

## LIST OF ALL SPECIAL CLAUSES APPLICABLE TO THE FP7 MODEL GRANT AGREEMENT FOR THE IMPLEMENTATION OF THE SEVENTH FRAMEWORK PROGRAMMES OF THE EUROPEAN UNION AND EURATOM

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## 1. PARTICIPATION BY THE JRC

1. The *[Union] [Euratom]* shall carry out part of the *project* through its *Joint Research Centre (JRC)* subject to the following conditions:
  - (a) For the purposes of this *grant agreement*, the *JRC* shall be considered as a *research organisation*.
  - (b) For the purposes of this *grant agreement*, the *JRC* shall be considered as a *beneficiary*. It shall have the same rights and same obligations as the other *beneficiaries* and shall be a member of the *consortium* identified in Article 1.1.
  - (c) An amount of EUR *[insert amount] [insert amount in words EURO]* of the *pre-financing* referred to in Article 6 shall be kept by the *Commission* for the *JRC*.
 

The *JRC* hereby agrees that the amount of EUR *[insert amount] ([insert amount in words] EURO)*, corresponding to the beneficiaries' contribution to the Guarantee Fund referred to in Article II.20 and representing [5%] of the maximum financial contribution of *[the Union] [Euratom]* intended for the *JRC* as stated in Annex I, is transferred in its name by the *Commission* from this part of the *pre-financing* into the Guarantee Fund.
  - (d) In addition to the documents referred to in Article II.4, the *consortium* shall indicate to the *Commission* the amount of each of the payments referred to in Article II.6.b and II.6.c to be transferred by the *Commission* to the *JRC*.
  - (e) This *grant agreement* takes precedence over any *consortium agreement* signed by the *Commission*, represented by the *JRC*.
2. Relations within the *Commission* between DG [...] and the *JRC* shall be regulated by an administrative arrangement as set out in Annex [...] to the *grant agreement*, without prejudice to the rights of the other *beneficiaries*.

## 2. INTERNATIONAL ORGANISATIONS (general rule)

1. Arbitration
  - a. Any dispute between the *Commission* ("Party") and (an) *international organisation(s)* ("Party") acting as *beneficiary(ies)* (collectively referred to in this Article of the *grant agreement* as the "Parties") relating to the *grant agreement*, which cannot be settled amicably shall be referred to an arbitration committee in accordance with the procedure specified below.
  - b. When notifying the other Party of its intention to resort to arbitration, the notifying Party shall also inform the other Party of its appointed arbitrator. The second Party shall appoint its arbitrator within one month of that written notification.
 

The two arbitrators shall, by joint agreement and within three months of the appointment of the second Party's arbitrator, appoint a third arbitrator who shall be the chairman of the arbitration committee, unless a sole arbitrator is agreed by both Parties.
  - c. Within one month of the appointment of the third arbitrator, the Parties shall agree on the terms of reference of the arbitration committee, including the procedure to be followed.
  - d. The arbitration proceedings shall take place in Brussels.
  - e. The arbitration committee shall apply the terms of the *grant agreement*. The arbitration committee shall set out in the award the detailed grounds for its decision.

- f. The arbitral award shall be final and binding upon the Parties, who hereby expressly agree to renounce any form of appeal or revision.
- g. The costs, including all reasonable fees expended by the Parties to any arbitration hereunder, shall be apportioned between the Parties by the arbitration committee.

## 2. Certificates on the financial statements and/or on the methodology

With reference to Article II.4.4, certificates on the financial statements and/or on the methodology to be provided by an *international organisation* may be established by its regular internal or external auditor, in accordance with its internal financial regulations and procedures.

## 3. Controls and audits

The competent bodies of the European Union shall address any requests for controls or audits pursuant to the provisions of Article II.22, to the Director General of the international organisation.

The international organisation shall make available to the competent bodies of the European Union, upon request, all relevant financial information, including statements of accounts concerning the action, where they are executed by the international organisation or by a subcontractor. In conformity with Article 287 of the Treaty on the Functioning of the European Union and with the *Financial Regulation of the European Community*, the competent bodies of the European Union may undertake, including on-the-spot checks related to the action financed by the European Union or *Euratom*.

Any control or audit shall be carried out on a confidential basis.

## 4. Governing law

Notwithstanding the law applicable on a subsidiary basis mentioned in Article 9 first paragraph, this *grant agreement* shall be governed on a subsidiary basis by [the law of (insert law of a Member State or an EFTA country).]

## 5. Privileges and immunities

Nothing in this *grant agreement* shall be interpreted as a waiver of any privileges or immunities accorded to [insert name of the International Organisation] by its constituent documents or international law.

# 3. UNITED NATIONS (only for use with specialised agencies and international organisations of the UN system having adhered to the UN-EC financial and administrative framework agreement of 29.04.2003 (FAFA))

## 1. Settlement of dispute

Any dispute arising between the *Commission* and [name of the beneficiary] shall be settled in accordance with Article 14 of the Financial and Administrative Framework Agreement concluded by the *Community*, represented by the *Commission*, and the United Nations on 29.04.2003 (hereinafter referred to as the "FAFA Agreement") to which [name of the beneficiary] adhered on the [date].

