

## **ANNEX II. GENERAL CONDITIONS APPLICABLE TO ALL BENEFICIARIES**

### **II.1. Definitions**

1. 'Associated country' means a third country which is party to an international agreement with the European Union, under the terms or on the basis of which it makes a financial contribution to all or part of the Seventh Framework Programme;
2. 'Third country' means a State that is not a Member State of the European Union;
3. 'National funding authority' means a national entity implementing the administrative arrangements in accordance with Article 12 of the Statutes;'
4. 'Irregularity' means any infringement of a provision of Union law or any breach of obligation resulting from an act or omission by a beneficiary which has, or would have, the effect of prejudicing the budget of the Joint Undertaking through unjustified expenditure.
5. The terms 'Project Agreement', 'Intellectual Property Rights', 'Foreground', 'Background', 'Access Rights', 'Use', 'Dissemination' shall have the same meaning as in Article 23 of the Joint Undertaking's Statutes annexed to Council Regulation (EC) No 74/2008.

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

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

#### **II. 2. Organisation of the consortium and role of coordinator**

1. All the beneficiaries together form the consortium. Beneficiaries are represented towards the Joint Undertaking by the coordinator, who shall be the intermediary for any communication between the Joint Undertaking and any beneficiary regarding non-financial/technical issues in connection to this grant agreement.
2. The Joint Undertaking's financial contribution to the beneficiaries' participation in the implementation of the Project shall be paid directly to each beneficiary.
3. The coordinator shall:
  - a) review the reports to verify their correspondence with the Project objectives and tasks before transmitting them to the Joint Undertaking and;
  - b) monitor the compliance by beneficiaries with their non financial/technical obligations under this grant agreement.

The coordinator may not subcontract the above-mentioned tasks.

4. Beneficiaries shall fulfil the following obligations as a consortium:
- a) provide all detailed data requested by the Joint Undertaking for the purposes of the proper administration of this Project;
  - b) carry out the Project jointly and severally vis-à-vis the Joint Undertaking, taking all necessary and reasonable measures to ensure that the Project is carried out in accordance with the terms and conditions of this grant agreement. The financial responsibility of each beneficiary shall be limited to its own debt;
  - c) make appropriate internal arrangements consistent with the provisions of this grant agreement to ensure the efficient implementation of the Project. These internal arrangements shall take the form of a written Project agreement (the 'Project agreement'). The Project agreement governs *inter alia* the following:
    - i. the internal organisation of the consortium including the decision making procedures;
    - ii. rules on dissemination and use, and access rights;
    - iii. the settlement of internal disputes, including cases of abuse of power;
    - iv. liability, indemnification and confidentiality arrangements between the beneficiaries.
  - d) engage, whenever appropriate, with actors beyond the research community and with the public in order to foster dialogue and debate on the research agenda, on research results and on related scientific issues with policy makers and civil society; create synergies with education at all levels and conduct activities promoting the socioeconomic impact of the research;
  - e) allow the Joint Undertaking to take part in Project meetings.

## **SECTION 2 – REPORTING AND PAYMENTS**

### **II.3. Reports and deliverables**

1. The consortium shall submit a periodic technical report through the coordinator to the Joint Undertaking for each reporting period within 60 days after the end of each respective period. The reporting shall comprise an overview, including a publishable summary, of the progress of work towards the objectives of the Project, including achievements and attainment of any milestones and deliverables identified in Annex I. This report should include the differences between work expected to be carried out in accordance with Annex I and that actually carried out.
2. The consortium shall submit a final technical report through the coordinator to the Joint Undertaking within 60 days after the end of the Project. The report shall comprise a final publishable summary report covering results, conclusions and socioeconomic impact of the Project, as well as the plan for the use and dissemination of Foreground

3. The consortium shall transmit the technical reports and other deliverables through the coordinator to the Joint Undertaking by electronic means.
4. The layout and content of the reports shall conform to the instructions and guidance notes established by the Joint Undertaking.
5. The reports submitted to the Joint Undertaking for publication should be of a suitable quality to enable direct publication and their submission to the Joint Undertaking in publishable form indicates that no confidential material is included therein.
6. Deliverables identified in Annex I shall be submitted as foreseen therein.
7. The Joint Undertaking may be assisted by external experts in the analysis and evaluation of the reports and deliverables.

