

ANNEX II

GENERAL CONDITIONS

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II.1 - Definitions

1. **Access rights:** means licences and user rights to *knowledge* or *pre-existing know-how*.
2. **Associated State:** means a State which is party to an international agreement with the *Community*, under the terms or on the basis of which it makes a financial contribution to all or part of the Sixth Framework Programme.
3. **Change of control:** means any change in the control exercised over a *contractor* within the meaning of Article 3 of the *Rules for Participation*.
4. **Consortium:** means all the *contractors* participating in the *project* covered by this *contract*.
5. **Consortium agreement:** means an agreement that *contractors* conclude amongst themselves for the implementation of this *contract*. Such an agreement shall not affect the *contractors'* obligations to the *Community* and/or to one another arising from this *contract*.
6. **Coordinator:** means the *contractor* identified in this *contract* who, in addition to its obligations as a *contractor*, is obliged to carry out the specific co-ordination tasks provided for in this *contract* on behalf of the *consortium*.
7. **Contractor:** means a participant as defined in Article 2.7 of the *Rules for Participation* and a signatory to this *contract* other than the *JRC*, which signs a separate arrangement with the *Commission* with respect to its participation in the *contract*.
8. **Dissemination:** means the disclosure of *knowledge* by any appropriate means other than publication resulting from the formalities for protecting *knowledge*.
9. **Final implementation date:** means the final date for implementation, which is determined taking into account the maximum periods allowed, beyond the end date of the duration of the *project*, as identified in Article 4.2, for the *contractor(s)* to submit the required activity reports and financial statements, for the *Commission* to approve them, and for it to make the final payment.
10. **Financial Regulation:** means the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹ and the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation² of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities.
11. **Irregularity:** means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a *contractor* which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by it through unjustified expenditure.

¹ OJ L 248, 16.9.2002, p.1.

² OJ L 357, 31.12.2002, p.1

12. **International organisation:** means any legal entity arising from the association of States, other than the *Community*, established on the basis of a treaty or similar act, having common institutions and an international legal personality distinct from that of its member states.
13. **JRC:** means the Joint Research Centre of the European *Commission*.
14. **Knowledge:** means the results, including information, whether or not they can be protected, arising from the *project* governed by this *contract*, as well as copyrights or rights pertaining to such results following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.
15. **Legitimate interest:** means a *contractor's* interest of any kind, particularly a commercial interest which may be claimed in the cases provided for in this *contract*. To this end the *contractor* must prove that failure to take account of its interest would result in its suffering disproportionately great harm.
16. **Own resources:** means those resources identified in the *Rules for Participation*³ which may be contributed to the work to be carried out under the *project*, and any other resources under the management discretion of the *contractor* which when allocated to the tasks to be carried out under the *project*, thereby create a cost.
17. **Plan for using and disseminating the knowledge:** means the report on the *contractors'* intentions for the protection, *use* and *dissemination* of the *knowledge* generated under the *project*.
18. **Pre-existing know-how:** means the information which is held by *contractors* prior to the conclusion of the *contract*, or acquired in parallel with it, as well as copyrights or rights pertaining to such information following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.
19. **Pre-financing:** means any part of the *Community* financial contribution which is paid in advance of submission of proof of work having been carried out for a specific period of the *project* either in order to provide advance funds to permit the work on the *project* to begin or to continue with the next phase.
20. **Project:** means all the work referred to in Annex I to this *contract*.
21. **Public body:** means a public sector body, or a legal entity governed by private law with a public-service mission providing adequate financial guarantees.
22. **Receipts:** means financial transfers or contributions in kind made available to a *contractor* by a third party, which are considered as *receipts* under Article II.23 and any income generated by the *project*, if generated during the life of the *project* or up to the time when the final financial statement is submitted to the *Commission*, whichever is later.
23. **Rules for Participation:** means the Regulation No. 2321/2002 of the European Parliament and of the Council concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the

³ Article 8.2 of OJ L 355, 30.12.2002, p.23

implementation of the European Community Sixth Framework Programme (2002-2006)⁴ or the Regulation No. 2322/2002 of the Council concerning the rules for participation of undertakings, research centres and universities in the implementation of the Sixth Framework Programme of the European Atomic Energy Community (2002-2006)⁵ (Euratom).

24. **Start date:** means the date upon which the *project* begins as identified in Article 4.2 of this *contract*.
25. **State Aid rules:** means the *Community* framework for state-aid for research and development adopted by the *Commission*⁶
26. **Subcontract:** means an agreement to provide services relating to tasks required for the *project* and which cannot be carried out by the *contractor* itself, concluded between a *contractor* and one or more *subcontractors* for the specific needs of the *project*.
27. **Subcontractor:** means a third party carrying out tasks identified in Annex I or minor tasks not relating to the core work of the *project*, by means of a *subcontract* with one or more of the *contractors*.
28. **Third country:** means a State that is neither a Member State nor an *Associated State*.
29. **Third party resources:** means any resources made available to a *contractor*, by a third party, for use in the *project*, and identified in Annex I, based on an agreement established between the *contractor* and the third party prior to its contribution to the *project*. The costs of such resources must be recorded in the accounts of the third party as a cost of the *project*.
30. **Use:** means the direct or indirect utilisation of *knowledge* in research activities 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 – IMPLEMENTATION AND DELIVERABLES

II. 2 – Activities

The *project* includes, as indicated in the table of indicated breakdown of resources and activities in Annex I one or more of the following activities :

⁴ OJ L 355, 30.12.2002, p.23

⁵ OJ L 355, 30.12.2002, 35

⁶ OJ C 45, 17.2.1996, p 5

1. Research and technological development or innovation activities
2. Demonstration activities
3. Training activities
4. Management of the *consortium* activities which include:
 - obtaining audit certificates by each of the *contractors*
 - implementation of competitive calls by the *consortium* for the participation of new *contractors*, in accordance with the provisions of the *contract*
 - maintenance of the *consortium agreement* if it is obligatory
 - obtaining any financial security such as bank guarantees when requested by the *Commission*
 - any other management activities at the *consortium* level not covered by any other activity, such as :
 - coordination of the technical activities of the *project*
 - the overall legal, contractual, ethical, financial and administrative management
 - coordination of *knowledge* management and other innovation-related activities
 - overseeing the promotion of gender equality in the *project*
 - overseeing science and society issues related to the research activities conducted within the *project*
 - any other management activities foreseen by the annexes.
5. Other specific support activities

II.3 - Performance obligations

1. The *consortium* shall :
 - a) take all necessary and reasonable measures to ensure that the *project* is carried out in accordance with the terms and conditions of this *contract*;
 - b) make appropriate internal arrangements to ensure the efficient implementation of the *project*, and shall ensure that any agreement concluded between the *contractors* to this end does not contradict the provisions of this *contract*. Such agreement(s) may, *inter alia*, specify the organisation of the work to be carried out, decision-making and dispute settlement procedures, and specify provisions concerning *access rights* within the limits established in this *contract*;
 - c) inform the *Commission* of any event which might affect the implementation of the *project* and the rights of the *Community* and of any circumstance affecting the

conditions of participation referred to in the *Rules for Participation* or the *Financial Regulation* and any requirements of the *contract*, including any *change of control*;

- d) provide all detailed data requested by the *Commission* for the purposes of the proper administration of this *project*.