## 2. Certificates on the financial statements and/or on the methodology, controls and audits

With regard to [name of the beneficiary], the "Agreement on the application of the verification clause to operations administered by the United Nations and financed or co-financed by the *European Community*" annexed to the FAFA Agreement prevails over this *grant agreement*, and in particular over its Articles II.4.4, II.22 and II.23.

**[3. Governing law**

Notwithstanding the law applicable on a subsidiary basis mentioned in Article 9 first paragraph, this *grant agreement* shall be governed on a subsidiary basis [insert law of a Member State or an EFTA country] [and, where appropriate, by the rules of the international organisations concerned, the general principles governing the law of international organisations and the rules of general international law].]

**4. Privileges and immunities**

Nothing in this *grant agreement* shall be interpreted as a waiver of any privileges or immunities accorded to [insert name of the International Organisation] by its constituent documents or international law.

**4. COORDINATION AND SUPPORT ACTIONS (CSA) AIMING AT SUPPORTING RESEARCH ACTIVITIES WITH ONE SINGLE BENEFICIARY**

All references to the “*beneficiaries*” or to the “*consortium*” or to the “*coordinator*” in this *grant agreement* and in the Annexes thereto shall be interpreted as references to the “*beneficiary*”.

**5. PROJECT REVIEW**

1. A *project review* shall be held [at a mid-term stage] [and/or at the end of the project].
2. At least two months before the date of the review the *Commission* shall communicate to the *consortium* in accordance with Article 8 the modalities of the *project review*, including, where appropriate, any meeting it may propose to convene and that it may request the *consortium* to organise. [Each *beneficiary* is requested by the *Commission* to attend such meeting in accordance with Article II.3.h.]

Costs incurred by the *consortium* in relation to the *project review* shall be eligible under the activity referred to in Article II.16.5.

3. The *project review* shall be made on the basis of the satisfactory completion of due deliverables, milestones listed in Annex I as well as on the progress reported in the periodic report for the period considered

**6. LATE PAYMENT OF THE PRE-FINANCING**

Notwithstanding the provisions of Article 6, the *pre-financing* shall be paid not earlier than 45 days before the *start date* of the *project*.

**7. LIMIT OF REIMBURSEMENT RATES FOR CERTAIN BENEFICIARIES AND CERTAIN ACTIVITIES**

Notwithstanding Article II.16, the reimbursement rate for [name of beneficiary(ies)] regarding [research and technological development activities],[and][demonstration activities],[and][other activities] may reach a maximum of [insert percentage % (< than the one mentioned in Article II.16)]

**8. BENEFICIARIES WITH FLAT RATE OVERHEADS OF LESS THAN 20%**

Notwithstanding the provisions of Articles II.15, the percentage of overheads for *beneficiary* [name] is fixed at [x<20%] of the total direct eligible cost excluding its 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*.

**9. BENEFICIARIES WITH COSTS INCURRED IN RELATION TO THE PROJECT BUT NO EU OR EURATOM CONTRIBUTION (e.g. usually from third countries)**

1. Costs incurred by the following *beneficiary(ies)* shall not be taken into consideration for determining the financial contribution of *[the Union] [Euratom]*:

---[*name of beneficiary*]

2. Part B of Annex II, with the exception of Articles II.23, II.25.2 and II.25.3 and any other financial and payment provisions contained in the grant agreement do not apply to beneficiary(ies) mentioned in the previous paragraph. This(ese) beneficiary(ies) need not submit, in particular, the reports mentioned in Article II.4.1.c) and II.4.4 and [is] [are] not subject to financial audits and controls referred to in Article II.22
3. When providing services or resources to another beneficiary, this(ese) beneficiary(ies) shall be considered as (a) third party(ies) for the purpose of the application of Article II.3 paragraphs c) and d).

**10. THIRD PARTIES LINKED TO A BENEFICIARY [Joint Research Units (Unités Mixtes de Recherche, unités propres de recherche etc.) EEIGs/ groupings/ affiliates]**

1. The following third parties are linked to *[name of the beneficiary]*

--[*name of the legal entity*]

---[*name of the legal entity*]

2. This *beneficiary* may charge costs incurred by the above-mentioned third parties in carrying out the *project*, in accordance with the provisions of the *grant agreement*. These contributions shall not be considered as receipts of the *project*.

The third parties shall identify the costs to the *project* mutatis mutandis in accordance with the provisions of part B of Annex II of the *grant agreement*. Each third party shall charge its eligible costs in accordance with the principles established in Articles II.14 and II.15. The *beneficiary* shall provide to the *Commission*:

- an individual financial statement from each third party in the format specified in Form C. These costs shall not be included in the *beneficiary's* Form C
- certificates on the financial statements and/or on the methodology from each third party in accordance with the relevant provisions of this *grant agreement*.
- a summary financial report consolidating the sum of the eligible costs borne by the third parties and the *beneficiary*, as stated in their individual financial statements, shall be appended to the *beneficiary's* Form C.

When submitting reports referred to in Article II.4, the *consortium* shall identify work performed and resources deployed by each third party linking it to the corresponding *beneficiary*.

3. The eligibility of the third parties' costs charged by the *beneficiary* is subject to controls and audits of the third parties, in accordance with Articles II.22 and 23.
4. The *beneficiary* shall retain sole responsibility towards *[the Union][Euratom]* and the other beneficiaries for the third parties linked to it. The *beneficiary* shall ensure that the third parties abide by the provisions of the *grant agreement*.