#### **II.4. Approval of reports and deliverables**

1. At the end of each reporting period, the Joint Undertaking shall evaluate Project technical reports and deliverables required by the provisions of Annex I.
2. After reception of the technical reports the Joint Undertaking may:
  - a) approve the reports and deliverables, in whole or in part or make the approval subject to certain conditions;
  - b) reject the reports and deliverables by giving an appropriate justification and, if appropriate, start the procedure for termination of the grant agreement in whole or in part;
  - c) in the case of beneficiaries not having concluded a corresponding national grant agreement, suspend the time limit for payments in accordance with Article III.4.

The Joint Undertaking shall inform the beneficiary concerned in writing of any such suspension and the conditions to be met for the lifting of the suspension.

- d) suspend the payment to a beneficiary at any time:
  - if the work carried out does not comply with the provisions of the grant agreement;
  - if the beneficiary has to reimburse to its national state an amount unduly received as state aid;
  - if the provisions of the grant agreement have been infringed or if there is a suspicion or presumption thereof, in particular in the wake of any audits and checks provided for in Articles II.13 and II.14;
  - if there is a suspicion of irregularity committed by one or more beneficiary(ies) in the performance of the grant agreement;
  - if there is a suspected or established irregularity committed by the beneficiary in the performance of another grant agreement funded by the budget of the Joint

Undertaking or the general budget of the European Union or by budgets managed by them. In such cases, suspension of the payments will occur where the irregularity (or suspected irregularity) is of a serious and systematic nature which is likely to affect the performance of the current grant agreement;

- if the payment to the beneficiary by the respective national funding authority is suspended under the conditions of the corresponding national grant agreement when such an agreement has been concluded.

When the Joint Undertaking suspends the payment the beneficiaries shall be duly informed of the reasons why payment will not be made.

3. 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.

## SECTION 3 – IMPLEMENTATION

### II.5. Suspension of the Project

1. The coordinator shall immediately inform the Joint Undertaking of any event affecting or delaying the implementation of the Project.
2. The coordinator can propose to suspend the whole or part of the Project if *force majeure* or exceptional circumstances render its execution excessively difficult or uneconomic. The coordinator must inform the Joint Undertaking without delay of such circumstances, including full justification and information related to the event, as well as an estimation of the date when the work on the Project will begin again.
3. The Joint Undertaking may suspend the whole or part of the Project where it considers that the consortium is not fulfilling its obligations according to this grant agreement after having given the consortium through the coordinator the opportunity to present its observations. The coordinator shall be informed without delay of the justification for such an event and the conditions necessary to reinstate the work again. The coordinator shall inform the other beneficiaries. This suspension takes effect 10 days after the receipt of the notification by the coordinator.
4. During the period of suspension, no costs may be charged to the Project for carrying out any part of the Project that has been suspended.

When a beneficiary has concluded a corresponding national grant agreement, any costs that may be charged by this beneficiary to the Project for carrying out any part of the Project that has been suspended may not be reimbursed by the Joint Undertaking.

5. The suspension of the whole or part of the Project may be lifted once the parties to the grant agreement have agreed on the continuation of the Project and, as appropriate, any necessary modification, including extension of the duration of the Project, has been identified by means of a written amendment.

## II.6. Confidentiality

1. Beneficiaries undertake to preserve the confidentiality of any data, documents or other material that is identified as confidential in relation to the execution of the Project ('*confidential information*') under the conditions laid down in the Project Agreement. The Joint Undertaking undertakes to preserve the confidentiality of 'confidential information' until five years after the completion of the Project. Upon a duly substantiated request by a beneficiary, the Joint Undertaking may agree to extend this period regarding specific confidential information.

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

2. Paragraph 1 no longer applies where:
  - beneficiaries have concluded corresponding national grant agreements. In this case, the Joint Undertaking is not bound by the obligation referred to in paragraph 1 with regard to the respective national funding authorities;
  - the confidential information becomes publicly available by means other than a breach of confidentiality obligations;
  - the disclosing party subsequently informs the recipient that the confidential information is no longer confidential;
  - the confidential information is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality;
  - the disclosure or communication of the confidential information is foreseen by other provisions of this grant agreement or the Project agreement;
  - the disclosure or communication of confidential information is required by the national law of one of the beneficiaries and this exception to the confidentiality requirement is foreseen in the Project agreement<sup>1</sup>.
3. The beneficiaries undertake to use such confidential information only in relation to the execution of the Project unless otherwise agreed with the disclosing party.
4. Notwithstanding the preceding paragraphs, the treatment of data, documents or other material which are classified ('*classified information*') or subject to security restrictions or export- or transfer- control, must follow the applicable rules established by the relevant national and legislation of the Union for such information, including the Commission's internal rules for handling classified information<sup>2</sup>. Where a beneficiary is established in a third country, any security agreements between that third country and the Union shall also apply.

