ANNEX II

GENERAL CONDITIONS

TABLE OF CONTENTS

II.1 DEFINITIONS

Part A: Implementation of the Project

SECTION 1 - IMPLEMENTATION AND DELIVERABLES

II.2 ACTIVITIES
II.3 PERFORMANCE OBLIGATIONS
II.4 FORCE MAJEURE
II.5 SUSPENSION AND PROLONGATION OF THE PROJECT
II.6 SUBCONTRACTING
II.7 REPORTS AND DELIVERABLES
II.8 EVALUATION AND APPROVAL OF REPORTS AND DELIVERABLES
II.9 CONFIDENTIALITY
II.10 COMMUNICATION OF DATA
II.11 INFORMATION TO MEMBER STATES AND ASSOCIATED STATES
II.12 PUBLICITY
II.13 LIABILITY
II.14 ASSIGNMENT

SECTION 2 - TERMINATION OF THE CONTRACT AND RESPONSIBILITY

II.15 TERMINATION OF THE CONTRACT AND PARTICIPATION OF CONTRACTORS
II.16 TERMINATION FOR BREACH OF CONTRACT AND IRREGULARITY
II.17 TECHNICAL COLLECTIVE RESPONSIBILITY
II.18 FINANCIAL COLLECTIVE RESPONSIBILITY


SECTION 1: GENERAL FINANCIAL PROVISIONS

II.19 ELIGIBLE COSTS OF THE PROJECT
II.20 DIRECT COSTS
II.21 INDIRECT COSTS
II.22 COST REPORTING MODELS
II.23 RECEIPTS OF THE PROJECT
II.24 COMMUNITY FINANCIAL CONTRIBUTION
II.25 REIMBURSEMENT RATES
II.26 AUDIT CERTIFICATES
II.27 INTEREST YIELDED BY PRE-FINANCING
II.28 PAYMENT MODALITIES

SECTION 2: CONTROLS, RECOVERIES AND SANCTIONS

II.29 CONTROLS AND AUDITS
II.30 LIQUIDATED DAMAGES
II.31 REIMBURSEMENT TO THE COMMISSION AND RECOVERY ORDERS

Part C: Intellectual Property Rights

II.32 OWNERSHIP OF KNOWLEDGE
II.33 PROTECTION OF KNOWLEDGE
II.34 USE AND DISSEMINATION
II.35 ACCESS RIGHTS
II.36 INCOMPATIBLE OR RESTRICTIVE COMMITMENTS
II.1 - Definitions

1. **Access rights**: means licences and user rights to knowledge or pre-existing know-how.

2. **Associated State**: means a State which is party to an international agreement with the **Community**, under the terms or on the basis of which it makes a financial contribution to all or part of the Sixth Framework Programme.

3. **Change of control**: means any change in the control exercised over a contractor within the meaning of Article 3 of the Rules for Participation.

4. **Consortium**: means all the contractors participating in the project covered by this contract.

5. **Consortium agreement**: means an agreement that contractors conclude amongst themselves for the implementation of this contract. Such an agreement shall not affect the contractors’ obligations to the Community and/or to one another arising from this contract.

6. **Coordinator**: means the contractor identified in this contract who, in addition to its obligations as a contractor, is obliged to carry out the specific co-ordination tasks provided for in this contract on behalf of the consortium.

7. **Contractor**: means a participant as defined in Article 2.7 of the Rules for Participation and a signatory to this contract other than the JRC, which signs a separate arrangement with the Commission with respect to its participation in the contract.

8. **Dissemination**: means the disclosure of knowledge by any appropriate means other than publication resulting from the formalities for protecting knowledge.

9. **Final implementation date**: means the final date for implementation, which is determined taking into account the maximum periods allowed, beyond the end date of the duration of the project, as identified in Article 4.2, for the contractor(s) to submit the required activity reports and financial statements, for the Commission to approve them, and for it to make the final payment.


11. **Irregularity**: means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a contractor which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by it through unjustified expenditure.

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12. **International organisation**: means any legal entity arising from the association of States, other than the **Community**, established on the basis of a treaty or similar act, having common institutions and an international legal personality distinct from that of its member states.

13. **JRC**: means the Joint Research Centre of the European **Commission**.

14. **Knowledge**: means the results, including information, whether or not they can be protected, arising from the **project** governed by this **contract**, as well as copyrights or rights pertaining to such results following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

15. **Legitimate interest**: means a **contractor**’s interest of any kind, particularly a commercial interest which may be claimed in the cases provided for in this **contract**. To this end the **contractor** must prove that failure to take account of its interest would result in its suffering disproportionately great harm.

16. **Own resources**: means those resources identified in the **Rules for Participation** which may be contributed to the work to be carried out under the **project**, and any other resources under the management discretion of the **contractor** which when allocated to the tasks to be carried out under the **project**, thereby create a cost.

17. **Plan for using and disseminating the knowledge**: means the report on the **contractors**’ intentions for the protection, **use** and **dissemination** of the **knowledge** generated under the **project**.

18. **Pre-existing know-how**: means the information which is held by **contractors** prior to the conclusion of the **contract**, or acquired in parallel with it, as well as copyrights or rights pertaining to such information following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

19. **Pre-financing**: means any part of the **Community** financial contribution which is paid in advance of submission of proof of work having been carried out for a specific period of the **project** either in order to provide advance funds to permit the work on the **project** to begin or to continue with the next phase.

20. **Project**: means all the work referred to in Annex I to this **contract**.

21. **Public body**: means a public sector body, or a legal entity governed by private law with a public-service mission providing adequate financial guarantees.

