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DRAFT "CORE" GRANT AGREEMENT

Provisions of the FCH Joint Undertaking

GRANT AGREEMENT No _____

PROJECT TITLE [ACRONYM]

(indicate **FUNDING SCHEME**)

The FCH Joint Undertaking (the "*FCH JU*"), represented for the purposes of this agreement by [forename, name], its Executive Director or her/his duly representative,

of the **one part**,

and (name of the *coordinator* and legal form) (national registration number if any), established in (full address city/state/province/country), represented by (name of legal representative), (function) [and/or (name of legal representative), (function)], or her/his/their authorised representative, the beneficiary acting as coordinator of the *consortium* (the "*coordinator*"), ("*beneficiary* no. 1"),

of the **other part**

HAVE AGREED to the following terms and conditions including those in the following annexes, which form an integral part of this grant agreement (the "*grant agreement*").

Annex I - Description of Work

Annex II - General conditions

Annex III - Form A – Accession of beneficiaries to the *grant agreement*

Annex IV - Form B – Request for accession of a new beneficiary to the *grant agreement*

Annex V - Form C – Financial statement

Annex VI – Form D – Terms of reference for the certificate on the financial statements
and Form E - Terms of reference for the certificate on the methodology

Article 1 – *Accession to the grant agreement of the other beneficiaries*

1. The *coordinator* shall endeavour to ensure that each legal entity identified below accedes to this *grant agreement* as a *beneficiary*, assuming the rights and obligations established by the *grant agreement* with effect from the date on which the *grant agreement* enters into force, by signing Form A in three originals, countersigned by the *coordinator*.

- **(full name and legal form of the *beneficiary*) (national registration number if any)** established in (full address city/state/province/country), represented by (name of legal representative) (function), [and/or (name of legal representative), (function)], or her/his/their authorised representative ("*beneficiary* no. 2"),

- **(full name and legal form of the *beneficiary*) (national registration number if any)** established in (full address city/state/province/country), represented by (name of legal representative) (function), [and/or (name of legal representative), (function)], or her/his/their authorised representative ("*beneficiary* no. 3"),

- (...)

All the *beneficiaries* together form the consortium (the "*consortium*").

2. The *coordinator* shall send to the *FCH JU* one duly completed and signed Form A per *beneficiary* at the latest 45 calendar days after the entry into force of the *grant agreement*. The two remaining signed originals shall be kept, one by the *coordinator* to be made available for consultation at the request of any *beneficiary*, and the other by the *beneficiary* concerned.

3. Should any legal entity identified above, fail or refuse to accede to the *grant agreement* within the deadline established in the previous paragraph, the *FCH JU* is no longer bound by its offer to the said legal entity(ies). The *consortium* may propose to the *FCH JU*, within the time-limit to be fixed by the latter, appropriate solutions to ensure the implementation of the *project*. The procedure established in Annex II for amendments to this *grant agreement* will apply.

4. The *beneficiaries* are deemed to have concluded a *consortium* agreement (the "*consortium agreement*") regarding the internal organisation of the *consortium*.

Article 2 – Scope

The *FCH JU* has decided to grant a financial contribution for the implementation of the *project* as specified in Annex I, called [*project* title (Acronym)] (the "*project*") under the conditions laid down in this *grant agreement*.

Article 3 – Duration and start date of the project

The duration of the *project* shall be [insert number] months from [the first day of the month after the entry into force of the *grant agreement*] [insert fixed start date¹] [the effective starting date notified by the *coordinator* /*beneficiary* which must be within [insert number] months from the date the *grant agreement* enters into force] (hereinafter referred to as the "start date").

Article 4 – Reporting periods and language of reports

The *project* is divided into reporting periods of the following duration:

- P1: from month 1 to month X
- P2: from month X+1 to month Y
- P3: from month Y+1 to month Z
- (...)

¹NOTE: In cases where the start date of the *project* is before the grant agreement is signed by both parties, i.e. before it has entered into force, according to Article 98 of the *FCH JU* Financial Rules, it is required that the consortium can demonstrate the need to start the action before the agreement is signed. In any case, the start date of the *project* cannot be prior to the submission of the proposal.

- [final]: from month [N+1] to the last month of the *project*

Any report and deliverable, when appropriate, required by this *grant agreement* shall be in English.

Article 5 – Maximum FCH JU financial contribution

1. The maximum *FCH JU* financial contribution to the *project* shall be EUR [insert amount]([insert amount in words] EURO).

The actual *FCH JU* financial contribution shall be calculated in accordance with the provisions of this *grant agreement*.

Notwithstanding Article II.16, and taking into account that the in-kind contribution from industry shall at least match the contribution of the Union, the maximum funding rates in this *Grant agreement* are for:

1.1 Direct eligible costs

Beneficiary no. 1

- for research and technological development activities: [insert %],
- for demonstration activities; [insert %],
- for other activities: [insert %].

[*Beneficiary* no. 2

- for research and technological development activities: [insert %],
- for demonstration activities; [insert %],
- for other activities: [insert %],]

[*Beneficiary* no. 3

- for research and technological development activities: [insert %],
- for demonstration activities; [insert %],
- for other activities: [insert %],]

[...]

1.2 Indirect costs

As provided for in Article II.16.5 or Article II.16.6

2. Details of the *FCH JU* financial contribution are contained in Annex I to this *grant agreement* which includes:

- a table of the estimated breakdown of budget, *FCH JU* financial contribution per activity to be carried out by each of the *beneficiaries* and the calculated pre-financing to each *beneficiary*

under the *project*. *Beneficiaries* are allowed to transfer budget between different activities and between themselves in so far as the work is carried out as foreseen in Annex I.

- [a table per *beneficiary* specifying the budget to be reimbursed as a lump sum. *Beneficiaries* are not allowed to transfer financial contribution of the Union to the part to be reimbursed as a lump sum [a table per *beneficiary* specifying the budget to be reimbursed as a lump sum. *Beneficiaries* are not allowed to transfer financial contribution of the Union to the part to be reimbursed as a lump sum.]²

3. The bank account of the *coordinator* to which all payments of the *FCH JU* financial contribution shall be made is:

Name of account holder:

Name of bank:

Account reference: IBAN/sort code and number

Article 6 – Pre-financing

A pre-financing of EUR [insert amount] ([insert amount in words] EURO) shall be paid to *coordinator* within 45 days following the date of entry into force of this *grant agreement*. The *coordinator* shall distribute the pre-financing only to the *beneficiaries* who have acceded to the *grant agreement* and after the minimum number of *beneficiaries* as detailed in the call for proposals to which the *project* is related have acceded to the *grant agreement*.

[NOTE: A special clause shall be foreseen in case payments will have to be performed directly from the *FCH JU* to the beneficiaries.]

This amount should be fixed in accordance to the needs of the *project* and shall never represent more than 80% of the total amount of the *FCH JU* contribution.

The *coordinator* shall be responsible for distributing the pre-financing in accordance with the *consortium agreement*. The *coordinator* shall in particular ensure that any payment of pre-financing

- to a *beneficiary* for which the ex ante verification of the financial capacity, as provided for in Article II.6, has failed and that has not provided any guarantee, shall not exceed [10 000] EUR

- to a *beneficiary* for which the ex ante verification of the financial capacity as provided for in Article II.6, is successful, shall not exceed 80% of the maximum financial contribution as provided for in Article 5.1, to that *beneficiary*.

The coordinator shall be liable to reimburse the *FCH JU* for any potential loss arising from these amounts having been exceeded.

² NOTE: This indent only appears when part of the grant is reimbursed as lump sum, flat rate (other than indirect costs) (including scale of unit costs) or a combination of those.

Article 7 – *Special clauses*

[No special clauses apply to this *grant agreement*.]

[The following special clauses apply to this *grant agreement*.]

Article 8 – *Communication*

1. Any communication or request concerning the *grant agreement* shall identify the *grant agreement* number, the nature and details of the request or communication and be submitted to the following addresses:

For the <i>FCH JU</i> :	FCH Joint Undertaking
	[name]
	[address]
	Belgium

For the <i>coordinator</i> :	[name of contact person]
	[contact address]

2. For information or documents to be transferred by electronic means, the following addresses shall be used:

For the *FCH JU*:

For the *coordinator*:

3. In case of refusal of the notification or absence of the recipient, the *beneficiary* or the *consortium*, as the case may be, is deemed to have been notified on the date of the latest delivery, if notification to the *coordinator* has been sent to one of the addresses mentioned in paragraphs 1 and 2 and to their legal representative. Other *beneficiaries* are deemed to have been notified if notification has been sent to the address mentioned in Article 1.1.

4. Any communication or request relating to the processing of personal data (Article II.13) shall be submitted, using the address(es) for the *FCH JU* identified in paragraphs 1 and 2, to the *FCH JU* responsible for the processing: The Executive Director of the *FCH JU*.