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<sup>1</sup> As certain national laws (for example regarding freedom of information) may provide that proprietary information made available under a confidentiality requirement must nevertheless be made public in case access is requested, the beneficiaries should inform each other of the existence of such national laws and make appropriate arrangements in the Project agreement.

<sup>2</sup> Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 OJ L 317, 3.12.2001, p. 1 (as last amended by Decision 2006/548/EC, Euratom, OJ L 215, 5.8.2006, p. 38).

## **II.7. Communication of data for evaluation, impact assessment and standardisation purposes**

1. Beneficiaries shall provide, at the request of the Joint Undertaking or of the Commission, the data necessary for:
  - the continuous and systematic review of its Annual Work Programme and/or the Seventh Framework Programme;
  - the evaluation and impact assessment of the Joint Undertaking's activities, including the use and dissemination of Foreground.

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

The data collected may be used by the Joint Undertaking or by the Commission in its own evaluations but will not be published other than on an anonymous basis.

2. Without prejudice to the provisions regarding protection of Foreground and confidentiality, the beneficiaries shall, where appropriate, during the Project and for two years following its end, inform the Joint Undertaking and the European standardisation bodies about Foreground which may contribute to the preparation of European or international standards.

## **II.8. Information to be provided to EU Member States or Associated Countries**

1. The Joint Undertaking shall, upon request, make available to any EU Member State or Associated country any useful information in its possession on Foreground, provided that the following cumulative conditions are met:
  - the information concerned is relevant to public policy;
  - the beneficiaries have not provided sound and sufficient reasons for withholding the information concerned;
  - the applicable Union law on classified information does not prohibit such action.
2. The provision of information pursuant to paragraph 1 shall not transfer to the recipient any rights or obligations and the recipient shall be required to treat any such information as confidential unless it becomes duly public, or it was communicated to the Joint Undertaking without restrictions on its confidentiality.

## **II.9. Information and communication**

1. The beneficiaries shall, throughout the duration of the Project, take appropriate measures to engage with the public and the media about the Project and to highlight the Joint Undertaking's financial support. Unless the Joint Undertaking requests otherwise, any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc), must specify that the Project has received Joint Undertaking's funding and display the

Joint Undertaking's logo and the European Emblem. This obligation to use the Joint Undertaking logo and the European emblem in respect of Projects to which the Joint Undertaking contributes implies no right of exclusive use. It is subject to general third-party use restrictions which do not permit the appropriation of the logo or the emblem, or of any similar trademark or logo, whether by registration or by any other means. Under these conditions, beneficiaries are exempted from the obligation to obtain prior permission from the Joint Undertaking and the Commission to use the Joint Undertaking logo and the European emblem.

Any publicity made by the beneficiaries in respect of the Project, in whatever form and on or by whatever medium, must specify that it reflects only the author's views and that the Joint Undertaking is not liable for any use that may be made of the information contained therein.

2. The Commission and the Joint Undertaking shall be authorised to publish, in whatever form and on or by whatever medium, the following information:

- the name of the beneficiaries;
- contact addresses of beneficiaries;
- the general purpose of the Project in the form of the summary provided by the consortium;
- the amount and rate of the Joint Undertaking's financial contribution granted to Project participants;
- the geographic location of the activities carried out;
- the list of dissemination activities and/or of patent (applications) relating to Foreground unless the latter are declared confidential;
- the details/references and the abstracts of scientific publications relating to Foreground and, where appropriate, the published version of the final manuscript accepted for publication;
- the publishable reports submitted to the Joint Undertaking;
- any picture or any audiovisual or web material provided to the Joint Undertaking in the framework of the Project.

The consortium shall ensure that all necessary authorisations for such publication have been obtained and that the publication of the information by the Joint Undertaking does not infringe any rights of third parties.

Upon a duly substantiated request by a beneficiary, the Joint Undertaking may agree to forego such publicity if disclosure of the information indicated above would risk compromising the beneficiary's security, academic or commercial interests.

## **II.10. Processing of personal data**

1. All personal data contained in the grant agreement shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on

the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Union and on the free movement of such data. Such data shall be processed by the Joint Undertaking solely in connection with the implementation and follow-up of the grant agreement and the evaluation and impact assessment of Union and Joint Undertaking's activities, including the use and dissemination of Foreground, without prejudice to the possibility of passing the data to the bodies in charge of a monitoring or inspection task in accordance with legislation of the Union and this grant agreement.

2. Beneficiaries may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. They should address any questions regarding the processing of their personal data to the Joint Undertaking. Beneficiaries may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.
3. For the purposes of this grant agreement, the Controller identified in Article 8.4 shall be the contact person for the Joint Undertaking.