22. **Receipts**: means financial transfers or contributions in kind made available to a **contractor** by a third party, which are considered as **receipts** under Article II.23 and any income generated by the **project**, if generated during the life of the **project** or up to the time when the final financial statement is submitted to the **Commission**, whichever is later.

23. **Rules for Participation**: means the Regulation No. 2321/2002 of the European Parliament and of the Council concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the

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

24. \textit{Start date}: means the date upon which the \textit{project} begins as identified in Article 4.2 of this \textit{contract}.

25. \textit{State Aid rules}: means the Community framework for state-aid for research and development adopted by the \textit{Commission}\textsuperscript{6}

26. \textit{Subcontract}: means an agreement to provide services relating to tasks required for the \textit{project} and which cannot be carried out by the \textit{contractor} itself, concluded between a \textit{contractor} and one or more \textit{subcontractors} for the specific needs of the \textit{project}.

27. \textit{Subcontractor}: means a third party carrying out tasks identified in Annex I or minor tasks not relating to the core work of the \textit{project}, by means of a \textit{subcontract} with one or more of the \textit{contractors}.

28. \textit{Third country}: means a State that is neither a Member State nor an \textit{Associated State}.

29. \textit{Third party resources}: means any resources made available to a \textit{contractor}, by a third party, for use in the \textit{project}, and identified in Annex I, based on an agreement established between the \textit{contractor} and the third party prior to its contribution to the \textit{project}. The costs of such resources must be recorded in the accounts of the third party as a cost of the \textit{project}.

30. \textit{Use}: means the direct or indirect utilisation of \textit{knowledge} in research activities or for developing, creating and marketing a product or process or for creating and providing a service.

\textbf{PART A: IMPLEMENTATION OF THE PROJECT}

\textbf{SECTION 1 – IMPLEMENTATION AND DELIVERABLES}

II. 2 – Activities

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


\textsuperscript{5} OJ L 355, 30.12.2002, 35

\textsuperscript{6} OJ C 45, 17.2.1996, p 5
1. Research and technological development or innovation activities

2. Demonstration activities

3. Training activities

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

5. Other specific support activities

II.3 - Performance obligations

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

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

2. Each contractor shall:

a) ensure that all information to be provided to the Commission is sent via the coordinator, except for those cases foreseen in the contract;

b) make appropriate arrangements for the proper performance of its work identified in Annex I. To this end, the contractor shall designate one or more persons who shall manage and monitor its work, ensure that the tasks assigned are correctly performed, and inform the Commission of the name and contact details of the person designated and of any changes to that information;

c) inform the Commission of any event which might affect the implementation of the project and the rights of the Community;

d) provide the Commission and Court of Auditors directly with information requested in the framework of controls and audits, as provided for in Article II.29;

e) ensure that any agreements or contracts entered into between the contractor and any subcontractor, or other third party, contain provisions extending the Commission and the Court of Auditors’ right to audit any work carried out under the project for which costs are claimed from the Community financial contribution;

f) undertake to ensure that the conditions applicable to it under Articles II.9, II.10, II.11, II.12, II.26, II.28.8 and II.29 are also applicable to any third party whose costs are claimed under the project by means of Article II.19.1.e;

g) take part in meetings concerning the supervision, monitoring and evaluation of the project which are relevant to it;

h) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this contract and inform the other contractors and the Commission of any unavoidable obligations which may arise during the duration of the contract which may have implications for any of its obligations under the contract;

i) carry out the project in accordance with fundamental ethical principles, as described or referred to in the Rules for Participation;

j) endeavour to promote equal opportunities between men and women in the implementation of the project;

k) ensure that the Commission is informed if and when any eligibility criteria established by the Rules for Participation and the Financial Regulation cease(s) to be met during the duration of the project;
l) take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the project and shall inform the Commission without delay of any situation which could lead to such a conflict of interest.

3. The coordinator shall:

   a) ensure that the tasks identified in Article 2 regarding accession to the contract are carried out in a timely manner;

   b) be the intermediary for communication between the contractors and the Commission in accordance with the provisions of Article 11, with the exceptions foreseen in the contract;

   c) receive all payments made by the Commission to the consortium and administer the Community contribution regarding its allocation between contractors and activities in accordance with this contract and the decisions taken by the consortium. The coordinator shall ensure that all the appropriate payments are made to contractors without unjustified delay;

   d) keep accounts making it possible to determine at any time what portion of the Community funds has been paid to each contractor for the purposes of the project. The coordinator shall inform the Commission of the distribution of the funds and the date of transfers to the contractors.

4. The Commission shall:

   a) monitor the scientific, technological and financial execution of the project and ensure that the Community financial contribution is provided when and where necessary under the conditions established by the contract;

   b) carry out review, analysis and approval of project deliverables within the periods indicated in the contract;

   c) maintain the confidentiality of any information, data, reports or other deliverables or knowledge communicated to it as confidential, in accordance with the provisions of Article II.9.

II.4 – Force majeure

1. Force majeure shall mean any unforeseeable and exceptional event affecting the contract and the implementation of the project by one or more contractors, which is beyond their control or the control of the Community and cannot be overcome despite their reasonable endeavours. Any default of a product or service or delays in making them available (unless due to force majeure) for the purpose of performing this contract and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute force majeure.
2. If any of the contractors is subject to force majeure liable to affect the fulfilment of its contractual obligations, the consortium shall notify without delay the Commission, stating the nature, likely duration and foreseeable effects.

3. If the Community is subject to force majeure liable to affect the fulfilment of its contractual obligations, it shall notify without delay the consortium, stating the nature, likely duration and foreseeable effects.