2. Each *contractor* shall :

- a) ensure that all information to be provided to the *Commission* is sent via the *coordinator*, except for those cases foreseen in the *contract*;
- b) make appropriate arrangements for the proper performance of its work identified in Annex I. To this end, the *contractor* shall designate one or more persons who shall manage and monitor its work, ensure that the tasks assigned are correctly performed, and inform the *Commission* of the name and contact details of the person designated and of any changes to that information;
- c) inform the *Commission* of any event which might affect the implementation of the *project* and the rights of the *Community*;
- d) provide the *Commission* and Court of Auditors directly with information requested in the framework of controls and audits, as provided for in Article II.29;
- e) ensure that any agreements or contracts entered into between the *contractor* and any *subcontractor*, or other third party, contain provisions extending the *Commission* and the Court of Auditors' right to audit any work carried out under the *project* for which costs are claimed from the *Community* financial contribution;
- f) undertake to ensure that the conditions applicable to it under Articles II.9, II.10, II.11, II.12, II.26, II.28.8 and II.29 are also applicable to any third party whose costs are claimed under the *project* by means of Article II.19.1.e;
- g) take part in meetings concerning the supervision, monitoring and evaluation of the *project* which are relevant to it;
- h) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this *contract* and inform the other *contractors* and the *Commission* of any unavoidable obligations which may arise during the duration of the *contract* which may have implications for any of its obligations under the *contract*;
- i) carry out the *project* in accordance with fundamental ethical principles, as described or referred to in the *Rules for Participation*;
- j) endeavour to promote equal opportunities between men and women in the implementation of the *project*;
- k) ensure that the *Commission* is informed if and when any eligibility criteria established by the *Rules for Participation* and the *Financial Regulation* cease(s) to be met during the duration of the *project*;

- l) 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* and shall inform the *Commission* without delay of any situation which could lead to such a conflict of interest.
3. The *coordinator* shall:
- a) ensure that the tasks identified in Article 2 regarding accession to the *contract* are carried out in a timely manner;
 - b) be the intermediary for communication between the *contractors* and the *Commission* in accordance with the provisions of Article 11, with the exceptions foreseen in the *contract*;
 - c) receive all payments made by the *Commission* to the *consortium* and administer the *Community* contribution regarding its allocation between *contractors* and activities in accordance with this *contract* and the decisions taken by the *consortium*. The *coordinator* shall ensure that all the appropriate payments are made to *contractors* without unjustified delay;
 - d) keep accounts making it possible to determine at any time what portion of the *Community* funds has been paid to each *contractor* for the purposes of the *project*. The *coordinator* shall inform the *Commission* of the distribution of the funds and the date of transfers to the *contractors*.
4. The *Commission* shall:
- a) monitor the scientific, technological and financial execution of the *project* and ensure that the *Community* financial contribution is provided when and where necessary under the conditions established by the *contract*;
 - b) carry out review, analysis and approval of *project* deliverables within the periods indicated in the *contract*;
 - c) maintain the confidentiality of any information, data, reports or other deliverables or *knowledge* communicated to it as confidential, in accordance with the provisions of Article II.9.

II.4 – Force majeure

1. *Force majeure* shall mean any unforeseeable and exceptional event affecting the *contract* and the implementation of the *project* by one or more *contractors*, which is beyond their control or the control of the *Community* and cannot be overcome despite their reasonable endeavours. Any default of a product or service or delays in making them available (unless due to *force majeure*) for the purpose of performing this *contract* and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute *force majeure*.

2. If any of the *contractors* is subject to *force majeure* liable to affect the fulfilment of its contractual obligations, the *consortium* shall notify without delay the *Commission*, stating the nature, likely duration and foreseeable effects.
3. If the *Community* is subject to *force majeure* liable to affect the fulfilment of its contractual obligations, it shall notify without delay the *consortium*, stating the nature, likely duration and foreseeable effects.
4. No *contractor* 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 *contractors* cannot fulfil their contractual 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.
5. The *project* can be suspended or terminated due to *force majeure* in accordance with the provisions of Articles II.5 and II.15.

II.5 – Suspension and prolongation of the *project*

1. The *consortium* shall immediately inform the *Commission* of any event affecting or delaying the implementation of the *project*.
2. The *consortium* can propose to suspend part or all, of the *project* if *force majeure* or exceptional circumstances, render its execution excessively difficult or uneconomic. The *consortium* must inform the *Commission* without delay of such circumstances, including all justifications and information related to the event, as well as an estimation of the date when the work on the *project* will begin again.
3. The *Commission* may suspend part, or all, of the work under the *project* where it considers that the *consortium* is not performing satisfactorily, in order to re-negotiate with it and propose the necessary amendments to the *contract* to redress the situation. Where the *Commission* suspends part, or all, of the *project*, it must inform the *consortium* without delay of the justifications for such an event, as well as the conditions necessary to reinstate the work again. This suspension takes effect on the date the *consortium* receives the notification.
4. During the period of suspension, no costs may be charged to the *project* for carrying out any tasks or any part of the *project* which has been suspended.
5. The part of the *project* which has been suspended can be taken up again once both parties have agreed on the continuation. Notwithstanding any other modifications, which may be necessary as a result of any such suspension and re-starting of the work, the extension of the duration will be identified by means of a written amendment in accordance with Article 10. Unless otherwise requested by the *consortium*, the extension will be equal to the period of suspension.

6. The *Commission* may terminate or the *consortium* may request the termination of the *contract* if it is established that it will be excessively difficult to continue with all or part of the *project* and/or that for technical, financial, economic or scientific reasons the delay or non-execution will be such that the *project* is no longer viable.

II.6 - Sub-contracting

1. *Contractors* shall ensure that the work to be performed, as identified in Annex I, can be carried out by them. However, where it is necessary to subcontract certain elements of the work to be carried out, this should be clearly identified in Annex I. During the implementation of the *project*, *contractors* may subcontract other minor services, which do not represent core elements of the *project* work, which cannot be directly assumed by them and where this proves necessary for the performance of their work under the *project*.
2. Any *subcontract*, the costs of which are to be claimed as an eligible cost, must be awarded to the bid offering best value for money (best price-quality ratio), under conditions of transparency and equal treatment. The following aspects must be taken into consideration in awarding *subcontracts*:
 - (a) they may only cover the execution of a limited part of the *project*;
 - (b) recourse to the award of *subcontracts* must be justified having regard to the nature of the action and what is necessary for its implementation;
 - (c) the tasks concerned must be set out in Annex I;
 - (d) the *contractor* shall retain sole responsibility for carrying out the action and for compliance with the provisions of the *contract*. The *contractor* must undertake to make the necessary arrangements to ensure that the *subcontractor* waives all rights in respect of the *Commission* under the *contract*;
 - (e) the *contractor* must undertake to ensure that the conditions applicable to it under Articles II.9, II.10, II.11, II.12, II.28.8 and II.29 of the *contract* are also applicable to the *subcontractor*.
3. Where the *contractors* enter into *subcontracts* to carry out some parts of the tasks related to the *project*, they remain bound by their obligations to the *Commission* under the *contract*.

II.7 – Reports and deliverables

1. All reports and deliverables shall be submitted within 45 days following the end of the respective periods identified in Articles 6 and 7.
2. The *consortium* shall submit the following reports to the *Commission* for each reporting period:

- a) a periodic activity report containing an overview of the activities carried out by the *consortium* during that period, a description of progress toward the objectives of the *project*, a description of progress towards the milestones and deliverables foreseen, the identification of the problems encountered and corrective action taken. An updated *plan for using and disseminating the knowledge* shall be included as a separate part of this report;
 - b) a periodic management report on that period including:
 - i) a justification of the resources deployed by each *contractor*, linking them to activities implemented and justifying their necessity;
 - ii) the Form C Financial statement set out in Annex VI, provided by each *contractor* for that period;⁷
 - iii) a summary financial report consolidating the claimed costs of all the *contractors* in an aggregate form, based on the information provided in Form C.
 - c) a report on the distribution between *contractors* made during that period of the *Community* financial contribution.
 - d) supplementary reports required by any Annex to this *contract*.
3. The *consortium* shall submit the audit certificates provided by each *contractor* in conformity with Article II.26 for each period for which the audit certificate is required. Even though an audit certificate is not required for a specific period, an audit certificate must be provided by each *contractor* where the *Community* financial contribution requested by that *contractor* exceeds € 750,000 for that period.
4. In addition to the documents referred to in paragraph 2 of this Article for the last period, the *consortium* shall submit the following final reports to the *Commission* after the end of the *project*:
- a) a final activity report covering all the work, objectives, results and conclusions, and the final *plan for using and disseminating the knowledge*, including a summary of all these aspects;
 - b) a final management report covering the full duration of the *project* including a summary financial report consolidating the claimed costs of all the *contractors* in an aggregate form covering the entire duration of the *project*, based on the information provided in Form C by each *contractor*;
 - c) supplementary final reports required by any Annex of the *contract*;
 - d) a report on the distribution between *contractors* made after the end of the *project* of the *Community* financial contribution, which shall be submitted 60 days after receipt of the final tranche of the *Community* financial contribution to the *consortium*.

