

## **ANNEX II OF MODEL GRANT AGREEMENT OF THE FCH JOINT UNDERTAKING**

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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 Union law or any breach of obligation resulting from an act or omission by a *beneficiary* which has, or would have, the effect of prejudicing the budget of the *FCH JU* or the Union through unjustified expenditure;
11. "*public body*" means any legal entity established as such by national law, and international organisations;

12. "*legal entity*" means any natural person, or any legal person created under the national law of its place of establishment, or under European Community or Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations. In the case of natural persons, references to establishment are deemed to refer to habitual residence;

13. A legal entity is qualified as "*non-profit*" when considered as such by national or international law;

14. "*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 and which does not fall under the definition of *industry*.

15. "*industry*" – for the purpose of this *Grant agreement* - means a legal entity pursuing an economic activity with a profit objective, or an affiliated entity to such a legal entity.

16. "*SMEs*" mean micro, small and medium-sized enterprises within the meaning of the Commission Recommendation 2003/361/EC in the version of 6 May 2003.

17. "*third party*" means any legal entity which does not sign the *Grant agreement*.

## Part A - IMPLEMENTATION OF THE PROJECT

### SECTION 1 – GENERAL PRINCIPLES

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

1. All the *beneficiaries* together form the *consortium*. *Beneficiaries* are represented towards the *FCH JU* by the *coordinator*, who shall be the intermediary for any communication between the *FCH JU* and any *beneficiary*, with the exceptions foreseen in this *grant agreement*.

2. The *FCH JU* financial contribution to the *project* shall be paid to the *coordinator* who receives it on behalf of the *beneficiaries*. The payment of the *FCH JU* financial contribution to the *coordinator* discharges the *FCH JU* from its obligation on payments.

3. The *coordinator* shall:

- a) administer the *FCH JU* financial contribution 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 *FCH JU* financial contribution has been paid to each *beneficiary* for the purposes of the *project*;
- c) inform the *FCH JU* of the distribution of the *FCH JU* financial contribution and the date of transfers to the *beneficiaries*, when required by this *grant agreement* or by the *FCH JU* ;
- d) review the reports to verify consistency with the *project* tasks before transmitting them to the *FCH JU*;
- 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 *FCH JU* for the purposes of the proper administration of this *project*;
- b) carry out the *project* jointly and severally vis-à-vis the *FCH JU*, 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*.

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;
  - 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 *FCH JU* 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 *FCH JU* under this *grant agreement*;
- c) ensure that the rights of the *FCH JU*, the *Commission* (including OLAF) and the *Court of Auditors* to carry out financial audits, controls and on-the-spot checks among the *beneficiaries*, are extended to the right to carry out any such audit or control or on-the-spot checks on any third party whose costs are reimbursed in full or in part by the *FCH JU* financial contribution, on the same terms and conditions as those indicated in this *grant agreement*;
- d) ensure that the conditions applicable to it under Articles II.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 *FCH JU* 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 *FCH JU*;
- 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 any change of status that may have an influence on e.g. the funding rates and matching participation;
- any circumstance affecting the conditions of participation referred to in the *FCH JU* Council Regulation<sup>1</sup>, the *FCH JU* Financial Rules and the call for proposals 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 *FCH JU*, the *Commission* including the European Anti-Fraud Office (OLAF) and the Court of Auditors directly with all information requested in the framework of controls, on-the-spot checks 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 *FCH JU* of any unavoidable obligations which may arise during the duration of the *grant agreement* which may have implications for any of its obligations under the *grant agreement*;

j) ensure that it complies with the provisions of the state aid framework;

k) carry out the *project* in accordance with fundamental ethical principles;

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

m) have regard to the general principles of the Commission Recommendation of 11 March 2005 on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers, in particular concerning the working conditions, transparency of recruitment processes, and career development of the researchers recruited for the *project*;

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*.