## **PART B - FINANCIAL PROVISIONS**

### **SECTION 1 – GENERAL FINANCIAL PROVISIONS**

#### **II.11. Upper funding limits**

The Joint Undertaking's financial contribution may reach a maximum of [X] % of each beneficiary's total eligible costs for implementing the Project.

The Joint Undertaking's financial contribution cannot give rise to any profit for any beneficiary. For this purpose, the final amount of the Joint Undertaking's financial contribution will take into account any receipts of the Project received by the beneficiaries in accordance, in the case of beneficiaries not having concluded a corresponding national grant agreement, with the provisions of Article III.9 or, in the case of beneficiaries having concluded a corresponding national grant agreement, with the provisions of the latter and the relevant certification submitted to the Joint Undertaking by the respective national funding authorities.

The Joint Undertaking's financial contribution cannot exceed the eligible costs minus the receipts for the Project.

### **SECTION 2 – RECOVERY**

#### **II.12. Reimbursement and recovery**

1. If any amount is unduly paid to a beneficiary or if recovery is justified under the terms of the grant agreement, the beneficiary undertakes to repay the Joint Undertaking the sum in question following a written request by the Joint Undertaking.
2. Where, following a written request from the Joint Undertaking, a beneficiary in an on-going grant agreement does not reimburse to the Joint Undertaking any requested amount at the latest 30 days after receipt of the request, the Joint Undertaking may



recover the amount due from that beneficiary by any appropriate means, including invoking any guarantees. No prior consent of the beneficiary is required.

3. If the obligation to pay the amount due is not honoured by the date set by the Joint Undertaking, the sum due shall bear interest 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 of payment, as published in the C series of the Official Journal of the European Union. Interest on late payment shall cover the period between the date set for payment, exclusive and the date on which the Joint Undertaking receives full payment of the amount owed in full, inclusive. Any partial payment shall first be entered against charges and interest on late payment and then against the principal.
4. Each beneficiary hereby accepts that any pending payment excluding pre-financing due by the Joint Undertaking to the said beneficiary, irrespective of its origin, is assigned to the payment of that beneficiary's debt towards the Joint Undertaking.
5. Bank charges occasioned by the recovery of the sums owed to the Joint Undertaking shall be borne solely by the beneficiary.

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

### **II.13. Financial audits and controls**

1. The Joint Undertaking may, at any time during the implementation of the Project and up to five years after the end of the Project, arrange for financial audits to be carried out, by external auditors, by the Joint Undertaking itself or under the responsibility of the respective national funding authorities/States having concluded an administrative arrangement with the Joint Undertaking, on its behalf. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the Joint Undertaking. Such audits may cover financial, systemic and other aspects (such as accounting and management principles) relating to the proper execution of the grant agreement. They shall be carried out on a confidential basis.
2. The beneficiaries shall make available directly to the Joint Undertaking or the respective national funding authorities all detailed information and data that may be requested with a view to verifying that the grant agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it. This information and data must be precise, complete and effective.
3. The beneficiaries shall keep the originals or, in exceptional cases, duly authenticated copies – including electronic copies – of all documents relating to the grant agreement for up to five years from the end of the Project. These shall be made available to the Joint Undertaking or the respective national funding authorities where requested during any audit under the grant agreement.
4. In order to carry out these audits, the beneficiaries shall ensure that the Joint Undertaking, the respective national funding authorities and any external body(ies) authorised by it have on-the-spot access at all reasonable times, notably to the beneficiary's offices, to its computer data, to its accounting data and to all the

information needed to carry out those audits, including information on individual salaries of persons involved in the Project. They shall ensure that the information is readily available on the spot at the moment of the audit and, if so requested, that data be handed over in an appropriate form.

5. On the basis of the findings made during the financial audit, a provisional report shall be drawn up. It shall be sent to the beneficiary concerned, which may make observations thereon within one month of receiving it. The Joint Undertaking may decide not to take into account observations conveyed or documents sent after that deadline. The final report shall be sent to the beneficiary concerned within two months of expiry of the aforesaid deadline.
6. On the basis of the conclusions of the audit, the Joint Undertaking shall take all appropriate measures which it considers necessary, including the issuing of recovery orders regarding all or part of the payments made by it and the application of any applicable sanction.
7. The Commission services including OLAF and the European Court of Auditors shall have the same rights as the Joint Undertaking, notably right of access, for the purpose of on-the-spot checks, without prejudice to their own rules.
8. 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 Union's financial interests against fraud and other irregularities<sup>3</sup> and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>4</sup>.