⁷ Costs incurred in currencies other than the Euro shall be reported in Euro on the basis of the conversion rate that would have applied on the date that the actual costs were incurred or the rate applicable on the first day of the month following the end of reporting period. The basis for the conversion rate used shall be indicated in Form C when reporting costs incurred.

5. The *consortium* shall transmit these documents to the *Commission* by electronic means in accordance with the provisions of Article 11.2. However, the originals of each of these documents and the audit certificates shall be submitted in accordance with the provisions of Article 11.1. In such cases, the date of receipt pursuant to Article 11.1 prevails.

The layout and content of the reports shall conform to the instructions and guidance notes established by the *Commission*.

The reports for publication should be of a suitable quality to enable direct publication.

6. Where the *Community* financial contribution is a lump sum the references to financial statements above are replaced by payment requests. None of the provisions in the *contract* relating to eligible costs apply in such cases.

II.8 – Evaluation and approval of reports and deliverables

1. The *Commission* evaluates the reports submitted by the *consortium* in accordance with the provisions of this Article and other deliverables required by the provisions of Annex I. In accordance with the provisions of Article 11.2.b of the *Rules for Participation*, it may be assisted in this task by external experts.
2. The *Commission* undertakes to evaluate *project* activity reports identified in Article II.7.2.a within 45 days of receipt thereof. Where no comments, changes or substantial corrections to any of the *project* activity reports are required, the *project* activity reports are deemed to be approved within 90 days of receipt.
3. The *Commission* undertakes to evaluate all other reports submitted within 45 days of receipt thereof. The absence of a response from the *Commission* within 45 days of receipt of these reports shall not imply approval by the *Commission*. The *Commission* may reject these reports even after the time limit for payment established in Article 8.2 (e).
4. Approval of any report does not imply exemption from any audit or review, which may be carried out in accordance with the provisions of Article II.29.
5. Where, following the evaluation of the reports or deliverable(s), the *Commission* considers that the *consortium* is not performing satisfactorily, it may:
 - a) Reject the reports submitted and request the *consortium* to complete the work foreseen in Annex I or to perform additional work within a reasonable delay established by the *Commission*. Reports and deliverables shall be re-submitted once the work has been completed;
 - b) Approve the reports and deliverables subject to re-negotiation of the work to be performed during the next period. The *Commission* may, for that purpose, impose a suspension of the *project* in accordance with Article II.5;
 - c) Terminate the *contract*.

II.9 – Confidentiality

1. The *Commission* and the *contractors* undertake to preserve the confidentiality of any document, information, *knowledge*, *pre-existing know-how* or other material communicated to them in relation to the execution of the *project*, and which has been identified as confidential in relation to the execution of the *project*, or where such information was provided orally, it has been confirmed as such in writing within 30 days after disclosure. Where the *contract* provides for the communication of any data, *knowledge*, *pre-existing know-how* or other document, the *contractors* and the *Commission* shall first satisfy themselves that the recipient will keep it confidential and use it only for the purpose for which it is communicated.
2. The confidentiality of any document, information or other material, the disclosure of which could harm, interfere with or otherwise limit the effective protection of their intellectual property rights, must be maintained during the life of the *project*. Unless other agreements are made between the *contractors*, this confidentiality must be maintained for the period in which *use* of any *knowledge* or *pre-existing know-how* is to be made available after the end of the *project*.

This obligation no longer applies where:

- a) the content of any of the document, information or material becomes publicly available through work or actions lawfully performed outside this *contract* and not based on activities under it, or
- b) the content of the document, information or material has been communicated without confidentiality restrictions or these are subsequently waived, or
- c) the information is lawfully received from a third party who is in lawful possession thereof and under no obligation of confidence to the disclosing party.

II.10 - Communication of data for evaluation, impact assessment, standardisation purposes and communication of information beyond the research community

1. Without prejudice to the provisions of Article II.9, *contractors* shall be required to provide, at the request of the *Commission*, data necessary for:
 - a) the continuous and systematic review of the specific programme concerned and the Sixth Framework Programme;
 - b) the evaluation and impact assessment of *Community* activities.

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

The data collected may be used by the *Commission* in its own evaluations but will not be published other than in analytical form based on anonymous statistics.

2. Without prejudice to the provisions regarding protection of *knowledge* and confidentiality, the *contractors* must, during the entire duration of the *contract* and for two years following the end of the *project*, inform the *Commission* and the European standardisation bodies about *knowledge* which may contribute to the preparation of European or, where appropriate, international standards or to an industrial consensus on technical issues. To

this end, they shall communicate appropriate data on such *knowledge* to the *Commission* and to the standardisation bodies concerned.

3. The *consortium* must engage with actors beyond the research community and with the public as a whole, to help spread awareness and *knowledge* and to explore the wider societal implications of the *project* and its results and must report on the actions taken in this respect in accordance with the provisions of Article 11.

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

The *Commission* shall make available to any Member State or Associated State its useful information on *knowledge* arising from the *project*, upon request, provided that such information is relevant to public policy, unless the *contractors* provide a reasoned case against doing so. Under no circumstances, shall such availability confer any rights or obligations of the *Commission* and *contractors*, as set out in Part C of this annex, to Member States or Associated States receiving such information. Unless such general information becomes public, or is made available by the *contractors* with an indication that it is without any confidentiality restrictions, Member States and Associated States shall comply with the *Commission's* obligations on confidentiality as established by this *contract*.

II.12 – Publicity

1. The *contractors* shall, throughout the duration of the *project*, take appropriate measures to ensure suitable publicity for the *project* in order to highlight the *Community* financial support. Unless the *Commission* requests otherwise, any notice or publication by the *contractors* about the *project*, including at a conference or seminar, must specify that the *project* has received research funding from the *Community's* Sixth Framework Programme. Where use of the European emblem, or any similar trademark or logo, is envisaged, prior approval shall be required from the *Commission*. Authorisation to use the European emblem or other similar mark or logo implies no right of exclusive use. It does not permit the appropriation of the emblem, or of any similar trademark or logo, whether by registration or by any other means.

Any notice or publication by the *contractors*, in whatever form and on or by whatever medium, must specify that it reflects only the author's views and that the *Community* is not liable for any use that may be made of the information contained therein.

2. The *Commission* shall be authorised to publish, in whatever form and on or by whatever medium, including the Internet, the following information:
 - the name of the *contractors*;
 - the general purpose of the grant in the form of the summary provided by the *consortium*;
 - the amount granted and, except for lump sum contributions, the rate of the *Community* financial contribution to the *project*;
 - the geographic location of the activities carried out.

3. Upon a reasoned and duly substantiated request by the *contractor*, the *Commission* may agree to forego such publicity if disclosure of the information indicated above would risk compromising the *contractor's* security or commercial interests.