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<sup>1</sup> Council Regulation (EC) No 521/2008 of 30 May 2008 setting up the Fuel Cells and Hydrogen Joint Undertaking

## SECTION 2 – REPORTING AND PAYMENTS

### II.4. Reports and deliverables

1. The *consortium* shall submit a periodic report to the *FCH JU* for each reporting period within 60 days after the end of each respective period. The reporting 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 *FCH JU* contribution of all the *beneficiaries* in an aggregate form, based on the information provided in Form C (Annex V) by each *beneficiary*.

2. The *consortium* shall submit a **final report** to the *FCH JU* within 60 days after the end of the *project*. The report shall comprise:

a) a final publishable summary report covering results, conclusions and socioeconomic 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 *FCH JU* financial contribution between *beneficiaries*. This report must be submitted within 30 days after receipt of the final payment.

4. A **certificate on the financial statements** shall be submitted for any claims of final payments submitted by each beneficiary whose total *FCH JU* financial contribution, claimed in the form of reimbursement of costs, exceeds [50000] EUR, and for claims of interim payments when the amount of the *FCH JU* financial contribution claimed by a *beneficiary* under the form of reimbursement of costs is equal to or superior to EUR 325 000, when cumulated with all previous payments for which a certificate on the financial statements has not been submitted. This certificate must be forwarded in the form of a detailed description verified as factual by its external auditor (Form D – Annex VI).

Certificates on the financial statements shall certify that the costs claimed and the receipts declared during the period for which they are provided 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 *beneficiary* may submit to the *FCH JU* a **certificate on the methodology** for the calculation of costs, which it uses 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 an independent report of factual findings on the methodology (according to the mandatory terms of reference Form E – Annex [VI]). When this certificate on the methodology has been accepted by the Joint Assessment Committee of the Commission (JAC), empowered by the *FCJ JU* to decide on the acceptability of the methodologies, the requirement to provide a certificate on the financial statements for intermediate cost claims under *FCH JU grant agreements* shall be waived. The decision on the acceptability of the certificate on the methodology will be taken on the basis of the criteria and procedures applied in FP7, including FP7 model Grant Agreement, the ex-ante implementation rules on average personnel costs, and the *Commission* “Guidance notes for *beneficiaries* and auditors on Audit certification”.

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 [VI] 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 Council Directive on statutory audits of annual accounts and consolidated accounts<sup>2</sup> 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 *FCH JU*.

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 *FCH JU* arising from this *grant agreement*.

5. The *consortium* shall transmit the reports and other deliverables through the *coordinator* to the *FCH JU* 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 *FCH JU*.

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

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

7. The reports submitted to the *FCH JU* for publication should be of a suitable quality to enable direct publication and their submission to the *FCH JU* 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 *FCH JU* 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 payment

1. At the end of each reporting period, the *FCH JU* 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 *FCH JU*'s approval of reports and/or deliverables. The absence of a response from the *FCH JU* within this time-limit shall not imply its approval. However, the *FCH JU* should send a written reply to the *consortium* in accordance with paragraph 3. The *FCH JU* 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 *FCH JU* 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 *FCH JU*, or where the *FCH JU* decides to proceed with an interim payment in part in accordance with paragraph 4.

The *FCH JU* 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 *FCH JU*.

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.22 and II.23;
- 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 *beneficiaries* in the performance of another grant agreement funded by *FCH JU*, 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 *FCH JU* 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 *FCH JU* 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 *FCH JU* of this time-limit, the *FCH JU* shall pay interest on the late payment, at the rate applied by the European Central Bank for its main refinancing operations in Euros, plus three and a half points. The reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union.

By way of exception, when the interest calculated in accordance with the provisions of the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only upon a demand submitted within two months of receiving the late payment.

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 *FCH JU*'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 *FCH JU* financial contribution.

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

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 *FCH JU*'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 *FCH JU* financial contribution.

6. The suspension of the time-limit, of payment or of the *project* by the *FCH JU* may not be considered as late payment.

7. At the end of the *project*, the *FCH JU* may decide not to make the payment of the corresponding *FCH JU* financial contribution subject to one month's written notice of non-

receipt of a report, of a certificate on the financial statements or of any other *project* deliverable.