4. No contractor shall be considered to be in breach of its obligation to execute the project if it has been prevented from complying by force majeure. Where contractors cannot fulfil their contractual obligations to execute the project due to force majeure, remuneration for accepted eligible costs incurred may be made only for tasks which have actually been executed up to the date of the event identified as force majeure. All necessary measures shall be taken to limit damage to the minimum.

5. The project can be suspended or terminated due to force majeure in accordance with the provisions of Articles II.5 and II.15.

II.5 – Suspension and prolongation of the project

1. The consortium shall immediately inform the Commission of any event affecting or delaying the implementation of the project.

2. The consortium can propose to suspend part or all, of the project if force majeure or exceptional circumstances, render its execution excessively difficult or uneconomic. The consortium must inform the Commission without delay of such circumstances, including all justifications and information related to the event, as well as an estimation of the date when the work on the project will begin again.

3. The Commission may suspend part, or all, of the work under the project where it considers that the consortium is not performing satisfactorily, in order to re-negotiate with it and propose the necessary amendments to the contract to redress the situation. Where the Commission suspends part, or all, of the project, it must inform the consortium without delay of the justifications for such an event, as well as the conditions necessary to reinstate the work again. This suspension takes effect on the date the consortium receives the notification.

4. During the period of suspension, no costs may be charged to the project for carrying out any tasks or any part of the project which has been suspended.

5. The part of the project which has been suspended can be taken up again once both parties have agreed on the continuation. Notwithstanding any other modifications, which may be necessary as a result of any such suspension and re-starting of the work, the extension of the duration will be identified by means of a written amendment in accordance with Article 10. Unless otherwise requested by the consortium, the extension will be equal to the period of suspension.
6. The Commission may terminate or the consortium may request the termination of the contract if it is established that it will be excessively difficult to continue with all or part of the project and/or that for technical, financial, economic or scientific reasons the delay or non-execution will be such that the project is no longer viable.

II.6 - Sub-contracting

1. Contractors shall ensure that the work to be performed, as identified in Annex I, can be carried out by them. However, where it is necessary to subcontract certain elements of the work to be carried out, this should be clearly identified in Annex I. During the implementation of the project, contractors may subcontract other minor services, which do not represent core elements of the project work, which cannot be directly assumed by them and where this proves necessary for the performance of their work under the project.

2. Any subcontract, the costs of which are to be claimed as an eligible cost, must be awarded to the bid offering best value for money (best price-quality ratio), under conditions of transparency and equal treatment. The following aspects must be taken into consideration in awarding subcontracts:

   (a) they may only cover the execution of a limited part of the project;
   (b) recourse to the award of subcontracts must be justified having regard to the nature of the action and what is necessary for its implementation;
   (c) the tasks concerned must be set out in Annex I;
   (d) the contractor shall retain sole responsibility for carrying out the action and for compliance with the provisions of the contract. The contractor must undertake to make the necessary arrangements to ensure that the subcontractor waives all rights in respect of the Commission under the contract;
   (e) the contractor must undertake to ensure that the conditions applicable to it under Articles II.9, II.10, II.11, II.12, II.28.8 and II.29 of the contract are also applicable to the subcontractor.

3. Where the contractors enter into subcontracts to carry out some parts of the tasks related to the project, they remain bound by their obligations to the Commission under the contract.

II.7 – Reports and deliverables

1. All reports and deliverables shall be submitted within 45 days following the end of the respective periods identified in Articles 6 and 7.

2. The consortium shall submit the following reports to the Commission for each reporting period:
1. a periodic activity report containing an overview of the activities carried out by the **consortium** during that period, a description of progress toward the objectives of the **project**, a description of progress towards the milestones and deliverables foreseen, the identification of the problems encountered and corrective action taken. An updated **plan for using and disseminating the knowledge** shall be included as a separate part of this report;

b) a periodic management report on that period including:

i) a justification of the resources deployed by each **contractor**, linking them to activities implemented and justifying their necessity;

ii) the Form C Financial statement set out in Annex VI, provided by each **contractor** for that period;\(^7\)

iii) a summary financial report consolidating the claimed costs of all the **contractors** in an aggregate form, based on the information provided in Form C.

c) a report on the distribution between **contractors** made during that period of the **Community** financial contribution.

d) supplementary reports required by any Annex to this **contract**.

3. The **consortium** shall submit the audit certificates provided by each **contractor** in conformity with Article II.26 for each period for which the audit certificate is required. Even though an audit certificate is not required for a specific period, an audit certificate must be provided by each **contractor** where the **Community** financial contribution requested by that **contractor** exceeds € 750,000 for that period.

4. In addition to the documents referred to in paragraph 2 of this Article for the last period, the **consortium** shall submit the following final reports to the **Commission** after the end of the **project**:

a) a final activity report covering all the work, objectives, results and conclusions, and the final **plan for using and disseminating the knowledge**, including a summary of all these aspects;

b) a final management report covering the full duration of the **project** including a summary financial report consolidating the claimed costs of all the **contractors** in an aggregate form covering the entire duration of the **project**, based on the information provided in Form C by each **contractor**;

c) supplementary final reports required by any Annex of the **contract**;

d) a report on the distribution between **contractors** made after the end of the **project** of the **Community** financial contribution, which shall be submitted 60 days after receipt of the final tranche of the **Community** financial contribution to the **consortium**.

\(^7\) Costs incurred in currencies other than the Euro shall be reported in Euro on the basis of the conversion rate that would have applied on the date that the actual costs were incurred or the rate applicable on the first day of the month following the end of reporting period. The basis for the conversion rate used shall be indicated in Form C when reporting costs incurred.
5. The consortium shall transmit these documents to the Commission by electronic means in accordance with the provisions of Article 11.2. However, the originals of each of these documents and the audit certificates shall be submitted in accordance with the provisions of Article 11.1. In such cases, the date of receipt pursuant to Article 11.1 prevails.