Article 9 – *Applicable law and competent court*

The *FCH JU* financial contribution is a contribution with the aim to implement the 7th Research Framework Programme (FP7) and it is incumbent on the *FCH JU* to execute FCH JTI. Accordingly, this *grant agreement* shall be governed by the terms of this *grant agreement*, the European Union acts related to the FCH JTI (Council Regulation No 521/2008], the *FCH JU* Financial Rules, as well as other relevant European Community and Union law and, on a subsidiary basis, by the law of Belgium.

The General Court , or on appeal, the Court of Justice of the European Union, shall have sole jurisdiction to hear any dispute between the *FCH JU* and any *beneficiary* concerning the interpretation, application or validity of this *grant agreement*.

Article 10 – *Application of the grant agreement provisions*

Any provision of this part of the *grant agreement*, shall take precedence over the provisions of any of the Annexes. The provisions of Annex II shall take precedence over the provisions of Annex I. The special clauses set out in Article 7 shall take precedence over any other provisions of this *grant agreement*.

Article 11 – *Entry into force of the grant agreement*

This *grant agreement* shall enter into force after its signature by the *coordinator* and the *FCH JU*³, on the day of the last signature.

Done in two originals in English.

For the coordinator done at [insert place]:

Name of the legal entity:

Name of legal representative:

Stamp of the organisation (if applicable):

Signature of legal representative:

Date:

For the FCH JU done at [Brussels]

Name of legal representative:

Signature of legal representative:

Date:

Name of legal representative:

Signature of legal representative:

Date:

³ During the preparatory phase, the signature of the *grant agreement* by the *FCH JU* will also require the signature of the competent authorising officer within the Commission.

[For the European Commission done at [Brussels]

In the preparatory phase, until the JU has the operational capacity to implement its own budget, this *grant agreement* is signed also by the competent authorising officer of the Commission. However, the JU shall be the sole contracting party after it has the operational capacity to implement its own budget.

Name of legal representative:

Signature of legal representative:

Date:]

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 Regulation¹, 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*.

¹ 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 accounts² 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*.

² 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.³

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"⁴) or subject to security restrictions or export- or transfer- control, must follow the applicable rules established by the relevant national and European Community and Uniony 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;

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

⁴ 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 irregularities⁵ 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)⁶ Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁷.

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)*

⁵ OJ L 292, 15.11.1996, p.2.

⁶ OJ L 136, 31.5.1999

⁷ 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 agreement⁸ 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

⁸ 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].⁹

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.

⁹ 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]¹⁰.

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.

¹⁰ 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*.¹¹

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.

¹¹ 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-limit¹².

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

¹² 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.

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

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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.

FCH JOINT UNDERTAKING GRANT AGREEMENT

ANNEX III - FORM A - ACCESSION OF BENEFICIARIES TO THE GRANT AGREEMENT

(to be filled in by each *beneficiary* identified in Article 1.1 of the *Grant Agreement*)

[**full name and legal form of the beneficiary**], represented for the purpose hereof by [**name of legal representative**] (**function**) [**and/or (name of legal representative), (function)**], or her/his/their authorised representative, established in (**full address: city/state/province/country**) (person legally authorised to act on behalf of the legal entity)] acting as its legal authorised representative, hereby consents to become a beneficiary ("**beneficiary no..**") to grant agreement No° (relating to project [**title**]) concluded between the FCH JU and [**name of the coordinator and legal form** (acronym) established in (**full address: city/state/province/country**)] and accepts in accordance with the provisions of the aforementioned *Grant Agreement* all the rights and obligations of a *beneficiary*.

Done in 3 copies, of which one shall be kept by the *coordinator* and one by [**name of the beneficiary**], the third being sent to the FCH JU by the *coordinator* in accordance with Articles 1.1 and 1.2 and Article 8 of the *grant agreement*.

Name of Legal Entity [**full name of the beneficiary**]

Name of legal representative(s): (written out in full)

Signature of legal representative(s):

Date:

Stamp of the organisation

Name of Legal Entity [**full name of the coordinator**]

Name of legal representative: (written out in full)

Signature of legal representative:

Date:

Document FCH JU 2009.8

Draft Grant Agreement FCH JU – Annex III – Form A
15 JUNE 2010

Stamp of the organisation

FCH JOINT UNDERTAKING GRANT AGREEMENT
ANNEX IV - FORM B - REQUEST FOR ACCESSION OF A NEW BENEFICIARY TO THE
GRANT AGREEMENT

(to be filled in by each new legal entity willing to become a beneficiary)

[**full name and legal form of new beneficiary**], represented for the purpose hereof by [(**name of legal representative**) (**function**) [and/or (**name of legal representative**), (**function**)], or her/his/their authorised representative established in (**full address: city/state/province/country**)] acting as its legal authorised representative, hereby requests to become a beneficiary ("**beneficiary no.**") to grant agreement No (relating to project [**title**]) concluded between the FCH JU and [**name of the coordinator**] and accepts, in accordance with the provisions of the aforementioned grant agreement, all the rights and obligations of a beneficiary starting on [**date**], should the FCH JU not oppose this request within 30 days of its receipt.

[**name of the coordinator and legal form (acronym)** established in (**full address: city/state/province/country**)], represented for the purpose hereof by [(**name of legal representative**), (**function**) [and/or (**name of legal representative**), (**function**)], or her/his/their authorised representative established in (**full address: city/state/province/country**)] acting as its legal authorised representative, hereby certifies as representative of the beneficiary #1 to grant agreement No..... (relating to project [**title**]) that the consortium proposes and agrees to the accession of [**full name and legal form of new beneficiary**] to the aforementioned grant agreement as beneficiary starting on the abovementioned date.

Enclosures:

- Grant Agreement Preparation Forms duly completed and signed by the new beneficiary.
- modified Annex I to the grant agreement describing the work to be performed by the new beneficiary.
- justification for selection of this/these beneficiary(ies)

Done in 3 copies, of which one shall be kept by the coordinator and one by [**name of new beneficiary**], the third being sent to the FCH JU by the coordinator in accordance with Articles [X] and [II.XX] of the Grant Agreement

Document FCH JU

Draft Grant Agreement FCH JU – Annex IV – Form B

15 JUNE 2010

*[**name of the new beneficiary** (legal entity)]*

Name of legal representative(s): (written out in full)

Signature of legal representative(s):

Date:

Stamp of the organisation

*[**name of the coordinator** (legal entity)]*

Name of legal representative: (written out in full)

Signature of legal representative:

Date:

Stamp of the organisation

FCH JOINT UNDERTAKING - Grant Agreement - Annex V - Collaborative Project

Summary Financial Report - Collaborative project - to be filled in by the coordinator

Project acronym		Project nr		Reporting period from	dd/mm/aa	to:	dd/mm/aa	Page	1/1
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Funding scheme		CP	Type of activity										Total (A)+(B)+(D)		Receipts	Interest
Beneficiary n°	If 3rd Party, linked to beneficiary	Adjustment (Yes/No)	Organisation Short Name	RTD (A)		Demonstration (B)		Management (C)		Other (D)						
				Total	Max FCH JU Contribution	Total	Max FCH JU Contribution	Total	Max FCH JU Contribution	Total	Max FCH JU Contribution	Total	Max FCH JU Contribution			
1																
2																
3																
4																
5																
6																
7																
8																
9																
10																
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16																
17																
18																
19																
20																
21																
22																
23																
24																
25																
TOTAL																

Requested FCH JU contribution for the reporting period (in €)

FCH JOINT UNDERTAKING - Grant Agreement - Annex V - Collaborative Project

Form C - Financial Statement (to be filled in by each beneficiary)

Project nr		Funding scheme	Collaborative Project
Project Acronym			
Period from	dd/mm/aa	Is this an adjustment to a previous statement ?	Yes/No
To	dd/mm/aa		
Legal Name		Participant Identity Code	
Organisation short Name		Beneficiary nr	
Funding % for RTD activities (A)		Flat rate for indirect costs %	20% of direct
Funding % for Demonstration activities (B)			
Funding % for other activities (D)			

1- Declaration of eligible costs/lump sum/flat-rate/scale of unit (in €)

	Type of Activity				TOTAL (A+B+D)
	RTD (A)	Demonstration (B)	Management (C)	Other (D)	
Personnel costs					
Subcontracting					
Other direct costs					
Indirect costs					
Lump sums/flat-rate/scale of unit declared					
Total					
Maximum FCH JU contribution					
Requested FCH JU contribution					

2- Declaration of receipts

Did you receive any financial transfers or contributions in kind, free of charge from third parties or did the project generate any income which could be considered a receipt according to Art.II.17 of the grant agreement ?

Yes/No

If yes, please mention the amount (in €)

3- Declaration of interest yielded by the pre-financing (to be completed by the coordinator)

Did the pre-financing you received generate any interest (only indicated for info) ?

Yes/No

If yes, please mention the amount (in €)

4- Certificate on the methodology

Do you declare average personnel costs according to Art. II.14.1 ?

Yes/No

Is there a certificate on the methodology provided by an independent auditor attached to this financial statement according to Art.II.4.4 ?

