

FP7 Grant Agreement
Annex II - General Conditions
Marie Curie Actions
Multi-beneficiary

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II.1. Definitions

1. "*access rights*" means licences and user rights to foreground or background;
2. "*affiliated entity*" means any legal entity that is under the direct or indirect control of a beneficiary, or under the same direct or indirect control as the beneficiary, control taking any of the following forms:
 - (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;
 - (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.
3. "*associated country*" means a third country which is party to an international agreement with *the Union*, under the terms or on the basis of which it makes a financial contribution to all or part of the Seventh Framework Programme;
4. "*background*" means information which is held by beneficiaries prior to their accession to this agreement, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to this agreement, and which is needed for carrying out the project or for using foreground;
5. "*dissemination*" means the disclosure of foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of foreground in any medium;
6. "*fair and reasonable conditions*" means appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the foreground or background to which access is requested and/or the scope, duration or other characteristics of the use envisaged;
7. "*foreground*" means the results, including information, whether or not they can be protected, which are generated under the project. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection;
8. "*use*" means the direct or indirect utilisation of foreground in further research activities other than those covered by the project, or for developing, creating and marketing a product or process, or for creating and providing a service;
9. "*third country*" means a State that is not a Member State;
10. "*irregularity*" means any infringement of a provision of European Community and European Union law or any breach of obligation resulting from an act or omission by a beneficiary which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it through unjustified expenditure;

11. "*public body*" means any legal entity established as such by national law, and international organisations;
12. A legal entity is qualified as "*non-profit*" when considered as such by national or international law;
13. "*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;
14. "*SMEs*" mean 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

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

1. All the beneficiaries together form the consortium, whether or not they enter into a separate written consortium agreement. Beneficiaries are represented towards the *REA* and the *Commission* by the coordinator, who shall be the intermediary for any communication between the *REA* or the *Commission* and any beneficiary, with the exceptions foreseen in this grant agreement.
2. The financial contribution of *the Union* to the project shall be paid to the coordinator who receives it on behalf of the beneficiaries. The payment of the financial contribution of *the Union* to the coordinator discharges the *REA* from its obligation on payments.
3. The coordinator shall:
 - a) administer the financial contribution of *the Union* regarding its allocation between beneficiaries and activities, in accordance with this grant agreement and the decisions taken by the consortium. The coordinator shall ensure that all the appropriate payments are made to the other beneficiaries without unjustified delay;
 - b) keep the records and financial accounts making it possible to determine at any time what portion of the financial contribution of *the Union* has been paid to each beneficiary for the purposes of the project;
 - c) inform the *REA* of the distribution of the financial contribution of *the Union* and the date of transfers to the beneficiaries, when required by this grant agreement or by the *REA* ;
 - d) review the reports to verify consistency with the project tasks before transmitting them to the *REA* ;
 - e) monitor the compliance by beneficiaries with their 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 *REA* or the *Commission* for the purposes of the proper administration of this project;
 - b) carry out the project jointly and severally vis-à-vis *the Union*, 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.
 - c) make appropriate internal arrangements consistent with the provisions of this grant agreement to ensure the efficient implementation of the project. When provided for in Article 1.4 these internal arrangements shall take the form of a written consortium agreement (the "consortium agreement"). The consortium 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 distribution of the financial contribution of *the Union*;
 - iv. the settlement of internal disputes, including cases of abuse of power;
 - v. 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 *REA* to take part in meetings concerning the project.

II.3. Specific performance obligations of each 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 II.7 or any special clause in Article 7. The beneficiary may use resources that are made available by third parties in order to carry out 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

- or on the methodology, shall have no rights vis-à-vis the *REA* or the *Commission* under this grant agreement;
- c) ensure that the rights of the *REA*, the *Commission* and the Court of Auditors to carry out audits are extended to the right to carry out any such audit or control on any third party whose costs are reimbursed in full or in part by the financial contribution of *the Union*, on the same terms and conditions as those indicated in this grant agreement;
 - d) ensure that the conditions applicable to it under Articles II.4.4, II.10, II.11, II.12, II.13, II.14 and II.22 are also applicable to any third party whose costs are claimed under the project according to the provisions of this grant agreement;
 - e) ensure that the tasks assigned to it are correctly and timely performed;
 - f) inform the other beneficiaries and the *REA* 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 Union*;
 - 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 Rules for Participation¹, the Financial Regulation² and its Implementing Rules³ 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 *REA*, the *Commission* including 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 *REA* of any unavoidable obligations which may arise

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

² Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 OJ L 248, 16.9.2002, p. 1.

³ *Commission* Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 OJ L357, 31.12.2002, p.1.

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;
- 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

II.4. Reports and deliverables

1. The consortium shall submit a periodic report to the *REA* for each reporting period within 60 days after the end of each respective period. The report shall comprise:
 - a) 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,
 - b) an explanation of the use of the resources, and
 - c) a financial statement , from each beneficiary together with a summary financial report consolidating the claimed contribution of *the Union* of all the beneficiaries in an aggregate form, based on the information provided in Form C (Annex VI) by each beneficiary.
2. The consortium shall submit a final report to the *REA* within 60 days after the end of the project. The report shall comprise:
 - a) a final publishable summary report covering results, conclusions and socio-economic impact of the project.
 - b) a report covering the wider societal implications of the project, including gender equality actions, ethical issues, efforts to involve other actors and spread awareness as well as the plan for the use and dissemination of foreground.

3. The coordinator shall submit a report on the distribution of the financial contribution of *the Union* between beneficiaries. This report must be submitted 30 days after receipt of the final payment.
4. A certificate on the financial statements shall be submitted for claims of interim payments and final payments when the amount of the financial contribution of *the Union* claimed by a beneficiary under the form of reimbursement of costs is equal to or superior to EUR 375.000, when cumulated with all previous payments for which a certificate on the financial statements has not been submitted. This certificate must be forwarded in the form of a detailed description verified as factual by its external auditor (Form D - Annex VII). However, for projects of a duration of 2 years or less, the certificate on the financial statements shall be submitted only for claims on final payments when the amount of the financial contribution of *the Union* claimed by a beneficiary, in the form of reimbursement of costs, is equal to or superior to EUR 375.000 when cumulated with all previous payments.