8. The *FCH JU* shall inform the *coordinator* of the amount of the final payment of the *FCH JU* financial contribution 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 *FCH JU*'s decision. The *FCH JU* 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 *FCH JU*'s decision.

## II.6. Payment modalities

1. The *FCH JU* shall make the following payments:

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

Where the amount of the corresponding *FCH JU* financial contribution is less than any amount already paid to the *consortium*, the *FCH JU* shall recover the difference.

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

In accordance with the *FCH JU* Financial Rules, the payment of a pre-financing may be subject to an ex ante verification of the financial capacity of the *coordinator* and /or the *beneficiaries* as well as to the taking of any required protecting measures, including the submission of guarantees.

2. The total amount of the pre-financing and interim payments shall not exceed 80% of the maximum *FCH JU* financial contribution defined in Article 5.

3. Payments by the *FCH JU* 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 *FCH JU* financial contribution and related interest are identified. Otherwise, the accounting methods of the

*beneficiaries* or intermediaries must make it possible to identify the *FCH JU* financial contribution and the interest or other benefits yielded.

6. Any payment may be subject to an audit or review and may be adjusted or recovered based on the results of such audit or review.

7. Payments by the *FCH JU* shall be deemed to be effected on the date when they are debited to the *FCH JU* '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 *FCH JU* 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 *FCH JU* 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 *FCH JU* 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. After having given the *consortium* through the *coordinator* a delay to make observations, the *FCH JU* 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 *FCH JU* 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 *FCH JU* 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* agreement.<sup>3</sup>

3. The *beneficiaries* undertake to use such confidential information only in relation to the execution of the *project* unless otherwise agreed with the disclosing party.

4. Notwithstanding the preceding paragraphs, the treatment of data, documents or other material which are classified (“classified information”<sup>4</sup>) or subject to security restrictions or export- or transfer- control, must follow the applicable rules established by the relevant national and European Community and Union legislation for such information, including the *FCH JU*’s internal rules for handling classified information. 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 *FCH JU*, the data necessary for:

- the continuous and systematic preparation and review of the Annual Implementation Plans, the specific programme Cooperation and the Seventh Framework Programme
- the evaluation and impact assessment of *FCH JU* activities, including the *use* and *dissemination of foreground*.

Such data may be requested throughout the duration of the *project* and up to five years after the end of the *project*. The data collected may be used by the *FCH JU* in its own evaluations but will not be published other than on an anonymous basis.

2. Without prejudice to the provisions regarding protection of *foreground* and confidentiality, the *beneficiaries* shall, where appropriate, during the *project* and for two years following its end, inform the *FCH JU* and the European standardisation 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 *FCH JU* 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;

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<sup>3</sup> As certain national laws (for example regarding freedom of information) may provide that proprietary information made available under a confidentiality requirement must nevertheless be made public in case access is requested, the *beneficiaries* should inform each other of the existence of such national laws and make appropriate arrangements in the *consortium agreement*.

<sup>4</sup> Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 OJ L 317, 3.12.2001, p. 1 (as last amended by Decision 2006/548/EC, Euratom, OJ L 215, 5.8.2006, p. 38).

- the applicable European Community and Union law on classified information does not prohibit such action.

2. The provision of information pursuant to paragraph 1 shall not transfer to the recipient any rights or obligations and the recipient shall be required to treat any such information as confidential unless it becomes duly public, or it was communicated to the *FCH JU* 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 *FCH JU* financial support. Unless the *FCH JU* 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 *FCH JU* research funding emanating from the Union and display the *FCH JU* logo and the European emblem. When displayed in association with another logo, the *FCH JU* logo and the European emblem should be given appropriate prominence.

This obligation to use the *FCH JU* logo and European emblem in respect of *projects* to which the *FCH JU* 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 *FCH JU* to use its logo and from the *Commission* to use its 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 *FCH JU* and the Union are not liable for any use that may be made of the information contained therein.