Yes/No

Name of the auditor		Cost of the certificate (in €)	
---------------------	--	--------------------------------	--

4- Certificate on the financial statements

Is there a certificate on the financial statements provided by an independent auditor attached to this financial statement according to Art.II.4.4 ?

Yes/No

Name of the auditor		Cost of the certificate (in €)	
---------------------	--	--------------------------------	--

5- Beneficiary's declaration on its honour

We declare on our honour that:

- the costs declared above are directly related to the resources used to attain the objectives of the project and fall within the definition of eligible costs specified in Articles II.14 and II.15 of the grant agreement;

- the receipts declared above are the only financial transfers or contributions in kind, free of charge, from third parties and the only income generated by the project which could be considered as receipts according to Art. II.17 of the grant agreement;

- the interest declared above is the only interest yielded by the pre-financing which falls within the definition of Art. II.19 of the grant agreement ;

- there is full supporting documentation to justify the information hereby declared. It will be made available at the request of the FCH JU and in the event of an audit by the FCH JU and/or, if applicable (cfr section II.3 of Annex II), by the Commission (including OLAF) and/or the Court of Auditors and/or their authorised representatives.

Beneficiary's Stamp	Name of the Person(s) Authorised to sign this Financial Statement
	Date & signature

FCH JOINT UNDERTAKING - Grant Agreement - Annex V - Collaborative Project

Form C - Financial Statement (to be filled in by Third Party) Only applicable if special clause # 11 is used

Project nr		Funding scheme	Collaborative Project
Project Acronym			
Period from	dd/mm/aa	Is this an adjustment to a previous statement ?	Yes/No
To	dd/mm/aa		
3rd party legal Name			
3rd party Organisation short Name		Working for beneficiary nr	
Funding % for RTD activities (A)		Flat rate for indirect costs %	20% of direct
Funding % for Demonstration activities (B)			
Funding % for other activities (D)			

1- Declaration of eligible costs/lump sum/flat-rate/scale of unit (in €)

	Type of Activity				TOTAL (A+B+D)
	RTD (A)	Demonstration (B)	Management (C)	Other (D)	
Personnel costs					
Subcontracting					
Other direct costs					
Indirect costs					
Lump sums/flat-rate/scale of unit declared					
Total					
Maximum FCH JU contribution					
Requested FCH JU contribution					

2- Declaration of receipts

Did you receive any financial transfers or contributions in kind, free of charge from third parties or did the project generate any income which could be considered a receipt according to Art.II. 17 of the grant agreement ?

Yes/No

If yes, please mention the amount (in €)

3- Declaration of interest yielded by the pre-financing (to be completed only by the coordinator)

Did the pre-financing you received generate any interest according to Art. II. 19 ?

Yes/No

If yes, please mention the amount (in €)

4- Certificate on the methodology

Do you declare average personnel costs according to Art. II. 14.1

Yes/No

Is there a certificate on the methodology provided by an independent auditor attached to this financial statement according to Art.II.4.4 ?

Yes/No

Name of the auditor		Cost of the certificate (in €)	
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5- Certificate on the financial statements

Is there a certificate on the financial statements provided by an independent auditor attached to this financial statement according to Art.II.4.4 ?

Yes/No

Name of the auditor		Cost of the certificate (in €)	
---------------------	--	--------------------------------	--

5- Third party's declaration on its honour

We declare on our honour that:

- the costs declared above are directly related to the resources used to attain the objectives of the project and fall within the definition of eligible costs specified in Articles II.14 and II.15 of the grant agreement
- the receipts declared above are the only financial transfers or contributions in kind, free of charge, from third parties and the only income generated by the project which could be considered as receipts according to Art. II.17 of the grant agreement;
- the interest declared above is the only interest yielded by the pre-financing which falls within the definition of Art. II.19 of the grant agreement ;
- there is full supporting documentation to justify the information hereby declared. It will be made available at the request of the FCH JU and in the event of an audit by the FCH JU and/or, if applicable (cfr section II.3 of Annex II), by the Commission (including OLAF) and/or the Court of Auditors and/or their authorised representatives.

Third party's Stamp	Name of the Person(s) Authorised to sign this Financial Statement
	Date & signature

FCH JOINT UNDERTAKING - Grant Agreement - Annex V - Coordination and Support Action

Summary Financial Report - Collaboration and Support Action - to be filled in by the coordinator																					
Project acronym						Project nr				Reporting period from		dd/mm/aa		to:		dd/mm/aa		Page		1/1	
Funding scheme			CSA		Type of activity										Total (C)+(E)						
Beneficiary n°	If 3rd Party, linked to beneficiary	Adjustment (Yes/No)	Organisation Short Name	RTD (A)		Demonstration (B)		Coordination / Support (C)		Management (D)		Other (E)		Total (C)+(E)		Receipts	Interest				
				Total	Max FCH JU Contribution	Total	Max FCH JU Contribution	Total	Max FCH JU Contribution	Total	Max FCH JU Contribution	Total	Max FCH JU Contribution	Total	Max FCH JU Contribution						
1																					
2																					
3																					
4																					
5																					
6																					
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18																					
19																					
20																					
21																					
22																					
23																					
24																					
25																					
TOTAL																					
Requested FCH JU contribution for the reporting period (in €)																					

FCH JOINT UNDERTAKING - Grant Agreement - Annex V - Coordination and Support Action

Form C - Financial Statement (to be filled in by each beneficiary)

Project nr		Funding scheme	Coordination and Support Action
Project Acronym			
Period from	dd/mm/aa	Is this an adjustment to a previous statement ?	Yes/No
To	dd/mm/aa		
Legal Name		Participant Identity Code	nn
Organisation short Name		Beneficiary nr	nn
Funding % for Coordination / Support actions (C)		Flat rate for indirect costs %	20% of direct
Funding % for other activities (E)			

1- Declaration of eligible costs/lump sum/flat-rate/scale of unit (in €)

	Type of Activity					TOTAL (C+E)
	RTD (A)	Demonstration (B)	Coordination / Support (C)	Management (D)	Other (E)	
Personnel costs						
Subcontracting						
Other direct costs						
Indirect costs						
Lump sums/flat-rate/scale of unit declared						
Total						
Maximum FCH JU contribution						
Requested FCH JU contribution						

2- Declaration of receipts

Did you receive any financial transfers or contributions in kind, free of charge from third parties or did the project generate any income which could be considered a receipt according to Art.II.17 of the grant agreement ?

Yes/No

If yes, please mention the amount (in €)

3- Declaration of interest yielded by the pre-financing (to be completed by the coordinator)

Did the pre-financing you received generate any interest (only indicated for information) ?

Yes/No

If yes, please mention the amount (in €)

4- Certificate on the methodology

Do you declare average personnel costs according to Art. II.14.1 ?

Yes/No

Is there a certificate on the methodology provided by an independent auditor attached to this financial statement according to Art.II.4.4 ?

Yes/No

Name of the auditor		Cost of the certificate (in €)	
---------------------	--	--------------------------------	--

4- Certificate on the financial statements

Is there a certificate on the financial statements provided by an independent auditor attached to this financial statement according to Art.II.4.4 ?

Yes/No

Name of the auditor		Cost of the certificate (in €)	
---------------------	--	--------------------------------	--

5- Beneficiary's declaration on its honour

We declare on our honour that:

- the costs declared above are directly related to the resources used to attain the objectives of the project and fall within the definition of eligible costs specified in Articles II.14 and II.15 of the grant agreement;

- the receipts declared above are the only financial transfers or contributions in kind, free of charge, from third parties and the only income generated by the project which could be considered as receipts according to Art. II.17 of the grant agreement;

- the interest declared above is the only interest yielded by the pre-financing which falls within the definition of Art. II.19 of the grant agreement ;

- there is full supporting documentation to justify the information hereby declared. It will be made available at the request of the FCH JU and in the event of an audit by the FCH JU and/or, if applicable (cfr section II.3 of Annex II), by the Commission (including OLAF) and/or the Court of Auditors and/or their authorised representatives.

Beneficiary's Stamp	Name of the Person(s) Authorised to sign this Financial Statement
	Date & signature

FCH JOINT UNDERTAKING - Grant Agreement - Annex V - Coordination and Support Action

Form C - Financial Statement (to be filled in by Third Party) Only applicable if special clause # 11 is used

Project nr		Funding scheme	Coordination and Support Action
Project Acronym			
Period from	dd/mm/aa	Is this an adjustment to a previous statement ?	Yes/No
To	dd/mm/aa		

3rd party legal Name		Working for and linked to beneficiary nr	
3rd party Organisation short Name			

Funding % for Coordination / Support actions (C)		Flat rate for indirect costs %	20% of direct
Funding % for other activities (E)			

1- Declaration of eligible costs/lump sum/flat-rate/scale of unit (in €)

	Type of Activity					TOTAL (C+E)
	RTD (A)	Demonstration (B)	Coordination and Support (C)	Management (D)	Other (E)	
Personnel costs						
Subcontracting						
Other direct costs						
Indirect costs						
Lump sums/flat-rate/scale of unit declared						
Total						
Maximum FCH JU contribution						
Requested FCH JU contribution						

2- Declaration of receipts

Did you receive any financial transfers or contributions in kind, free of charge from third parties or did the project generate any income which could be considered a receipt according to Art.II.17 of the grant agreement ?

