

# **ANNEX III. SPECIFIC CONDITIONS FOR BENEFICIARIES NOT HAVING CONCLUDED A CORRESPONDING NATIONAL GRANT AGREEMENT**

## **III.1. Definitions**

1. 'Public body' means any legal entity established as such by national law, and international organisations;
2. A legal entity is qualified as 'Non-profit' when considered as such by national or international law;
3. 'Research organisation' means a legal entity established as a non-profit organisation which carries out research or technological development as one of its main objectives;
4. 'SMEs' means micro, small and medium-sized enterprises within the meaning of Recommendation 2003/361/EC in the version of 6 May 2003.

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

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

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

Each beneficiary shall:

- a) carry out the work to be performed, as identified in Annex I. However, where it is necessary for the implementation of the Project, it may call upon third parties to carry out certain elements, according to the conditions established in Article III.6 or any special condition in Article 7. The beneficiary may use resources that are made available by third parties in order to carry out its part of the work;
- b) ensure that any agreement or contract related to the Project, entered into between the beneficiary and any third party contain provisions that this third party, including the auditor providing the certificate on the financial statements, shall have no rights vis-à-vis the Joint Undertaking under this grant agreement;
- c) ensure that the rights of the Joint Undertaking, the Commission, the European Anti-Fraud Office (OLAF) and the Court of Auditors to carry out audits and on-the-spot checks are extended to the right to carry out any such audit or checks on any third party whose costs are reimbursed in full or in part by the Joint Undertaking's financial contribution, on the same terms and conditions as those indicated in this grant agreement;

- d) ensure that the conditions applicable to it under Articles II.7, II.8, II.9, II.10, II.13, III.3.2 and III.7 are also applicable to any third party whose costs are claimed under the Project according to the provisions of this grant agreement;
- e) ensure that the tasks assigned to it are correctly and timely performed;
- f) inform the other beneficiaries and the Joint Undertaking through the coordinator in due time of:
  - the names of the person(s) who shall manage and monitor its work, and its contact details as well as any changes to that information;
  - any event which might affect the implementation of the Project and the rights of the Joint Undertaking;
  - any change in its legal name, address and of its legal representatives, and any change with regard to its legal, financial, organisational or technical situation including change of control and, in particular, any change of status as regards non-profit public bodies, secondary and higher education establishments, research organisations and SMEs;
  - any circumstance affecting the conditions of participation referred to in the Call for Proposals<sup>1</sup> or of any requirements of the grant agreement, especially if and when any eligibility criteria cease(s) to be met during the duration of the Project.
- g) provide the Joint Undertaking, the Commission, the European Anti-Fraud Office (OLAF) and the Court of Auditors directly with all information requested in the framework of controls and audits;
- h) take part in meetings concerning the supervision, monitoring and evaluation of the Project which are relevant to it;
- i) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this grant agreement and inform the other beneficiaries and the Joint Undertaking of any unavoidable obligations which may arise during the duration of the grant agreement which may have implications for any of its obligations under the grant agreement;
- j) ensure that it complies with the provisions of the state aid framework;
- k) carry out the Project in accordance with fundamental ethical principles;
- l) endeavour to promote equal opportunities between men and women in the implementation of the Project;
- m) have regard to the general principles of the Commission Recommendation of 11 March 2005 on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers, in particular concerning the working conditions, transparency of recruitment processes, and career development of the researchers recruited for the Project;

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<sup>1</sup> See 'Eligibility criteria' document ([https://www.artemis-ju.eu/call\\_2009](https://www.artemis-ju.eu/call_2009))

- n) take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the Project.

## SECTION 2 – REPORTING AND PAYMENTS

### III.3. Reports and deliverables

1. Beneficiaries shall submit to the Joint Undertaking for each reporting period within 60 days after the end of each respective period, a financial report. The financial report shall comprise an explanation of the use of the resources and a financial statement (Form C – Annex IX).
2. A **certificate on the financial statements** shall be submitted by each beneficiary for claims of interim payments and final payments when the amount of the Joint Undertaking's financial contribution claimed by the beneficiary under the form of reimbursement of costs is equal to or superior to EUR 325 000, when cumulated with all previous payments for which a certificate on the financial statements has not been submitted. This certificate must be forwarded in the form of a detailed description verified as factual by its external auditor (Form D – Annex X).