Certificates on the financial statements shall certify that the costs claimed and the receipts declared during the period for which they are provided, 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.

The *Commission* may, at its sole discretion, accept at the request of a beneficiary, that it submits a certificate on the methodology for the calculation of costs, which it used to prepare its claims with regard to both personnel and indirect costs, and the related control systems. This certificate must be forwarded in the form of a detailed description verified as factual by its external auditor (Form E - Annex VII). When this certificate is accepted by the *Commission*, the requirement to provide an intermediate certificate on the financial statements for claims of interim payments shall be waived.

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

- i) the auditor must be independent from the beneficiary;
- ii) the auditor must be qualified to carry out statutory audits of accounting documents in accordance with national legislation implementing the 8th Council Directive on statutory audits of annual account and consolidated

accounts⁴ or any European Union legislation 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 *Commission*.

Public bodies, secondary and higher education establishments and research organisations may opt for a competent public officer to provide their certificate on the financial statements and on the methodology, provided that the relevant national authorities have established the legal capacity of that competent public officer to audit that entity and that the independence of that officer, in particular regarding the preparation of the financial statements, can be ensured.

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

5. The consortium shall transmit the reports and other deliverables through the coordinator to the *REA* 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 and on the methodology must be signed by an authorised person of the auditing entity, and the originals shall be sent to the *REA*. In the case of the certificates on the methodology, the request for eligibility and the certificates have to be submitted directly to the *Commission* via the functional mailboxes as indicated in the Guidance Notes for Auditors and Beneficiaries on FP7 audit certification issues.
6. The layout and content of the reports shall conform to the instructions and guidance notes established by the *Commission*.
7. The reports submitted to the *REA* for publication should be of a suitable quality to enable direct publication and their submission to the *REA* in publishable form indicates that no confidential material is included therein.
8. Deliverables identified in Annex I shall be submitted as foreseen therein.
9. The *REA* may be assisted by external experts in the analysis and evaluation of the reports and deliverables.

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

1. At the end of each reporting period, the *REA* shall evaluate project reports and deliverables required by the provisions of Annex I and disburse 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 *REA*'s approval of reports and/or deliverables. The absence of a response from the *REA* within this time-limit shall not imply its

⁴ 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

approval. However, the *REA* should send a written reply to the consortium in accordance with paragraph 3. The *REA* 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. After reception of the reports the *REA* 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) suspend the time limit 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 *REA*, or where the *REA* decides to proceed with an interim payment in part in accordance with paragraph 4.

The *REA* shall inform the consortium in writing via the coordinator 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 *REA*.

- d) suspend the payment at any time, in whole or in part for the amount intended for the beneficiary(ies) concerned:
 - if the work carried out does not comply with the provisions of the grant agreement;
 - if a 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.21 and II.22;
 - 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 one or more beneficiary(ies) in the performance of another grant agreement funded by 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.

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

4. The *REA* 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 *REA* of this time-limit, the *REA* shall pay interest on the late payment, according to the conditions foreseen in the Financial Regulation and its Implementing Rules, 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 *Commission's* account, inclusive. The interest shall not be treated as a receipt for the project for the purposes of determining the final grant. Any such interest payment is not considered as part of the financial contribution of *the Union*.

6. The suspension of the time-limit, of payment or of the project by the *REA* may not be considered as late payment.
7. At the end of the project, the *REA* may decide not to make the payment of the corresponding financial contribution of *the Union* subject to one month's written notice of non-receipt of a report, of a certificate on the financial statements or of any other project deliverable.
8. The *REA* shall inform the coordinator of the amount of the final payment of the financial contribution of *the Union* and shall justify this amount. The coordinator 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 consortium is deemed to have accepted the *REA's* decision. The *REA* 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 *REA's* decision.

II.6. Payment modalities

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

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

Where the amount of the corresponding financial contribution of *the Union* is more than any amount already paid to the consortium, the *REA* shall pay the difference as the final payment within the limit of Articles 5.1 and II.19.

2. The total amount of the pre-financing and interim payments shall not exceed 90% of the maximum financial contribution of *the Union* defined in Article 5.
3. Payments by the *REA* 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 account mentioned in Article 5.3 shall allow that the financial contribution of *the Union* and related interest are identified. Otherwise, the accounting methods of the beneficiaries or intermediaries must make it possible to identify the financial contribution of *the Union* 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 *REA* shall be deemed to be effected on the date when they are debited to the *Commission's* account.

SECTION 3 – IMPLEMENTATION

II.7. Subcontracting

1. A subcontractor is a third party which has entered into an agreement on business conditions with 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 *REA* and to the *Commission* and the other beneficiaries under the grant agreement and retains sole responsibility for carrying out the project and for compliance with the provisions of the grant agreement.

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

2. Where it is necessary for the beneficiaries to subcontract certain elements of the work to be carried out, the following conditions must be fulfilled:

- 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 the rights and obligations of the beneficiaries regarding background and foreground;
- Annex I must indicate the tasks to be subcontracted and an estimation of the costs;

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.

II.8. Suspension of the project

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

II.9. Confidentiality

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

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

2. Paragraph 1 no longer applies where:
 - the confidential information becomes publicly available by means other than a breach of confidentiality obligations;
 - the disclosing party subsequently informs the recipient that the confidential information is no longer confidential;
 - the confidential information is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality;
 - the disclosure or communication of the confidential information is foreseen by other provisions of this grant agreement or the consortium 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 consortium agreement⁵;
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.

⁵ 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 *consortium agreement*.