#### **II.14. Technical audits and reviews**

1. The Joint Undertaking may initiate a technical audit or review at any time during the implementation of the Project and up to five years after the end of the Project. The aim of a technical audit or review shall be to assess the work carried out under the Project over a certain period, *inter alia*, by evaluating the Project reports and deliverables relevant to the period in question. Such audits and reviews may cover scientific, technological and other aspects, including compliance with fundamental ethical principles, relating to the proper execution of the Project and the grant agreement.
2. With respect to the Description of the Project (Annex I), the audit or review shall objectively assess the following:
  - the degree of fulfilment of the Project work plan for the relevant period and of the related deliverables;
  - the continued relevance of the objectives and breakthrough potential with respect to the scientific and industrial state of the art;

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<sup>3</sup> OJ L 292, 15.11.1996, p.2

<sup>4</sup> OJ L 136, 31.5.1999

- the resources planned and utilised in relation to the achieved progress, in a manner consistent with the principles of economy, efficiency and effectiveness;
  - the management procedures and methods of the Project;
  - the beneficiary's contribution and integration within the Project;
  - the expected potential impact in economic, competition and social terms, and the beneficiaries' plan for the use and dissemination of Foreground.
3. Audits and reviews shall be deemed to be initiated on the date of receipt by the beneficiary(ies) of the relevant letter sent by the Joint Undertaking.
  4. Any such audit or review shall be carried out on a confidential basis.
  5. The Joint Undertaking may be assisted in technical audits and reviews by external scientific or technological experts. Prior to the carrying out of the evaluation task, the Joint Undertaking shall communicate to the beneficiaries the identity of the appointed experts. The beneficiary(ies) shall have the right to refuse the participation of a particular external scientific or technological expert on grounds of commercial confidentiality.
  6. Audits and reviews may be carried out remotely at the expert's home or place of work or involve sessions with Project representatives either at the Joint Undertaking's premises or at the premises of beneficiaries. The Joint Undertaking or the external scientific or technological expert may have access to the locations and premises where the work is being carried out, and to any document concerning the work.
  7. The beneficiaries shall make available directly to the Joint Undertaking all detailed information and data that may be requested by it or the external scientific or technological expert with a view to verifying that the Project is being/has been properly implemented and performed in accordance with the provisions of this grant agreement.
  8. A report on the outcome of the audits and reviews shall be drawn up. It shall be sent by the Joint Undertaking to the beneficiary concerned, who may make observations thereon within one month of receiving it. The Joint Undertaking may decide not to take into account the observations conveyed after that deadline.
  9. On the basis of the experts' formal recommendations the Joint Undertaking will inform the coordinator of its decision:
    - to accept or reject the deliverables;
    - to allow the Project to continue without modification of Annex I or with minor modifications;
    - to consider that the Project can only continue with major modifications;
    - to initiate the termination of the grant agreement according to Article II. 20;

- to issue a recovery order regarding all or part of the payments made by the Joint Undertaking and to apply any applicable sanction or initiate judiciary procedures.

## II.15. Liquidated damages

1. The Joint Undertaking, without prejudice to any other measures provided for in this grant agreement, is entitled to claim damages (hereinafter 'liquidated damages') from a beneficiary that is found to have overstated any amount and which has therefore received an unjustified financial contribution from the Joint Undertaking. Liquidated damages are due in addition to the recovery of the unjustified Joint Undertaking's financial contribution from the beneficiary.
2. Any amount of liquidated damages shall be proportionate to the overstated amount and the unjustified part of the Joint Undertaking's financial contribution. The following formula shall be used to calculate liquidated damages:

**Liquidated damages = unjustified Joint Undertaking's financial contribution x (overstated amount/total Joint Undertaking's financial contribution claimed)**

The calculation of any liquidated damages shall only take into consideration the reporting period(s) relating to the beneficiary's claim for the Joint Undertaking's financial contribution for that period. It shall not be calculated in relation to the entire Joint Undertaking's financial contribution.

When a beneficiary has concluded a corresponding national grant agreement, the calculation of any liquidated damages shall only take into consideration the period(s) relating to the beneficiary's claim to the respective national funding authority. It shall not be calculated in relation to the entire Joint Undertaking's financial contribution.