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

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

- i) the auditor must be independent from the beneficiary;
- ii) the auditor must be qualified to carry out statutory audits of accounting documents in accordance with national legislation implementing the 8<sup>th</sup> Council Directive on statutory audits of annual accounts and consolidated accounts<sup>2</sup> or any legislation of the Union replacing this Directive. Beneficiaries established in third countries shall comply with national regulations in the same field and the certificate on the financial statement provided shall consist of an independent report of factual findings based on procedures specified by the Joint Undertaking.

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

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<sup>2</sup> Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

the financial statements, provided that the relevant national authorities have established the legal capacity of that competent public officer to audit that entity and that the independence of that officer can be ensured.

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

3. Beneficiaries shall transmit the financial reports to the Joint Undertaking by electronic means. In addition, Form C, must be signed by the authorised person(s) within the beneficiary's organisation, and the certificates on the financial statements must be signed by an authorised person of the auditing entity, and the originals shall be sent to the Joint Undertaking.
4. The layout and content of the reports shall conform to the instructions and guidance notes established by the Joint Undertaking.
5. The Joint Undertaking may be assisted by external experts in the analysis and evaluation of the reports.

#### **III.4. Approval of reports and deliverables, time-limit for payments**

1. At the end of each reporting period, the Joint Undertaking shall evaluate Project reports and deliverables required by the provisions of Articles II.3 and III.3 and disburse to each beneficiary the corresponding payments within 105 days of their receipt unless the time-limit, the payment or the Project has been suspended.
2. Payments shall be made after the Joint Undertaking's approval of reports and/or deliverables. The absence of a response from the Joint Undertaking within this time-limit shall not imply its approval. However, the Joint Undertaking should send a written reply to the beneficiaries. The Joint Undertaking may reject reports and deliverables even after the time-limit for payment. Approval of the reports shall not imply recognition of their regularity or of the authenticity of the declarations and information they contain and do not imply exemption from any audit or review.
3. The Joint Undertaking, after reception, may suspend the time limit for payments if one or more of the reports or appropriate deliverables have not been supplied, or are not complete or if some clarification or additional information is needed or there are doubts concerning the eligibility of costs claimed in the financial statement and/or additional checks are being conducted. The suspension will be lifted from the date when the last report, deliverable or the additional information requested is received by the Joint Undertaking or where the Joint Undertaking decides to proceed with an interim payment in part. The Joint Undertaking shall inform the beneficiaries of any such suspension and the conditions to be met for the lifting of the suspension. Suspension shall take effect on the date when notice is sent by the Joint Undertaking.
4. The Joint Undertaking may proceed with an interim payment in part if some reports or deliverables are not submitted as required, or only partially or conditionally approved. The reports and deliverables due for one reporting period which are submitted late will be evaluated together with the reports and deliverables of the next reporting period.

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

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

Interest on late payment shall cover the period from the final date of the period for payment, exclusive, up to the date when the payment is debited to the Joint Undertaking's account, inclusive.

The interest shall not be treated as a receipt for the Project for the purposes of determining the final grant. Any such interest payment is not considered as part of the Joint Undertaking's financial contribution.

6. The suspension of the time-limit, of payment or of the Project by the Joint Undertaking may not be considered as late payment.
7. At the end of the Project, the Joint Undertaking may decide not to make the payment of its corresponding financial contribution subject to one month's written notice of non-receipt of a report, of a certificate on the financial statements or of any other Project deliverable.
8. The Joint Undertaking shall inform the beneficiaries of the amount of the final payment of the Joint Undertaking's financial contribution and shall justify this amount. The beneficiary shall have two months from the date of receipt to give reasons for any disagreement. After the end of this period such requests will no longer be considered and the beneficiary is deemed to have accepted the Joint Undertaking's decision. The Joint Undertaking undertakes to reply in writing within two months following the date of receipt, giving reasons for its reply. This procedure is without prejudice to the beneficiary's right to appeal against the Joint Undertaking's decision.