4. Notwithstanding the preceding paragraphs, the treatment of data, documents or other material which are classified (“classified information”) or subject to security restrictions or export- or transfer- control, must follow the applicable rules established by the relevant national and European Community and European Union legislation for such information, including the *Commission's* internal rules for handling classified information⁶. Where a beneficiary is established in a third country, any security agreements between that third country and *the Union* shall also apply.

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

1. Beneficiaries shall provide, at the request of the *REA* and the *Commission*, the data necessary for:
 - the continuous and systematic review of the specific programme and the Seventh Framework Programme;
 - the evaluation and impact assessment of activities of *the Union*, including the use and dissemination of foreground.

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

The data collected may be used by the *REA* and the *Commission* in their own evaluations but will not be published other than on an anonymous basis.

2. Without prejudice to the provisions regarding protection of foreground and confidentiality, the beneficiaries shall, where appropriate, during the project and for two years following its end, inform the *REA* and the European standardization bodies about foreground which may contribute to the preparation of European or international standards.

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

1. The *REA* shall, upon request, make available to any Member State or Associated country any useful information in its possession on foreground, provided that the following cumulative conditions are met:
 - the information concerned is relevant to public policy;
 - the beneficiaries have not provided sound and sufficient reasons for withholding the information concerned;
 - the applicable European Community and European Union law on classified information does not prohibit such action.
2. As stipulated in the Rules for Participation, the provision of information pursuant to paragraph 1 shall not transfer to the recipient any rights or obligations and the recipient shall be required to treat any such information as confidential unless it

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

becomes duly public, or it was communicated to the *REA* without restrictions on its confidentiality.

II.12. 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 financial support of *the Union*. Unless the *REA* requests otherwise, any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc), must specify that the project has received research funding from *the Union* and display the European emblem. When displayed in association with a logo, the European emblem should be given appropriate prominence. This obligation to use the European emblem in respect of projects to which *the Union* contributes implies no right of exclusive use. It is subject to general third-party use restrictions which do not permit the appropriation of the emblem, or of any similar trademark or logo, whether by registration or by any other means. Under these conditions, beneficiaries are exempted from the obligation to obtain prior permission from the *REA* to use the emblem. Further detailed information on the EU emblem can be found on the Europa web page.

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 Union* is not liable for any use that may be made of the information contained therein.

2. The *REA* and the *Commission* 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 financial contribution of *the Union* foreseen for the project; after the final payment, the amount and rate of the financial contribution of *the Union* accepted by the *REA* ;
 - the estimated amount and rate of the financial contribution of *the Union* foreseen for each beneficiary in the table of the estimated breakdown of budget in Annex I; after the final payment, the amount and rate of the financial contribution of *the Union* accepted by the *REA* for each beneficiary;
 - the geographic location of the activities carried out;
 - the list of dissemination activities and/or of patent (applications) relating to foreground;

- the details/references and the abstracts of scientific publications relating to foreground and, where provided pursuant to Article II.29, the published version or the final manuscript accepted for publication;
- the publishable reports submitted to them;
- any picture or any audiovisual or web material provided to the *REA* 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 *REA* or the *Commission* does not infringe any rights of third parties.

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

II.13. Processing of personal data

1. All personal data contained in the grant agreement shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the institutions and bodies of *the Union* and on the free movement of such data. Such data shall be processed by the Controller solely in connection with the implementation and follow-up of the grant agreement and the evaluation and impact assessment of activities of *the Union*, including the use and dissemination of foreground, without prejudice to the possibility of passing the data to the bodies in charge of a monitoring or inspection task in accordance with European Community and European Union legislation and this grant agreement.
2. 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 Controller. 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 for the *REA*.

PART B FINANCIAL PROVISIONS

SECTION 1 – GENERAL FINANCIAL PROVISIONS

II.14. Eligible costs of the project

1. Costs incurred for the implementation of the project shall meet the following conditions in order to be considered eligible:
 - a) they must be actual;
 - b) they must be incurred by the beneficiary;

- c) they must be incurred during the duration of the project, with the exception of costs incurred in relation to final reports and reports corresponding to the last period as well as certificates on the financial statements when requested at the last period and final reviews if applicable, which may be incurred during the period of up to 60 days after the end of the project or the date of termination whichever is earlier;
 - d) they must be determined in accordance with the usual accounting and management principles and practices of the beneficiary. The accounting procedures used in the recording of costs and receipts shall respect the accounting rules of the State in which the beneficiary is established. The beneficiary's internal accounting and auditing procedures must permit direct reconciliation of the costs and receipts declared in respect of the project with the corresponding financial statements and supporting documents;
 - e) they must be used for the sole purpose of achieving the objectives of the project and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness;
 - f) they must be recorded in the accounts of the beneficiary; in the case of any contribution from third parties, they must be recorded in the accounts of the third parties;
 - g) they must be indicated in the estimated overall budget in Annex I.
2. Costs incurred by third parties in relation to resources they make available free of charge to a beneficiary, can be declared by the beneficiary provided they meet the conditions established in paragraphs 1 and 3, *mutatis mutandis* and are claimed in conformity with Article II.16.
3. Costs entailed by a sub-contract awarded by the beneficiary for the purposes of carrying out the project are eligible provided that the conditions laid down in Article II.7 are met.
4. 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 of *the Union* or of Euratom,
 - g) debt and debt service charges, excessive or reckless expenditure.

II.15. Identification of direct and indirect costs

1. Direct costs are all those eligible costs which can be attributed directly to the project and are identified by the beneficiary as such, in accordance with its accounting principles and its usual internal rules.
2. Direct eligible costs may take the form either of actual eligible costs, and/or flat-rates and/or lump sums. The conditions for reimbursement of direct eligible costs are defined in Annex III.
3. Direct personnel costs concerning the appointed researcher are eligible for the work carried out in the frame of the project.
4. As a general rule, the appointed researcher must devote him/herself full-time and continuously to the project in order to claim the contribution to the benefit of the researchers as specified in Annex III. However, in specific and duly justified cases, as established in Annex III, the researcher may devote him/herself part-time for reasons connected to personal or family circumstances and his/her activities under the project may be carried out in several phases. In the latter specific and duly justified cases, the amount of the contribution may be adjusted pro rata to the time actually spent on the project.
5. Personnel costs other than those concerning the researcher appointed under the project are eligible where expressly foreseen in Annex III. In this case 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.