II.13 - Liability

1. The *Community* cannot be held liable for acts or omissions committed by the *contractors* performing this *contract*. It shall not be liable for any defaults of any products or services created on the basis of *knowledge* resulting from the *project*, including, for instance, anomalies in the functioning or performance thereof.
2. Each *contractor* fully guarantees the *Community*, and agrees to indemnify it, in case of any action, complaint or proceeding brought by a third party against it as a result of damage caused, either by any act or omission committed by the *contractors* in performing this *contract*, or because of any products or services created by the *contractor* on the basis of *knowledge* resulting from the *project*.

In the event of any action brought by a third party against a *contractor* in connection with the performance of this *contract*, the *Commission* may assist the latter upon written request. The costs incurred by the *Commission* in this connection shall be borne by the *contractor* concerned.

3. The *contractors* shall bear sole responsibility for ensuring that the use of acronyms within the framework of this *project* does not infringe existing trademarks, registered names and other similar rights.

II. 14– Assignment

The *contractors* shall not assign any of the rights and obligations arising from the *contract* except those cases provided for in Part C of this Annex, without the prior and written authorisation of the *Commission* and the other *contractors*.

SECTION 2 –TERMINATION OF THE *CONTRACT* AND RESPONSIBILITY

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

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

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

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

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

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

4. The *consortium* may request the termination of the *contract*, by notifying this to the *Commission* providing the justification for termination.

The request shall be deemed to be rejected if the *Commission* does not send its explicit agreement to the *coordinator* within six weeks of the receipt of the request.

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

5. The *Commission* may terminate the *contract* or the participation of a *contractor* in the following cases and in accordance with the procedures identified in paragraphs 6 and 7 of this Article:

- a) where one or more of the legal entities identified in Article 1.2 does not accede to the contract in accordance with Article 2.
- b) where, in accordance with the provisions of Article II.8, the required reports are not approved by the Commission.
- c) where a legal, financial, organisational or technical change or *change of control* of a *contractor* puts into question the decision of the *Commission* to accept its participation.
- d) where any such change identified in c) above or termination of the participation of the *contractor(s)* concerned substantially affects the implementation of the *project*, or the interests of the *Community*, or puts into question the decision to grant the *Community* contribution .
- e) in case of *force majeure* notified in conformity with Article II.4, where any reactivation of the *project* after suspension is impossible.
- f) in accordance with the provisions of Article II.5.6.
- g) where the conditions for participation in the *project* established by the *Rules for Participation* or as amended by the call for proposals to which the *project* was submitted are no longer satisfied, unless the *Commission* considers that the continuation of the *project* is essential to the implementation of the specific programme.
- h) where a *contractor* is found guilty of an offence involving its professional conduct by a judgment having the force of *res judicata* or if it is guilty of grave professional misconduct proven by any justified means.

6. Termination by the *Commission* shall be notified to the *contractor*, with a copy to the *consortium* in the case of termination of the participation of one or more *contractors*, and

shall become effective 30 days after its receipt by the *contractor*. In the case of termination of the *contract*, the *coordinator* shall be notified, who shall in turn notify all the other *contractors* and the termination shall become effective 45 days after receipt by the *coordinator*.

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

Within 45 days after the effective date of termination, the *contractor* shall submit reports and deliverables referred to in Article II.7 relating to the work carried out and the costs incurred up to that date. In the absence of receipt of such documents within the delays, the *Commission* may determine not to take into account any further cost claims or costs or not to make any further reimbursement and, where appropriate, require the reimbursement of any *pre-financing* after providing 30 days notice in writing of the non-receipt of such documents.

Notwithstanding the termination of the *contract* or the participation of one or more *contractors*, the provisions identified in Articles II.9, II.10, II.11, II.13, II.14, II.15, II.29, II.30, II.31 and Part C of Annex II continue to apply after the termination of the *contract* or the termination of the participation of the *contractor*

II.16 – Termination for breach of *contract* and *irregularity*

1. In the case of breach of any obligation imposed by this *contract* the *Commission* shall request the *consortium* to find appropriate solutions to make good that breach within a maximum period of 30 days.

Costs incurred by the *consortium*, after the date of receipt of such request, shall be eligible only if an appropriate solution to the breach is accepted by the *Commission*.

Where appropriate, the *consortium* may request the *Commission* to suspend part, or all, of the *project* in accordance with Article II.5.

In the absence of any satisfactory solution, the *Commission* will terminate the participation of the defaulting *contractor*.

2. The *Commission* may immediately terminate the participation of a *contractor*:
 - a) where the *contractor* has deliberately or through negligence committed an *irregularity* in the performance of any contract with the *Commission*;
 - b) where the *contractor* has contravened fundamental ethical principles as referred to in the *Rules for Participation*.
3. Notification of termination shall be addressed to the *contractor* and copied to the *consortium*.

Termination shall take effect upon receipt of such notification by the *contractor* and shall be without prejudice to the obligations established or referred hereto.

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

4. In cases foreseen in the above paragraphs, the *Commission* shall require the *consortium* to continue with the implementation of the *project*, and to provide evidence to the *Commission* of its capacity to do so within 30 days of receipt of such request.

If, at the end of the period identified in the above sub-paragraph, the *consortium* has not complied with the *Commission's* requirement, the *Commission* shall terminate the *contract*. The procedures to be followed shall be the same as those identified in Articles II.15.6 and II.15.7.

5. The defaulting *contractor* has up to 30 days after the effective date of termination of its participation to provide the *Commission* with:
- a) reports, as provided for in Article II.7.1, relating to the work it has performed from the beginning of the *project* up to the effective date of the termination or for the period covered since the last periodic reports approved by the *Commission*, whichever is later;
 - b) an audit certificate, as provided for in Article II.7.3, for the costs it has incurred from the beginning of the *project* up to the effective date of the termination or for the period after the last approved certificate.

In the absence of receipt of such documents within the delays, the *Commission* shall consider that no costs were incurred by the defaulting *contractor* for the period(s) in question and that no reimbursement can be made for these period(s).

6. The *consortium* has up to 30 days after the effective date of termination of the defaulting contractor's participation to provide the *Commission* with information on the share of the contribution that was effectively transferred to the defaulting *contractor* since the beginning of the *project*.

In the absence of receipt of such information within the delays, the *Commission* shall consider that the defaulting *contractor* owes no money to the *Commission* and that the *Community* contribution already paid is still at the disposal of the *consortium* and under its responsibility.

7. Based on documents and information referred to in paragraphs 5 and 6, the *Commission* shall establish the debt owed by the defaulting *contractor*.
8. Where, in accordance with paragraph 4 the *consortium* continues the *project*, the *Commission* shall either issue a recovery order to the defaulting *contractor* or request the defaulting *contractor*, with a copy to the *consortium*, to transfer to the *consortium* the amount owed to the *Commission* within 30 days. In the latter case, the *consortium* shall inform the *Commission* at the latest 10 days after the end of this delay if the amount was transferred to it. Should the *contractor* not comply with this requirement, the *Commission* shall establish a recovery order for any amounts due by the *contractor*.

Where the *contract* is terminated in accordance with paragraph 4, the *Commission* shall establish a recovery order for any amounts due by the *consortium*.

The provisions identified in Articles II.7, II.9, II.10, II.11, II.13, II.29, II.30, II.31 and Part C of Annex II continue to apply to the defaulting *contractor* after termination of its participation and to the *contractors* in the case of termination of the *contract*.

II.17 - Technical Collective Responsibility

Technical implementation of the *project* shall be the collective responsibility of the *contractors*⁸. To that end each *contractor* shall take all necessary and reasonable measures to attain the objectives of the *project*, and to carry out the work incumbent on the defaulting *contractor*.

II.18 - Financial collective responsibility

1. Should the *contract* be terminated or the participation of a *contractor* be terminated in accordance with Article II.16, and any *contractor* does not honour the reimbursement of the amount due by that *contractor*, the *consortium* will reimburse the amount due to the *Commission*.