2. The *FCH JU* 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 *FCH JU* financial contribution foreseen for the *project*; after final payment, the amount and rate of the *FCH JU* financial contribution accepted by the *FCH JU*;
- the estimated amount and rate of the *FCH JU* financial contribution 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 *FCH JU* financial contribution accepted by the *FCH JU* 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.30.4, the published version or the final manuscript accepted for publication;
- the publishable reports submitted to it;
- any picture or any audiovisual or web material provided to the *FCH JU* 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 *FCH JU* or the *Commission* does not infringe any rights of third parties.

Upon a duly substantiated request by a *beneficiary*, the *FCH JU* and 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 Union institutions and bodies 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 the activities of the Union and *FCH JU*, 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 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 *FCH JU*.

## Part B FINANCIAL PROVISIONS

### SECTION 1 – GENERAL FINANCIAL PROVISIONS

#### II.14. Eligible costs of the *project*

#### 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.

Notwithstanding point a) of the first subparagraph, *beneficiaries* may opt to declare average personnel costs if the following cumulative criteria are fulfilled:

- (a) The average personnel cost methodology shall be the one declared by the *beneficiary* as its usual cost accounting practice; as such it shall be consistently applied to all the participations of the *beneficiary* in the **FCH JU programme as well as the EU Framework Programmes**.
- (b) The methodology shall be based on the actual personnel costs of the *beneficiary* as registered in its statutory accounts, without estimated or budgeted elements;

- (c) The methodology shall exclude from the average personnel rates any ineligible cost item as referred to in paragraph 3 and any costs claimed under other costs categories in order to avoid double funding of the same costs;
- (d) The number of productive hours used to calculate the average hourly rates shall correspond to the usual management practice of the *beneficiary* provided that it reflects the actual working standards of the *beneficiary*, in compliance with applicable national legislation, collective labour agreements and contracts and that it is based on auditable data.

*Beneficiaries* may submit a certified methodology for approval by the Commission empowered by the *FCH JU* on the basis of the criteria referred to in points (a) to (d) of the second subparagraph.

Such a certificate shall be issued in accordance with the provisions laid down in Article II.4 and the relevant part of Form E in Annex VII, unless it has already been submitted for a previous *grant agreement* under the Seventh Framework Programme and the methodology certified has not changed.

Average personnel costs charged on the basis of methodologies which comply with the criteria referred to in points (a) to (d) of the second subparagraph shall be deemed not to differ significantly from actual costs.

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/EC, and specified in the Commission's annual Work Programme of the year of the publication of the call to which the proposal has been submitted.

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.

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.17.

3. The following costs shall be considered as non-eligible and may not be charged to the *project*:

- a) identifiable indirect taxes including value added tax,
- b) duties,
- c) interest owed,
- d) provisions for possible future losses or charges,
- e) exchange losses, cost related to return on capital,
- f) costs declared or incurred, or reimbursed in respect of another *t* project of the Union, Euratom or *FCH JU*,
- 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.

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

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

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

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

Indirect costs shall represent a fair apportionment of the overall overheads of the organisation. They may be identified according to one of the following methods:

- a) Based on actual indirect costs for those *beneficiaries* which have an analytical accounting system to identify their indirect costs as indicated above.

For this purpose, a *beneficiary* is allowed to use a simplified method of calculation of its full indirect eligible costs at the level of its legal entity if this is in accordance with its usual accounting and management principles and practices. Use of such a method is only acceptable where the lack of analytical accounting or the legal requirement to use a form of cash-based accounting prevents detailed cost allocation. The simplified

approach must be based on actual costs derived from the financial accounts of the last closed accounting year.

b) Based on a flat rate of 20% of its total direct eligible costs, excluding its direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the *beneficiary*.

## II.16. Upper funding limits

The beneficiaries will be reimbursed for the direct costs and indirect costs

### Reimbursement of direct costs

1. For **research and technological development activities**, the *FCH JU* financial contribution may reach a maximum of 50% of the total direct eligible costs.

However, for *beneficiaries* that are non-profit public bodies, secondary and higher education establishments, research organisations and SMEs, the *FCH JU* financial contribution may reach a maximum of 75% of the total eligible costs. This rate shall be applied for the whole duration of the project, even if these *beneficiaries* change their status during the life of the *project*."