3. The Joint Undertaking shall inform the beneficiary which it considers liable to pay liquidated damages in writing of its claim by way of a registered letter with acknowledgement of receipt. The beneficiary shall have a period of 30 days to answer the Joint Undertaking's claim.
4. The procedure for repayment of unjustified Joint Undertaking's financial contribution and for payment of liquidated damages will be determined in accordance with the provisions of Article II.12. Liquidated damages will be deducted from any further payment or will be subject to recovery by the Joint Undertaking.
5. The Joint Undertaking shall be entitled to liquidated damages in respect of any overstated amount which comes to light after the end of the Project, in accordance with the provisions of paragraphs 1 to 4.

## **II.16. Financial penalties**

1. A beneficiary that has made false declarations or has been found to have seriously failed to meet its obligations under this grant agreement shall be liable to financial penalties of between 2% and 10% of the value of the Joint Undertaking's financial contribution received by that beneficiary. The rate may be increased to between 4% and 20% in the event of a repeated offence within five years following the first infringement.
2. The provisions in this Article shall be without prejudice to any additional sanction that may be imposed on any defaulting beneficiary in accordance with the financial rules of the Joint Undertaking or to any other civil remedy to which the Joint Undertaking or any other beneficiary may be entitled. Furthermore, these provisions shall not preclude any criminal proceedings which may be initiated by the Member States' authorities.
3. The Joint Undertaking shall give the beneficiary concerned the opportunity to present its observations before imposing any financial penalty.

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

### **II.17. Intellectual Property Rights**

Intellectual property arrangements among beneficiaries shall be laid down in the Project agreement in compliance with Article 23 of the Joint Undertaking's Statutes as annexed to Council Regulation (EC) No 74/2008<sup>5</sup> establishing the ARTEMIS Joint Undertaking.

## **FINAL PROVISIONS**

### **II.18. Requests for amendments at the initiative of the parties and termination at the initiative of the consortium**

1. Amendments to this grant agreement may be requested by any of the parties. Requests for amendments and termination shall be signed by the legal representative of the parties and submitted in accordance with Article 8. Any request or acceptance by the consortium or a beneficiary(ies) shall be submitted by the coordinator. The coordinator, unless otherwise explicitly stated, is deemed to act on behalf of all beneficiaries when signing a request, an acceptance or rejection letter concerning an amendment as well as when requesting a termination. The coordinator shall ensure that adequate proof of the consortium's agreement to such an amendment or termination exists and is made available in the event of an audit or upon request of the Joint Undertaking.
2. In the case of change of coordinator without its agreement, the request shall be submitted by all other beneficiaries or by one of them representing the others.

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<sup>5</sup> 'OJ L 30, 04.02.2008, p. 52, as corrected by OJ L 219, 14.08.2008, p. 73 and by OJ L 259, 27.09.2008, p. 19

3. A request for amendment including more than one modification to the agreement shall be considered a package that cannot be separated into several requests and shall be approved or rejected by the other party as a whole, except where the request explicitly states that it contains separate requests that can be approved independently.
4. Requests for the addition of a new beneficiary shall include a completed Form B (Annex VIII) duly signed by such new entity. Any addition is subject to the conditions required by the Call for Proposals<sup>6</sup>. Such additional entity shall assume the rights and obligations of beneficiaries as established by the grant agreement with effect from the date of its accession specified in the signed Form B.
5. The amendments may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of the beneficiaries.
6. Requests for termination of the participation of one or more beneficiaries shall include:
  - the consortium's proposal for reallocation of the tasks and budget of that beneficiary;
  - the reasons for requesting the termination;
  - the proposed date on which the termination shall take effect;
  - a letter containing the opinion of the beneficiary whose participation is requested to be terminated and;
  - the reports and deliverables referred to in Article II.3 and, where appropriate, in Article III.3, relating to the work carried out by this beneficiary up to the date on which the termination takes effect, together with a comment of the coordinator on behalf of the consortium on these reports and deliverables.

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

The letter containing the opinion of the beneficiary concerned can be substituted by proof that this beneficiary has been requested in writing to express its opinion on the proposed termination of its participation and to send the reports and deliverables but failed to do so within the time-limit established by that notification. This time-limit shall not be inferior to one month. In this case, if no reports have been submitted with the request for termination, the Joint Undertaking shall not take into account any further cost claims of that beneficiary and/or shall not make any further reimbursement for it, as appropriate.

Unless otherwise agreed with the Joint Undertaking, all the tasks of the beneficiary whose participation is terminated must be reallocated within the consortium.

Requests for termination of the grant agreements shall provide the justification for termination and the reports and deliverables referred to in Article II.3 and, where

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<sup>6</sup> See 'Eligibility criteria' document ([https://www.artemis-ju.eu/call\\_2009](https://www.artemis-ju.eu/call_2009))

appropriate, in Article III.3, relating to the work carried out up to the date on which the termination takes effect.

