II.23 Technical audits and reviews

1. The *Agency* and the *Commission* may initiate a technical audit or review at any time during the implementation of the *project* and up to five years after the end of the *project*. The aim of a technical audit or review shall be to assess the work carried out under the *project* over a certain period, *inter alia* by evaluating the *project* reports relevant to the period in question and aspects related to project transfer. Such audits and 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 audit or review shall objectively assess the following:
  - the degree of fulfilment of the *project* objectives for the relevant period,
  - the continued relevance of the objectives and breakthrough potential with respect to the scientific 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*.
3. Audits and reviews shall be deemed to be initiated on the date of receipt by the *beneficiary* of the relevant letter sent by the *Agency* or the *Commission*.
4. Any such audit or review shall be carried out on a confidential basis.
5. The *Agency* or the *Commission* may be assisted in technical audits and reviews by external scientific or technological experts. Prior to the carrying out of the evaluation task, the *Agency* or the *Commission* shall communicate to the *beneficiary* the identity of the appointed experts. The *beneficiary* shall have the right to refuse the participation of a particular external scientific or technological expert on grounds of commercial confidentiality.
6. Audits and reviews may be carried out remotely at the expert's home or place of work or involve sessions with *project* representatives either at the *Agency's* premises, or at the *Commission's* premises or at the premises of the *beneficiary*. The *Agency*, the *Commission* or

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<sup>7</sup> OJ L 292, 15.11.1996, p.2.

<sup>8</sup> OJ L 136, 31.5.1999

<sup>9</sup> OJ L 136, 31.5.1999

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 *beneficiary* shall make available directly to the *Agency* or 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/has been properly implemented and performed in accordance with the provisions of this *grant agreement*.
8. A report on the outcome of the audits and reviews shall be drawn up. It shall be sent by the *Agency* or by the *Commission* to the *beneficiary*, who may make observations thereon within one month of receiving it. The *Agency* or the *Commission* may decide not to take into account the observations conveyed after that deadline.
9. On the basis of the outcome of the audits and review the *Agency* will inform the *beneficiary* of its decision:
  - to allow the *project* to continue without modification of Annex I or with minor modifications;
  - to consider that the *project* can only continue with major modifications;
  - to initiate the transfer or the termination of the *grant agreement* according to Articles II.33 , II.34 and II.35;
  - to add a new *beneficiary* following a review initiated after objection of transfer of grant agreement by the *beneficiary*, in accordance with Articles II.33 and II.34;
  - to issue a recovery order regarding all or part of the payments made by the *Agency* and the application of any applicable sanction.
10. An ethics audit may be undertaken at the discretion of the *Agency's* or the *Commission's* services up to five years after the end of the *project*. Paragraphs 3, 4, 5, 6, 7, 8 and 9 shall apply mutatis mutandis.

## **II.24 Liquidated damages**

1. The *beneficiary* that is found to have overstated any amount and which has therefore received an unjustified financial contribution from *the Union* 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 of *the Union* from the *beneficiary*. In exceptional cases the *Agency* may refrain from claiming liquidated damages.
2. Any amount of liquidated damages shall be proportionate to the overstated amount and the unjustified part of the financial contribution of *the Union*. The following formula shall be used to calculate liquidated damages:

**Liquidated damages = unjustified financial contribution of *the Union* x (overstated amount/ total financial contribution of *the Union* claimed)**

The calculation of any liquidated damages shall only take into consideration the financial management reporting period(s) relating to the *beneficiary's* claim for the financial

contribution of *the Union* for that period. It shall not be calculated in relation to the entire financial contribution of *the Union*.

3. The *Agency* 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 claim of *the Union*.
4. The procedure for repayment of unjustified financial contribution of *the Union* and for payment of liquidated damages will be determined in accordance with the provisions of Article II.21. Liquidated damages will be deducted from any further payment or will be subject to recovery by the *Agency* or the *Commission*.
5. The *Agency* shall be entitled to liquidated damages in respect of any overstated amount which comes to light after the end of the *project*, in accordance with the provisions of paragraphs 1 to 4.

## **II.25 Financial penalties**

1. The *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 financial contribution of *the Union* received by it. 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, the *beneficiary* shall be excluded from all *Union and Euratom* 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 the defaulting *beneficiary* in accordance with the *Financial Regulation* or to any other civil remedy to which *the Union* may be entitled. Furthermore, these provisions shall not preclude any criminal proceedings which may be initiated by the Member States' authorities.

# **PART C - INTELLECTUAL PROPERTY RIGHTS, USE AND DISSEMINATION**

## **SECTION 1 - FOREGROUND**

### **II.26 Ownership**

1. *Foreground* shall be the property of the *beneficiary* carrying out the work generating that *foreground*.
2. If employees or other personnel working for the *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 the *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. Where the *beneficiary* intends to transfer ownership of *foreground* to a third party, the *Commission* may object to such a transfer 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 shall not take place unless the *Commission* is satisfied that appropriate safeguards will be put in place and has authorised the transfer in writing.