2. For **demonstration activities**, the *FCH JU* financial contribution may reach a maximum of 50% of the total direct eligible costs.

3. For **other activities** not covered by paragraphs 1 and 2, inter alia, management activities, training activities, coordination, networking and *dissemination* (including publications), the *FCH JU* financial contribution may reach a maximum of 100% of the total direct eligible costs.

Management of the consortium activities includes:

- maintenance of the *consortium agreement*,
- the overall legal, ethical, financial and administrative management including for each of the beneficiaries the obtaining of the certificates on the financial statements [and on the methodology] and costs relating of financial audits and technical reviews;
- any other management activity foreseen by the annexes except coordination of research and technological development activities.

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

4. For **coordination and support actions**, the *FCH JU* financial contribution may reach a maximum of 100% of the total direct eligible costs.

[Paragraphs 1 to 4 shall apply also in the case of *projects* where flat rate financing or lump sum financing is used for the whole or for part of the *project*.]

### Reimbursement of indirect costs

5. Reimbursement of indirect costs may reach a maximum of 20% of the total direct eligible costs, excluding direct eligible costs for subcontracting and the costs of resources made

available by third parties which are not used on the premises of the beneficiaries. Under this option, beneficiaries shall declare their actual indirect costs under eligible costs.

However, *industry*, whose accounting systems do not make a distinction between direct indirect costs, and non-profit public bodies, secondary and higher education establishments, and research organisations may opt for a reimbursement of their indirect costs by a flat rate of 20% of the total direct eligible costs, excluding their direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the *beneficiary*.

6. Notwithstanding the previous paragraph, in the case of coordination and support actions, the reimbursement of indirect eligible costs for every *beneficiary* may reach a maximum of 7% of the direct eligible costs, excluding its direct eligible costs for subcontracting and the costs of resources made available by third parties which are not used on the premises of the *beneficiary*.

## II.17. Receipts of the *project*

Receipts of the *project* may arise from:

a) Resources made available by third parties to the *beneficiary* by means of financial transfers or contributions in kind which are free of charge:

- i. shall be considered a receipt of the *project* if they have been contributed by the third party specifically to be used on the *project*;
- ii. shall not be considered a receipt of the *project* if their use is at the discretion of the *beneficiary's* management.

b) Income generated by the *project*:

- i. shall be considered a receipt for the *beneficiary* when generated by actions undertaken in carrying out the *project* and from the sale of assets purchased under the *grant agreement* up to the value of the cost initially charged to the *project* by the *beneficiary*; this includes particularly, but not only, interest generated by the pre-financing.
- ii. shall not be considered a receipt for the *beneficiary* when generated from the use of *foreground* resulting from the *project*

## II.18. *FCH JU* financial contribution

1. The "*FCH JU* financial contribution" to the *project* shall be determined by applying the rates of reimbursement indicated in Article II.16 per activity and per *beneficiary* to the actual eligible costs.

2. The *FCH JU* financial contribution 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*.

3. The *FCH JU* financial contribution cannot give rise to any profit for any *beneficiary*. For this purpose, at the time of the submission of the last financial statement, the final amount of the *FCH JU* financial contribution will take into account any receipts of the *project* received by each *beneficiary*. For each *beneficiary*, the *FCH JU* financial contribution cannot exceed the eligible costs minus the receipts for the *project*.

4. The total amount of payments by the *FCH JU* shall not exceed in any circumstances the maximum amount of the *FCH JU* financial contribution referred to in Article 5.

5. Without prejudice to the right to terminate the *grant agreement* under Article II.38, and without prejudice to the right of the *FCH JU* to apply the penalties referred to in Articles II.24 and II.25 if the *project* is not implemented or is implemented poorly, partially or late, the *FCH JU* 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*.

#### II.19. Interest yielded on pre-financing provided by the *FCH JU*

Any interest generated on the pre-financing paid out by the *FCH JU* shall be considered to be a receipt to the project *consortium*.

## SECTION 2 – FINANCIAL RESPONSIBILITY

#### II.20. Financial responsibility

The financial responsibility of each *beneficiary* shall be limited to its own debt.

