

The SPECIAL CLAUSES take precedence over the provisions in the Grant agreement when introduced (see Article 7). They are normally alternatives to the standard grant agreement and are used to cover situations that occur less frequently.

## SPECIAL CLAUSES

### LIST OF SPECIAL CLAUSES APPLICABLE TO THE FCH JU GRANT AGREEMENT

#### TABLE OF CONTENTS

1. PARTICIPATION BY THE JRC .....	1
2. INTERNATIONAL ORGANISATIONS (general rule) .....	2
2 BIS UNITED NATIONS (only for use with specialised agencies and international organisations of the UN system having adhered to the UN-EC financial and administrative framework agreement of 29.04.2003 (FAFA)) .....	3
3. COORDINATION AND SUPPORT ACTIONS (CSA) AIMING AT SUPPORTING RESEARCH ACTIVITIES WITH ONE SINGLE BENEFICIARY .....	4
4. PROJECT REVIEW .....	4
5. [ALT 1] PAYMENT OF THE <i>CONSORTIUM'S PRE-FINANCING</i> SUBJECT TO OBTAINING A FINANCIAL GUARANTEE FROM A BENEFICIARY TO COVER THE JU FINANCIAL CONTRIBUTION....	4
5. [ALT 2] PAYMENT OF THE <i>CONSORTIUM'S PRE-FINANCING</i> SUBJECT TO OBTAINING A FINANCIAL GUARANTEE FROM THE CO-ORDINATOR.....	4
5. [ALT 3] THE <i>[BENEFICIARY]</i> AGREES THAT IN LIEU OF A FINANCIAL GUARANTEE NO PRE-FINANCING SHALL BE PROVIDED .....	5
6. LATER PAYMENT OF THE PRE-FINANCING .....	5
7. LIMITS OF PRE-FINANCING FOR CERTAIN BENEFICIARIES .....	5
8. PAYMENTS DIRECTLY TO BENEFICIARIES .....	5
9. BENEFICIARIES WITH INDIRECT COSTS OF LESS THAN 20% OF DIRECT COSTS.....	5
10. BENEFICIARIES WITH COSTS INCURRED IN RELATION TO THE PROJECT BUT NO EC CONTRIBUTION (e.g. usually from third countries) .....	5
11. THIRD PARTIES LINKED TO A BENEFICIARY [Joint Research Units (Unités Mixtes de Recherche, unités propres de recherche etc.) EEIGs/ groupings/ affiliates] .....	6
12. NO ACCESS RIGHTS FOR AFFILIATES.....	6
13. DEPARTMENTS/INSTITUTES ETC. WITHIN A LEGAL ENTITY THAT CAN IDENTIFY THEIR REAL INDIRECT COSTS WHERE THE (WHOLE) LEGAL ENTITY CANNOT.....	7

## 1. PARTICIPATION BY THE JRC

1. Where the Joint Research Centre (JRC) participates in an FCH JU funded project the following conditions apply:

(a) For the purposes of this *grant agreement*, the *JRC* shall be considered as a *research organisation*.

(b) For the purposes of this *grant agreement*, the *JRC* shall be considered as a *beneficiary*. It shall have the same rights and same obligations as the other *beneficiaries* and shall be a member of the *consortium* identified in Article 1.1.

(c) When participating in a project governed by this *grant agreement* the *JRC* must not offer its direct services via the Framework Agreement.

(d) This *grant agreement* takes precedence over any *consortium agreement* signed by the *Commission*, represented by the *JRC*.

(e) Any possible financial or in-kind contribution from the JRC to the FCH JU shall not be considered as part of the contribution of the Union.

## 2. INTERNATIONAL ORGANISATIONS (general rule)

### 1. Arbitration

- a. Any dispute between the FCH JU("Party") and (an) *international organisation(s)* ("Party")acting as *beneficiary(ies)* (collectively referred to in this Article of the *grant agreement* as the "Parties") relating to the *grant agreement*, which cannot be settled amicably shall be referred to an arbitration committee in accordance with the procedure specified below.
- b. When notifying the other Party of its intention to resort to arbitration, the notifying Party shall also inform the other Party of its appointed arbitrator. The second Party shall appoint its arbitrator within one month of that written notification.

The two arbitrators shall, by joint agreement and within three months of the appointment of the second Party's arbitrator, appoint a third arbitrator who shall be the chairman of the arbitration committee, unless a sole arbitrator is agreed by both Parties.

- c. Within one month of the appointment of the third arbitrator, the Parties shall agree on the terms of reference of the arbitration committee, including the procedure to be followed.
- d. The arbitration proceedings shall take place in Brussels.
- e. The arbitration committee shall apply the terms of the *grant agreement*. The arbitration committee shall set out in the award the detailed grounds for its decision.
- f. The arbitral award shall be final and binding upon the Parties, who hereby expressly agree to renounce any form of appeal or revision.
- g. The costs, including all reasonable fees expended by the Parties to any arbitration hereunder, shall be apportioned between the Parties by the arbitration committee.µ

### 2. Certificates on the financial statements and/or on the methodology

With reference to Article II.4.4, certificates on the financial statements and/or on the methodology to be provided by an *international organisation* may be established by its regular internal or external auditor, in accordance with its internal financial regulations and procedures.