Yes/No

If yes, please mention the amount (in €)

3- Declaration of interest yielded by the pre-financing (to be completed by the coordinator)

Did the pre-financing you received generate any interest (only indicated for information) ?

Yes/No

If yes, please mention the amount (in €)

4- Certificate on the methodology

Do you declare average personnel costs according to Art. II.14.1

Yes/No

Is there a certificate on the methodology provided by an independent auditor attached to this financial statement according to Art.II.4.4 ?

Name of the auditor		Cost of the certificate (in €)	
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5- Certificate on the financial statements

Is there a certificate on the financial statements provided by an independent auditor attached to this financial statement according to Art.II.4.4 ?

Yes/No

Name of the auditor		Cost of the certificate (in €)	
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5- Third party's declaration on its honour

We declare on our honour that:

- the costs declared above are directly related to the resources used to attain the objectives of the project and fall within the definition of eligible costs specified in Articles II.14 and II.15 of the grant agreement
- the receipts declared above are the only financial transfers or contributions in kind, free of charge, from third parties and the only income generated by the project which could be considered as receipts according to Art. II.17 of the grant agreement;

- the interest declared above is the only interest yielded by the pre-financing which falls within the definition of Art. II.19 of the grant agreement ;

- there is full supporting documentation to justify the information hereby declared. It will be made available at the request of the FCH JU and in the event of an audit by the FCH JU and/or, if applicable (cfr section II.3 of Annex II), by the Commission (including OLAF) and/or the Court of Auditors and/or their authorised representatives.

Third party's Stamp	Name of the Person(s) Authorised to sign this Financial Statement
	Date & signature

FCH JOINT UNDERTAKING GRANT AGREEMENT – ANNEX VI - FORM D - TERMS OF REFERENCE FOR THE CERTIFICATE OF FINANCIAL STATEMENTS

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INDEPENDENT REPORT OF FACTUAL FINDINGS ON COSTS CLAIMED UNDER A FCH JU GRANT AGREEMENT FINANCED UNDER THE SEVENTH RESEARCH FRAMEWORK PROGRAMME (FP7)...	4
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The Terms of Reference should be completed by the Beneficiary and be agreed with the Auditor

The Independent Report of Factual Findings should be provided by the Auditor

Terms of Reference for an Independent Report of Factual Findings on costs claimed under an FCH Joint Undertaking (FCH JU) Grant Agreement financed under the Seventh Research Framework Programme (FP7)

The following are the terms of reference ('ToR') on which <name of the Beneficiary> 'the Beneficiary' agrees to engage < name of the audit firm> 'the Auditor' to provide an independent report of factual findings on a Financial Statement(s) ¹ prepared by the Beneficiary and to report in connection with FCH JU financed grant agreement under the Seventh Research Framework Programme (FP7), concerning < title and number of the grant agreement> (the 'Grant Agreement'). Where in these ToR the 'FCH JU' is mentioned this refers to its quality as signatory of the Grant Agreement with the Beneficiary. [Note: The FCH JU is not a party to this engagement.]

1.1 Responsibilities of the Parties to the Engagement

'The Beneficiary' refers to the legal entity that is receiving the grant and that has signed the Grant Agreement with the FCH JU. ²

- The Beneficiary is responsible for preparing a Financial Statement for the Action financed by the Grant Agreement in compliance with such agreements and providing it to the Auditor, and for ensuring that this Financial Statement can be properly reconciled to the Beneficiary's accounting and bookkeeping system and to the underlying accounts and records. Notwithstanding the procedures to be carried out, the Beneficiary remains at all times responsible and liable for the accuracy of the Financial Statement.
- The Beneficiary is responsible for the factual statements which will enable the Auditor to carry out the procedures specified, and will provide the Auditor with a written representation letter supporting these statements, clearly dated and stating the period covered by the statements.
- The Beneficiary accepts that the ability of the Auditor to perform the procedures required by this engagement effectively depends upon the Beneficiary providing full and free access to the Beneficiary's staff and its accounting and other relevant records.

'The Auditor' refers to the Auditor who is responsible for performing the agreed-upon procedures as specified in these ToR, and for submitting an independent report of factual findings to the Beneficiary.

The Auditor must be independent from the Beneficiary.

- [Option 1: delete if not applicable] The Auditor is qualified to carry out statutory audits of accounting documents in accordance with the 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 or similar national regulations.
- [Option 2: delete if not applicable] The Auditor is a Competent Public Officer for which the relevant national authorities have established the legal capacity to audit the Beneficiary and has not been involved in the preparation of the financial statements.
- The procedures to be performed are specified by the FCH JU and the Auditor is not responsible

¹ Financial Statement in this context refers solely to Form C - Annex V by which the Beneficiary claims costs under the Grant Agreement.

² Where special clause "Third parties linked to a beneficiary" for the FCH Model Grant Agreement applies, this Form shall be filled in also by such Third Parties linked to a beneficiary. In that case, the wording "the Beneficiary" shall be read as "the Third Party".

for the suitability and appropriateness of these procedures.

1.2 Subject of the Engagement

The subject of this engagement is the *<interim or final; delete what is not applicable> Financial Statement* in connection with the Grant Agreement for the period covering *<dd Month yyyy to dd Month yyyy>*.

1.3 Reason for the Engagement

The Beneficiary is required to submit to the FCH JU a certificate on a Financial Statement in the form of an independent report of factual findings produced by an external auditor in support of the payment requested by the Beneficiary under Article II.4 of the Grant Agreement. The Authorising Officer of the FCH JU requires this Report as he makes the payment of costs requested by the Beneficiary conditional on the factual findings of this Report.

1.4 Engagement Type and Objective

This constitutes an engagement to perform specific agreed-upon procedures regarding an independent report of factual findings on costs claimed under the Grant Agreement.

As this engagement is not an assurance engagement the Auditor does not provide an audit opinion and expresses no assurance. The FCH JU derives its assurance by drawing its own conclusions from the factual findings reported by the Auditor on the Financial Statement and the payment request of the Beneficiary relating thereto.

The Auditor shall include in its Report that no conflict of interest exists between it and the Beneficiary in establishing this Report, as well as the fee paid to the Auditor for providing the Report.

1.5 Scope of Work

1.5.1 The Auditor shall undertake this engagement in accordance with these ToR and:

- in accordance with the International Standard on Related Services ('ISRS') 4400 *Engagements to perform Agreed-upon Procedures regarding Financial Information* as promulgated by the IFAC;
- in compliance with the *Code of Ethics for Professional Accountants* issued by the IFAC. Although ISRS 4400 provides that independence is not a requirement for agreed-upon procedures engagements, the FCH JU requires that the Auditor also complies with the independence requirements of the *Code of Ethics for Professional Accountants*.

1.5.2 Planning, procedures, documentation and evidence

The Auditor should plan the work so that the procedures can be effectively performed. For this purpose he performs the procedures specified in 1.9 of these Terms of Reference ('Scope of Work – Compulsory Report Format and Procedures to be Performed') and uses the evidence obtained from these procedures as the basis for the Report of factual findings.

1.6 Reporting

The Report of factual findings, an example of which is attached to this ToR, should describe the purpose and the agreed-upon procedures of the engagement in sufficient detail in order to enable the Beneficiary and the FCH JU to understand the nature and extent of the procedures performed by the Auditor. Use of the reporting format attached as Annex VI (Form D) of the Grant Agreement is compulsory. The Report should be written in the language indicated in Article 4 of the Grant Agreement. In accordance with Article II.22 of the Grant Agreement, the FCH JU, the Commission and the Court of Auditors have the right to audit any work carried out under the project for which costs are claimed from the FCH JU, including the work related to this engagement.

1.7 Timing

The Report should be provided by [DATE].

1.8 Other Terms

[The Beneficiary and the Auditor can use this section to agree other specific terms such as Auditor's fees, out of pocket expenses, liability, applicable law, etc.]

[legal name of the audit firm]

[name & function of authorised representative]

<dd Month yyyy>

<Signature of the Auditor>

[legal name of the Beneficiary]

[name & function of authorised representative]

<dd Month yyyy>

<Signature of the Beneficiary>

1.9 Scope of Work – Compulsory Report Format and Procedures to be Performed

Independent Report of Factual Findings on costs claimed under an FCH JU Grant Agreement financed under the Seventh Research Framework Programme (FP7)

To be printed on letterhead paper of the Auditor

<Name of contact person(s)>, < Position>

< Beneficiary's name>

<Address>

<dd Month yyyy>

In accordance with our contract dated <dd Month yyyy> with <name of the Beneficiary> “the Beneficiary” and the terms of reference attached thereto (appended to this Report), we provide our Independent Report of Factual Findings (“the Report”), as specified below.