#### II.21. Reimbursement and recovery

1. If any amount is unduly paid to a *beneficiary* or if recovery is justified under the terms of the *grant agreement*, the *beneficiary* undertakes to repay, via the *coordinator*, the *FCH JU* the sum in question following a written request by the *FCH JU*

Where, following this written request from the *FCH JU*, a *beneficiary* in an on-going grant agreement does not reimburse to the *coordinator* any requested amount at the latest 30 days after receipt of the request, the *FCH JU* may recover the amount due from that *beneficiary* by any appropriate means, including invoking any guarantees. No prior consent of the *beneficiary* is required.

2. If the obligation to pay the amount due is not honoured by the date set by the *FCH JU*, 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 *FCH JU* 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.

3. Each *beneficiary* hereby accepts that any pending payment excluding pre-financing due by the *FCH JU* to the said *beneficiary*, irrespective of its origin, is assigned to the payment of that *beneficiary's* debt towards the *FCH JU*.

4. Bank charges occasioned by the recovery of the sums owed to the *FCH JU* shall be borne solely by the *beneficiary*.

## SECTION 3 – CONTROLS AND SANCTIONS

### II.22. Financial audits and controls

1. The *FCH JU* 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 *FCH JU* services themselves or by the *Commission* including OLAF. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the *FCH JU*. 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 *FCH JU* all detailed information and data that may be requested by the *FCH JU* or any representative authorised by it, 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 *FCH JU* where requested during any audit under the *grant agreement*.

4. In order to carry out these audits, the *beneficiaries* shall ensure that the *FCH JU's* services and any external body(ies) authorised by it have on-the-spot access at all reasonable times, notably to the *beneficiary's* offices, to its computer data, to its accounting data and to all the information needed to carry out those audits, including information on individual salaries of persons involved in the *project*. They shall ensure that the information is readily available on the spot at the moment of the audit and, if so requested, that data be handed over in an appropriate form.

5. On the basis of the findings made during the financial audit, a provisional report shall be drawn up. It shall be sent by the *FCH JU* or its authorised representative to the *beneficiary* concerned, which may make observations thereon within one month of receiving it. The *FCH JU* 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 *FCH JU* shall take all appropriate measures which it considers necessary, including the issuing of recovery orders regarding all or part of the payments made by it and the application of any applicable sanction.



7. The Court of Auditors and the *Commission* (including OLAF) shall have the same rights as the *FCH JU*, notably right of access, for the purpose of checks and audits, without prejudice to their own rules.

8. In addition, the *Commission* may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the *Commission* in order to protect the European Communities' financial interests against fraud and other irregularities<sup>5</sup> and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>6</sup> Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>7</sup>.

## II.23. Technical audits and reviews

1. The *FCH JU* may initiate a technical audit or review at any time during the implementation of the *project* and up to 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;
- 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 *FCH JU*.

4. Any such audit or review shall be carried out on a confidential basis.

5. The *FCH JU* may be assisted in technical audits and reviews by external scientific or technological experts. Prior to the carrying out of the evaluation task, the *FCH JU* shall communicate to the *beneficiaries* the identity of the appointed experts. The *beneficiary(ies)*

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<sup>5</sup> OJ L 292, 15.11.1996, p.2.

<sup>6</sup> OJ L 136, 31.5.1999

<sup>7</sup> OJ L 136, 31.5.1999

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 *FCH JU* premises or at the premises of *beneficiaries*. The *FCH JU* 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 *FCH JU* 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 *FCH JU* to the *beneficiary* concerned, who may make observations thereon within one month of receiving it. The *FCH JU* may decide not to take into account the observations conveyed after that deadline.

9. On the basis of the experts' formal recommendations the *FCH JU* 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. 38;
- to issue a recovery order regarding all or part of the payments made by the *FCH JU* and to apply any applicable sanction.