## 11. For EU - NOTIFICATION TO THE COMMISSION REQUIRED IN CASE OF AN INTENDED TRANSFER OF OWNERSHIP AND/OR AN INTENDED GRANT OF AN EXCLUSIVE LICENCE

1. Where a *beneficiary* intends to transfer ownership of *foreground* or to grant an exclusive licence regarding *foreground* to a third party established in a *third country* not associated to the *Seventh Framework Programme* during the *project* and for a period of X<sup>1</sup> years after its completion, it shall notify the *Commission* 90 days prior to the intended transfer or grant..

A notification may only relate to existing and specifically defined *foreground*. It must include sufficient details regarding such *foreground*, the intended assignee or licensee and the (potential) *use* of the *foreground* and possible *access rights* thereto. Furthermore, a reasoned assessment of the intended transfer or grant must be included with regard to its impact on the competitiveness of the European economy, its consistency with ethical principles and its implications on security considerations.

The *Commission* may at any time notify the *beneficiary* that a notification is not complete or request additional information. No transfer or grant may take place until the *Commission* has, within the period set out in the next paragraph, had the opportunity to object.

2. The *Commission* may object to such an intended transfer of ownership of *foreground* or grant of an exclusive licence regarding *foreground* within 60 days of respectively having received a complete notification, or where applicable, having received the requested additional information, if it considers that the intended transfer or grant 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 or grant shall not take place unless the *Commission* is satisfied that appropriate safeguards will be put in place and has authorised the transfer or grant in writing.

[Only for Multi-beneficiary grant agreements if needed]

3. Notwithstanding Articles II.27.4 and II.32.8 and paragraph 2 above, the *Commission* shall not object to transfers of ownership of *foreground* or grants of an exclusive licence regarding *foreground* intended by *beneficiaries* that do not receive a financial contribution of the *Union* as long as the intended transfer or grant concerns *foreground* generated by them. These intended transfers or grants are also excluded from the notification to the *Commission* mentioned in paragraph 1 above.]

## 11 bis) For EURATOM - NOTIFICATION TO THE COMMISSION REQUIRED IN CASE OF AN INTENDED TRANSFER OF OWNERSHIP AND/OR AN INTENDED GRANT OF A LICENCE

- 1) Where a *beneficiary* intends to transfer ownership of *foreground* or to grant a licence regarding *foreground* to a third party established in a *third country* not associated to the *Seventh Framework Programme* during the *project* and for a period of X<sup>1</sup> years after its completion, it shall notify the *Commission* 90 days prior to the intended transfer or grant. However, excluded from this additional notification requirement are transfers or grants intended by beneficiaries that do not receive financial contribution of *Euratom* as long as the intended transfer or grant concerns *foreground* generated by them.

A notification may only relate to existing and specifically defined *foreground*. It must include sufficient details regarding such *foreground*, the intended assignee or licensee and the (potential) *use* of the *foreground* and possible *access rights* thereto. Furthermore, a reasoned assessment of the intended transfer or grant must be included with regard to its impact on the competitiveness of the European economy, its consistency with ethical principles and its implications on defence interests of the

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<sup>1</sup> To be determined according to the project's research field, aims and likely results.



Member States within the meaning of Article 24 of the Treaty establishing the *European Atomic Energy Community* (Euratom).

The *Commission* may at any time notify the *beneficiary* that a notification is not complete or request additional information. No transfer or grant may take place until the *Commission* has, within the period set out in the next paragraph, had the opportunity to object.

- 2) The *Commission* may object to such an intended transfer of ownership of *foreground* or grant of a licence regarding *foreground* within 60 days of respectively having received a complete notification, or where applicable, having received the requested additional information, if it considers that the intended transfer or grant is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or the defence interests of the Member States within the meaning of Article 24 of the Treaty establishing the *European Atomic Energy Community* (Euratom).

In such cases, the transfer or grant shall not take place unless the *Commission* is satisfied that appropriate safeguards will be put in place and has authorised the transfer or grant in writing.

## 12. NO ACCESS RIGHTS FOR AFFILIATES

Paragraph 3 of Article II.34 regarding *access rights* for affiliates does not apply to this *grant agreement*.

## 13. ETHICAL RULES

1. The *beneficiaries* shall comply with the ethical framework of FP7, all applicable legislation, any relevant future legislation and FP7 specific programmes on "Cooperation", "Ideas", "People", "Capacities" (2007-2013) and "Euratom" (2007-2011)<sup>2</sup>.
2. The *beneficiaries* undertake not to carry out research under this *project* involving any of the following activities:
  - (a) research activities aiming at human cloning for reproductive purposes,
  - (b) research activities intended to modify the genetic heritage of human beings which could make such change heritable, and
  - (c) research activities intended to create human embryos solely for the purpose of research or for the purpose of stem cell procurement, including by means of somatic cell nuclear transfer.

## 14. RESEARCH ACTIVITIES INVOLVING THE USE OF HUMAN EMBRYOS AND HUMAN EMBRYONIC STEM CELLS

The *beneficiaries* shall inform the *Commission* in writing of any research activities that may involve the use of human embryos or human embryonic stem cells, unless such provisions in Annex I to the *grant agreement* have specifically been approved. Such research may not take place without the prior written agreement of the *Commission*. The agreement of the *Commission* shall be subject to its internal procedures. Should such research not be approved, the *Commission* will not fund it as part of the *project* and may terminate the *grant agreement* if the *project* cannot continue without that research.