Direct costs for management of the consortium activities include:

- maintenance of the consortium agreement, if it is obligatory,
- the overall legal, ethical, financial and administrative management including, for each of the beneficiaries,
- obtaining the certificates on the financial statements and on the methodology and costs relating to financial audits and technical reviews,
- implementation of competitive calls by the consortium for the participation of new beneficiaries, where required by Annex I of this grant agreement,
- any other management activities foreseen by the annexes, except coordination of research and technological development activities.

SME owners who do not receive a salary and other natural persons who do not receive a salary shall charge as personnel costs a flat rate based on the ones used in the People Specific Programme for researchers with full social security coverage, adopted by Council Decision No 2006/973/EC⁷, and specified in the annual Work Programme of the year of the publication of the call to which the proposal has been submitted⁸.

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

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

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

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

6. 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.

Indirect costs shall represent a fair apportionment of the overall overheads of the organisation. A flat rate calculated on the basis of the direct eligible costs excluding the direct eligible costs for subcontracting and the cost of resources made available by third parties which are not used on the premises of the beneficiary may be charged to the project according to Annex III.

II.16. 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.

⁷ OJ L 400, 30.12.2006, p.272.

⁸ For calls published in 2006 the flat rates to be applied are those of the People Work programme 2007.

- 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.

II.17. The financial contribution of *the Union*

1. The financial contribution of *the Union* to the project shall be determined per activity and per beneficiary on the basis of the actual eligible costs and/or to the flat rates and/or lump sums accepted by the *REA*.
2. The conditions for the application of the flat-rates and/or lump sums are indicated in Annex III. The maximum amount of the flat-rates and/or lump sums is determined according to the reference rates established in the Work Programme and the total estimated amount of the financial contribution of *the Union* is indicated in Annex I.
3. The financial contribution of *the Union* shall be calculated by reference to the cost of the project as a whole and its reimbursement shall be based on the accepted costs of each beneficiary.
4. The financial contribution of *the Union* 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 financial contribution of *the Union* will take into account any receipts of the project received by each beneficiary. For each beneficiary, the financial contribution of *the Union* cannot exceed the eligible costs minus the receipts for the project.
5. The total amount of payments by *the Union* shall not exceed in any circumstances the maximum amount of the financial contribution of *the Union* referred to in Article 5.
6. Without prejudice to the right to terminate the grant agreement under Article II.37, and without prejudice to the right of the *REA* and of the *Commission* to apply the penalties referred to in Articles II.23 and II.24, if the project is not implemented or is implemented poorly, partially or late, the *REA* may reduce the grant initially provided for in line with the actual implementation of the project on the terms laid down in this grant agreement.
7. Financing in the form of flat rates and/or lump sums is limited to the amounts established in Annex I. If the conditions or grounds for granting these contributions are not fulfilled or are only partially fulfilled on completion of the project, the *REA* shall withdraw or reduce the contribution in line with the actual extent of fulfilment of the conditions or requirements.

II.18. Interest yielded by pre-financing provided by the REA

1. Pre-financing remains the property of *the Union* until the final payment.
2. The *REA* or the *Commission* shall recover from the coordinator, 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 Financial Regulation and its Implementing Rules.

SECTION 2 – GUARANTEE FUND AND RECOVERIES**II.19. Guarantee Fund**

1. The financial responsibility of each beneficiary shall be limited to its own debt, subject to the following paragraphs.
2. In accordance with Article 6, beneficiaries shall contribute, to the Guarantee Fund (hereinafter the Fund) established in order to manage the risk associated with non-recovery of sums due to *the Union* by beneficiaries of grant agreements under FP7. That contribution to be transferred by the *REA* on their behalf may not be offset against any pending debt they may have towards *the Union*.
3. The Fund is the property of the beneficiaries of on-going grant agreements under FP7. *The Union* represented by the *Commission* shall manage it, as executive agent, on their behalf. The Fund shall be deposited in a bank (hereinafter the Bank) chosen by *the Union* represented by the *Commission*, in its quality of executive agent.
4. Interest generated by the Fund shall be added to it and shall be used by the *Commission* for transfers from or recoveries from the Fund referred to in paragraph 1 and 2 of Article II.20 (hereinafter the Operations).

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

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

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

The amount to be returned shall be equal to:

“contribution to the Fund under this grant agreement” x “Fund index”

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

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

where:

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

I = cumulated interests generated by the Fund since the start of the period

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

Where following this calculation the amount to be returned to the beneficiaries, is lower than the amount contributed to the Fund under this grant agreement, that deduction shall not exceed 1% of the financial contribution of *the Union* and shall not apply to amounts due to public bodies or legal entities whose participation in the grant agreement is guaranteed by a Member State or an Associated country, and higher and secondary education establishments.

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

II.20. Reimbursement and recoveries

1. Where following a written request from the *REA* a beneficiary in an on-going grant agreement under the FP7 does not reimburse to the coordinator any requested amount at the latest 30 days after receipt of the request, and where the remaining beneficiaries agree to implement the said grant agreement identically regarding its objectives, the *REA* shall order the Bank to directly transfer from the Fund an equivalent amount to the coordinator. Amounts transferred from the Fund shall substitute the financial contribution of *the Union* not reimbursed by the beneficiary.