The amount due to the *Commission* may not exceed the value of the contribution due to the *consortium* in accordance with Article 5.

2. The amount to be recovered shall be allocated between the remaining *contractors* other than those referred to in paragraph 3 in accordance with their *pro rata* share in the overall *project*.

This allocation shall be based on the relative weight of all those *contractors* not excluded by paragraph 3, taking into account their share of the provisional costs as indicated in Annex I when *pre-financing* is to be recovered and their share of accepted certified costs when payment is to be recovered.

Any amount claimed from a *contractor* shall not exceed the contribution it is entitled to receive according to applicable reimbursement rates. The amount a *contractor* is entitled to receive is based on its provisional costs as indicated in Annex I when *pre-financing* is to be recovered and is based on its certified costs accepted by the *Commission* when a settled payment is to be recovered.

3. Paragraphs 1 and 2 do not apply where the defaulting *contractor* is a *public body*, an *international organisation* or a *contractor* whose participation to the *indirect action* is guaranteed by a Member State or an *Associated State*.
4. The *consortium* is not collectively responsible for:
 - a) any amount owed by a defaulting *contractor* for any breach discovered after the *final implementation date*;
 - b) liquidated damages due by a *contractor* in accordance with Article II.30;
 - c) sanctions referred to in Article II.30 imposed on a defaulting *contractor*.

PART B – FINANCIAL PROVISIONS

SECTION 1 - GENERAL FINANCIAL PROVISIONS

II.19 - Eligible costs of the *project*

⁸ Article 13.2 *Rules for Participation*

1. Eligible costs incurred for the implementation of the *project* must fulfil all of the following conditions:
 - a) they must be actual, economic and necessary for the implementation of the *project*; and
 - b) they must be determined in accordance with the usual accounting principles of the *contractor*; and
 - c) they must be incurred during the duration of the *project* as identified in Article 4.2 except for the costs incurred in drawing up the final reports referred to in Article II 7.4, which may be incurred during the period of up to 45 days after the end of the *project* or the date of termination whichever is earlier; and
 - d) they must be recorded in the accounts of the *contractor* that incurred them, no later than at the date of the establishment of the audit certificate referred to in Article II.26. The accounting procedures used in the recording of costs and *receipts* shall respect the accounting rules of the State in which the *contractor* is established as well as permit the direct reconciliation between the costs and *receipts* incurred for the implementation of the *project* and the overall statement of accounts relating to the overall business activity of the *contractor*; and
 - e) in the case of contributions made by third parties established on the basis of an agreement between the *contractor* and the third party existing prior to its contribution to the *project*, and for which the tasks and their execution by such a third party are clearly identified in Annex I, the costs must :
 - i) be incurred in accordance with the usual accounting principles of such third parties and the principles set out in paragraph d) above;
 - ii) meet the other provisions of this Article and this Annex; and
 - iii) be recorded in the accounts of the third party no later than the date of the establishment of the audit certificate referred to in Article II.26.
2. The following non-eligible costs may not be charged to the *project* :
 - a) any identifiable indirect taxes, including VAT or duties;
 - b) interest owed;
 - c) provisions for possible future losses or charges;
 - d) exchange losses;
 - e) costs declared, incurred or reimbursed in respect of another *Community* project;
 - f) costs related to return on capital;
 - g) debt and debt service charges;
 - h) excessive or reckless expenditure;
 - i) any cost which does not meet the conditions established in Article II.19.1.
3. In the case of *contractors* using the additional costs system the eligible costs upon which the *Community* financial contribution will be based shall be the direct costs specified in Article II.20 which are additional to their recurring costs and the contribution to indirect costs specified in Article II.21.

4. Any SME may claim under the research and technological development/innovation or demonstration activities the costs of any premium it must pay for a loan guarantee. However, the proportion of the loan that is guaranteed may not exceed 80% of the loan where the costs of such a loan guarantee meet the other criteria established by paragraph 1 of this Article.

II.20 – Direct costs

1 - Direct costs are all those costs which meet the criteria established in Article II.19 above, can be identified by the *contractor* in accordance with its accounting system, and can be attributed directly to the *project*.

2 - *Contractors* using the additional cost model may charge to the *project* only those direct costs that are additional to their recurring costs. Any such direct additional costs specifically covered by contributions from third parties are excluded. Direct costs of personnel shall be limited to the actual costs of the personnel assigned to the *project* where the *contractor* has concluded with the personnel:

- a temporary contract for working on *Community* RTD projects ;
- a temporary contract for completing a doctorate;
- a contract which depends, in full or in part, upon external funding⁹ additional to the normal recurring funding of the *contractor*. In that case, the costs charged to this *contract* must exclude any costs borne by the normal recurring funding.¹⁰

II.21 – Indirect costs

Indirect costs are all those costs, which meet the criteria established in Article II.19, which cannot be identified by the *contractor* as being directly attributed to the *project* but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the *project*.

Indirect costs may be charged to the *project* under the full cost model, to the extent that they represent a fair apportionment of the overall overheads of the organisation.

II. 22 – Cost reporting models

1. There are three models for reporting costs under the *contract*.
 - eligible direct and indirect costs are charged by *contractors* using the full cost model (FC);

⁹ Contracts dependant upon external funding may include contracts necessary to permit permanent personnel to carry out additional work required for the *project*, which is dependant upon external funding.

¹⁰ Permanent personnel which do not meet the criteria established in this Article may be charged to eligible costs incurred by *contractors* using the AC model under Management Activities identified in Article II.2, and within the limits established by Article II.28 where these costs can be identified with precision by the *contractor*.

- eligible direct costs and a flat rate for indirect costs are charged by *contractors* using the full cost flat rate reporting model (FCF). The flat rate is 20% of all direct costs minus costs of *subcontracts*, which is deemed to cover any indirect costs incurred by the *contractor* under the *project*.
 - eligible direct additional costs and a flat rate for indirect costs are charged by *contractors* using the additional cost model (AC). The flat rate is 20% of all direct additional costs minus costs of *subcontracts*, which is deemed to cover any indirect costs incurred by the *contractor* under the *project*.
2. All *contractors*, except for physical persons may use the full cost (FC) model. *Contractors* that are SMEs, non-commercial or non-profit organisations established either under public law or private law, or *international organisations* may use the full cost model with a flat rate for overheads (FCF).
3. *Contractors* which may use the additional cost model are:
- non-commercial or non-profit organisations established either under public law or private law; or
 - *international organisations*;

which do not have an accounting system that allows the share of their direct and indirect costs relating to the *project* to be distinguished.

Contractors which must use the additional cost model are:

- physical persons.

Physical persons may not charge any labour cost in relation to their personal involvement in the *project*.

4. Each *contractor* shall apply a cost reporting model in accordance with the principles established in Articles II.19, II.20 and II.21. Where a legal entity may choose a cost reporting model it shall apply that model in all contracts established under the Sixth Framework Programme.
- By derogation to the principle established above, any legal entity eligible to opt for the AC cost model may opt in this *contract* for the FCF or the FC reporting model even if it has initially opted for the AC reporting model in previous *contracts*. However, if it does so, it must use that reporting model consistently in subsequent *contracts* established under the Sixth Framework Programme.
 - By derogation to the principle established above, any legal entity eligible to opt for the FCF cost model may opt in this *contract* for the FC reporting model even if it has opted earlier for the FCF reporting model in previous *contracts*. However, if it does so, it must use that reporting model consistently in subsequent *contracts* established under the Sixth Framework Programme.