### 3. Controls and audits

The competent bodies of the FCH JU, the European Union (the Commission including OLAF and the Court of Auditors) shall address any requests for controls or audits pursuant to the provisions of Article II.22, to the Director General of the international organisation. The international organisation shall make available to the FCH JU or to the competent bodies of the *European Union*, upon request, all relevant financial information, including statements of accounts concerning the action, where they are executed by the international organisation or by a subcontractor. In conformity with Article 287 of the Treaty on the Functioning of the European Union and with the *Financial Regulation* of the *European Community*, the competent bodies of the *European Union* may undertake controls and audits, including on-the-spot checks related to the action financed by the *European Union or Euratom*.

Any control or audit shall be carried out on a confidential basis.

#### 4. Governing law

Notwithstanding the law applicable on a subsidiary basis mentioned in Article 9 first paragraph, this *grant agreement* shall be governed on a subsidiary basis by [the law of (insert law of a Member State or an EFTA country).]

#### 5. Privileges and immunities

Nothing in this *grant agreement* shall be interpreted as a waiver of any privileges or immunities accorded to [insert name of the International Organisation] by its constituent documents or international law.

## 2 BIS UNITED NATIONS (only for use with specialised agencies and international organisations of the UN system having adhered to the UN-EC financial and administrative framework agreement of 29.04.2003 (FAFA))

#### 1. Settlement of dispute

Any dispute arising between the *FCH JU* and [name of the beneficiary] shall be settled in accordance with Article 14 of the Financial and Administrative Framework Agreement concluded by the *Community*, represented by the *Commission*, and the United Nations on 29.04.2003 (hereinafter referred to as the “FAFA Agreement”) to which [name of the beneficiary] adhered on the [date].

#### 2. Certificates on the financial statements and/or on the methodology, controls and audits

With regard to [name of the beneficiary], the “Agreement on the application of the verification clause to operations administered by the United Nations and financed or co-financed by the *European Community*” annexed to the FAFA Agreement prevails over this *grant agreement*, and in particular over its Articles II.4.4, II.22 and II.23.

### 3. [ Governing law

Notwithstanding the law applicable on a subsidiary basis mentioned in Article 9 first paragraph, this *grant agreement* shall be governed on a subsidiary basis by the law of [insert law of a Member State or an EFTA country] [and, where appropriate, by the rules of the international organisations concerned, the general principles governing the law of international organisations and the rules of general international law].]

### 4. Privileges and immunities

Nothing in this *grant agreement* shall be interpreted as a waiver of any privileges or immunities accorded to [insert name of the International Organisation] by its constituent documents or international law.

## 3. COORDINATION AND SUPPORT ACTIONS (CSA) AIMING AT SUPPORTING RESEARCH ACTIVITIES WITH ONE SINGLE BENEFICIARY

All references to the “*beneficiaries*” or to the “*consortium*” or to the “*coordinator*” in this *grant agreement* and in the Annexes thereto shall be interpreted as references to the “*beneficiary*”.

## 4. PROJECT REVIEW

1. A *project review* shall be held [at a mid-term stage] [and/or at the end of the project].

2. At least two months before the date of the review the *FCH JU* shall communicate to the *consortium* in accordance with Article 8 the modalities of the *project review*, including, where appropriate, any meeting it may propose to convene and that it may request the *consortium* to organise. [Each *beneficiary* is requested by the *FCH JU* to attend such meeting in accordance with Article II.3.h.]

Costs incurred by the *consortium* in relation to the *project review* shall be eligible under the activity referred to in Article II.16 “Other activities”

3. The *project review* shall be made on the basis of the satisfactory completion of due deliverables, milestones listed in Annex I as well as on the progress reported in the periodic report for the period.

## 5. [ALT 1] PAYMENT OF THE CONSORTIUM’S PRE-FINANCING SUBJECT TO OBTAINING A FINANCIAL GUARANTEE FROM A BENEFICIARY TO COVER THE JU FINANCIAL CONTRIBUTION

[An amount of EUR..... of the][All the] *pre-financing* as referred to in Article 6 shall be retained by the *FCH JU* until *beneficiary* [name] provides to the *FCH JU* a financial guarantee [equivalent to that amount].

## 5. [ALT 2] PAYMENT OF THE CONSORTIUM’S PRE-FINANCING SUBJECT TO OBTAINING A FINANCIAL GUARANTEE FROM THE CO-ORDINATOR

Notwithstanding the provisions of Article 6, the *pre-financing* for this *project* shall not be paid by the *FCH JU* until a financial guarantee of a value of [amount] is provided by the *coordinator* to the *FCH JU*.

## 5. [ALT 3] THE [BENEFICIARY] AGREES THAT IN LIEU OF A FINANCIAL GUARANTEE NO PRE-FINANCING SHALL BE PROVIDED

The *coordinator* shall not distribute to the *beneficiary* [name] any *pre-financing*. Only interim and/or final payments based on approved technical reports and financial statements accompanied, where required, by certificates on the financial statements shall be made to this *beneficiary*.