Where an amount due to *the Union* by a beneficiary is to be recovered after termination or completion of any grant agreement under the FP7, the *REA* or the *Commission* shall request by means of a recovery order issued against the beneficiary concerned the reimbursement of the amount due. If payment has not been made by the due date, sums owed to *the Union* may be recovered by offsetting them against any sums it owes to the beneficiary concerned, after informing the latter accordingly. In exceptional circumstances, justified by the necessity to safeguard the financial interests of *the Union*, the *Commission* may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required. Where offsetting is not possible, the *REA* shall recover effectively from the Fund the amounts due.

2. Where an amount due by a beneficiary has been transferred or recovered from the Fund according to paragraphs 1 and 2, the said beneficiary shall reimburse that amount to the Fund. For this purpose, the *REA* or the *Commission* shall issue against that beneficiary a recovery order to the benefit of the Fund.
3. Each beneficiary hereby accepts that:

- any pending payment excluding pre-financing due by *the Union* or Euratom to the said beneficiary, irrespective of its origin, is assigned to the payment of that beneficiary's debt towards the Fund.
 - the *Commission* may adopt a recovery decision in accordance with paragraph 5.
4. Beneficiaries understand that under Article 299 of the Treaty on the Functioning of the European Union and as provided by the Financial Regulation, the *Commission* may adopt an enforceable decision formally establishing an amount as receivable from persons other than States.
 5. If the obligation to pay the amount due is not honoured by the date set by the *REA* or the *Commission*, the sum due shall bear interest at the rate indicated in Article II.5. Interest on late payment shall cover the period between the date set for payment, exclusive and the date on which the *REA* or the *Commission* receives full payment of the amount owed is reimbursed in full, inclusive. Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

SECTION 3 – CONTROLS AND SANCTIONS

II.21. Financial audits and controls

1. The *REA* or the *Commission* may, at any time during the implementation of the project and up to five years after the end of the project, arrange for financial audits to be carried out, by external auditors, or by the *REA* or the *Commission* services themselves including OLAF. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the *REA* or the *Commission*. Such audits may cover financial, systemic and other aspects (such as accounting and management principles) relating to the proper execution of the grant agreement. They shall be carried out on a confidential basis.
2. The beneficiaries shall make available directly to the *REA*/or the *Commission* all detailed information and data that may be requested by the *REA* or the *Commission* or any representative authorised by any of them, with a view to verifying that the grant agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it. This information and data must be precise, complete and effective.
3. The 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 *REA* or to the *Commission* where requested during any audit under the grant agreement.
4. In order to carry out these audits, the beneficiaries shall ensure that the *REA*, the *Commission*'s services and any external body(ies) authorised by any of them have on the spot access at all reasonable times, notably to the beneficiary's offices, to its computer data, to its accounting data and to all the information needed to carry out those audits, including information on individual salaries of persons involved in the project. They shall ensure that the information is readily available on the spot at the

moment of the audit and, if so requested, that data be handed over in an appropriate form.

5. On the basis of the findings made during the financial audit, a provisional report shall be drawn up. It shall be sent by the *REA* or the *Commission* or the authorised representative to the beneficiary concerned, who may make observations thereon within one month of receiving it. The *REA* or the *Commission* may decide not to take into account observations conveyed or documents sent after that deadline. The final report shall be sent to the beneficiary concerned within two months of expiry of the aforesaid deadline.
6. On the basis of the conclusions of the audit, the *REA* or the *Commission* shall take all appropriate measures which it considers necessary, including the issuing of recovery orders regarding all or part of the payments made and the application of any applicable sanction.
7. The European Court of Auditors shall have the same rights as the *REA* and the *Commission*, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.
8. In addition, the *REA* or the *Commission* may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the *Commission* in order to protect the European Communities financial interests against fraud and other irregularities⁹ 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)¹⁰.

II.22. Technical audits and reviews

1. The *REA* and the *Commission* may initiate a technical audit or review at any time during the implementation of the project and up to five years after the end of the project. The aim of a technical audit or review shall be to assess the work carried out under the project over a certain period, inter alia by evaluating the project reports and deliverables relevant to the period in question. Such audits and reviews may cover scientific, technological and other aspects relating to the proper execution of the project and the grant agreement.
2. With respect to the Description of work (Annex I), the audit or review shall objectively assess the following:
 - the degree of fulfilment of the project 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,

⁹ OJ L 292, 15.11.1996, p.2.

¹⁰ 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 beneficiaries' contributions 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 *REA* or the *Commission*.
 4. Any such audit or review shall be carried out on a confidential basis.
 5. The *REA* or the *Commission* may be assisted in technical audits and reviews by external scientific or technological experts. Prior to the carrying out of the evaluation task, the *REA* or the *Commission* 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 *REA*'s premises or at the *Commission*'s premises or at the premises of the beneficiaries. The *REA*, the *Commission* 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 *REA* or to the *Commission* all detailed information and data that may be requested by it or the external scientific or technological expert with a view to verifying that the project is being/has been properly implemented and performed in accordance with the provisions of this grant agreement.
 8. A report on the outcome of the audits and reviews shall be drawn up. It shall be sent by the *REA* or by the *Commission* to the beneficiary concerned, who may make observations thereon within one month of receiving it. The *REA* or the *Commission* may decide not to take into account the observations conveyed after that deadline.
 9. On the basis of the experts' formal recommendations the *REA* 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 or of the participation of any beneficiary according to Article II. 37,

- to issue a recovery order regarding all or part of the payments made by the *REA* and to apply any applicable sanction.
10. An ethics audit may be undertaken at the discretion of the *REA*'s or the *Commission*'s services up to five years after the end of the project. Paragraphs 3, 4, 5, 6, 7, 8 and 9 shall apply mutatis mutandis.

II.23. Liquidated damages

1. A beneficiary that is found to have overstated any amount and which has therefore received an unjustified financial contribution from *the Union* shall, without prejudice to any other measures provided for in this grant agreement, be liable to pay damages, hereinafter "liquidated damages". Liquidated damages are due in addition to the recovery of the unjustified financial contribution of *the Union* from the beneficiary. In exceptional cases the *REA* may refrain from claiming liquidated damages.