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<sup>2</sup> Council Decisions on the specific programmes: 2006/971/EC on "Cooperation", 2006/972/EC on "Ideas", 2006/973/EC on "People", 2006/974/EC on "Capacities" and 2006/976/Euratom on "Euratom".

**15. ETHICAL REVIEW**

1. The *beneficiary(ies)* shall provide the *Commission* with a written confirmation that it has received (a) favourable opinion(s) of the relevant ethics committee(s) and, if applicable, the regulatory approval(s) of the competent national or local authority(ies) in the country in which the research is to be carried out before beginning any *Commission* approved research requiring such opinions or approvals. The copy of the official approval from the relevant national or local ethics committees must also be provided to the *Commission*.
- [2. The *beneficiary(ies)* shall ensure that, where an ethical review has been carried out by the *Commission*, the research carried out under the project fully complies with the following additional requirements resulting from the ethical review:

*Free text with clear operational conclusions from the ethical review.]*

**16. CLINICAL RESEARCH (specific to biomedical research involving human beings)**

1. The *beneficiary(ies)* shall provide the *Commission* with a statement confirming that it has received (a) favourable opinion(s) of the relevant ethics committee(s) and, if applicable, the regulatory approval of the competent national authority(ies) in the country concerned before beginning any biomedical research involving human beings.
2. (For biomedical research involving human beings including clinical or other trials) The *Commission* shall never be considered as a sponsor for clinical trials in the sense of Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use.

Annex I shall indicate the name(s) of any such sponsor(s).

For trials not covered by Directive 2001/20/EC, Annex I shall indicate the name of the person or organisation that is responsible for the initiation, co-ordination and monitoring of the trial.

**17. SPECIFIC PROVISIONS FOR REIMBURSEMENT OF ACCESS TO SCIENTIFIC SERVICES FREELY AVAILABLE THROUGH COMMUNICATION NETWORK****A : Performance obligations**

The *beneficiary* that is in charge of providing access to the *infrastructure(s)* or *installation(s)*, as specified in Annex I – the *access provider* – shall, in addition to the other provisions of this *grant agreement*,:

- a) provide access free of charge to the scientific services described in Annex I through communication networks;
- b) have the services offered to the scientific community assessed periodically by an external board composed of international experts in the field, appointed by the *consortium* with the written approval of the *Commission*.

**B : Financial provisions**

Financial support of *[the Union]* *[Euratom]* for access costs shall not exceed 20% of the operating costs incurred by the *installation* providing the access over the duration of the *project*, excluding all contributions to the capital investments of the infrastructure.

## 18. E-INFRASTRUCTURE ACTIVITIES

### Definitions

In addition to those of Article II.1, the following definitions apply to the *grant agreement*:

*Connectivity*: means a set of one or more circuits allowing for the transmission of full duplex bit streams between defined end points, as specified in Annex I.

*Connectivity services*: means any other activities as foreseen in Article II.16 to provide connectivity.

### Financial provisions

As an exception to Article II.16, for the continued provision and upgrading of the required connectivity services as specified in Annex I, the maximum reimbursement rate shall be 50% of the total eligible costs.

## 19. LIMITATION OF INDIRECT COSTS FOR INTEGRATING ACTIVITIES /INFRASTRUCTURES AND PREPARATORY PHASE

Reimbursement of indirect costs related to coordination and support activities, except those related to the management of these activities, is limited to a maximum of 7% of the direct eligible costs relating to these activities, 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*.

## 20. PAYMENT OF FIRST PRE-FINANCING (specific to DG TREN)

Notwithstanding Article 6, the *pre-financing* shall be paid to the *Coordinator* within 45 days following the date the *Commission* is informed of accession to the *grant agreement* of all the *beneficiaries* identified in Article 1.1.

## 21. CLASSIFIED DATA OR INFORMATION OR DANGEROUS MATERIALS<sup>3</sup> (specific to security-related projects)

When classified information is used as *background*, or is planned to be generated as *foreground*, or is actually generated as *foreground*, or if export or transfer licences are required for the transfer of dangerous materials or substances<sup>4</sup> or where a topic is subject to specific national or European security related legal restrictions, a Security Aspect Letter (SAL) is annexed to this *grant agreement* as an integral part of Annex I.

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<sup>3</sup> "Dangerous materials" means materials or substances of a sensitive or hazardous nature, that if publicly disclosed could be expected to cause a hazard or danger to public health or the safety of citizens or the environment or that could adversely affect the national security interests of the States concerned or pose a risk otherwise, including high consequence dangerous goods, and accordingly, for which handling and transport is subject to specific security and safety rules on national, Union and International level, e.g. sensitive or hazardous materials in the field of biological, chemical, nuclear, radioactive or explosive materials.

<sup>4</sup> "Substances" means chemical elements and their compounds as they occur in the natural state or as produced by industry according to Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (OJ L 262 of 27.09.1976, p. 201–203).