### **II.19. Approval of amendments and termination requested by the consortium**

1. The parties to this grant agreement undertake to approve or reject any valid request for an amendment or termination within 45 days of its receipt. The absence of a response within 45 days of receipt of such a request shall be considered as a rejection.
2. The Joint Undertaking's approval of the requested amendment or termination shall be notified to the coordinator, which receives it on behalf of the consortium. In case of termination of the participation of one or more beneficiaries, the Joint Undertaking shall send a copy to the beneficiary concerned.
3. Amendments and terminations shall take effect on the date agreed by the parties; where there is no date specified they shall take effect on the date of the Joint Undertaking's approval.

### **II.20. Termination of the grant agreement or of the participation of one or more beneficiaries at the Joint Undertaking's initiative**

1. The Joint Undertaking may terminate the grant agreement or the participation of a beneficiary in the following cases:
  - a) where one or more of the legal entities identified in Article 1 does not accede to this grant agreement;
  - b) in case of non-performance or poor performance of the work or breach of any substantial obligation imposed by this grant agreement that is not remedied following a written request to the beneficiary or the consortium to present its observations and to rectify the situation within a period of 30 days;
  - c) where the beneficiary has deliberately or through negligence committed an irregularity in the performance of any grant agreement with the Joint Undertaking;
  - d) where the beneficiary has contravened fundamental ethical principles;
  - e) where the required reports or deliverables are not submitted or the Joint Undertaking does not approve the reports or deliverables submitted;
  - f) for major technical or economic reasons substantially adversely affecting the completion of the Project;
  - g) if the potential use of the Foreground diminishes to a considerable extent;
  - h) where a legal, financial, organisational or technical change or change of control of a beneficiary calls into question the decision of the Joint Undertaking to accept its participation;
  - i) where any such change identified in h) above or termination of the participation of the beneficiary(ies) concerned substantially affects the

- implementation of the Project, or the interests of the Joint Undertaking, or calls into question the decision to grant the Joint Undertaking's contribution;
- j) in case of *force majeure* notified in conformity with Article II.22, where any reactivation of the Project after suspension is impossible;
  - k) where the conditions for participation in the Project established in the Call for Proposals<sup>7</sup> to which the Project was submitted are no longer satisfied, unless the Joint Undertaking considers that the continuation of the Project is essential to the implementation of its Annual Work Programme ;
  - l) where a beneficiary 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;
  - m) where further to the termination of the participation of one or more beneficiaries, the consortium does not propose to the Joint Undertaking an amendment to the grant agreement with the necessary modifications for the continuation of the Project including the reallocation of tasks of the beneficiary whose participation is terminated within the time-limit determined by the Joint Undertaking, or where the Joint Undertaking does not accept the proposed modifications;
  - n) where a beneficiary is declared bankrupt or is being wound up;
  - o) subject to the responsible authorising officer's assessment, following termination of the corresponding national grant agreement between a beneficiary and the respective national funding authority, when such an agreement has been concluded.
2. Termination of the participation of one or more beneficiaries at the Joint Undertaking's initiative shall be notified to the beneficiary(ies) concerned, with a copy to the coordinator and shall take effect on the date indicated in the notification and at the latest 30 days after its receipt by the beneficiary.

The Joint Undertaking shall inform the consortium of the effective date of termination.

In the case of termination of the grant agreement, the coordinator shall be notified, who shall in turn notify all the other beneficiaries and the termination shall become effective 45 days after receipt by the coordinator.

3. Within 45 days after the effective date of termination, the beneficiary(ies) whose participation is terminated shall submit all required reports and deliverables referred to in Article II.3 and, where appropriate, in Article III.3, relating to the work carried out up to that date. In the absence of receipt of such documents within the above time-limits, the Joint Undertaking may, after providing 30 days notice in writing of the non-receipt of such documents, determine not to take into account any further cost claims and/or not to make any further reimbursement and, where appropriate, require the reimbursement of any pre-financing due by the beneficiary(ies).

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



4. Based on the above mentioned documents the Joint Undertaking shall establish the debt owed by the beneficiary whose participation is terminated.
5. Where the participation of one or more beneficiaries is terminated, the beneficiary(ies) whose participation is terminated shall reimburse the amount due to the Joint Undertaking as requested by the Joint Undertaking within 30 days.
6. Where the grant agreement is terminated, the Joint Undertaking shall establish the debt owed by each beneficiary and notify it directly to them.