2. Any amount of liquidated damages shall be proportionate to the overstated amount and the unjustified part of the financial contribution of *the Union*. The following formula shall be used to calculate liquidated damages:

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

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

3. The *REA* shall inform the beneficiary which it considers liable to pay liquidated damages in writing of its claim by way of a registered letter with acknowledgement of receipt. The beneficiary shall have a period of 30 days to answer the claim of *the Union*.
4. The procedure for repayment of unjustified financial contribution of *the Union* and for payment of liquidated damages will be determined in accordance with the provisions of Article II.20. Liquidated damages will be deducted from any further payment or will be subject to recovery by the *REA* or the *Commission*.
5. The *REA* 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.24. Financial penalties

1. A beneficiary that has been guilty of making false declarations or has been found to have seriously failed to meet its obligations under this grant agreement shall be liable to financial penalties of between 2% and 10% of the value of the financial contribution of *the Union* received by 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. In the cases of paragraph 1, beneficiaries shall be excluded from all Union and Euratom grants for a maximum of two years from the date the infringement has been established.
3. The provisions in this Article shall be without prejudice to any administrative or financial sanction that may be imposed on any defaulting beneficiary in accordance with the Financial Regulation or to any other civil remedy to which *the Union* 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.

PART C INTELLECTUAL PROPERTY RIGHTS, USE AND DISSEMINATION

SECTION 1 – FOREGROUND

II.25. Ownership

1. Foreground shall be the property of the beneficiary carrying out the work generating that foreground.
2. Where several beneficiaries have jointly carried out work generating foreground and where their respective share of the work cannot be ascertained, they shall have joint ownership of such foreground. They shall establish an agreement¹¹ regarding the allocation and terms of exercising that joint ownership.

However, where no joint ownership agreement has yet been concluded, each of the joint owners shall be entitled to grant non-exclusive licences to third parties, without any right to sub-licence, subject to the following conditions:

- a) at least 45 days prior notice must be given to the other joint owner(s); and
 - b) fair and reasonable compensation must be provided to the other joint owner(s).
3. If employees or other personnel working for a beneficiary are entitled to claim rights to foreground, the beneficiary shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under this grant agreement.

II.26. Transfer

1. Where a beneficiary transfers ownership of foreground, it shall pass on its obligations regarding that foreground to the assignee including the obligation to pass those obligations on to any subsequent assignee.
2. Subject to its obligations concerning confidentiality such as in the framework of a merger or an acquisition of an important part of its assets, where a beneficiary is required to pass on its obligations to provide access rights, it shall give at least 45 days prior notice to the other beneficiaries of the envisaged transfer, together with

¹¹ The joint owners may of course agree not to continue with joint ownership but decide on an alternative regime (for example, a single owner with access rights for the other *beneficiaries* that transferred their ownership share).

sufficient information concerning the envisaged new owner of the foreground to permit the other beneficiaries to exercise their access rights.

However, the *beneficiaries* may, by written agreement, agree on a different time-limit or waive their right to prior notice in the case of transfers of ownership from one *beneficiary* to a specifically identified third party.

3. Following notification in accordance with paragraph 2, any other beneficiary may object within 30 days of the notification or within a different time-limit agreed in writing, to any envisaged transfer of ownership on the grounds that it would adversely affect its access rights.

Where any of the other beneficiaries demonstrate that their access rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between the beneficiaries concerned.

4. Where a beneficiary intends to transfer ownership of foreground to a third party established in a third country not associated to the Seventh Framework Programme, the *Commission* may object to such transfer of ownership of foreground, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations.

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

II.27. Protection

1. Where foreground is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection, having due regard to its legitimate interests and the legitimate interests, particularly the commercial interests, of the other beneficiaries.

Where a beneficiary which is not the owner of the foreground invokes its legitimate interest, it must, in any given instance, show that it would suffer disproportionately great harm.

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

The work leading to this invention has received funding from the People Programme (Marie Curie Actions) of the European Union's Seventh Framework Programme (FP7/2007-2013) under REA grant agreement n° [xxxxxx]¹²

¹² This statement will have to be translated into the language of the patent filing. Translations in all European Union languages will be provided.

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

3. Where the foreground is capable of industrial or commercial application and its owner does not protect it and does not transfer it to another beneficiary, to an affiliated entity established in a Member State or Associated country or to any other third party established in a Member State or Associated country along with the associated obligations in accordance with Article II.27, no dissemination activities relating to said foreground may take place before the *REA* has been informed. The *REA* must be informed at the latest 45 days prior to the intended dissemination activity.

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

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

II.28. Use

1. The beneficiaries shall use the foreground which they own or ensure that it is used.
2. The beneficiaries shall report on the expected use to be made of foreground in the plan for the use and dissemination of foreground. The information must be sufficiently detailed to permit the *REA* or the *Commission* to carry out any related audit.

II.29. Dissemination

1. Each beneficiary shall ensure that the foreground of which it has ownership is disseminated as swiftly as possible. If it fails to do so, the *REA* may disseminate that foreground.
2. Dissemination activities shall be compatible with the protection of intellectual property rights, confidentiality obligations and the legitimate interests of the owner(s) of the foreground.
3. At least 45 days prior notice of any dissemination activity shall be given to the other beneficiaries concerned, including sufficient information concerning the planned dissemination activity and the data envisaged to be disseminated.

Following notification, any of those beneficiaries may object within 30 days of the notification to the envisaged dissemination activity if it considers that its legitimate interests in relation to its foreground or background could suffer disproportionately great harm. In such cases, the dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests.

The beneficiaries may agree in writing on different time-limits to those set out in this paragraph, which may include a deadline for determining the appropriate steps to be taken.