II.23 – Receipts of the Project

Receipts of the *project* may arise from (a) financial transfers to the *contractor* from third parties, (b) contributions in kind from third parties, and from (c) income generated by the *project* and as specified below:

- a) Where there is a financial transfer from third parties:
 - i. made specifically to co-finance the *project* or specifically to finance a resource used by the *contractor* on the *project*, such transfers shall be considered as *receipts* of the *project*¹¹;
 - ii. where the use of the financing or the use of resources paid with the financial transfers are at the management discretion of the *contractor* and the *contractor* chooses to allocate that resource to the *project*, such transfers shall not be considered to be *receipts* of the *project*.
- b) Contributions in kind from third parties that are used for the *project* constitute an eligible cost of the *project*, and:
 - i. shall also be considered a *receipt* of the *project* if they have been contributed by the third party specifically to be used on the *project*¹²;
 - ii. shall not be considered a *receipt* of the *project* if their use is at the management discretion of the *contractor*.

Contractors shall ensure that third parties whose resources are made available to the *project* are informed of this use of their resources. *Contractors* shall do so in accordance with their national legislation and practices.

- c) Income generated by the *project*:
 - i. income generated by actions undertaken in carrying out the *project* and income from the sale of assets purchased under the *contract* up to the value of the cost initially charged to the *project* shall be considered as a *receipt* of the *project*;
 - ii. income generated for the *contractor* from the *use of knowledge* resulting from the *project* shall not be considered as a *receipt* of the *project*.

II.24 - Community financial contribution

- 1. Where the *Community* contributes to the *project* through a grant to the budget or grant to integration¹³ the *Community* shall make its contribution to the *consortium* under the following cumulative conditions:
 - a) the contribution is based on the reimbursement of eligible costs claimed by *contractors*; and

¹¹ Except for the case where a prior commitment between the *contractor* and the third party(ies) identified in Annex I establishes that the third party(ies) make(s) available its resources on the basis that they are to be reimbursed or used for a common interest.

¹² Except for the case where a prior commitment between the *contractor* and the third party(ies) identified in Annex I establishes that the third party(ies) make(s) available its resources on the basis that they are to be reimbursed or used for a common interest.

¹³ As identified in Article 5

- b) is based on the reimbursement rates per activity ; and
 - c) in accordance with the cost reporting models used by each *contractor*; and
 - d) on the basis of financial statements provided by each *contractor* and, for *contractors* using the full cost models, which identify the sources of all co-financing provided by the *contractor* for the *project*, including its *own resources*, any financial transfers from third parties, or any contributions in kind. *Contractors* using the additional cost model must also identify in their periodic technical reports all the resources employed on the *project* and provide a global estimate of all their costs (not just the additional eligible costs which are reported in the financial statement); and
 - e) subject to the submission of an audit certificate of the *contractors*' financial statements when and where required by the provisions of Article 7; and
 - f) for the *coordinator*, must take into account any interest or equivalent benefits yielded by the *pre-financing* of the *project*.
 - g) in the case of Networks of Excellence paragraph b) does not apply.
2. At the time of the submission of the last financial statement the final amount of the *Community* financial contribution will take into account any *receipts* of the *project* received by each *contractor*. For each *contractor*, the *Community* financial contribution cannot exceed the eligible costs minus the *receipts* for the *project*.

The *Community* financial *contribution* can not give rise to any profit for the *contractors*.

3. *Contractors* subject to the provisions of the *state aid* framework on the cumulation of public funding must ensure that they comply with its provisions.
4. Where the *Community* financial contribution is a lump sum¹⁴ the *Community* shall provide its contribution to the *consortium* according to the payment modalities identified in Article II.28.
5. The *Community* financial contribution shall be offset by any interest or equivalent benefits yielded by the *pre-financing* of the *project*, as referred to in Article II.27.

II. 25– Reimbursement rates

The table indicates the maximum rates of *Community* financial contribution for the activities and cost reporting models relating to the instruments below:

¹⁴ As identified in Article 5

Maximum reimbursement rates of eligible costs	Research and technological development or innovation activities	Demonstration activities	Training activities	Management of the consortium activities	Other specific activities (*)
Network of excellence				100% (up to 7% of the contribution) (AC : eligible direct costs)	100%
Integrated project	FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%	100%	100% (up to 7% of the contribution) (AC : eligible direct costs)	
Specific targeted research or innovation project	FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%		100% (up to 7% of the contribution) (AC : eligible direct costs)	
Specific research project for SMEs	FC/FCF : 50% AC : 100%		100% (for collective research only)	100% (up to 7% of the contribution) (AC : eligible direct costs)	
Integrated infrastructures initiative	FC/FCF : 50% AC : 100%	FC/FCF : 35% AC : 100%		100% (up to 7% of the contribution) (AC : eligible direct costs)	100%
Coordination action			100% (FC indirect costs : flat rate(**))	100% (up to 7% of the contribution) (AC : eligible direct costs) (FC indirect costs : flat rate(**))	100% (FC indirect costs : flat rate(**))
Specific support action				100% (up to 7% of the contribution) (AC : eligible direct costs) (FC indirect costs : flat rate(**))	100% (FC indirect costs : flat rate(**))

(*) : Other specific activities means:

- for Network of Excellence : Joint Programme of Activities, except management of the consortium activities.
- for Integrated infrastructures initiative: any "specific activity" covered by Annex I, including transnational access to infrastructures
- for Coordination Action: Coordination activities, except management of the consortium activities
- for Specific support action: any "specific activity" covered by Annex I, including transnational access to infrastructures

(**): Flat rate for FC indirect costs : 20% of all their eligible direct costs minus the eligible direct costs of sub-contracts.

In those instruments where *contractors* using the FC cost model are limited to a claim of 20% of their direct costs as a contribution to overheads, this rate shall be based on all direct costs excluding the costs of *subcontracts*. For coordination actions and specific support actions indirect costs are reimbursed at 20% of direct costs (excluding the costs of *subcontracts*).

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

For Specific Support Actions, where the total eligible costs claimed are lower than the grant foreseen in the *contract*, the reimbursement rate shall be 95% of the eligible costs, without prejudice to the limitations per activity established in this Article.

The costs relating to management activities identified in Article II.2 may be charged, up to the maximum level of *Community* reimbursement for management activities. Where the costs incurred for management activities exceed the limit of 7% of the *Community* financial contribution, such costs may be charged to the other relevant activity to which they correspond if they meet the conditions of Articles II.19, II.20, and II.21 applicable to those activities.

II.26 - Audit Certificates

- For each period for which an audit certificate is required, each *contractor* shall provide an audit certificate prepared and certified by an external auditor, certifying that the costs incurred during that period meet the conditions required by this *contract*. The certificate should expressly state the amounts that were subject to verification. Where third parties'

costs are claimed under the *contract*, such costs shall be audited in accordance with the provisions of this Article.

The cost of this certification is an eligible cost under the activity relating to Management of the *consortium*.

2. Each *contractor* is free to choose any qualified external auditor, including its usual external auditor, provided that it meets the cumulative following professional requirements:
 - a) the external auditor must be independent from the *contractor*;
 - b) the external auditor must be qualified to carry out statutory audits of accounting documents in accordance with the 8th Council directive 84/253/EEC of 10 April 1984 or similar national regulations.
3. A *contractor* that is a *public body* may opt for a competent public officer to provide an audit certificate, provided that the relevant national authorities have established the legal capacity of that competent public officer to audit that *public body*.

Certification by external auditors according to this Article does not diminish the liability of *contractors* according to this *contract* nor the rights of the *Community* arising from Article II.29.

II.27 – Interest yielded by *pre-financing* provided by the *Commission*

1. In accordance with the provisions of the *Financial Regulation*¹⁵, *pre-financing* granted to the *coordinator* on behalf of the *consortium* remains the property of the *Community*.
2. The *coordinator* shall inform the *Commission* of the amount of any interest or equivalent benefits yielded by the *pre-financing* it has received from the *Commission*. Notification must be made annually if the interest in question represents a significant amount, and in any event when the request for interim payments and the request for payment of the balance of the grant is made.