#### **II.21. Financial contribution after termination and other termination consequences**

1. In the event of termination any financial contribution from the Joint Undertaking is limited to those eligible costs incurred and accepted, either by the Joint Undertaking or by the respective national funding authority, as appropriate, up to the effective date of such termination and of any legitimate commitments taken prior to that date, which cannot be cancelled.
2. By derogation to the above paragraph:
  - in the case of Article II.20.1.a), no costs incurred by beneficiaries under the Project can be approved or accepted as eligible for reimbursement or reimbursed by the Joint Undertaking. Any pre-financing provided and any interest generated by the pre-financing must be returned in full to the Joint Undertaking.
  - in the case of Article II.20.1.b), any financial contribution from the Joint Undertaking is limited to those eligible costs incurred up to the date of receipt of the written request to rectify the breach.
3. In addition, in the cases of Article II.20.1.b), c), d), e), l), m) and o), the Joint Undertaking may require reimbursement of all or part of the Joint Undertaking's financial contribution. In the case of Article II.20.1.b), m) and o), the Joint Undertaking shall take into account the nature and results of the work carried out and its usefulness to the Joint Undertaking.
4. Reports and deliverables submitted in the framework of a termination are deemed to be submitted at the end of the corresponding reporting period.
5. Where the Joint Undertaking makes a payment after the termination of the participation of a beneficiary or after termination of the grant agreement, this payment shall be considered as a final payment in relation to such beneficiary(ies).

Notwithstanding the termination of the grant agreement or the participation of one or more beneficiaries, the provisions identified in Articles II.6, II.7, II.8, II.9, II.12, II.13, II.14, II.15, II.16, II.17, II.18, II.20, II.23, II.24 continue to apply after the termination of the grant agreement or the termination of the participation of such beneficiary(ies).

## II.22. Force majeure

1. *Force majeure* shall mean any unforeseeable and exceptional event affecting the fulfilment of any obligation under this grant agreement by the parties, which is beyond their control and cannot be overcome despite their reasonable endeavours. Any default of a product or service or delays in making them available for the purpose of performing this grant agreement and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute *force majeure*.
2. If any of the beneficiaries is subject to *force majeure* liable to affect the fulfilment of its obligations under this grant agreement, the coordinator shall notify the Joint Undertaking without delay, stating the nature, likely duration and foreseeable effects.
3. If the Joint Undertaking is subject to *force majeure* liable to affect the fulfilment of its obligations under this grant agreement, it shall notify the coordinator without delay, stating the nature, likely duration and foreseeable effects.
4. No party shall be considered to be in breach of its obligation to execute the Project if it has been prevented from complying by *force majeure*. Where beneficiaries cannot fulfil their obligations to execute the Project due to *force majeure*, remuneration for eligible costs incurred which are accepted either by the Joint Undertaking or by the national funding authority, when a corresponding national grant agreement has been concluded, may be made only for tasks which have actually been executed up to the date of the event identified as *force majeure*. All necessary measures shall be taken to limit damage to the minimum.

## II.23. Assignment

The beneficiaries shall not assign any of the rights and obligations arising from the grant agreement, except those cases provided for in line with Article II.17, without the prior and written authorisation of the Joint Undertaking and the other beneficiaries.

## II.24. Liability

1. The Joint Undertaking cannot be held liable for any acts or omissions of the beneficiaries in relation to this grant agreement. It shall not be liable for any defaults of any products, processes or services created on the basis of Foreground, including, for instance, anomalies in the functioning or performance thereof.
2. Each beneficiary fully guarantees the Joint Undertaking, and agrees to indemnify it, in case of any action, complaint or proceeding brought by a third party against the Joint Undertaking as a result of damage caused, either by any of its acts or omissions in relation to this grant agreement, or by any products, processes or services created by it on the basis of Foreground resulting from the Project.

In the event of any action brought by a third party against a beneficiary in connection with the performance of this grant agreement, the Joint Undertaking may assist the latter upon written request. The costs incurred by the Joint Undertaking in this connection shall be borne by the beneficiary concerned.

3. Each beneficiary shall bear sole responsibility for its acts within the framework of this Project that infringe third parties rights.
4. The Joint Undertaking cannot be held liable for any consequences arising from the proper exercise of the rights of the Joint Undertaking under acts of the Union relating to the ARTEMIS Joint Undertaking, the Joint Undertaking's financial rules or this grant agreement.

## **II. 25. Limitation of entitlements**

Any entitlements of the Joint Undertaking against a beneficiary of a beneficiary against the Joint Undertaking shall be subject to a limitation period of five years. The provisions of the Implementing rules of the Financial Regulation applicable to the general budget of the European Union shall apply regarding the date for calculating the limitation period and the conditions for interrupting this period.