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

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

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

II.8 – Evaluation and approval of reports and deliverables

1. The Commission evaluates the reports submitted by the consortium in accordance with the provisions of this Article and other deliverables required by the provisions of Annex I. In accordance with the provisions of Article 11.2.b of the Rules for Participation, it may be assisted in this task by external experts.

2. The Commission undertakes to evaluate project activity reports identified in Article II.7.2.a within 45 days of receipt thereof. Where no comments, changes or substantial corrections to any of the project activity reports are required, the project activity reports are deemed to be approved within 90 days of receipt.

3. The Commission undertakes to evaluate all other reports submitted within 45 days of receipt thereof. The absence of a response from the Commission within 45 days of receipt of these reports shall not imply approval by the Commission. The Commission may reject these reports even after the time limit for payment established in Article 8.2 (e).

4. Approval of any report does not imply exemption from any audit or review, which may be carried out in accordance with the provisions of Article II.29.

5. Where, following the evaluation of the reports or deliverable(s), the Commission considers that the consortium is not performing satisfactorily, it may:

   a) Reject the reports submitted and request the consortium to complete the work foreseen in Annex I or to perform additional work within a reasonable delay established by the Commission. Reports and deliverables shall be re-submitted once the work has been completed;

   b) Approve the reports and deliverables subject to re-negotiation of the work to be performed during the next period. The Commission may, for that purpose, impose a suspension of the project in accordance with Article II.5;

   c) Terminate the contract.

II.9 – Confidentiality
1. The Commission and the contractors undertake to preserve the confidentiality of any document, information, knowledge, pre-existing know-how or other material communicated to them in relation to the execution of the project, and which has been identified as confidential in relation to the execution of the project, or where such information was provided orally, it has been confirmed as such in writing within 30 days after disclosure. Where the contract provides for the communication of any data, knowledge, pre-existing know-how or other document, the contractors and the Commission shall first satisfy themselves that the recipient will keep it confidential and use it only for the purpose for which it is communicated.

2. The confidentiality of any document, information or other material, the disclosure of which could harm, interfere with or otherwise limit the effective protection of their intellectual property rights, must be maintained during the life of the project. Unless other agreements are made between the contractors, this confidentiality must be maintained for the period in which use of any knowledge or pre-existing know-how is to be made available after the end of the project.

This obligation no longer applies where:

a) the content of any of the document, information or material becomes publicly available through work or actions lawfully performed outside this contract and not based on activities under it, or

b) the content of the document, information or material has been communicated without confidentiality restrictions or these are subsequently waived, or

c) the information is lawfully received from a third party who is in lawful possession thereof and under no obligation of confidence to the disclosing party.

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

1. Without prejudice to the provisions of Article II.9, contractors shall be required to provide, at the request of the Commission, data necessary for:

a) the continuous and systematic review of the specific programme concerned and the Sixth Framework Programme;

b) the evaluation and impact assessment of Community activities.

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

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

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

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

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

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

II.12 – Publicity

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

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

2. The Commission shall be authorised to publish, in whatever form and on or by whatever medium, including the Internet, the following information:
   – the name of the contractors;
   – the general purpose of the grant in the form of the summary provided by the consortium;
   – the amount granted and, except for lump sum contributions, the rate of the Community financial contribution to the project;
   – the geographic location of the activities carried out.
3. Upon a reasoned and duly substantiated request by the contractor, the Commission may agree to forego such publicity if disclosure of the information indicated above would risk compromising the contractor’s security or commercial interests.

II.13 - Liability

1. The Community cannot be held liable for acts or omissions committed by the contractors performing this contract. It shall not be liable for any defaults of any products or services created on the basis of knowledge resulting from the project, including, for instance, anomalies in the functioning or performance thereof.

2. Each contractor fully guarantees the Community, and agrees to indemnify it, in case of any action, complaint or proceeding brought by a third party against it as a result of damage caused, either by any act or omission committed by the contractors in performing this contract, or because of any products or services created by the contractor on the basis of knowledge resulting from the project.

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

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

II. 14– Assignment

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

SECTION 2 –TERMINATION OF THE CONTRACT AND RESPONSIBILITY

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

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

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

2. The consortium may request the Commission to terminate the participation of any contractor. The coordinator shall include with any such request, the consortium’s proposal for reallocation of the tasks of that contractor, the reasons for doing so and the opinion of the contractor whose participation is requested to be terminated.
3. In the cases foreseen in paragraphs 1 and 2, the Commission may agree or object within six weeks of receipt of such a request. Where the Commission does not object within this period, it is deemed to have approved the request on the last date of this delay. Notwithstanding this approval, a written amendment to the contract shall be formalised by the Commission.

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

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

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

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

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

a) where one or more of the legal entities identified in Article 1.2 does not accede to the contract in accordance with Article 2.

b) where, in accordance with the provisions of Article II.8, the required reports are not approved by the Commission.

c) where a legal, financial, organisational or technical change or change of control of a contractor puts into question the decision of the Commission to accept its participation.

d) where any such change identified in c) above or termination of the participation of the contractor(s) concerned substantially affects the implementation of the project, or the interests of the Community, or puts into question the decision to grant the Community contribution.

e) in case of force majeure notified in conformity with Article II.4, where any reactivation of the project after suspension is impossible.

f) in accordance with the provisions of Article II.5.6.

g) where the conditions for participation in the project established by the Rules for Participation or as amended by the call for proposals to which the project was submitted are no longer satisfied, unless the Commission considers that the continuation of the project is essential to the implementation of the specific programme.

h) where a contractor is found guilty of an offence involving its professional conduct by a judgment having the force of res judicata or if it is guilty of grave professional misconduct proven by any justified means.