10. An ethics audit may be undertaken at the discretion of the *FCH JU* 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.24. Liquidated damages

1. A *beneficiary* that is found to have overstated any amount and which has therefore received an unjustified financial contribution from the *FCH JU* 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 *FCH JU* financial contribution from the *beneficiary*. In exceptional cases the *FCH JU* 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 *FCH JU* financial contribution. The following formula shall be used to calculate liquidated damages:

**Liquidated damages = unjustified *FCH JU* financial contribution x (overstated amount/total *FCH JU* financial contribution claimed)**

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

3. The *FCH JU* 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 *FCH JU's* claim.

4. The procedure for repayment of unjustified *FCH JU* financial contribution and for payment of liquidated damages will be determined in accordance with the provisions of Article II.21. Liquidated damages will be deducted from any further payment or will be subject to recovery by the *FCH JU*.

5. The *FCH JU* 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.25. 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 *FCH JU* financial contribution received by that *beneficiary*. The rate may be increased to between 4% and 20% in the event of a repeated offence within five years following the first infringement.

2. In the cases of paragraph 1, *beneficiaries* shall be excluded from all *FCH JU* 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 *FCH JU* Financial Rules or to any other civil remedy to which the *FCH JU* 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.

4. The *FCH JU* shall give the *beneficiary* concerned the opportunity to present its observations within 30 days before imposing any financial penalties.

## Part C INTELLECTUAL PROPERTY RIGHTS, USE AND DISSEMINATION

### SECTION 1 – FOREGROUND

#### II.26. 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 agreement<sup>8</sup> 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.27. 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 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

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<sup>8</sup> 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).

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 *FCH JU* 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 *FCH JU* is satisfied that appropriate safeguards will be put in place and has authorised the transfer in writing.

## II.28. 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 *FCH JU*:

**The work leading to this invention has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) for the Fuel Cells and Hydrogen Joint Technology Initiative under grant agreement n° [xxxxxx].<sup>9</sup>**

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 *FCH JU* to trace the patent (application). Any such filing arising after the final report must be notified to the *FCH JU* 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*, an affiliated entity established in a Member State or Associated country or 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 that *foreground* may take place before the *FCH JU* has been informed. The *FCH JU* must be informed at the latest 45 days prior to the intended *dissemination* activity.

In such cases, the *FCH JU* 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 *FCH JU* assumes ownership, it shall take on the obligations regarding the granting of access rights.

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<sup>9</sup> This statement will have to be translated into the language of the patent filing

## II.29. 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 *FCH JU* to carry out any related audit.

## II.30. 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 *FCH JU* 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 *FCH JU*.

**The research leading to these results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) for the Fuel Cells and Hydrogen Joint Technology Initiative under grant agreement n° [xxxxxx]<sup>10</sup>.**

Any *dissemination* activity shall be reported in the plan for the *use* and *dissemination* of *foreground*, including sufficient details/references to enable the *FCH JU* 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 *FCH JU* 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 *FCH JU* at the same time for the purpose set out in Article II.12.2 if this does not infringe any rights of third parties.

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<sup>10</sup> This statement will have to be translated into the language of the *dissemination* activity.

## SECTION 2 – ACCESS RIGHTS

### II.31. *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*.<sup>11</sup>

### II.32. 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.
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 *FCH JU* 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 *FCH JU* is satisfied that appropriate safeguards will be put in place and has authorised the grant in writing.

### II.33. 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.

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<sup>11</sup> 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*.

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.34. 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-limit<sup>12</sup>.

## FINAL PROVISIONS

### 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

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<sup>12</sup> This can be a longer or shorter time-limit.



*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 agreement* to such an amendment or termination exists and is made available in the event of an audit or upon request of the *FCH JU*

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 [IV]), duly signed by such new entity. Any addition is subject to the conditions required by the FCH Council Regulation, the related call for proposals and the *FCH JU* Financial Rules. 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 *FCH JU* 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 *FCH JU*, all the tasks of the *beneficiary* whose participation is terminated must be reallocated within the *consortium*.

Requests for termination of the *grant agreements* shall provide the justification for termination and the reports and deliverables referred to in Article II.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 *FCH JU* within 30 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 *FCH JU*.

Where the *FCH JU* does not object within this period, it is deemed to have approved the request on the last day of the time-limit. The *FCH JU* 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 *FCH JU*.