Objective

We *[legal name of the audit firm]*, established in *[full address/city/state/province/country]* represented for signature of this Report by *[name and function of an authorised representative]* have performed agreed-upon procedures regarding the cost declared in the Financial Statement(s)³ of *[name of beneficiary]* hereinafter referred to as the Beneficiary, to which this Report is attached, and which is to be presented to the FCH JU under grant agreement *[FCH JU grant agreement reference: title, acronym, number]* for the following period(s) *[insert period(s) covered by the Financial Statement(s) per Activity]* and for the following amount *[insert amount in EUR]*. This engagement involved performing certain specified procedures, the results of which the FCH JU uses to draw conclusions as to the eligibility of the costs claimed.

Scope of Work

Our engagement was carried out in accordance with :

- the terms of reference appended to this Report and:
- International Standard on Related Services (‘ISRS’) 4400 *Engagements to perform*

³ Financial Statement in this context refers solely to Form C - Annex V by which the Beneficiary claims costs under the Grant Agreement.

Agreed-upon Procedures regarding Financial Information as promulgated by the International Federation of Accountants ('IFAC);

- the *Code of Ethics for Professional Accountants* issued by the IFAC. Although ISRS 4400 provides that independence is not a requirement for agreed-upon procedures engagements, the FCH JU requires that the Auditor also complies with the independence requirements of the *Code of Ethics for Professional Accountants*;

As requested, we have only performed the procedures set out in the terms of reference for this engagement and we have reported our factual findings on those procedures in the table appended to this Report.

The scope of these agreed upon procedures has been determined solely by the FCH JU and the procedures were performed solely to assist the FCH JU in evaluating whether the costs claimed by the Beneficiary in the accompanying Financial Statement has been claimed in accordance with the Grant Agreement. The Auditor is not responsible for the suitability and appropriateness of these procedures.

Because the procedures performed by us did not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance on the Financial Statements.

Had we performed additional procedures or had we performed an audit or review of the Financial Statements of the Beneficiary in accordance with International Standards on Auditing, other matters might have come to our attention that would have been reported to you.

Sources of Information

The Report sets out information provided to us by the management of the Beneficiary in response to specific questions or as obtained and extracted from the Beneficiary's information and accounting systems.

Factual Findings

The above mentioned Financial Statement(s) per Activity was (were) examined and all procedures specified in the appended table for our engagement were carried out. On the basis of the results of these procedures, we found:

All documentation and accounting information to enable us to carry out these procedures has been provided to us by the Beneficiary. Except as indicated below, no exceptions were noted.

Exceptions

- In some cases, the Auditor was not able to successfully complete the procedures specified. These exceptions are as follows:

exceptions such as inability to reconcile key information, unavailability of data which prevented the Auditor from carrying out the procedures, etc. should be listed here. The FCH JU will use this information to decide the amounts which will be reimbursed.

Use of this Report

This Report is solely for the purpose set forth in the above objective.

This Report is prepared solely for the confidential use of the Beneficiary and the FCH JU and solely for the purpose of submission to the FCH JU in connection with the requirements as set out in Article II.4.4 of the Grant Agreement. This Report may not be relied upon by the Beneficiary or by the FCH

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Amended by GB on 5 June 2012

JU for any other purpose, nor may it be distributed to any other parties. The FCH JU may only disclose this Report to others who have regulatory rights of access to it, in particular the European Commission including the European Anti-Fraud Office and the European Court of Auditors.

This Report relates only to the Financial Statement(s) specified above and does not extend to any other financial statements of the Beneficiary.

No conflict of interest⁴ exists between the Auditor and the Beneficiary in establishing this Report. The fee paid to the Auditor for providing the Report was € ____ .

We look forward to discussing our Report with you and would be pleased to provide any further information or assistance which may be required.

[legal name of the audit firm]

[[name and function of an authorised representative]

<dd Month yyyy>,<Signature of the Auditor>

⁴ A conflict of interest arises when the auditor's objectivity to establish the certificate is compromised in fact or in appearance when the auditor for instance:

- was involved in the preparation of the Financial Statements (Forms C);
- stands to benefit directly should the certificate be accepted;
- has a close relationship with any person representing the beneficiary;
- is a director, trustee or partner of the beneficiary;
- is in any other situation that compromises his or her independence or ability to establish the certificate impartially.

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Procedures performed by the Auditor

The Auditor designs and carries out his work in accordance with the objective and scope of this engagement and the procedures to be performed as specified below. When performing these procedures the Auditor may apply techniques such as inquiry and analysis, (re)computation, comparison, other clerical accuracy checks, observation, inspection of records and documents, inspection of assets and obtaining confirmations or any others deemed necessary in carrying out these procedures.

The FCH JU reserves the right to issue guidance together with example definitions and findings to guide the Auditor in the nature and presentation of the facts to be ascertained. The FCH JU reserves the right to vary the procedures by written notification to the Beneficiary. The procedures to be performed are listed as follows:

Procedures	Standard factual finding and basis for exception reporting
Personnel Costs	
<p>1. Recalculate hourly personnel and overhead rates for personnel (full coverage if less than 20 employees, otherwise a sample of minimum 20, or 20% of employees, whichever is the greater), indicate the number of productive hours used and hourly rates. Where sampling is used, selection should be random with a view to producing a representative sample. 'Productive hours' represent the (average) number of hours made available by the employee in a year after the deduction of holiday, sick leave and other entitlements. The auditor obtained the calculation of the productive hours after inspecting all necessary records, national legislation, labour agreements, contracts, any other relevant documentation. The calculation should be based on the period(s) corresponding to the Financial Statement(s) or on the last closed financial year (whichever is used by the beneficiary).</p>	<p>The auditor sampled _____ employees out of the total of _____ employees. For each employee in the sample of ____, the Auditor obtained the personnel costs (salary and employer's costs) from the payroll system together with the productive hours from the time records of each employee.</p> <p>For each employee selected, the Auditor recomputed the hourly rate by dividing the actual personnel costs by the actual productive hours, which was then compared to the hourly rate charged by the Beneficiary.</p> <p>No exceptions were noted.</p> <p>The average number of productive hours for the employees selected was _____.</p> <p>The productive hours calculation corresponds to the usual accounting practice of the beneficiary.</p> <p>If the productive hours or costs of personnel cannot be identified, they should be listed (together with the amounts) as exceptions in the main report.</p> <p>If the productive hours calculation does not correspond to the usual accounting practice of the beneficiary, this should be listed as an exception in the main report.</p>
<p>2. For the same selection examine and describe time recording of employees (paper/computer, daily/weekly/monthly, signed,</p>	<p>Employees record their time on a daily/weekly/monthly basis using a paper/computer-based system. The time-records selected were authorised by the project manager or other</p>

Procedures	Standard factual finding and basis for exception reporting
authorised).	<p>superior.</p> <p>If no time records are available which fit the above description, this should be listed as an exception in the main report.</p>
<p>3. Employment status and employment conditions of personnel. The Auditor should obtain the employment contracts of the employees selected and compare with the standard employment contract used by the Beneficiary. Differences which are not foreseen by the Grant Agreement should be noted as exceptions.</p>	<p>For the employees selected, the Auditor inspected their employment contracts and found that they were:</p> <ul style="list-style-type: none"> – directly hired by the Beneficiary in accordance with its national legislation, – under the sole technical supervision and responsibility of the latter, and – remunerated in accordance with the normal practices of the Beneficiary. <p>Personnel who do not meet all three conditions should be listed (together with the amounts) as exceptions in the main report.</p>
<p>4. Use of average personnel costs</p> <p>Apply 4a, 4b or 4c according to the existence or not of an approved Methodology Certificate (CoMAv or CoM if it concerns average personnel costs)</p> <p>4a. With an approved Methodology Certificate including average personnel costs:</p>	<p>4a.</p> <p>The Auditor found that the personnel costs charged to the financial statement:</p> <ul style="list-style-type: none"> • are calculated using average costs in accordance with the methodology as specified in the Report of findings on the methodology dated _____. • have been calculated using amounts derived from the relevant period which can be reconciled to the accounting records of the relevant period.. • Where categories are used, the Auditor verified that the researcher (or research-related person) had been correctly classified. • The Auditor obtained confirmation from the Beneficiary that the rates used were not budgeted or estimated amounts. <p>If amounts cannot be reconciled, or if estimates or budgeted amounts were used, this should be reported as an exception in the main report.</p>