## 6. LATER PAYMENT OF THE PRE-FINANCING

Notwithstanding the provisions of Article 6, the *pre-financing* shall be paid not earlier than 45 days before the *start date* of the *project*.

## 7. LIMITS OF PRE-FINANCING FOR CERTAIN BENEFICIARIES

Notwithstanding the provisions of Article 6 the pre-financing to [name of beneficiary(ies)] may reach a maximum of [insert percentage % of the total FCH JU contribution to it] ALT. [insert a fixed sum] Euro.

## 8. PAYMENTS DIRECTLY TO BENEFICIARIES

Notwithstanding the provisions of Article 5.3, 6 and II.2 all payments from the FCH JU shall be made directly to each and every *beneficiary*.

The bank account of [name of beneficiary] to which its payments from the FCH JU financial contribution shall be made is:

Name of account holder:

Name of bank:

Account reference: IBAN/sort code and number

The bank account of [name of beneficiary] to which its payments from the FCH JU financial contribution shall be made is:

Name of account holder:

Name of bank:

Account reference: IBAN/sort code and number

../add if needed/

## 9. BENEFICIARIES WITH INDIRECT COSTS OF LESS THAN 20% OF DIRECT COSTS

Notwithstanding the provisions of Articles II.15, the reimbursement of indirect costs for *beneficiary* [name] is

fixed at [x<20%] of the total direct eligible cost 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*.

## 10. BENEFICIARIES WITH COSTS INCURRED IN RELATION TO THE PROJECT BUT NO EC CONTRIBUTION (e.g. usually from third countries)

1. Costs incurred by the following *beneficiary(ies)* shall not be taken into consideration for determining the *financial contribution of the Union*:

---[*name of beneficiary*]

2. Part B of Annex II, with the exception of Articles II.23, II.25.2 and II.25.3 and any other financial and payment provisions contained in the grant agreement do not apply to beneficiary(ies) mentioned in the previous paragraph. This(ese) beneficiary(ies) need not submit, in particular, the reports mentioned in Article II.4.1.c) and II.4.4 and [is] [are] not subject to financial audits and controls referred to in Article II.22.

3. When providing services or resources to another beneficiary, this(ese) beneficiary(ies) shall be considered as (a) third party(ies) for the purpose of the application of Article II.3 paragraphs c) and d).

## 11. THIRD PARTIES LINKED TO A BENEFICIARY [Joint Research Units (Unités Mixtes de Recherche, unités propres de recherche etc.) EEIGs/ groupings/ affiliates]

1. The following third parties are linked to [*name of the beneficiary*]

--[*name of the legal entity*]

--[*name of the legal entity*]

2. This *beneficiary* may charge costs incurred by the above-mentioned third parties in carrying out the *project*, in accordance with the provisions of the *grant agreement*. These contributions shall not be considered as receipts of the *project*.

The third parties shall identify the costs to the *project* mutatis mutandis in accordance with the provisions of part B of Annex II of the *grant agreement*. Each third party shall charge its eligible costs in accordance with the principles established in Articles II.14 and II.15. The *beneficiary* shall provide to the *FCH JU*:

- an individual financial statement from each third party in the format specified in Form C. These costs shall not be included in the *beneficiary's* Form C

- certificates on the financial statements and/or on the methodology from each third party in accordance with the relevant provisions of this *grant agreement*.

- a summary financial report consolidating the sum of the eligible costs borne by the third parties and the *beneficiary*, as stated in their individual financial statements, shall be appended to the *beneficiary's* Form C.

When submitting reports referred to in Article II.4, the *consortium* shall identify work performed and resources deployed by each third party linking it to the corresponding *beneficiary*.

3. The eligibility of the third parties' costs charged by the *beneficiary* is subject to controls and audits of the third parties, in accordance with Articles II.22 and 23.

4. The *beneficiary* shall retain sole responsibility towards the *FCH JU* and the other beneficiaries for the third parties linked to it. The *beneficiary* shall ensure that the third parties abide by the provisions of the *grant agreement*.

## 12. NO ACCESS RIGHTS FOR AFFILIATES

Paragraph 3 of Article II.34 regarding *access rights* for affiliates does not apply to this *grant agreement*.

### 13. DEPARTMENTS/INSTITUTES ETC. WITHIN A LEGAL ENTITY THAT CAN IDENTIFY THEIR REAL INDIRECT COSTS WHERE THE (WHOLE) LEGAL ENTITY CANNOT

[Name of the department/institute etc.], which is an integral part of [beneficiary] [third party identified in special clause number 11] [name of beneficiary/third party] has an analytical accounting system which allows it to identify its actual indirect costs. Therefore, [name of the department/institute, etc.] shall declare indirect costs in FCH JU grant agreements based on its actual indirect costs, despite the fact that the [beneficiary] [third party identified in special clause number 11] has opted for a flat rate. Reimbursement of indirect costs will be made in accordance with Article II.16.