4. All publications or any other dissemination relating to foreground shall include the following statement to indicate that said foreground was generated with the assistance of financial support from *the Union*:

The research leading to these results has received funding from the People Programme (Marie Curie Actions) of the European Union's Seventh Framework Programme FP7/2007-2013/ under REA grant agreement n° [xxxxxx]¹³

Any dissemination activity shall be reported in the plan for the use and dissemination of foreground, including sufficient details/references to enable the *REA* to trace the activity. With regard to scientific publications relating to foreground published before or after the final report, such details/references and an abstract of the publication must be provided to the *REA* at the latest two months following publication. Furthermore, an electronic copy of the published version or the final manuscript accepted for publication shall also be provided to the *REA* at the same time for the purpose set out in Article II.12.2 if this does not infringe any rights of third parties.

SECTION 2 – ACCESS RIGHTS

II.30. Background covered

Beneficiaries may define the *background* needed for the purposes of the *project* in a written agreement and, where appropriate, may agree to exclude specific *background*¹⁴.

II.31. Principles

1. All requests for access rights shall be made in writing.
2. The granting of access rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.
3. Without prejudice to their obligations regarding the granting of access rights, beneficiaries shall inform each other as soon as possible of any limitation to the granting of access rights to background, or of any other restriction which might substantially affect the granting of access rights.

¹³ This statement will have to be translated into the language of the dissemination activity. Translations in all European Union languages will be provided.

¹⁴ Such an exclusion may be temporary (e.g. to permit the adequate protection of the *background* prior to providing access) or limited (e.g. to exclude only one or more specific *beneficiaries*). As *background* is by definition considered to be needed for implementation or use, the impact of such an exclusion on the *project*, particularly regarding an exclusion which does not have a temporary character, should be examined by the *beneficiaries*.

4. The termination of the participation of a beneficiary shall in no way affect the obligation of that beneficiary to grant access rights to the remaining beneficiaries.
5. Unless otherwise agreed by the owner of the foreground or background, access rights shall confer no entitlement to grant sub-licences.
6. Without prejudice to paragraph 7, any agreement providing access rights to foreground or background to beneficiaries or third parties must ensure that potential access rights for other beneficiaries are maintained.
7. Exclusive licences for specific foreground or background may be granted subject to written confirmation by all the other beneficiaries that they waive their access rights thereto.
8. However, where a beneficiary intends to grant an exclusive licence to foreground to a third party established in a third country not associated to the Seventh Framework Programme, the *Commission* may object to the granting of such an exclusive licence, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations.

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

II.32. Access rights for implementation

1. Access rights to foreground shall be granted to the other beneficiaries, if it is needed to enable those beneficiaries to carry out their own work under the project.

Such access rights shall be granted on a royalty-free basis.

2. Access rights to background shall be granted to the other beneficiaries, if it is needed to enable those beneficiaries to carry out their own work under the project provided that the beneficiary concerned is entitled to grant them.

Such access rights shall be granted on a royalty-free basis, unless otherwise agreed by all beneficiaries before their accession to this agreement.

II.33. Access rights for use

1. Beneficiaries shall enjoy access rights to foreground, if it is needed to use their own foreground.

Subject to agreement, such access rights shall be granted either under fair and reasonable conditions or be royalty-free.

2. Beneficiaries shall enjoy access rights to background, if it is needed to use their own foreground provided that the beneficiary concerned is entitled to grant them.

Subject to agreement, such access rights shall be granted either under fair and reasonable conditions or be royalty-free.

3. An affiliated entity established in a Member State or Associated country shall also enjoy access rights, referred to in paragraphs 1 and 2, to foreground or background under the same conditions as the beneficiary to which it is affiliated, unless otherwise provided for in the consortium agreement. As the access rights referred to in paragraphs 1 and 2 require that access is needed to use own foreground, this paragraph only applies to the extent that ownership of foreground was transferred to an affiliate entity established in a Member State or Associated country. The beneficiaries may provide for arrangements regarding access rights for affiliated entities in their consortium agreement, including regarding any notification requirements.
4. A request for access rights under paragraphs 1, 2 or 3 may be made up to one year after either of the following events:
 - a) the end of the project; or
 - b) termination of participation by the owner of the background or foreground concerned. However, the beneficiaries concerned may agree on a different time-limit¹⁵.

FINAL PROVISIONS

II.34. Competitive calls

1. When required by the terms of Annex I, the consortium shall identify and propose to the *REA* the participation of new beneficiaries following a competitive call in accordance with the provisions of this Article.
2. The consortium shall publish the competitive call at least in one international journal and in three different national newspapers in three different Member States or Associated countries. It shall also be responsible for advertising the call widely using specific information support, particularly Internet sites on the Seventh Framework Programme, the specialist press and brochures and through the national contact points set up by Member States and Associated countries. In addition, the publication and advertising of the call shall conform to any instructions and guidance notes established by the *Commission*. The consortium shall inform the *REA* of the call and its content at least 30 days prior to its expected date of publication.
3. The competitive call shall remain open for the submission of proposals by interested parties for a period of at least five weeks.
4. The consortium shall evaluate offers received in the light of the criteria that governed the evaluation and selection of the project, defined in the relevant call for proposals, and with the assistance of at least two independent experts appointed by the consortium on the basis of the criteria described in the Rules for Participation.
5. The consortium shall notify the *REA* of the proposed accession of a new beneficiary(ies) in accordance with Article II.35. At the same time, it will inform the

¹⁵ This can be a longer or shorter time-limit.

REA of the means by which the competitive call was published and of the names and affiliation of the experts involved in the evaluation. The *REA* may object to the accession of any new beneficiary within 45 days of the receipt of the notification.

II.35. Requests for amendments 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 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 *REA*.
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.
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 V), duly signed by such new entity. Any addition is subject to the conditions required by the Rules for Participation, the related call for proposals and the Financial Regulation. Such additional entity shall assume the rights and obligations of 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.4, 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 and a declaration on distribution of payments to this beneficiary by the coordinator.

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 *REA* shall not take into account any further cost claims of that *beneficiary* and shall not make any further reimbursement for it.