6. Termination by the Commission shall be notified to the contractor, with a copy to the consortium in the case of termination of the participation of one or more contractors, and
shall become effective 30 days after its receipt by the contractor. In the case of termination of the contract, the coordinator shall be notified, who shall in turn notify all the other contractors and the termination shall become effective 45 days after receipt by the coordinator.

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

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

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

II.16 – Termination for breach of contract and irregularity

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

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

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

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

2. The Commission may immediately terminate the participation of a contractor:

a) where the contractor has deliberately or through negligence committed an irregularity in the performance of any contract with the Commission;

b) where the contractor has contravened fundamental ethical principles as referred to in the Rules for Participation.

3. Notification of termination shall be addressed to the contractor and copied to the consortium.

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

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

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

5. The defaulting contractor has up to 30 days after the effective date of termination of its participation to provide the Commission with:

   a) reports, as provided for in Article II.7.1, relating to the work it has performed from the beginning of the project up to the effective date of the termination or for the period covered since the last periodic reports approved by the Commission, whichever is later;

   b) an audit certificate, as provided for in Article II.7.3, for the costs it has incurred from the beginning of the project up to the effective date of the termination or for the period after the last approved certificate.

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

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

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

7. Based on documents and information referred to in paragraphs 5 and 6, the Commission shall establish the debt owed by the defaulting contractor.

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

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

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

II.17 - Technical Collective Responsibility
Technical implementation of the project shall be the collective responsibility of the contractors. To that end each contractor shall take all necessary and reasonable measures to attain the objectives of the project, and to carry out the work incumbent on the defaulting contractor.

II.18 - Financial collective responsibility

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

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

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

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

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

3. Paragraphs 1 and 2 do not apply where the defaulting contractor is a public body, an international organisation or a contractor whose participation to the indirect action is guaranteed by a Member State or an Associated State.

4. The consortium is not collectively responsible for:
   a) any amount owed by a defaulting contractor for any breach discovered after the final implementation date;
   b) liquidated damages due by a contractor in accordance with Article II.30;
   c) sanctions referred to in Article II.30 imposed on a defaulting contractor.

PART B – FINANCIAL PROVISIONS

SECTION 1 - GENERAL FINANCIAL PROVISIONS

II.19 - Eligible costs of the project

8 Article 13.2 Rules for Participation
1. Eligible costs incurred for the implementation of the project must fulfil all of the following conditions:

   a) they must be actual, economic and necessary for the implementation of the project; and

   b) they must be determined in accordance with the usual accounting principles of the contractor; and

   c) they must be incurred during the duration of the project as identified in Article 4.2 except for the costs incurred in drawing up the final reports referred to in Article II 7.4, which may be incurred during the period of up to 45 days after the end of the project or the date of termination whichever is earlier; and

   d) they must be recorded in the accounts of the contractor that incurred them, no later than at the date of the establishment of the audit certificate referred to in Article II.26. The accounting procedures used in the recording of costs and receipts shall respect the accounting rules of the State in which the contractor is established as well as permit the direct reconciliation between the costs and receipts incurred for the implementation of the project and the overall statement of accounts relating to the overall business activity of the contractor; and

   e) in the case of contributions made by third parties established on the basis of an agreement between the contractor and the third party existing prior to its contribution to the project, and for which the tasks and their execution by such a third party are clearly identified in Annex I, the costs must:

      i) be incurred in accordance with the usual accounting principles of such third parties and the principles set out in paragraph d) above;

      ii) meet the other provisions of this Article and this Annex; and

      iii) be recorded in the accounts of the third party no later than the date of the establishment of the audit certificate referred to in Article II.26.

2. The following non-eligible costs may not be charged to the project:

   a) any identifiable indirect taxes, including VAT or duties;

   b) interest owed;

   c) provisions for possible future losses or charges;

   d) exchange losses;

   e) costs declared, incurred or reimbursed in respect of another Community project;

   f) costs related to return on capital;

   g) debt and debt service charges;

   h) excessive or reckless expenditure;

   i) any cost which does not meet the conditions established in Article II.19.1.

3. In the case of contractors using the additional costs system the eligible costs upon which the Community financial contribution will be based shall be the direct costs specified in Article II.20 which are additional to their recurring costs and the contribution to indirect costs specified in Article II.21.
4. Any SME may claim under the research and technological development/innovation or demonstration activities the costs of any premium it must pay for a loan guarantee. However, the proportion of the loan that is guaranteed may not exceed 80% of the loan where the costs of such a loan guarantee meet the other criteria established by paragraph 1 of this Article.

II.20 – Direct costs

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

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

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

II.21 – Indirect costs

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

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

II. 22 – Cost reporting models

1. There are three models for reporting costs under the contract.

- eligible direct and indirect costs are charged by contractors using the full cost model (FC);
- eligible direct costs and a flat rate for indirect costs are charged by contractors using the full cost flat rate reporting model (FCF). The flat rate is 20% of all direct costs minus costs of subcontracts, which is deemed to cover any indirect costs incurred by the contractor under the project.

- eligible direct additional costs and a flat rate for indirect costs are charged by contractors using the additional cost model (AC). The flat rate is 20% of all direct additional costs minus costs of subcontracts, which is deemed to cover any indirect costs incurred by the contractor under the project.