**22. TREATMENT OF CONFIDENTIAL, CLASSIFIED DATA OR INFORMATION OR DANGEROUS MATERIALS (specific to security-related projects)**

1. Each *beneficiary* shall comply with any security requirements prescribed by the Security Aspect Letter (SAL) attached to Annex I of this grant agreement. The *Commission* may terminate the *grant agreement* or the participation of the *beneficiary(ies)*, in accordance with Article II.38, in case of non compliance with this obligation. Such action shall be without prejudice to any further legal action.
2. This SAL is valid throughout the duration of the *project*.
3. The beneficiaries of this grant agreement shall via the *Coordinator* inform the *Commission* of any change of security requirements emerging during the performance of the *project*. Any such change shall be introduced in the SAL by means of an amendment following the rules on amendments of Annex I.
4. In cases where a *beneficiary* cannot comply with increased security requirements, the grant agreement shall be terminated.
5. The beneficiaries shall ensure that any subcontractor or other third party complies with the security requirements set out in the SAL.

**23. ACTIVITIES AIMING TO DEVELOP HIGHLY RELIABLE CAPABILITIES HAVING AN IMPACT ON THE SECURITY OF EUROPEAN CITIZENS (specific to security-related projects)**

Notwithstanding the provisions of Article II.16.1, for security related research and technological development activities, the financial contribution of *the Union* may reach a maximum of 75% of the total eligible costs for all the *beneficiaries*, in the case of the development of capabilities in domains with very limited market size and a risk of 'market failure' and for accelerated equipment development in response to new threats.

**24. LIMITED DISSEMINATION OF FOREGROUND OUTSIDE THE CONSORTIUM FOR SECURITY REASONS (specific to security-related projects)**

Any *foreground*, generated in the course of the *project* shall not be disseminated to any legal entity outside the existing *consortium*, unless agreed otherwise by the *beneficiaries* and the *Commission*.

This rule also applies to affiliates or parent companies.

**25. SUBCONTRACTING IN GRANTS TO PRE-DEFINED BENEFICIARIES<sup>5</sup> (specific to space-related projects)**

Article II.7 of the *grant agreement* is replaced as follows:

1. A subcontractor is a third party which has entered into an agreement on business conditions with one or more *beneficiaries* in order to carry out part of the tasks related to the *project*.

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 towards the *Commission* and the other *beneficiaries* under the *grant agreement* and retains sole responsibility for carrying out the *project* and for compliance with the provisions of the *grant agreement*.

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<sup>5</sup> Relevant for space research in the case of beneficiaries mentioned in the specific programme and/or work programme "Space" according to Article 14 of the Rules for Participation (in the following "pre-defined beneficiary"), applying for a grant under the funding scheme of a coordination and support action.

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

2. Where it is necessary for the beneficiaries to *subcontract* certain elements of the work to be carried out, the following conditions must be fulfilled:
  - the overall total of *subcontracts* cannot exceed 85% of the total eligible costs of the *project*;
  - recourse to the award of *subcontracts* must be duly justified and described in detail in Annex I having regard to the nature of the *project* and what is necessary for its implementation;
  - recourse to the award of *subcontract* by a *beneficiary* may not affect the rights and obligations of the *beneficiaries* regarding *background* and *foreground*;
  - Annex I must indicate the tasks to be subcontracted and an estimation of the costs;
3. 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. The rules governing any such awarding procedures are subject to prior approval by the *Commission* and form part of Annex I.

Subcontracts concluded on the basis of framework contracts entered into between a *beneficiary* and a *subcontractor*, prior to the beginning of the *project* in accordance with the *beneficiary's* usual management principles may also be accepted.

4. *Beneficiaries* may use external support services for assistance with minor tasks that do not represent *per se project* tasks as identified in Annex I.
5. The *Commission* and the Court of Auditors enjoy the right to exercise their powers of control, on documents and on premises, over all *beneficiaries* and subcontractors who have received Union funds.

## **26. ENLARGEMENT OF THE CONSORTIUM (specific to space-related projects)**

Notwithstanding the obligations of *consortiums* mentioned in Article II.35, the rules and procedures governing any such competitive call shall be subject to the prior approval of the *Commission*, which shall be consulted at least 90 days prior to the expected date of publication.

## **27. BANK ACCOUNT SPECIFICALLY DEDICATED TO THE PROJECT (specific to security-related projects)**

The bank account referred to in Article 5.3 shall be dedicated specifically to the *project*.

## **28. RIGHT TO ACCESS AND TO USE DATA FOR THE PURPOSES OF THE EUROPEAN UNION (specific to space-related projects)**

The *Union* shall enjoy access rights to information specifically acquired for the *project* and to *foreground* for the purpose of developing, implementing and monitoring *Union* policies related to environment and security. Such access rights shall be granted on a royalty-free basis.

**29. ACCESS RIGHTS TO FOREGROUND FOR POLICY PURPOSES AND TRANSFER OF OWNERSHIP OF FOREGROUND (specific to environment research)**

1. The *Project* should ensure that protocols and plans for data collection and storage are in line with Data Policy of the European Union.
2. The European Union Institutions and Bodies shall enjoy access rights to *foreground* for the purpose of developing, implementing and monitoring environmental policies. Such access rights shall be granted by the *beneficiary* concerned on a royalty-free basis.
3. Where *foreground* will no longer be used by the *beneficiary* nor transferred, the *beneficiary* concerned will inform the *Commission*. In such case, the *Commission* may request the transfer of ownership of such *foreground* to the European Union. Such transfer shall be made free of charge and without restrictions on use and dissemination.