II.28 - Payment modalities

1. Without prejudice to Article II.29, the *Commission* shall adopt the amount of the final payment to be made to the *contractor* on the basis of the documents referred to in Article II.7 which it has approved.
2. The total amount paid to the *consortium* by the *Commission* may not in any circumstances exceed the maximum amount of the grant laid down in Article 5, even if the total actual eligible costs exceed the estimated total eligible costs specified in Article 5 or in the table in Annex I.

15 Article 5.4 of the Financial Regulation (OJ L 248, 16.9.2002), p.1 and Articles 3 and 4 of the Commission Regulation laying down detailed rules for its implementation (OJ L 357, 31.12.2002, p.1)

3. If the actual eligible costs at the end of the *project* are lower than the estimated total eligible costs, the *Commission's* contribution shall be limited to the amount obtained by applying the *Community* reimbursement rates per activity specified in Article II.25 to the actual eligible costs approved by the *Commission*.
4. The *contractors* hereby agree that the grant shall be limited to the amount necessary to balance the action's *receipts* and expenditure and that it may not in any circumstances produce a profit for them.

For the purposes of this Article, only actual costs falling within the activities set out in the estimated budget contained in Annex I shall be taken into account; non-eligible costs shall always be covered by non-*Community* resources.

Any surplus of *receipts* shall result in a corresponding reduction in the amount of the grant.

5. Without prejudice to the right to terminate the *contract*, if the *project* is not implemented or is implemented poorly, partially or late, the *Commission* may reduce the grant initially provided for in line with the actual implementation of the *project* on the terms laid down in this *contract*.
6. Any reduction in the amount of the grant to be paid by the *Commission* shall be effected by:
 - reducing the balance of the grant payable when the *project* ends;
 - requesting the *contractors* to repay any amounts overpaid, if the total amount already paid by the *Commission* exceeds the final amount which it actually owes.

7. In the event of late payment the *contractor(s)* may claim interest, within two months of receipt of the payment. Interest shall be calculated at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Communities, in force on the first calendar day of the month in which the due date falls, plus three and a half percentage points. Interest shall be payable for the time elapsed between expiry of the payment deadline and the date of payment. Date of payment is the date upon which the *Commission's* account is debited. Any such interest payment is not considered as part of the financial contribution of the *Community* established by the provisions of Article 5 of the *contract*.

8. The periods identified in Article 8 regarding the delays for payment may be suspended by the *Commission* at any time by notification of the *coordinator* that the financial statement is not acceptable, either because it does not conform to the requirements of the *contract* or because it is not in conformity with the activity reports submitted for approval to the *Commission*. The delay for approval of the financial statement will be suspended until the submission of the corrected or revised version as requested and the balance of the delay for approval will start again upon receipt by the *Commission* of this information.

The *Commission* may suspend its payments at any time in case of non-respect by the *contractor(s)* of any contractual provision, particularly regarding the audit and control provisions in Article II.29. In such case, the *Commission* shall notify the *contractor(s)* directly by means of registered letter with acknowledgement of receipt.

The *Commission* may suspend its payments at any time where there is a suspicion of *irregularity* committed by one or more *contractor(s)* in the performance of the

contract. Only the portion destined for the *contractor(s)* suspected of *irregularity* will be suspended. The *Commission* shall notify the *contractor(s)* of the justification for the suspension of payment directly by means of registered letter with acknowledgement of receipt.

SECTION 2 – CONTROLS, RECOVERIES AND SANCTIONS

II.29 – Controls and audits

1. The *Commission* may, at any time during the *contract* and up to five years after the end of the *project*, arrange for audits to be carried out, either by outside scientific or technological reviewers or auditors, or by the *Commission* departments themselves including OLAF. Such audits may cover scientific, financial, technological and other aspects (such as accounting and management principles) relating to the proper execution of the *project* and the *contract*. Any such audit shall be carried out on a confidential basis. Any amounts due to the *Commission* as a result of the findings of any such audit may be the subject of a recovery as mentioned in Article II.31.

The *contractor(s)* shall have the right to refuse the participation of a particular outside scientific or technological reviewer or auditor on grounds of commercial confidentiality.

2. The *contractors* shall make available directly to the *Commission* all the detailed data that may be requested by the *Commission* with a view to verifying that the *contract* is being properly managed and performed.
3. The *contractors* shall keep the original or, in exceptional cases, duly substantiated, authenticated copies, of all documents relating to the *contract* for up to five years from the end of the *project*. These shall be put at the *Commission's* disposal where requested during the execution of any audit under the *contract*.
4. In order to carry out these audits, the *contractors* shall ensure that the *Commission's* departments and any outside body(ies) nominated by it have on the spot access, notably to the *contractor's* offices, at all reasonable times and to all the information needed to carry out those audits.
5. The European Court of Auditors shall have the same rights as the *Commission*, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.
6. In addition, the *Commission* may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the *Commission* in order to protect the European Communities' financial interests against fraud and other irregularities¹⁶ 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-

¹⁶ OJ L 292, 15.11.1996, p.2.

Fraud Office (OLAF)¹⁷ Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹⁸.

7. *Contractors* shall ensure that the rights of the *Commission* and the Court of Auditors to carry out audits are extended to the right to carry out any such audit or control on any *subcontractor* or third party whose costs are reimbursed in full or in part by the *Community* financial contribution, on the same terms and conditions as indicated in this Article.

II.30–Liquidated damages

Without prejudice to any other measures provided for in this *contract*, the *contractors* agree that the *Community*, with the aim of protecting its financial interests, is entitled to claim liquidated damages from a *contractor* who is found to have overstated expenditure and who has consequently received an unjustified financial contribution from the *Community*. Liquidated damages are due in addition to the recovery of the unjustified financial contribution from the *contractor*.

1. Any amount of liquidated damages shall be proportionate to the overstated expenditure and unjustified portion of the *Community* contribution. The following formula shall be used to calculate any possible liquidated damages:

Liquidated damages = unjustified financial contribution x (overstated expenditure/ total claimed)

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

2. The *Commission* shall inform the *contractor* which it considers liable to pay liquidated damages in writing of its claim by way of a registered letter with acknowledgement of receipt. The *contractor* shall have a period of 30 days to answer the *Community's* claim.
3. The procedure for repayment of unjustified financial contribution and for payment of liquidated damages will be determined in accordance with the provisions of Article II.31.
4. The *Commission* shall be entitled to compensation in respect of any overstated expenditures which come to light after the *contract* has been completed, in accordance with the provisions of paragraphs 1 to 6.
5. These provisions shall be without prejudice to any administrative or financial sanctions that the *Commission* may impose on any defaulting *contractor* in accordance with the *Financial Regulation* or to any other civil remedy to which the *Community* or any other *contractor* may be entitled. Furthermore, these provisions shall not preclude any criminal proceedings which may be initiated by the Member States' authorities.

¹⁷ OJ L 136, 31.5.1999

¹⁸ OJ L 136, 31.5.1999

6. Further, as established by the *Financial Regulation*, any *contractor* declared to be in grave breach of its contractual obligations shall be liable to financial penalties of between 2% and 10% of the value of the *Community* financial contribution received by that *contractor*. The rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first breach.

II.31– Reimbursement to the *Commission* and recovery orders

1. If any amount is unduly paid to the *contractor* or if recovery is justified under the terms of the *contract*, the *contractor* undertakes to repay the *Commission* the sum in question on whatever terms and by whatever date it may specify.
2. If the *contractor* fails to pay by the date set by the *Commission*, the sum due shall bear interest at the rate indicated in Article II.28. Interest on late payment shall cover the period between the date set for payment and the date when the *Commission* receives full payment of the amount owed.