2. All contractors, except for physical persons may use the full cost (FC) model. Contractors that are SMEs, non-commercial or non-profit organisations established either under public law or private law, or international organisations may use the full cost model with a flat rate for overheads (FCF).

3. Contractors which may use the additional cost model are:
   - non-commercial or non-profit organisations established either under public law or private law; or
   - international organisations;

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

   Contractors which must use the additional cost model are:
   - physical persons.

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

4. Each contractor shall apply a cost reporting model in accordance with the principles established in Articles II.19, II.20 and II.21. Where a legal entity may choose a cost reporting model it shall apply that model in all contracts established under the Sixth Framework Programme.

   - By derogation to the principle established above, any legal entity eligible to opt for the AC cost model may opt in this contract for the FCF or the FC reporting model even if it has initially opted for the AC reporting model in previous contracts. However, if it does so, it must use that reporting model consistently in subsequent contracts established under the Sixth Framework Programme.

   - By derogation to the principle established above, any legal entity eligible to opt for the FCF cost model may opt in this contract for the FC reporting model even if it has opted earlier for the FCF reporting model in previous contracts. However, if it does so, it must use that reporting model consistently in subsequent contracts established under the Sixth Framework Programme.

II.23 – Receipts of the Project
Receipts of the project may arise from (a) financial transfers to the contractor from third parties, (b) contributions in kind from third parties, and from (c) income generated by the project and as specified below:

a) Where there is a financial transfer from third parties:
   i. made specifically to co-finance the project or specifically to finance a resource used by the contractor on the project, such transfers shall be considered as receipts of the project;\(^{11}\)
   ii. where the use of the financing or the use of resources paid with the financial transfers are at the management discretion of the contractor and the contractor chooses to allocate that resource to the project, such transfers shall not be considered to be receipts of the project.

b) Contributions in kind from third parties that are used for the project constitute an eligible cost of the project, and:
   i. shall also be considered a receipt of the project if they have been contributed by the third party specifically to be used on the project;\(^{12}\)
   ii. shall not be considered a receipt of the project if their use is at the management discretion of the contractor.

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

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

II.24 - Community financial contribution

1. Where the Community contributes to the project through a grant to the budget or grant to integration\(^{13}\) the Community shall make its contribution to the consortium under the following cumulative conditions:

   a) the contribution is based on the reimbursement of eligible costs claimed by contractors; and

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

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

\(^{13}\) As identified in Article 5
b) is based on the reimbursement rates per activity; and

c) in accordance with the cost reporting models used by each contractor; and

d) on the basis of financial statements provided by each contractor and, for contractors using the full cost models, which identify the sources of all co-financing provided by the contractor for the project, including its own resources, any financial transfers from third parties, or any contributions in kind. Contractors using the additional cost model must also identify in their periodic technical reports all the resources employed on the project and provide a global estimate of all their costs (not just the additional eligible costs which are reported in the financial statement); and

e) subject to the submission of an audit certificate of the contractors’ financial statements when and where required by the provisions of Article 7; and

f) for the coordinator, must take into account any interest or equivalent benefits yielded by the pre-financing of the project.

g) in the case of Networks of Excellence paragraph b) does not apply.

2. At the time of the submission of the last financial statement the final amount of the Community financial contribution will take into account any receipts of the project received by each contractor. For each contractor, the Community financial contribution cannot exceed the eligible costs minus the receipts for the project.

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

3. Contractors subject to the provisions of the state aid framework on the cumulation of public funding must ensure that they comply with its provisions.

4. Where the Community financial contribution is a lump sum the Community shall provide its contribution to the consortium according to the payment modalities identified in Article II.28.

5. The Community financial contribution shall be offset by any interest or equivalent benefits yielded by the pre-financing of the project, as referred to in Article II.27.

II. 25– Reimbursement rates

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

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14 As identified in Article 5
In those instruments where contractors using the FC cost model are limited to a claim of 20% of their direct costs as a contribution to overheads, this rate shall be based on all direct costs excluding the costs of subcontracts. For coordination actions and specific support actions indirect costs are reimbursed at 20% of direct costs (excluding the costs of subcontracts).

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

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

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

II.26 - Audit Certificates

1. For each period for which an audit certificate is required, each contractor shall provide an audit certificate prepared and certified by an external auditor, certifying that the costs incurred during that period meet the conditions required by this contract. The certificate should expressly state the amounts that were subject to verification. Where third parties’
costs are claimed under the *contract*, such costs shall be audited in accordance with the provisions of this Article.

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

2. Each *contractor* is free to choose any qualified external auditor, including its usual external auditor, provided that it meets the cumulative following professional requirements:

   a) the external auditor must be independent from the *contractor*;

   b) the external auditor must be qualified to carry out statutory audits of accounting documents in accordance with the 8th Council directive 84/253/EEC of 10 April 1984 or similar national regulations.

3. A *contractor* that is a *public body* may opt for a competent public officer to provide an audit certificate, provided that the relevant national authorities have established the legal capacity of that competent public officer to audit that *public body*.

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

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

1. In accordance with the provisions of the Financial Regulation\textsuperscript{11}, pre-financing granted to the *coordinator* on behalf of the *consortium* remains the property of the *Community*.

2. The *coordinator* shall inform the *Commission* of the amount of any interest or equivalent benefits yielded by the pre-financing it has received from the *Commission*. Notification must be made annually if the interest in question represents a significant amount, and in any event when the request for interim payments and the request for payment of the balance of the grant is made.

**II.28 - Payment modalities**

1. Without prejudice to Article II.29, the *Commission* shall adopt the amount of the final payment to be made to the *contractor* on the basis of the documents referred to in Article II.7 which it has approved.