**30. DEPARTMENTS/INSTITUTES ETC. WITHIN A LEGAL ENTITY THAT CAN IDENTIFY THEIR REAL INDIRECT COSTS WHERE THE (WHOLE) LEGAL ENTITY CANNOT**

[Name of the department/institute etc.], which is an integral part of [beneficiary] [third party identified in special clause number 10] [name of beneficiary/third party] has an analytical accounting system which allows it to identify its actual indirect costs. Therefore, and notwithstanding the provisions of article II.15.3, [name of the department/institute etc.] may declare indirect costs in FP7 grant agreements based on its actual indirect costs, despite the fact that the [beneficiary] [third party identified in special clause number 10] has opted for a flat rate.

**31. CONTRIBUTION TO THE GUARANTEE FUND**

Notwithstanding Article 6, the *pre-financing* referred to therein shall be paid to the *coordinator* in accordance with the following:

- a first instalment of the *pre-financing* of EUR [insert amount foreseen in Article 6.1, minus the **beneficiaries' contribution to the Guarantee Fund**] within 45 days following the date of entry into force of this *grant agreement*,
- a second instalment of the *pre-financing* of EUR [**beneficiaries' contribution to the Guarantee Fund, insert amount foreseen in Article 6.2**] to be transferred by the *Commission* in the name of the *beneficiaries* into the Guarantee Fund referred to in Article II.20, once the *Commission* has established the Fund and entrusted its financial management to a depository bank.

**32. SPECIFIC PROVISIONS RELATED TO COST ACTIVITIES**

1. All references to the *beneficiaries* or to the *consortium* or to the *coordinator* in this *grant agreement* and in the Annexes thereto shall be interpreted as references to the *beneficiary*.
2. The 90% limit of payments foreseen in Article II.6.2 does not apply to this *grant agreement*.
3. In case an amendment to this *grant agreement* foresees an increase of the maximum financial contribution of the *Union* laid down in Article 5.1, a further *pre-financing* shall be paid. The amount of this *pre-financing* shall be fixed in the amendment. Article 6 applies *mutatis mutandis*.

4. The *beneficiary* shall ensure that the provisions of Article II.22 apply to the final beneficiaries of the actions financed by the *beneficiary* under this *grant agreement*.
5. The *beneficiary* shall observe the following conditions for the award of grants to the final beneficiaries:
  - a. Any grant awarded to final beneficiaries shall contribute to the overall objective of COST to establish and maintain an intergovernmental system for cooperation and networking of European nationally-funded researchers and research activities.
  - b. The procedures for the award of grants shall be open and transparent. They shall be based on a competitive approach following, as a rule, a system of open calls with clearly set out objectives and budget and external peer review. Final award decisions shall be taken by the Management Committee of the Action or the Domain Committee. The procedures are laid down in detail in Annex I to this *grant agreement*.
  - c. The grants shall be awarded to the following types of activities:
    - (1) Operation of the COST Domain Committees
    - (2) COST Actions ("bottom-up" initiatives for coordination and networking at European level, based on a continuous open call)
    - (3) Short-term scientific missions (STSM)
    - (4) Training Schools
    - (5) Dissemination and publication of scientific results
    - (6) Any other related activity agreed by the parties and laid down in Annex I to this *grant agreement*
  - d. The maximum amounts of the financial support to final beneficiaries are established in Annex I to this *grant agreement*.

**33. CONFIDENTIAL, CLASSIFIED DATA OR INFORMATION OR DANGEROUS MATERIALS. In relation to Article II.9. Confidentiality (specific to security-related projects)**

Article II.9 of the *grant agreement* is replaced as follows:

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

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

2. Paragraph 1 no longer applies where:
  - the *confidential information* becomes publicly available by means other than a breach of confidentiality obligations;
  - the disclosing party subsequently informs the final beneficiary that the *confidential information* is no longer confidential;

- the *confidential information* is subsequently communicated to the final beneficiary without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality.
- 3. The *beneficiaries* undertake to use such confidential information only in relation to the execution of the *project* unless otherwise agreed with the disclosing party.
- 4. Notwithstanding the preceding paragraphs, the treatment of data, documents or other information which are determined to require protection against unauthorised disclosure and which has been so designated by a security classification ("*classified information*") must follow the applicable rules established by the relevant national, European Community, European Union, and International legislation, including the *Commission's* internal rules for handling *classified information*. The obligation also applies for the handling of dangerous materials or substances and for any information or materials which are subject to security restrictions or to export- or transfer-control. Where a *beneficiary* is established in a *third country* or is an *international organisation*, which has established with the *Union* or *Euratom* a special bilateral agreement in the field of security, including the handling, treatment or transfer of dangerous materials, any such bilateral security agreement shall also apply. The *beneficiaries* shall make sure that the *consortium agreement* concluded between them respects the relevant security legislation.