Procedures	Standard factual finding and basis for exception reporting
<p>4b. Without an approved Methodology Certificate (not applicable to SME owners and natural persons not receiving a salary):</p> <ul style="list-style-type: none"> The auditor reviewed all relevant manuals and/or internal guidance describing the methodology used to calculate average personnel costs; The auditor obtained a list of all average personnel rates calculated by the beneficiary in accordance with the methodology used; The auditor verified that the calculation of the average personnel costs excludes ineligible items as defined in Art.II.14.3, Annex II to the Grant Agreement or any costs claimed under other cost categories; The auditor obtained a list of all relevant employees (working on EU projects + not working on EU projects) based on which the average personnel rate(s) are calculated; The auditor reviewed the allocation of employees to the relevant group and verified the correctness of the Full Time Equivalent (FTE); The auditor performed a numerical reconciliation between the total amount of personnel costs taken into consideration for the calculation of the average personnel rate and the total amount of personnel costs recorded in the statutory accounts; The auditor verified on a sample basis that the appropriate average hourly rate was used for the personnel costs claimed on the audited project. <p>4c. Without an approved Methodology Certificate – applicable only for SME owners and natural persons not receiving a salary:</p> <ul style="list-style-type: none"> The auditor reviewed payroll and accounting records, contracts and other relevant legal documents in order to verify that the SME owners and the natural persons 	<p>4b.</p> <p>The auditor found:</p> <ul style="list-style-type: none"> no discrepancies between the method described in the relevant documents and the method used by the beneficiary; the methodology used to calculate the average personnel hourly rate(s) represent(s) the usual cost accounting practice of the organisation; no differences arose from the numerical reconciliation the Auditor confirms that the rates used for the calculation of the average personnel costs were not based on budgeted or estimated amounts. <p>If amounts cannot be reconciled, or if estimates or budgeted amounts were used, this should be reported as an exception in the main report.</p> <p>If the usual accounting practice differs from the one described, this should be reported as an exception in the main report.</p> <p>4c.</p> <ul style="list-style-type: none"> SME owners and natural persons charging personnel costs based on a flat rate, do not receive salary. <p>If they receive any salary, it should be listed as an exception in the main report.</p> <ul style="list-style-type: none"> Time spent on projects was duly recorded by the persons whose personal work costs are

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Procedures	Standard factual finding and basis for exception reporting
<p>concerned do not receive any salary.</p> <ul style="list-style-type: none"> The auditor obtained documents (such as employment records, CVs, diplomas and other relevant documents) proving professional experience of the persons concerned and supporting determination of appropriate research category in line with 'People' Work Programme. The auditor verified that the annual living allowance corresponds to the reference year of the publication of the call under which the project was selected for funding and that the beneficiary applied the appropriate country coefficient correction as published in the 'People' Work Programme of the year of publication of the call. The Auditor recomputed the hourly rate by dividing the applicable living allowance corresponding to the appropriate research category by the standard number of productive hours (1575) and by multiplying it by the appropriate country correction coefficient. The auditor reviewed the time-sheets completed by the persons whose personal work costs were claimed on a flat rate basis. 	<p>charged on the basis of a flat rate. These time-records have been verified by a superior or another person involved in the project. In the absence of any superior or other person working closely with such persons, the Auditor confirms that documentation is available to ascertain the reliability of the time records.</p> <p>If no time records are available, this should be listed as an exception in the main report.</p> <ul style="list-style-type: none"> The hourly rates applicable to all SME owners and natural persons who do not receive a salary are correctly calculated. The total number of hours claimed for the European Union project in a year is in line with their time-sheets but is not higher than the standard number of productive hours per SME owner or natural person (1575). <p>If the calculation is not correct, this should be listed as an exception in the main report.</p>
Subcontracting	
<p>5 Obtain a written description from the Beneficiary regarding 3rd party resources used and compare with Annex 1 to the Grant Agreement.</p>	<p>The Auditor compared the description of the 3rd party resources provided by the Beneficiary to the specification in Annex 1 to the Grant Agreement, and found them to be the same.</p> <p>If the descriptions do not clearly match, this should be reported as an exception in the main report.</p>
<p>6 Inspect documents and obtain confirmations that subcontracts</p>	<p>The Auditor obtained tendering documents for each subcontract entered into and found that the tendering process was followed and that a written analysis of value-for-money had been</p>

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Amended by GB on 5 June 2012

Procedures	Standard factual finding and basis for exception reporting
<p>are awarded according to a procedure including an analysis of best value for money (best price-quality ratio), transparency and equal treatment.</p> <p>Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.</p>	<p>prepared by the Beneficiary in support of the final choice of subcontractor, or that the contract had been awarded as part of an existing framework contract entered into prior to the beginning of the project.</p> <p>If the Auditor is not provided with evidence of either of the above situations, the amount of the subcontract should be listed as an exception in the main report.</p>
Other Direct Costs	
<p>7 Allocation of equipment subject to depreciation is correctly identified and allocated to the project.</p> <p>Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.</p>	<p>The Auditor traced the equipment charged to the project to the accounting records and the underlying invoices. The Beneficiary has documented the link with the project on the invoice and purchase documentation, and, where relevant, the project accounting. The asset value was agreed to the invoice and no VAT or other identifiable indirect taxes were charged. The depreciation method used to charge the equipment to the project was compared to the Beneficiary's normal accounting policy and found to be the same.</p> <p>If assets have been charged which do not comply with the above, they should be listed (together with the amounts) as exceptions in the main report.</p>
<p>8 Travel costs correctly identified and allocated to the project (and in line with Beneficiary's normal policy for non-EU work regarding first-class travel, etc.)</p> <p>Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.</p> <p>The Beneficiary should provide written evidence of its normal policy for travel costs (e.g. use of first class tickets) to enable the Auditor to compare the travel charged with this policy</p>	<p>The Auditor inspected the sample and found that the Beneficiary had allocated travel costs to the project by marking of invoices and purchase orders with the project reference, resulting in traceable allocation in the project accounts.</p> <p>The costs charged were compared to the invoices and found to be the same. No VAT or other identifiable indirect taxes were charged.</p> <p>The use of first class travel was in line with the written policy provided by the Beneficiary.</p> <p>Costs which are not allocated to project accounts and do not have a clear attribution (normally by writing the project number on the original invoice) should be listed (together with the amounts) as exceptions in the main report.</p>
<p>9 Consumables correctly identified and allocated to the project.</p> <p>Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.</p>	<p>The Auditor inspected the sample and found that the Beneficiary had allocated consumable costs to the project by marking of invoices and purchase orders with the project reference, resulting in traceable allocation in the project accounts.</p>

Procedures	Standard factual finding and basis for exception reporting
	<p>The costs charged were compared to the invoices and found to be the same. No VAT or other identifiable indirect taxes were charged.</p> <p>Costs which are not allocated to project accounts and do not have a clear attribution (normally by writing the project number on the original invoice) should be listed (together with the amounts) as exceptions in the main report.</p>
Indirect costs	
<p>10 Obtain and review a detailed breakdown of Indirect costs (reconciled to the accounting records) and confirm that the following costs are not present:</p> <ul style="list-style-type: none"> 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 JU, Union or Euratom project, g) debt and debt service charges, excessive or reckless expenditure.⁵ <p>The above does not apply to beneficiaries using a flat rate to claim indirect costs in accordance with Annex II of the Grant Agreement attached to the grant agreement being reviewed. In such case the procedure to apply is:</p> <ul style="list-style-type: none"> • The auditor confirmed that the flat rate applied on the Financial Statement(s) is consistent with the one provided in Annex II of the Grant Agreement. • The auditor recalculated the indirect costs claimed on the basis of the flat rate for arithmetical accuracy. 	<p>The Auditor obtained the total overhead amount which was allocated and reconciled this to the accounting records for the period in question.</p> <p>The Auditor recalculated the ratio of indirect costs [as a percentage of personnel costs/ as a fixed personnel hourly rate / as another cost driver specified by the Beneficiary] and agreed it to the rate used in the Financial Statement(s).</p> <p>The Auditor obtained a detailed breakdown from the accounting system of the indirect costs which have been charged to the contract, and reconciled the individual amounts to the general ledger of the Beneficiary.</p> <p>The Auditor found that costs for the non-research activities of the Beneficiary, such as manufacturing, education, marketing of products or services, etc., had not been included in the calculation.</p> <p>For each element of the breakdown, the Auditor obtained the Beneficiary's confirmation that it contained none of the ineligible costs specified (typical examples are leasing costs, loan charges, provisions for doubtful debt (but not normal accruals), local business and property taxes, customs duties, exchange losses from billing in a foreign currency).</p> <p>Only the types of excessive and reckless expenditure listed in the FCH JU's guidance should be considered, the Auditor is not required to exercise professional judgement or provide assurance in this matter.</p>

⁵ Excessive or reckless expenditure as defined in guidance notes issued by the Commission