### **III.5. Payment modalities**

1. The Joint Undertaking shall make the following payments:
  - a) a pre-financing in accordance with Article 6;
  - b) for Projects with more than one reporting period, the Joint Undertaking shall make interim payments of its financial contribution to each beneficiary corresponding to the amount accepted for each reporting period;
  - c) the Joint Undertaking shall make a final payment of its financial contribution to each beneficiary corresponding to the amount accepted for the last reporting period plus any adjustment needed.

Where the amount of the corresponding Joint Undertaking's financial contribution is less than any amount already paid to the beneficiary, the Joint Undertaking shall recover the difference.

Where the amount of the corresponding Joint Undertaking's financial contribution is more than any amount already paid to the beneficiary the Joint Undertaking shall pay the difference as the final payment within the limit of Articles 5.1 and II.12.

In accordance with the financial rules of the Joint Undertaking, the pre-financing or interim payments may be subject to verification of the financial capacity of the beneficiaries as well as to the adoption of any required protective measures, including the submission of guarantees.

2. The total amount of the pre-financing and interim payments shall not exceed 80% of the maximum Joint Undertaking's financial contribution defined in Article 5.
3. Payments by the Joint Undertaking shall be made in Euro.
4. Costs shall be reported in Euro. Beneficiaries with accounts in currencies other than the Euro shall report costs by using, either the conversion rate published by the European Central Bank that would have applied on the date that the actual costs were incurred, or its rate applicable on the first day of the month following the end of the reporting period. Beneficiaries with accounts in Euro shall convert costs incurred in other currencies according to their usual accounting practice.
5. The bank accounts mentioned in Article 5 shall allow that the Joint Undertaking's financial contribution and related interest are identified. Otherwise, the accounting methods of the beneficiaries or intermediaries must make it possible to identify the Joint Undertaking's financial contribution and the interest or other benefits yielded.
6. Any payment may be subject to an audit or review and may be adjusted or recovered based on the results of such audit or review.
7. Payments by the Joint Undertaking shall be deemed to be effected on the date when they are debited to the Joint Undertaking's account.

## **SECTION 3 – IMPLEMENTATION**

### **III.6. Subcontracting**

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

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

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

2. Where it is necessary for the beneficiaries to subcontract certain elements of the work to be carried out, the following conditions must be fulfilled:
  - subcontracts may only cover the execution of a limited part of the Project;
  - recourse to the award of subcontracts must be duly justified in Annex I having regard to the nature of the Project and what is necessary for its implementation;
  - recourse to the award of subcontracts by a beneficiary may not affect its rights and obligations regarding Background and Foreground;
  - Annex I must indicate the tasks to be subcontracted and an estimation of the costs.

Any subcontract, the costs of which are to be claimed as an eligible cost, must be awarded according to the principles of best value for money (best price-quality ratio), transparency and equal treatment. Subcontracts concluded on the basis of framework contracts entered into between 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.

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

## **PART B - FINANCIAL PROVISIONS**

### **III.7. Eligible costs**

1. Costs incurred for the implementation of the Project shall meet the following conditions in order to be considered eligible:
  - a) they must be actual;
  - b) they must be incurred by the beneficiary;
  - c) they must be incurred during the duration of the Project, with the exception of costs incurred in relation to final reports and reports corresponding to the last period as well as certificates on the financial statements when requested at the last period and final reviews if applicable, which may be incurred during the period of up to 60 days after the end of the Project or the date of termination whichever is earlier;
  - d) they must be determined in accordance with the usual accounting and management principles and practices of the beneficiary. The accounting procedures used in the recording of costs and receipts shall respect the accounting rules of the State in which the beneficiary is established. The beneficiary's internal accounting and auditing procedures must permit direct reconciliation of the costs and receipts declared in respect of the Project with the corresponding financial statements and supporting documents;
  - e) they must be used for the sole purpose of achieving the objectives of the Project and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness;