2. The total amount paid to the *consortium* by the *Commission* may not in any circumstances exceed the maximum amount of the grant laid down in Article 5, even if the total actual eligible costs exceed the estimated total eligible costs specified in Article 5 or in the table in Annex I.

3. If the actual eligible costs at the end of the project are lower than the estimated total eligible costs, the Commission’s contribution shall be limited to the amount obtained by applying the Community reimbursement rates per activity specified in Article II.25 to the actual eligible costs approved by the Commission.

4. The contractors hereby agree that the grant shall be limited to the amount necessary to balance the action’s receipts and expenditure and that it may not in any circumstances produce a profit for them.

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

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

5. Without prejudice to the right to terminate the contract, if the project is not implemented or is implemented poorly, partially or late, the Commission may reduce the grant initially provided for in line with the actual implementation of the project on the terms laid down in this contract.

6. Any reduction in the amount of the grant to be paid by the Commission shall be effected by:

- reducing the balance of the grant payable when the project ends;
- requesting the contractors to repay any amounts overpaid, if the total amount already paid by the Commission exceeds the final amount which it actually owes.

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

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

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

The Commission may suspend its payments at any time where there is a suspicion of irregularity committed by one or more contractor(s) in the performance of the
contract. Only the portion destined for the contractor(s) suspected of irregularity will be suspended. The Commission shall notify the contractor(s) of the justification for the suspension of payment directly by means of registered letter with acknowledgement of receipt.

SECTION 2 – CONTROLS, RECOVERIES AND SANCTIONS

II.29 – Controls and audits

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

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

2. The contractors shall make available directly to the Commission all the detailed data that may be requested by the Commission with a view to verifying that the contract is being properly managed and performed.

3. The contractors shall keep the original or, in exceptional cases, duly substantiated, authenticated copies, of all documents relating to the contract for up to five years from the end of the project. These shall be put at the Commission's disposal where requested during the execution of any audit under the contract.

4. In order to carry out these audits, the contractors shall ensure that the Commission's departments and any outside body(ies) nominated by it have on the spot access, notably to the contractor's offices, at all reasonable times and to all the information needed to carry out those audits.

5. The European Court of Auditors shall have the same rights as the Commission, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.

6. In addition, the Commission may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities’ financial interests against fraud and other irregularities 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)\textsuperscript{17} Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)\textsuperscript{18}.

7. \textit{Contractors} shall ensure that the rights of the \textit{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 \textit{subcontractor} or third party whose costs are reimbursed in full or in part by the \textit{Community} financial contribution, on the same terms and conditions as indicated in this Article.

II.30–Liquidated damages

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

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

\[
\text{Liquidated damages} = \text{unjustified financial contribution}\times \frac{\text{overstated expenditure}}{\text{total claimed}}
\]

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

2. The \textit{Commission} shall inform the \textit{contractor} which it considers liable to pay liquidated damages in writing of its claim by way of a registered letter with acknowledgement of receipt. The \textit{contractor} shall have a period of 30 days to answer the \textit{Community}'s claim.

3. The procedure for repayment of unjustified financial contribution and for payment of liquidated damages will be determined in accordance with the provisions of Article II.31.

4. The \textit{Commission} shall be entitled to compensation in respect of any overstated expenditures which come to light after the \textit{contract} has been completed, in accordance with the provisions of paragraphs 1 to 6.

5. These provisions shall be without prejudice to any administrative or financial sanctions that the \textit{Commission} may impose on any defaulting \textit{contractor} in accordance with the \textit{Financial Regulation} or to any other civil remedy to which the \textit{Community} or any other \textit{contractor} may be entitled. Furthermore, these provisions shall not preclude any criminal proceedings which may be initiated by the Member States' authorities.

\textsuperscript{17} OJ L 136, 31.5.1999

\textsuperscript{18} OJ L 136, 31.5.1999
6. Further, as established by the Financial Regulation, any contractor declared to be in grave breach of its contractual obligations shall be liable to financial penalties of between 2% and 10% of the value of the Community financial contribution received by that contractor. The rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first breach.

II.31– Reimbursement to the Commission and recovery orders

1. If any amount is unduly paid to the contractor or if recovery is justified under the terms of the contract, the contractor undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.

2. If the contractor fails to pay by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article II.28. Interest on late payment shall cover the period between the date set for payment and the date when the Commission receives full payment of the amount owed.

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

3. Sums owed to the Commission may be recovered by offsetting them against any sums owed to the contractor, after informing the latter accordingly, or by calling in any financial guarantee. The contractor’s prior consent shall not be required.

4. Bank charges occasioned by the recovery of the sums owed to the Commission shall be borne solely by the contractor.

5. The contractor understands that under Article 256 of the Treaty establishing the European Community, and as provided by the Rules for Participation, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States.

PART C – INTELLECTUAL PROPERTY RIGHTS

II.32 - Ownership of knowledge

1. Knowledge shall be the property of the contractor carrying out the work leading to that knowledge.

2. Where several contractors have jointly carried out work generating the knowledge and where their respective share of the work cannot be ascertained, they shall have joint ownership of such knowledge. The contractors concerned shall agree amongst themselves the allocation and terms of exercising ownership of that knowledge in accordance with the provisions of this contract.

3. If personnel working for a contractor are entitled to claim rights to knowledge, the contractor shall take steps or reach appropriate agreements to ensure that these rights can be exercised in a manner compatible with its obligations under this contract.
4. Where a contractor transfers ownership of knowledge, it shall take steps or conclude agreements to pass on to the assignee its obligations under this contract, in particular regarding the granting of access rights, dissemination and use of the knowledge. As long as the contractor is required to grant access rights, it shall give at least 60 days prior notice to the Commission and the other contractors, of the envisaged assignment and the name and address of the assignee.