Procedures	Standard factual finding and basis for exception reporting
	<p>Amounts which do not meet the above criteria or where the Auditor is not provided with sufficient information in order to inspect and compare the types of cost should be listed (together with the amounts) as exceptions in the main report.</p> <p>Only for beneficiaries using a flat rate to claim indirect costs:</p> <p>The auditor found:</p> <ul style="list-style-type: none"> that the flat rate has been charged in accordance with Annex II of the Grant Agreement and computed on direct eligible costs excluding costs for sub-contracting and the costs of resources made available by third parties which are not used on the premises of the beneficiary. that no differences arose from the numerical reconciliation
<p>11 Assess use of a simplified method of calculation of overheads at the level of the legal entity. The Beneficiary may use a simplified method of calculation (either due to the lack of analytical accounting or legal requirement to use a form of cash-based accounting). This does not permit the use of a generalised estimate, or the use of a 'standard' rate that is not derived from the accounting records of the period in question. Thus the rate (but not the methodology) should be updated for each accounting period</p>	<p>The Beneficiary's accounting system does not permit indirect costs to be separately identified for the individual departments. [and/ or]</p> <p>The Beneficiary's accounting system is cash-based and year-end adjustments are made using accounting estimates in order to charge certain accrued costs.</p> <p>The Auditor obtained the breakdown of overhead costs and the adjusting entries together with the source of the relevant accounting entries.</p> <p>The Beneficiary provided the Auditor with underlying calculations showing the basis for additional accounting entries. The Auditor agreed these calculations to the relevant sources of management information.</p> <p>Any elements of a simplified calculation which represent percentage estimates and which cannot be compared to underlying data should be listed (together with the amounts) as exceptions in the main report.</p>
Other	
<p>12 Inspect and compare exchange rates into Euros.</p>	<p>The Auditor compared the exchange rates used for conversion with the applicable official exchange rates established by the European Union and the Beneficiary used [choose one]:</p>

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Amended by GB on 5 June 2012

Procedures	Standard factual finding and basis for exception reporting
	<ul style="list-style-type: none">the conversion rate of the date where the actual costs were incurredthe rate applicable on the first day of the month following the end of reporting period <p>Where rates cannot be agreed, an exception should be noted, (together with the amount) in the main report.</p>
<p>13 Identification of receipts.</p> <p>The Beneficiary is obliged to declare in its claim any receipts related to the project (income from events, rebates from suppliers, etc.)</p>	<p>The Auditor examined the relevant project accounts and obtained representations from the Beneficiary that the amounts listed represent a complete record of the sources of income connected with the project. The amount included in the claim regarding receipts is the same as the amount recorded in the project accounting.</p> <p>Any discrepancies in the receipts noted in the accounts and those reported by the Beneficiary should be noted (together with the amount) as exceptions in the main report.</p>
<p>14 Identification of interest yielded on pre-financing.</p> <p>The Beneficiary, when it is the coordinator of the project, is obliged to declare interest yielded on pre-financing</p>	<p>The Auditor compared the relevant project accounts with the interest shown in the bank statements and found them to be the same.</p> <p>Any discrepancies in the interest noted in the accounts and those reported by the Beneficiary should be noted (together with the amount) as exceptions in the main report.</p>

*[legal name of the audit firm]**[name and function of an authorised representative]*

<dd Month yyyy>

<Signature of the Auditor>

FCH JOINT UNDERTAKING GRANT AGREEMENT

ANNEX VI - FORM E - TERMS OF REFERENCE FOR THE CERTIFICATE ON THE METHODOLOGY

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TERMS OF REFERENCE FOR AN INDEPENDENT REPORT OF FACTUAL FINDINGS ON THE METHODOLOGY CONCERNING A FCH JOINT UNDERTAKING GRANT AGREEMENT FINANCED UNDER THE SEVENTH RESEARCH FRAMEWORK PROGRAMME (FP7)	2
INDEPENDENT REPORT OF FACTUAL FINDINGS ON THE METHODOLOGY CONCERNING A FCH JOINT UNDERTAKING GRANT AGREEMENT FINANCED UNDER THE SEVENTH RESEARCH FRAMEWORK PROGRAMME (FP7)	4

The Terms of Reference should be completed by the Beneficiary and be agreed with the Auditor

The Independent Report of factual findings on the methodology should be provided by the Auditor

Terms of Reference for an Independent Report of factual findings on the methodology concerning a FCH Joint Undertaking (FCH JU) Grant Agreement financed under the Seventh Research Framework Programme (FP7)

The following are the terms of reference ('ToR') on which <name of the Beneficiary> 'the Beneficiary' agrees to engage < name of the audit firm> 'the Auditor' to provide an Independent Report of Factual Findings in connection with FCH JU financed grant agreements under the Seventh Research Framework Programme (FP7), < title and number of the grant agreements> (the 'Grant Agreements'), concerning the Beneficiary's methodology for calculating personnel costs [and overhead costs (indirect costs)] Where in these ToR the 'FCH JU' is mentioned this refers to its quality as signatory of the Grant Agreements with the Beneficiary. The FCH JU is not a party to this engagement.

1.1 Responsibilities of the Parties to the Engagement

'The Beneficiary' refers to the legal entity that is receiving the grant funding and that has signed the Grant Agreements with the FCH JU.¹

- The Beneficiary is responsible for preparing a Financial Statement² for the Action financed by the Grant Agreements in compliance with such agreements and providing it to the Auditor, and for ensuring that this Financial Statement can be properly reconciled to the Beneficiary's accounting and bookkeeping system and to the underlying accounts and records. This Financial Statement will be used as a basis for the procedures which the Auditor will carry out in the framework of this engagement. Notwithstanding the procedures to be carried out, the Beneficiary remains at all times responsible and liable for the methodology in place and the accuracy of the Financial Statement.
- The Beneficiary is responsible for the factual statements which will enable the Auditor to carry out the procedures specified, and will provide the Auditor with a written representation letter supporting these statements, clearly dated and stating the period covered by the statements.
- The Beneficiary accepts that the ability of the Auditor to perform the procedures required by this engagement effectively depends upon the Beneficiary providing full and free access to the Beneficiary's staff and its accounting and other relevant records.

'The Auditor' refers to the Auditor who is responsible for performing the agreed-upon procedures as specified in these ToR, and for submitting an independent report of factual findings to the Beneficiary.

The Auditor must be independent from the Beneficiary.

- [Option 1: delete if not applicable] The Auditor is qualified to carry out statutory audits of accounting documents in accordance with the 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 or similar national regulations.
- [Option 2: delete if not applicable] The Auditor is a Competent Public Officer for which the relevant national authorities have established the legal capacity to audit the Beneficiary and is not involved in the preparation of the financial statements.
- The procedures to be performed are specified by the FCH JU and the Auditor is not responsible

¹ Where special clause "Third party linked to a beneficiary" for the FCH Model Grant Agreement applies, this Form shall be filled in also by such Third Parties linked to a beneficiary. In that case, the wording "the Beneficiary" shall be read as "the Third Party".

² Financial Statement in this context refers solely to Form C - Annex V by which the Beneficiary claims costs under the Grant Agreement

for the suitability and appropriateness of these procedures.

1.2 Subject of the Engagement

The subject of this engagement is the methodology implemented and applied by *the Beneficiary* for claiming personnel costs and overhead rates (indirect costs).

1.3 Reason for the Engagement

The Beneficiary submits to the FCH JU a certificate on the methodology in the form of an independent report of factual findings on the methodology produced by an external auditor in accordance with Article II.4 of the Grant Agreements. The Authorizing Officer of the FCH JU requires this Report as he makes the payments of costs requested by the Beneficiary conditional on the factual findings of this Report.

1.4 Engagement Type and Objective

This constitutes an engagement to perform specific agreed-upon procedures regarding an independent report of factual findings on methodology concerning the Grant Agreements. The objective of this Report is for the Auditor to present factual findings on methodology used by the Beneficiary to calculate costs in its Financial Statements for the actions financed by the Grant Agreements. The procedures to be carried out will enable the FCH JU to conclude on the existence of the Beneficiary's methodology and its suitability to ensure that costs claimed will be in compliance with the terms of the Grant Agreements.

As this engagement is not an assurance engagement the Auditor does not provide an audit opinion and expresses no assurance. The FCH JU derives its assurance by drawing its own conclusions from the factual findings reported by the Auditor on the methodology of the Beneficiary.

The Auditor shall include in its Report that no conflict of interest exists between it and the Beneficiary in establishing this Report, as well as the fee paid to the Auditor for providing the Report.

1.5 Scope of Work

1.5.1 The Auditor shall undertake this engagement in accordance with these ToR and:

- in accordance with the International Standard on Related Services ('ISRS') 4400 *Engagements to perform Agreed-upon Procedures regarding Financial Information* as promulgated by the IFAC;
- in compliance with the *Code of Ethics for Professional Accountants* issued by the IFAC. Although ISRS 4400 provides that independence is not a requirement for agreed-upon procedures engagements, the FCH JU requires that the Auditor also complies with the independence requirements of the *Code of Ethics for Professional Accountants*.

1.5.2 Planning, procedures, documentation and evidence

The Auditor should plan the work so that an effective analysis of the methodology can be performed. For this purpose he performs the procedures specified in 1.9 of these ToR ('Scope of Work – Compulsory Report Format and Procedures to be Performed') and he uses the evidence obtained from these procedures as the basis for the Report of factual findings.

1.6 Reporting

The Report of factual findings on the methodology, an example of which is attached to this ToR, should describe the purpose and the agreed-upon procedures of the engagement in sufficient detail in order to enable the Beneficiary and the FCH JU to understand the nature and extent of the procedures performed by the Auditor. Use of the reporting format attached as Annex VI (Form E) of the General Conditions is compulsory. The Report should be written in the language indicated in Article 4 of the

Grant Agreement. In accordance with Article II.22 of the Grant Agreement, the FCH JU, the European Commission and the European Court of Auditors have the right to audit any work carried out under the project for which costs are claimed. This audit may include the work related to this engagement.