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

**The work leading to this invention has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007-2013) / ERC grant agreement n° [xxxxxx].<sup>10</sup>**

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

3. Where the *foreground* is capable of industrial or commercial application and its owner does not protect it, no *dissemination* activities relating to said *foreground* may take place before the *Agency* has been informed. The *Agency* must be informed at the latest 45 days prior to the intended *dissemination* activity.

In such cases, *the Union* may, with the consent of the *beneficiary*, assume ownership of that *foreground* and adopt measures for its adequate and effective protection. The *beneficiary* may refuse consent only if it can demonstrate that its legitimate interests would suffer disproportionately great harm.

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

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<sup>10</sup> This statement will have to be translated into the language of the patent filing. Translations in all European Union languages will be provided.

## **II.29 Use**

1. The *beneficiary* shall *use* the *foreground* which it owns or ensure that it is used.
2. The *beneficiary* 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 *Agency* or the *Commission* to carry out any related audit.

## **II.30 Dissemination**

1. The *beneficiary* shall ensure that the *foreground* of which it has ownership is disseminated as swiftly as possible. If it fails to do so, the *Agency* 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 of the *foreground*.
3. 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 Union*:

**The research leading to these results has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007-2013) / ERC grant agreement n° [xxxxxx]<sup>11</sup>.**

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

In case of transfer of the entire *project* or a part of it, the *beneficiary* and the new *beneficiary(ies)* shall define before the transfer the *background* and *foreground* needed for the purposes of the *project* in a written agreement and, where appropriate, may agree to exclude specific *background*.

### **II.32 Principles**

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<sup>11</sup> This statement will have to be translated into the language of the dissemination activity. Translations in all European Union languages will be provided.

1. The termination of the participation of the *beneficiary* in case of transfer shall in no way affect its rights and obligations concerning *access rights* to *background* and *foreground* towards the new *beneficiary (ies)*.
2. *Access rights* for *beneficiary (ies)* to *background* and *foreground* needed to enable the work under the *project* to be carried out or needed for the purposes of pursuing further research activities regarding own *foreground* shall be granted on a royalty-free basis.
3. *Access rights* for *beneficiary (ies)* to *background* and *foreground* needed for use of own *foreground* excluding for the purposes of pursuing further research activities shall be granted either under fair and reasonable conditions or be royalty-free.
4. An affiliated entity established in a Member State or *associated country* shall also have *access rights* for use to *foreground* and *background* under the same conditions as the beneficiary to which it is affiliated unless otherwise agreed between beneficiaries. As the *access rights* require that access is needed to use own *foreground*, this paragraph only applies to the extent that *ownership* of *foreground* was transferred to an affiliate entity established in a Member State or *Associated country*. *Beneficiaries* may provide for arrangements regarding *access rights* for affiliated entities in a further written agreement, including regarding any notification requirements.
5. Request for *access rights* shall be made in writing.
6. 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.
7. Unless otherwise agreed by the owner of the *foreground* or *background*, *access rights* shall confer no entitlement to grant sub-licences.
8. Where a *beneficiary* intends to grant an exclusive licence to *foreground* to a third party, 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. In such cases, the exclusive licence shall not take place unless the *Commission* is satisfied that appropriate safeguards will be put in place and has authorised the grant in writing.

## **PART D - FINAL PROVISIONS**

### **II.33 Requests for amendments and termination**

1. Requests for amendments or terminations shall be signed by the legal representative of the parties and submitted in accordance with Article 8.
2. A request for amendment including more than one modification to the *grant 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.

3. Request for the addition of a new *beneficiary* shall include a completed Accession Form (Annex III) 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 a *beneficiary* as established by the *grant agreement* with effect from the date of its accession specified in the signed Annex III.
4. 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.
5. Request by the *beneficiary* for termination of its participation or of the *grant agreement* shall include:
  - a. the reasons for requesting the termination,
  - b. the proposed date on which the termination shall take effect,
  - c. based on consultation with the *principal investigator*, the reports referred to in Article II.4 relating to the work carried out by the *beneficiary* up to the date on which the termination takes effect.

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

### **II.34 Approval of amendments and termination**

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. When the *beneficiary* requests the addition of a new *beneficiary* or the termination of its participation such a request shall require the written approval of the *Agency*.
3. Should the *principal investigator* request to transfer the *project* or part of it to a new *beneficiary* and the *beneficiary* agrees to such a transfer, the latter shall send a substantiated request for amendment to the *Agency*. On the basis of the request, the *Agency* may approve the transfer after a review procedure as referred to in Article II.23, where appropriate.
4. Should the *principal investigator* request to transfer the project or part of it to a new *beneficiary* and the *beneficiary* objects to such a transfer, the latter shall communicate the reasons for its objection to the *Agency*, including any legal obstacle to such a transfer under national law. The technical capacity of the new proposed *beneficiary* will then be subject to a review procedure as referred to in Article II.23. Following the review the *Agency* may approve the transfer of the grant agreement to the new *beneficiary* or decide to terminate the *grant agreement*.
5. The *Agency's* approval of the requested amendment or termination shall be notified to the *beneficiary* with a copy to the *principal investigator*. In case of transfer of the *grant agreement*, the *Agency's* approval shall be notified to the *beneficiary* with a copy to the

*principal investigator*. The Agency and the new *beneficiary* shall sign an agreement on the transfer of the *grant agreement*.