### **34. PROJECT INVOLVING COORDINATION WITH ANOTHER PROJECT FUNDED BY A THIRD COUNTRY AS A RESULT OF A COORDINATED CALL WITH THIS THIRD COUNTRY**

1. The *project* shall be coordinated with the *third country project* called [insert the name of the *third country project*], as described in Annex I ("*the third country project*").
2. *Coordination agreement*  
The *beneficiaries* are deemed to have concluded a *coordination agreement* with the partners of the *third country project*, which must be consistent with the provisions of this *grant agreement* and the *consortium agreement*. The *coordination agreement* governs *inter alia*:
  - i. the internal organisation between the projects including the decision making procedures;
  - ii. rules on intellectual property rights (for example regarding protection, *dissemination*, *use* and *access rights*);
  - iii. the settlement of internal disputes, including cases of abuse of power;
  - iv. liability, indemnification and confidentiality arrangements between the partners.
3. *Termination*  
In addition to the cases stipulated in Article II.38 the *Commission* may terminate the *grant agreement*::
  - Where the *third country project* does not start at the latest on the date specified in Annex I. In this case, no costs incurred by the *consortium* under the *project* can be approved or accepted as eligible for reimbursement by [the *Union*] [*Euratom*]. Any *pre-financing* provided to the *consortium* and any interest generated by the *pre-financing* must be returned in full to the *Commission*.
  - Where the corresponding *third country project* is terminated or becomes unable to meet its technical or economic commitments as defined in Annex I.  
In both cases, the procedure described in Article II.38 applies.



**35. ARBITRATION CLAUSE TO BE USED ONLY AT THE REQUEST OF ENTITIES NOT RECEIVING A FINANCIAL CONTRIBUTION OF [THE UNION] [EURATOM] WHICH ARE ESTABLISHED IN A THIRD COUNTRY NOT ASSOCIATED TO FP7 AND WHICH FOR REASONS OF DOMESTIC LAW CANNOT BE SUBJECT TO THE JURISDICTION OF THE COURT OF JUSTICE OF THE EUROPEAN UNION.**

1. Any dispute between [*the Union*] [*Euratom*] and [*name of the beneficiary*] (referred to in this Article individually as the "Party" and collectively as the "*Parties*") relating to the *grant agreement*, which cannot be settled amicably shall be referred to arbitration in accordance with the procedure specified below.
2. The Parties may refer to a sole arbitrator appointed on the basis of a common agreement. If no agreement is reached, an arbitration committee composed of three arbitrators shall be appointed. In this case, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the committee.

Each Party shall notify the other of its intention to resort to arbitration, appointing in the same act its arbitrator. If within one month after receipt of a party's notification of the appointment of an arbitrator, the other party has not notified the first party of the arbitrator it has appointed, the first party may request the Secretary-General of the Permanent Court of Arbitration to appoint the second arbitrator.

3. Within one month of the appointment of the arbitrators, the *Parties* shall agree on the terms of reference of the arbitration committee, including the procedure to be followed. If no agreement is reached after this time-limit, and for any matters not covered by these terms of reference, the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States or International Organisations and Private parties shall apply, depending on the nature of the entities involved.
4. The arbitration proceedings shall take place in Brussels.
5. In resolving the dispute, the arbitrator or the arbitration committee shall apply the provisions of the *grant agreement*, the [*Euratom*] [European Community and European Union] acts related to FP7, the Financial Regulation applicable to the general budget and its implementing rules and other [*Euratom* and European Union] [European Community and European Union] law and, on a subsidiary basis, by the law of [*country of the seat of the authorising officer responsible under the internal rules on the execution of the general budget of the European Union*]. The arbitrator or the arbitration committee shall set out in the arbitral award the detailed grounds for its decision.
6. The arbitral award shall be final and binding upon the *Parties*, which hereby expressly agree to renounce their right to any form of appeal or revision.
7. The costs, including all reasonable fees expended by the *Parties* to any arbitration hereunder, shall be apportioned between the *Parties* by the arbitrator or the arbitration committee.
8. The language to be used in the arbitral proceedings shall be English.

**36. NO OBJECTION BY THE COMMISSION REGARDING TRANSFERS OF OWNERSHIP OR GRANT OF EXCLUSIVE LICENCES BY BENEFICIARIES NOT RECEIVING FUNDING**

Notwithstanding Articles II.27.4 and II.32.8, the *Commission* shall not object to transfers of ownership of *foreground* or to grants of an exclusive licence regarding *foreground* to a third party established in a *third country* not associated to the *Seventh Framework Programme* intended by *beneficiaries* that do not receive financial contribution of [*the Union*] [*Euratom*] as long as the intended transfer or grant concerns *foreground* generated by them.

### **36TER (SPECIFIC FOR SECURITY RELATED PROJECTS) NO OBJECTION BY THE COMMISSION REGARDING TRANSFERS OF OWNERSHIP OR GRANT OF EXCLUSIVE LICENCES BY BENEFICIARIES NOT RECEIVING FUNDING**

Notwithstanding Articles II.27.4 and II.32.8, the Commission shall not object to transfers of ownership of foreground or to grants of an exclusive licence regarding foreground to a third party established in a third country not associated to the Seventh Framework Programme intended by beneficiaries established in that third country that do not receive a financial contribution of *the Union* as long as the intended transfer or grant concerns foreground generated by this beneficiary based on his own background.

### **37. ACCESS RIGHTS TO FOREGROUND FOR EURATOM PURPOSES**

*Euratom* shall enjoy access rights, on a royalty-free basis, to *foreground* generated under the *project* for the purpose of negotiating, concluding and participating in international research and collaboration agreements in the field of nuclear energy. Such *access rights* shall include the right to sub-license the said *foreground* to third parties participating in accordance with the provisions of the relevant collaboration agreement.