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

Requests for termination of the *grant agreement* shall provide the justification for termination and the reports and deliverables referred to in Article II.4 relating to the work carried out up to the date on which the termination takes effect.

II.36. 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. By derogation to paragraph 1, when the consortium requests the addition or the termination of the participation of a beneficiary, the absence of a response from the *REA* within 45 days of receipt of such a request constitutes approval, except in cases of absence of the agreement of the beneficiary concerned and in cases of appointment of a new coordinator, which shall require the written approval of the *REA*.

Where the *REA* does not object within this period, it is deemed to have approved the request on the last day of the time-limit. The *REA* undertakes to send a letter for information purposes in case of tacit approval.

Where the request for the addition or removal of a beneficiary is associated with requests for other modifications to the grant agreement which are not directly related to this addition or removal, the whole request shall be subject to written approval by the *REA*.

3. The *REA*'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 *REA* shall send a copy to the beneficiary concerned.

4. 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 *REA*'s approval.

II.37. Termination of the grant agreement or of the participation of one or more beneficiaries at the *REA*'s initiative

1. The *REA* 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 consortium 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 *REA* or the *Commission*;
 - d) where the beneficiary has contravened fundamental ethical principles;
 - e) where the required reports or deliverables are not submitted or the *REA* 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 use potential of the project results 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 *REA* 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 Union*, or calls into question the decision to grant the contribution of *the Union*;
 - j) in case of force majeure notified in conformity with Article II.40, where any reactivation of the project after suspension is impossible;
 - k) where the conditions for participation in the project established by the Rules for Participation or as amended by the call for proposals to which the project was submitted are no longer satisfied, unless the *REA* considers that the continuation of the project is essential to the implementation of the specific 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 *REA* an amendment to the grant agreement with the necessary modifications for the continuation of the project including the reallocation of task of the beneficiary whose participation is terminated within the time-limit determined by the *REA*, or where the *REA* does not accept the proposed modifications.
 - n) where a beneficiary is declared bankrupt or is being wound up.
2. Termination of the participation of one or more beneficiaries at the *REA*'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 *REA* 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 (through the coordinator) all required reports and deliverables referred to in Article II.4 relating to the work carried out up to that date. In the absence of receipt of such documents within the above time-limits, the *REA* may, after providing 30 days notice in writing of the non-receipt of such documents, determine not to take into account any further cost claims and not to make any further reimbursement and, where appropriate, require the reimbursement of any pre-financing due by the beneficiary(ies).
4. The consortium has up to 30 days after the effective date of termination of the beneficiary's participation to provide the *REA* with information on the share of *the Union* contribution that has been effectively transferred to such beneficiary since the beginning of the project.
5. In the absence of receipt of such information within the time-limits, the *REA* shall consider that the beneficiary whose participation is terminated owes no money to the *REA* and that the contribution of *the Union* already paid is still at the disposal of the consortium and under its responsibility.
6. Based on documents and information referred to in the paragraphs above, the *REA* shall establish the debt owed by the beneficiary whose participation is terminated.
7. Where the participation of one or more beneficiaries is terminated, the beneficiary(ies) whose participation is terminated shall reimburse the amount due to the *REA* or transfer it to the coordinator as requested by the *REA*, within 30 days. The *REA* shall send a copy of such a request to the coordinator. In the latter case, the

coordinator shall inform the *REA* at the latest 10 days after the end of this time-limit whether the amount has been transferred to it.

8. Where the grant agreement is terminated, the *REA* shall establish the debt owed by the consortium and notify it to the coordinator.

II.38. Financial contribution after termination and other termination consequences

1. In the event of termination any financial contribution from *the Union* is limited to those eligible costs incurred and accepted up to the effective date of such termination and of any legitimate commitments taken prior to that date, which cannot be cancelled.
2. By derogation to the above paragraph:
 - in the case of Article II.37.1.a), no costs incurred by the consortium under the project can be approved or accepted as eligible for reimbursement by *the Union*. Any pre-financing provided to the consortium and any interest generated by the pre-financing must be returned in full to the *REA*.
 - in the case of Article II.37.1.b), any financial contribution from *the Union* is limited to those eligible costs incurred up to the date of receipt of the written request to rectify the breach.
3. In addition, in the cases of Article II.37.1.b), c), d), e), l) and m) the *REA* or the *Commission* may require reimbursement of all or part of the financial contribution of *the Union*. In the case of Article II.37.1.b) and m) the *REA* shall take into account the nature and results of the work carried out and its usefulness to *the Union* in the context of the specific programme concerned.
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 Union* 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) or the project, respectively and in any case shall be done through the coordinator.

Notwithstanding the termination of the grant agreement or the participation of one or more beneficiaries, the provisions identified in Articles II.9, II.10, II.11, II.12, II.21, II.22, II.23, II.24, II.25, II.35, II.36, II.38, II.41, II.42 and Part C of Annex II continue to apply after the termination of the grant agreement or the termination of the participation of such beneficiary(ies).

II.39. 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 *REA* without delay, stating the nature, likely duration and foreseeable effects.
3. If *the Union* is subject to force majeure liable to affect the fulfilment of its obligations under this grant agreement, it shall notify 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 accepted eligible costs incurred may be made only for tasks which have actually been executed up to the date of the event identified as force majeure. All necessary measures shall be taken to limit damage to the minimum.

II.40. Assignment

The *beneficiaries* shall not assign any of the rights and obligations arising from the *grant agreement* except those cases provided for in Article II.26 (transfer of *foreground*), without the prior and written authorisation of the *REA* and the other *beneficiaries*.

II.41. Liability

1. *The Union* 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 Union*, and agrees to indemnify it, in case of any action, complaint or proceeding brought by a third party against *the Union* as a result of damage caused, either by any of its acts or omissions in relation to this grant agreement, or by any products, processes or services created by it on the basis of foreground resulting from the project.

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

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