3. The *FCH JU*'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 *FCH JU* 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 *FCH JU*'s approval.

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

1. The *FCH JU* 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 *FCH JU*;

d) where the *beneficiary* has contravened fundamental ethical principles;

- e) where the required reports or deliverables are not submitted or the *FCH JU* does not approve the reports or deliverables submitted;
- f) for major technical or economic reasons substantially adversely affecting the completion of the *project*;
- g) if the potential use of the *foreground* diminishes to a considerable extent;
- h) where a legal, financial, organisational or technical change or change of control of a *beneficiary* calls into question the decision of the *FCH JU* 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 *FCH JU* or the Union, or calls into question the decision to grant the *FCH JU* contribution;
- j) in case of force majeure notified in conformity with Article II.39, where any reactivation of the *project* after suspension is impossible;
- k) where the conditions for participation in the *project* established by Council Regulation (EC) No 521/2008, the *grant agreement* and the call for proposals to which the *project* was submitted are no longer satisfied, unless the *FCH JU* considers that the continuation of the *project* is essential to the Annual and Multi-annual Implementation plans;
- 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 *FCH JU* 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 *FCH JU*, or where the *FCH JU* does not accept the proposed modifications.
- n) where a *beneficiary* is declared bankrupt or is being wound up.

2. The *FCH JU* shall notify the *beneficiary(ies)* whose participation is intended to be terminated with a copy to the *coordinator* and both shall have the opportunity to make their observations within [15] days. Termination of the participation of the *beneficiary(ies)* at the *FCH JU*'s initiative shall take effect on the date indicated in the notification and at the latest [30] days after its receipt by the *beneficiary*.

The *FCH JU* shall inform the *consortium* of the effective date of termination.

The *FCH JU* shall notify the *coordinator* of its intent to terminate the *grant agreement* and the *consortium* shall have the opportunity to make its observations through the *coordinator* within [30] days. 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 *FCH JU* 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 *FCH JU* with information on the share of the *FCH JU* 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 *FCH JU* shall consider that the *beneficiary* whose participation is terminated owes no money to the *FCH JU* and that the *FCH JU* contribution 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 *FCH JU* 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 *FCH JU* or transfer it to the *coordinator* as requested by the *FCH JU*, within 30 days. The *FCH JU* shall send a copy of such a request to the *coordinator*. In the latter case, the *coordinator* shall inform the *FCH JU* 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 *FCH JU* 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 *FCH JU* 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 *FCH JU*. Any pre-financing provided to the *consortium* and any interest generated by the pre-financing must be returned in full to the *FCH JU*.

- in the case of Article II.37.1.b), any financial contribution from the *FCH JU* 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 *FCH JU* may require reimbursement of all or part of the *FCH JU's* financial contribution. In the case of Article II.37.1.b) and m) the *FCH JU* shall take into account the nature and results of the work carried out and its usefulness to the *FCH JU* in the context of the objectives 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 *FCH JU* 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.37, II.40, II.41 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 *FCH JU* without delay, stating the nature, likely duration and foreseeable effects.

3. If the *FCH JU* 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.27 (transfer of *foreground*), without the prior and written authorisation of the *FCH JU* and the other *beneficiaries*.

## II.41. Liability

1. The *FCH JU* 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 *FCH JU*, and agrees to indemnify it, in case of any action, complaint or proceeding brought by a third party against the *FCH JU* 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 *FCH JU* may assist the latter upon written request. The costs incurred by the *FCH JU* 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 *FCH JU* cannot be held liable for any consequences arising from the proper exercise of the rights of the *FCH JU* under the Community and European Union acts relating to the *FCH JU* or this *grant agreement*.

#### II.42. Limitation of entitlements

Any entitlements of the *FCH JU* against a *beneficiary* or of a *beneficiary* against the *FCH JU* shall be subject to a limitation period of five years. The provisions of the Implementing Rules of the Financial Regulation applicable to the general budget of the European Communities shall apply regarding the date for calculating the limitation period and the conditions for interrupting this period.