### **38. SPECIAL CASE WHEN SECONDARY AND HIGHER EDUCATION ESTABLISHMENTS AND PUBLIC BODIES ARE THE COORDINATOR AND THERE IS AN "AUTHORISATION TO ADMINISTER" GIVEN TO A THIRD PARTY CREATED, CONTROLLED OR AFFILIATED TO THE COORDINATOR**

The bank account mentioned in Article 5 is the bank account of *[insert third party with an "authorisation to administer"]*. The financial contribution of *[the Union] [Euratom]* shall be paid to *[insert third party with an "authorisation to administer"]* which receives it on behalf of the *coordinator*, which in its turn receives it on behalf of the *consortium*. The payment of the financial contribution of *[the Union] [Euratom]* to this entity discharges the *Commission* from its obligation on payments.

The *coordinator* may delegate the tasks mentioned in Article II.2.3 a), b) and c) to this entity. The *coordinator* retains sole responsibility for the financial contribution of *[the Union] [Euratom]* and for the compliance with the provisions of the *grant agreement*.

### **39. OPEN ACCESS (SPECIFIC TO THE THEMATIC AREAS "HEALTH", "ENERGY", "ENVIRONMENT (INCLUDING CLIMATE CHANGE)", "INFORMATION & COMMUNICATION TECHNOLOGIES" (CHALLENGES 2 AND 4), AND "SOCIO-ECONOMIC SCIENCES AND THE HUMANITIES", AS WELL AS TO THE ACTIVITIES "RESEARCH INFRASTRUCTURES" (E-INFRASTRUCTURES), AND "SCIENCE IN SOCIETY")**

In addition to Article II.30.4, *beneficiaries* shall deposit an electronic copy of the published version or the final manuscript accepted for publication of a scientific publication relating to *foreground* published before or after the final report in an institutional or subject-based repository at the moment of publication.

*Beneficiaries* are required to make their best efforts to ensure that this electronic copy becomes freely and electronically available to anyone through this repository:

- immediately if the scientific publication is published "open access", i.e. if an electronic version is also available free of charge via the publisher, or
- within [X<sup>6</sup>] months of publication.

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<sup>6</sup> The number X will be 6 months in the thematic areas "Health", "Energy", "Environment (including Climate Change)", and "Information & communication technologies" (Challenges 2 and 4) and the activity "Research infrastructures" (e-infrastructure), and 12 months in the thematic area "Socio-economic Sciences and the Humanities" and the activity "Science in Society".

#### 40. DISSEMINATION OF FOREGROUND (SPECIFIC FOR THE THEME "SCIENCE IN SOCIETY" – ONLY TO BE USED FOR COORDINATION AND SUPPORT ACTIONS IF ITS USE IS FORESEEN IN THE WORK PROGRAMME)

The *Commission* shall be authorised to publish any *foreground disseminated* by the *consortium* in whatever form and on or by whatever medium, in particular via a European level information provider on its behalf. To enhance the accessibility of this *foreground* for third parties, it may adapt such *foreground* in any manner, including by making translations thereof. Any third party shall be allowed to utilise this published *foreground* for free for non-commercial educational purposes.

To ensure the above, the *consortium*, acting through the *coordinator*, shall upon *dissemination* of any *foreground* provide the *Commission* with an electronic copy thereof and shall ensure that any necessary authorisations have been obtained and that it has not accepted legal obligations which could conflict with this clause.

#### 41. COMPLEMENTARY GRANT AGREEMENTS

1. In addition to the provisions of Article II.1, the following definitions shall apply to this *grant agreement*.
  - (a) *Complementary grant agreements* means agreements concluded with the *Union* in respect of work complementary to the *project* and referred to in paragraph 2 below.
  - (b) *Complementary beneficiary* means a *beneficiary* of a *complementary grant agreement* to this *grant agreement*.
2. This grant agreement is complementary to [the grant agreement(s): numbers, title/coordinator] [the grant agreement(s) resulting from the selection of Call(s) [name of the Call(s)]].
3. *Complementary beneficiaries* enjoy the rights and bear the obligations of *beneficiaries* with regard to Articles II.32, II.33 and II.34 of Annex II {Access Rights}. However, for *complementary beneficiaries*, these rights and obligations are limited to *foreground* only and do not extend to *background*. *Complementary beneficiaries* are not members of the *consortium* for the purpose of this *grant agreement*.
4. The *coordinator* shall provide copies of the reports referred to in Articles II.4.1 a), II.4.2 a) and II.4.2 b) of Annex II to the *coordinator(s)* of the *complementary grant agreement(s)*. *Complementary beneficiaries* shall treat this information in accordance with Article II.9 {Confidentiality} and Part C of Annex II {Intellectual Property Rights, Use and Dissemination}.
5. Coordination between *complementary grant agreements*.
  - (a) The *complementary beneficiaries* are deemed to have concluded a written agreement regarding the coordination between *complementary grant agreements*.
  - (b) In order to ensure coherence of the work undertaken under *complementary grant agreements*, *beneficiaries* will be required to create and participate in boards and advisory structures together with representatives from *complementary grant agreements*. The beneficiaries of these *complementary grant agreements* shall collectively address collaboration and synchronisation of activities, including on issues such as management of outcomes, common approaches towards standardisation, SME involvement, links with regulatory and policy activities, and commonly shared dissemination and awareness raising activities.