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

3. Sums owed to the *Commission* may be recovered by offsetting them against any sums owed to the *contractor*, after informing the latter accordingly, or by calling in any financial guarantee. The *contractor's* prior consent shall not be required.
4. Bank charges occasioned by the recovery of the sums owed to the *Commission* shall be borne solely by the *contractor*.
5. The *contractor* understands that under Article 256 of the Treaty establishing the European Community, and as provided by the *Rules for Participation*, the *Commission* may adopt an enforceable decision formally establishing an amount as receivable from persons other than States.

PART C – INTELLECTUAL PROPERTY RIGHTS

II.32 - Ownership of *knowledge*

1. *Knowledge* shall be the property of the *contractor* carrying out the work leading to that *knowledge*.
2. Where several *contractors* have jointly carried out work generating the *knowledge* and where their respective share of the work cannot be ascertained, they shall have joint ownership of such *knowledge*. The *contractors* concerned shall agree amongst themselves the allocation and terms of exercising ownership of that *knowledge* in accordance with the provisions of this *contract*.
3. If personnel working for a *contractor* are entitled to claim rights to *knowledge*, the *contractor* shall take steps or reach appropriate agreements to ensure that these rights can be exercised in a manner compatible with its obligations under this *contract*.

4. Where a *contractor* transfers ownership of *knowledge*, it shall take steps or conclude agreements to pass on to the assignee its obligations under this *contract*, in particular regarding the granting of *access rights*, *dissemination* and *use* of the *knowledge*. As long as the *contractor* is required to grant *access rights*, it shall give at least 60 days prior notice to the *Commission* and the other *contractors*, of the envisaged assignment and the name and address of the assignee.
5. The *Commission* or the other *contractors* may object within 30 days of notification to such a transfer of ownership. The *Commission* may object to transfer of ownership to third parties, in particular to those not established in a Member State or an *Associated State*, if such a transfer is not in accordance with the interests of developing the competitiveness of the dynamic, knowledge-based European economy or is inconsistent with ethical principles. The other *contractors* may object to any transfer of ownership, if that transfer would adversely affect their *access rights*.

II.33 - Protection of *knowledge*

1. Where *knowledge* is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection, in conformity with relevant legal provisions, including this *contract* and any *consortium agreement*, and having due regard to the *legitimate interests* of the *contractors* concerned. Details of any such protection sought or obtained shall be included in the *plan for using and disseminating the knowledge*.
2. Where a *contractor* does not intend to protect its *knowledge* in a specific country it shall inform the *Commission*. Where a *contractor* intends to waive the protection of its *knowledge*, the *Commission* shall be informed at least 45 days prior to the corresponding deadline. In such a case and where the *Commission* considers it necessary to protect such *knowledge* in a particular country, it may, with the agreement of the *contractor* concerned, adopt measures to protect the *knowledge*. In this event, and as far as that particular country is concerned, the *Community* shall take on the obligations regarding the granting of *access rights* in the place of the *contractor*. The *contractor* may only refuse if it can demonstrate that its *legitimate interests* will be significantly impaired.
3. A *contractor* may publish or allow the publication of data, on whatever medium, concerning *knowledge* it owns provided that this does not affect the protection of that *knowledge*. The *Commission* and the other *contractors* shall be given 30 days prior written notice of any planned publication. If, before the end of this period, the *Commission* and/or the other *contractors* so request, a copy of this data shall be communicated to them within 30 days after receipt of such request. The *Commission* and the other *contractors* may object to the publication within 30 days after receipt of the data envisaged to be published, if they consider that the protection of their *knowledge* would be adversely affected by this publication. The planned publication shall be suspended until the end of this consultation period. In the absence of any objection within the above-mentioned period, it is deemed that the *Commission* and the other *contractors* agree.

The *consortium agreement* may specify the practical details of any such right to object.

II.34 - Use and dissemination

1. The *contractors* shall *use* or cause to be used the *knowledge* arising from the *project*, which they own, in accordance with their interests. The *contractors* shall set out the terms of *use* in a detailed and verifiable manner, notably in the *plan for using and disseminating the knowledge*, and in accordance with the provisions of this *contract* and the *Rules for Participation*.
2. If *dissemination of knowledge* would not adversely affect its protection or its *use*, the *contractors* shall ensure that it is disseminated within a period of two years after the end of the *project*. Should the *contractors* fail to do so, the *Commission* may disseminate the *knowledge*. In so doing, the *Commission* and the *contractors* shall take particular account of the following factors:
 - a) the need to safeguard intellectual property rights;
 - b) the benefits of swift *dissemination*, for example in order to avoid duplication of research efforts and to create synergies between *projects*;
 - c) confidentiality;
 - d) the *legitimate interests* of the *contractors*.

II.35 - Access rights

1. The general principles relating to *access rights* are the following :
 - a) *Access rights* shall be granted to any of the other *contractors* upon written request. The granting of *access rights* may be made conditional on the conclusion of specific agreements aimed at ensuring that they are used only for the intended purpose, and of appropriate undertakings as to confidentiality. *Contractors* may also conclude agreements with the purpose of granting additional or more favourable *access rights*, including *access rights* to third parties, in particular to enterprises associated with the *contractor(s)*, or specifying the requirements applicable to *access rights*, but not restricting the latter. Any agreement providing for *access rights* to *contractors* and/or third parties must ensure that the potential *access rights* for other *contractors* are maintained. Such agreements shall comply with the applicable competition rules;
 - b) The *Commission* may object to the grant of *access rights* to third parties, in particular to those not established in a Member State or an *Associated State*, if such grant is not in accordance with the interests of developing the competitiveness of the dynamic knowledge-based European economy, or is inconsistent with ethical principles. *Contractors* shall ensure that where any potential grant of access rights to *knowledge* is not in accordance with these interests, the *Commission* shall be given 30 days prior written notice of plans to provide such access rights to third parties;
 - c) *Access rights* to *pre-existing know-how* shall be granted provided that the *contractor* concerned is free to grant them;
 - d) A *contractor* may explicitly exclude specific *pre-existing know-how* from its obligation to grant *access rights*, by means of a written agreement between the *contractors* established before the *contractor* concerned signs the *contract* or before

a new *contractor* joins the *project*. The other *contractors* may only withhold their agreement if they demonstrate that the implementation of the *project* or their *legitimate interests* will be significantly impaired thereby;

- e) Except where the *contractor* granting *access rights* so agrees, such rights shall confer no entitlement to grant sub-licences.
2. *Access rights* for execution of the *project* are the following:
- a) *Contractors* shall enjoy *access rights* to the *knowledge* and to the *pre-existing know-how*, if that *knowledge* or *pre-existing know-how* is needed to carry out their own work under that *project*. *Access rights* to *knowledge* shall be granted on a royalty-free basis. *Access rights* to *pre-existing know-how* shall be granted on a royalty-free basis, unless otherwise agreed before signature of the *contract*;
 - b) Subject to its *legitimate interests*, the termination of the participation of a *contractor* shall in no way affect its obligation to grant *access rights* to the other *contractors* pursuant to the previous sub-paragraph until the end of the *project*.
3. *Access rights* for use of *knowledge* are the following:
- a) *Contractors* shall enjoy *access rights* to *knowledge* and to the *pre-existing know-how*, if that *knowledge* or *pre-existing know-how* is needed to use their own *knowledge*. *Access rights* to *knowledge* shall be granted on a royalty-free basis, unless otherwise agreed before signature of the *contract*. *Access rights* to *pre-existing know-how* shall be granted under fair and non-discriminatory conditions to be agreed;
 - b) Subject to the *contractors' legitimate interests*, *access rights* may be requested under the conditions laid down in the previous paragraph until two years after the end of the *project* or after the termination of the participation of a *contractor*, whichever falls earlier, unless the *contractors* concerned agree on a longer period.

II.36 Incompatible or restrictive commitments

Contractors shall be informed as soon as possible by the *contractor* required to grant *access rights* of any limitations to the granting of *access rights* or of any restriction which might substantially affect the granting of *access rights*, as the case may be.

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