6. Amendments and terminations shall take effect on the date agreed by the parties. Where there is no agreement or no date specified, the date shall be the date of the Agency's approval.

### **II.35 Termination of the *grant agreement* or of the participation of the *beneficiary* at the initiative of the Agency**

1. The Agency may terminate the *grant agreement* or the participation of the *beneficiary* in the following cases:
  - a) where the *principal investigator* for any reason is no longer in the position to continue working under the *project*;
  - 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 *beneficiary* 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 Agency or the *Commission*;
  - d) where the *beneficiary* has contravened fundamental ethical principles;
  - e) where the required reports are not submitted or the Agency does not approve the reports submitted;
  - f) for major technical or economic reasons substantially adversely affecting the completion of the *project*;
  - g) where the review report referred to in Article II.23.8 has shown that the *project* is of no continued scientific relevance;
  - h) where a legal, financial, organisational or technical change or *change of control* of the *beneficiary* calls into question the decision of the Agency to accept its participation;
  - i) where any change identified in h) above substantially affects the implementation of the *project*, or the interests of the *Union*, or puts into question the decision to grant the contribution of the *Union*;
  - j) in case of *force majeure* notified in conformity with Article II.37, 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 Agency considers that the continuation of the *project* is essential to the implementation of the specific specific programme;
  - l) where the *beneficiary* is found guilty of an offence involving its professional conduct by a judgement having the force of *res judicata* or if it is guilty of grave professional misconduct proven by any justified means;

- m) Where the *beneficiary* is declared bankrupt or is being wound up.
2. Termination of the participation of the *beneficiary* at the *Agency's* initiative shall be notified to the *beneficiary*, with a copy to the *principal investigator* and shall take effect on the date indicated in the notification and at the latest 30 days after its receipt by the *beneficiary*. The *Agency* shall inform the *beneficiary* and the *principal investigator* of the effective date of termination.

In the case of termination of the *grant agreement*, the *beneficiary* and the *principal investigator* shall be notified, and the termination shall become effective 45 days after receipt by the *beneficiary*.

3. Within 45 days after the effective date of termination, the *beneficiary* in consultation with the *principal investigator* shall submit reports 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 time-limits, the *Agency* 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*.
3. Based on documents and information referred to in paragraphs above, the *Agency* shall establish the debt owed by the *beneficiary* whose participation is terminated.
4. Where the *grant agreement* is terminated, the *Agency* shall establish the debt owed by the *beneficiary* and notify it to the *beneficiary*.

### **II.36 Financial Contribution after termination and other termination consequences**

1. In the event of termination, any financial contribution from *the Union* 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.35.1 b) any financial contribution from *the Union* 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.35.1 b), c), d), e) and l), the *Agency* or the *Commission* may require reimbursement of all or part of the financial contribution of *the Union*. In the case of Article II. 35.1 b), the *Agency* shall take into account the nature and results of the work carried out and its usefulness to *the Union* in the context of the *Specific Programme Ideas*.
4. Reports submitted on the framework of a termination are deemed to be submitted at the end of the corresponding reporting period.
5. Where *the Union* makes a payment after the termination of the participation of the *beneficiary* or after termination of the *grant agreement*, this payment shall be considered as a final payment.

6. Notwithstanding the termination of the *grant agreement* or the termination of the participation of the *beneficiary*, the provisions identified in Articles II.9, II.10, II.11, II.12, II.21, II.22, II.23, II.24, II.25, II.33, II.35, II.38, II.39 and part C of Annex II continue to apply after the termination of the *grant agreement* or the termination of the participation of the *beneficiary*.

### **II.37 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 the *beneficiary* is subject to *force majeure* liable to affect the fulfilment of its obligations under this *grant agreement*, it shall notify without delay the *Agency*, stating the nature, likely duration and foreseeable effects.
3. If the *Union* is subject to *force majeure* liable to affect the fulfilment of its obligations under this *grant agreement*, it shall notify without delay the *beneficiary*, 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 the *beneficiary* cannot fulfil its 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.38 Assignment**

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

### **II.39 Liability**

1. The *Union* cannot be held liable for any acts or omissions of the *beneficiary* 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. The *beneficiary* fully guarantees *the Union*, and agrees to indemnify it, in case of any action, complaint or proceeding brought by a third party against *the Union* 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 the *beneficiary* in connection with the performance of this *grant agreement*, the *Agency* may assist the latter upon written request. The costs incurred by the *Agency* in this connection shall be borne by the *beneficiary*.

3. The *beneficiary* shall bear sole responsibility for ensuring that its acts within the framework of this *project* do not infringe third parties rights.
4. *The Union* cannot be held liable for any consequences arising from the proper exercise of the rights of *the Union* under the *Rules for Participation* or this *grant agreement*.