- f) they must be recorded in the accounts of the beneficiary; in the case of any contribution from third parties, they must be recorded in the accounts of the third parties;
  - g) they must be indicated in the estimated overall budget in Annex I.
2. Costs incurred by third parties in relation to resources they make available free of charge to the beneficiary, can be declared by a beneficiary provided they meet the conditions established in paragraphs 1 and 3, *mutatis mutandis* and are claimed in conformity with Article III.9.
3. The following costs shall be considered as non-eligible and may not be charged to the Project:
- a) identifiable indirect taxes including value added tax;
  - b) duties;
  - c) interest owed;
  - d) provisions for possible future losses or charges;
  - e) exchange losses, cost related to return on capital;
  - f) costs declared or incurred, or reimbursed in respect of another Project funded by the Joint Undertaking or the European Union;
  - g) debt and debt service charges, excessive or reckless expenditure.

### **III.8. Identification of direct and indirect costs**

1. Direct costs are all those eligible costs which can be attributed directly to the Project and are identified by the beneficiary as such, in accordance with its accounting principles and its usual internal rules.

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

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

Costs related to parental leave for persons who are directly carrying out the Project are eligible costs, in proportion to the time dedicated to the Project, provided that they are mandatory under national law.

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



eligible direct costs attributed to the Project. They may not include any eligible direct costs.

By way of derogation from Article III.7, the indirect costs incurred in carrying out the Project are eligible for flat-rate funding of 20% of the total direct eligible costs, excluding the direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the beneficiary.

### **III.9. Receipts of the Project**

Receipts of the Project may arise from:

- a) Resources made available by third parties to the beneficiary by means of financial transfers or contributions in kind which are free of charge:
  - i. shall be considered a receipt of the Project if they have been contributed by the third party specifically to be used on the Project;
  - ii. shall not be considered a receipt of the Project if their use is at the discretion of the beneficiary's management.
- b) Income generated by the Project:
  - i. shall be considered a receipt for the beneficiary when generated by actions undertaken in carrying out the Project and from the sale of assets purchased under the grant agreement up to the value of the cost initially charged to the Project by the beneficiary;
  - ii. shall not be considered a receipt for the beneficiary when generated from the use of Foreground resulting from the Project.

### **III.10. The Joint Undertaking's financial contribution**

1. The Joint Undertaking's financial contribution shall be determined by applying the upper funding limit indicated in Article II.11, to the actual eligible costs and to the flat rates accepted by the Joint Undertaking.
2. The Joint Undertaking's financial contribution shall be calculated by reference to the cost of the Project participation for each beneficiary and its reimbursement shall be based on the accepted costs of each beneficiary's participation in the Project.
3. The Joint Undertaking's financial contribution cannot give rise to any profit for any beneficiary. For this purpose, at the time of the submission of the last financial statement, the final amount of the Joint Undertaking's financial contribution will take into account any receipts of the Project received by the beneficiary. The Joint Undertaking's financial contribution cannot exceed the eligible costs minus the receipts for the Project.
4. The total amount of payments by the Joint Undertaking shall not exceed in any circumstances the maximum amount of the Joint Undertaking's financial contribution referred to in Article 5.
5. Without prejudice to the right to terminate the grant agreement under Article II.20, and without prejudice to the right of the Joint Undertaking to apply the penalties

referred to in Article II.16, if the Project is not implemented or is implemented poorly, partially or late, the Joint Undertaking may, after having given the beneficiary the opportunity to present its observations, reduce the grant initially provided for in line with the actual implementation of the Project on the terms laid down in this grant agreement.

### **III.11. Interest yielded by pre-financing provided by the Joint Undertaking**

1. Pre-financing remains the property of the Joint Undertaking until the final payment.
2. The Joint Undertaking shall recover from each beneficiary, for each reporting period following the implementation of the agreement, the amount of interest generated when such pre-financing exceeds the amount fixed in the Joint Undertaking's financial rules.