5. The Commission or the other contractors may object within 30 days of notification to such a transfer of ownership. The Commission may object to transfer of ownership to third parties, in particular to those not established in a Member State or an Associated State, if such a transfer is not in accordance with the interests of developing the competitiveness of the dynamic, knowledge-based European economy or is inconsistent with ethical principles. The other contractors may object to any transfer of ownership, if that transfer would adversely affect their access rights.

II.33 - Protection of knowledge

1. Where knowledge is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection, in conformity with relevant legal provisions, including this contract and any consortium agreement, and having due regard to the legitimate interests of the contractors concerned. Details of any such protection sought or obtained shall be included in the plan for using and disseminating the knowledge.

2. Where a contractor does not intend to protect its knowledge in a specific country it shall inform the Commission. Where a contractor intends to waive the protection of its knowledge, the Commission shall be informed at least 45 days prior to the corresponding deadline. In such a case and where the Commission considers it necessary to protect such knowledge in a particular country, it may, with the agreement of the contractor concerned, adopt measures to protect the knowledge. In this event, and as far as that particular country is concerned, the Community shall take on the obligations regarding the granting of access rights in the place of the contractor. The contractor may only refuse if it can demonstrate that its legitimate interests will be significantly impaired.

3. A contractor may publish or allow the publication of data, on whatever medium, concerning knowledge it owns provided that this does not affect the protection of that knowledge. The Commission and the other contractors shall be given 30 days prior written notice of any planned publication. If, before the end of this period, the Commission and/or the other contractors so request, a copy of this data shall be communicated to them within 30 days after receipt of such request. The Commission and the other contractors may object to the publication within 30 days after receipt of the data envisaged to be published, if they consider that the protection of their knowledge would be adversely affected by this publication. The planned publication shall be suspended until the end of this consultation period. In the absence of any objection within the above-mentioned period, it is deemed that the Commission and the other contractors agree.

The consortium agreement may specify the practical details of any such right to object.
II.34 - Use and dissemination

1. The contractors shall use or cause to be used the knowledge arising from the project, which they own, in accordance with their interests. The contractors shall set out the terms of use in a detailed and verifiable manner, notably in the plan for using and disseminating the knowledge, and in accordance with the provisions of this contract and the Rules for Participation.

2. If dissemination of knowledge would not adversely affect its protection or its use, the contractors shall ensure that it is disseminated within a period of two years after the end of the project. Should the contractors fail to do so, the Commission may disseminate the knowledge. In so doing, the Commission and the contractors shall take particular account of the following factors:

   a) the need to safeguard intellectual property rights;
   b) the benefits of swift dissemination, for example in order to avoid duplication of research efforts and to create synergies between projects;
   c) confidentiality;
   d) the legitimate interests of the contractors.

II.35 - Access rights

1. The general principles relating to access rights are the following:

   a) Access rights shall be granted to any of the other contractors upon written request. The granting of access rights may be made conditional on the conclusion of specific agreements aimed at ensuring that they are used only for the intended purpose, and of appropriate undertakings as to confidentiality. Contractors may also conclude agreements with the purpose of granting additional or more favourable access rights, including access rights to third parties, in particular to enterprises associated with the contractor(s), or specifying the requirements applicable to access rights, but not restricting the latter. Any agreement providing for access rights to contractors and/or third parties must ensure that the potential access rights for other contractors are maintained. Such agreements shall comply with the applicable competition rules;

   b) The Commission may object to the grant of access rights to third parties, in particular to those not established in a Member State or an Associated State, if such grant is not in accordance with the interests of developing the competitiveness of the dynamic knowledge-based European economy, or is inconsistent with ethical principles. Contractors shall ensure that where any potential grant of access rights to knowledge is not in accordance with these interests, the Commission shall be given 30 days prior written notice of plans to provide such access rights to third parties;

   c) Access rights to pre-existing know-how shall be granted provided that the contractor concerned is free to grant them;

   d) A contractor may explicitly exclude specific pre-existing know-how from its obligation to grant access rights, by means of a written agreement between the contractors established before the contractor concerned signs the contract or before
a new contractor joins the project. The other contractors may only withhold their agreement if they demonstrate that the implementation of the project or their legitimate interests will be significantly impaired thereby;

e) Except where the contractor granting access rights so agrees, such rights shall confer no entitlement to grant sub-licences.

2. Access rights for execution of the project are the following:

a) Contractors shall enjoy access rights to the knowledge and to the pre-existing know-how, if that knowledge or pre-existing know-how is needed to carry out their own work under that project. Access rights to knowledge shall be granted on a royalty-free basis. Access rights to pre-existing know-how shall be granted on a royalty-free basis, unless otherwise agreed before signature of the contract;

b) Subject to its legitimate interests, the termination of the participation of a contractor shall in no way affect its obligation to grant access rights to the other contractors pursuant to the previous sub-paragraph until the end of the project.

3. Access rights for use of knowledge are the following:

a) Contractors shall enjoy access rights to knowledge and to the pre-existing know-how, if that knowledge or pre-existing know-how is needed to use their own knowledge. Access rights to knowledge shall be granted on a royalty-free basis, unless otherwise agreed before signature of the contract. Access rights to pre-existing know-how shall be granted under fair and non-discriminatory conditions to be agreed;

b) Subject to the contractors’ legitimate interests, access rights may be requested under the conditions laid down in the previous paragraph until two years after the end of the project or after the termination of the participation of a contractor, whichever falls earlier, unless the contractors concerned agree on a longer period.

II.36 Incompatible or restrictive commitments

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