1.7 Timing

The Report should be provided by [DATE]

1.8 Other Terms

[The Beneficiary and the Auditor can use this section to agree other specific terms such as Auditor's fees, out of pocket expenses, *liability, applicable law*, etc.]

[legal name of the audit firm]

[name & function of authorised representative]

<dd Month yyyy>

<Signature of the Auditor>

[legal name of the Beneficiary]

[name & function of authorised representative]

<dd Month yyyy>

<Signature of the Beneficiary>

1.9 Scope of Work – Compulsory Report Format and Procedures to be Performed

Independent Report of factual findings on the methodology concerning FCH JU Grant Agreement financed under the Seventh Research Framework Programme (FP7)

To be printed on letterhead paper of the Auditor

<Name of contact person(s)>, < Position>

< Beneficiary's name>

<Address>

<dd Month yyyy>

Dear <Name of contact person(s)>

In accordance with our contract dated <dd Month yyyy> with <name of the Beneficiary> “the Beneficiary” and the terms of reference attached thereto (appended to this Report), we provide our independent report of factual findings (“the Report”), with respect to the methodology used to calculate personnel costs and overhead rates (indirect costs). You requested certain procedures to be carried out in connection with the grant concerning [*title and number of the agreement*], the ‘Grant Agreement’. The Report covers the methodology used during the period [date]. In the event that the Beneficiary changes the methodology, the Report will not be applicable to Financial Statements³ submitted thereafter.

Objective

Our engagement was an engagement to perform agreed-upon procedures regarding the methodology used to calculate personnel costs and overhead rates (indirect costs) in the context of the grant agreements signed between you and the FCH JU. It involved performing certain specified procedures in order to confirm the factual basis of the responses and descriptions provided by the Beneficiary, the results of which the FCH JU uses to draw conclusions from the procedures performed by us.

The objective of this Report is for the Auditor to present factual findings on the methodology used by the Beneficiary to claim costs in its Financial Statements for the actions financed by the Grant Agreements.

Scope of Work

³ Financial Statement in this context refers solely to Form C - Annex V by which the Beneficiary claims costs under the Grant Agreement.

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Updated by GB on 5 June 2012

Our engagement was undertaken in accordance with:

- the terms of reference appended to this Report and;
- International Standard on Related Services ('ISRS') 4400 *Engagements to perform Agreed-upon Procedures regarding Financial Information* as promulgated by the International Federation of Accountants ('IFAC');
- the *Code of Ethics for Professional Accountants* issued by the IFAC. Although ISRS 4400 provides that independence is not a requirement for agreed-upon procedures engagements, the FCH JU requires that the Auditor also complies with the independence requirements of the *Code of Ethics for Professional Accountants*;

As requested, we have only performed the procedures set out in the terms of reference for this engagement and we have reported our factual findings on those procedures in the table appended to this Report.

The scope of these agreed upon procedures has been determined solely by the FCH JU and the procedures were performed solely to assist the FCH JU in evaluating whether the methodology for preparing cost claims by the Beneficiary is in accordance with the requirements of the financed Grant Agreement. The Auditor is not responsible for the suitability and appropriateness of these procedures.

Because the procedures performed by us did not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance on any Financial Statements claimed using this methodology.

Had we performed additional procedures or had we performed an audit or review of the Financial Statements of the Beneficiary in accordance with International Standards on Auditing, other matters might have come to our attention that would have been reported to you.

Sources of Information

The Report sets out information provided to us by the management of the Beneficiary in response to specific questions or as obtained and extracted from the Beneficiary's information and accounting systems.

Factual Findings

The Auditor's factual findings based on the procedures carried out are presented in the table appended to this Report.

Exceptions

In some cases, the Auditor was not able to successfully complete the procedures specified. These exceptions are as follows:

[exceptions such as inability to reconcile key information, unavailability of data which prevented the Auditor from carrying out the procedures, etc. should be listed here.]

Use of this Report

This Report is solely for the purpose set forth in the above objective.

This Report is prepared solely for the confidential use of the Beneficiary and the FCH JU and solely for the purpose of submission to the FCH JU in connection with the requirements as set out in Article II.4.4 of the Grant Agreement. This Report may not be relied upon by the Beneficiary or by the FCH JU for any other purpose, nor may it be distributed to any other parties. The FCH JU may only

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disclose this Report to others who have regulatory rights of access to it, in particular, the European Commission, the European Anti-Fraud Office and the European Court of Auditors.

This Report relates only to the methodology specified above and does not constitute a report on the Financial Statements of the Beneficiary.

No conflict of interest⁴ exists between the Auditor and the Beneficiary in establishing this Report. The fee paid to the Auditor for providing the Report was € _____ .

We look forward to discussing our Report with you and would be pleased to provide any further information or assistance which may be required.

Yours sincerely

[legal name of the audit firm]

[name and function of an authorized representative]

<dd Month yyyy>, <Signature of the Auditor>

⁴ A conflict of interest arises when the auditor's objectivity to establish the certificate is compromised in fact or in appearance when the auditor for instance:

- was involved in the preparation of the Financial Statements (Forms C);
- stands to benefit directly should the certificate be accepted;
- has a close relationship with any person representing the beneficiary;
- is a director, trustee or partner of the beneficiary;
- is in any other situation that compromises his or her independence or ability to establish the certificate impartially.

-

Statements to be made by the Beneficiary and corresponding procedures carried out by the Auditor.

The Auditor designs and carries out his work in accordance with the objective and scope of this engagement and the procedures to be performed as specified below. When performing these procedures the Auditor may apply techniques such as inquiry and analysis, (re)computation, comparison, other clerical accuracy checks, observation, inspection of records and documents, inspection of assets and obtaining confirmations or any others deemed necessary in carrying out these procedures.

The FCH JU reserves the right to issue guidance together with example definitions and findings to guide the Auditor in the nature and presentation of the facts to be ascertained. The FCH JU reserves the right to vary the procedures by written notification to the Beneficiary. The procedures to be performed are listed as follows:

Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. <i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
<p>The methodology described below has been in use since [date].</p> <p>The next planned alteration to the methodology used by the Beneficiary will be from [date]</p>	<p>Procedure: The Auditor has inspected records and documents which support the date given by the Beneficiary.</p> <p>Finding: The dates given by the Beneficiary are consistent with the management information provided by the Beneficiary.</p>
Personnel	
<p>1. Time recording exists, with authorization, which enables all personnel hours to be allocated to project work, management and administrative time, holidays, etc.</p> <p>The time recording enables the time of employees working on multiple projects to be allocated to those projects, and includes a check to prevent double charging of time.</p> <p>'Productive hours' represent the (average) number of hours made available by the employee in a year after the deduction of holiday, sick leave and other entitlements. This calculation should be provided by the Beneficiary, based on the period(s) corresponding to</p>	<p>Procedure: For 10 employees selected at random, the Auditor checked: That the employee had recorded management and administrative tasks separately from project time; That an authorization check exists which checks, inter alia, double-charging of time; The Auditor obtained the calculation of the productive hours after inspecting all necessary records, national legislation, labour agreements, contracts and any other relevant documentation</p>

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Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. <i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
the Financial Statement(s) or to the last closed financial year (whichever is used by the beneficiary).	Finding: For the items checked, the time recording includes separation of time as specified above, and an authorization including a check for double charging of time. For the most recent full calendar year: The average productive hours for the 10 employees was _____. The average productive hours per employee for the organisation as a whole, as recorded by the Beneficiary's time records was _____. The productive hours calculation corresponds to the usual accounting practice of the beneficiary.
2. Personnel costs of the employees only include standard salaries, employer's costs, etc. and no special conditions exist for employees on FCH projects, unless they are explicitly foreseen in the Grant Agreement.	Procedure: The Auditor reconciled the personnel costs used in the personnel cost calculation to the payroll system and accounting records. Finding: The amounts used in the costs calculation and those in the accounting records were the same. The costs consisted of standard salaries and statutory employers' costs, and did not include bonuses and confirmation was obtained from the Beneficiary that no special conditions exist for employees on FCH projects.
3. Hourly rates are correctly calculated using (3a or 3b as appropriate) : 3a: Actual personnel costs based on one of the following possibilities [choose one]: <ul style="list-style-type: none"> Actual personnel costs <i>per person</i> divided by actual productive hours <i>per person</i>; Actual personnel costs <i>per person</i> divided by standard productive hours; 	Procedure (apply 3a or 3b according to the method of calculation of personnel costs): 3a: <ul style="list-style-type: none"> The Auditor reviewed the calculation and confirmed that hourly rates are calculated as specified by the Beneficiary. The Auditor multiplied the personnel hourly rate by the total productive hours for the period of the Financial Statement(s) or to the last closed financial year (whichever is used by the beneficiary) and reconciled the result to the accounting records ('chargeable' personnel costs).

<p>Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings.</p> <p><i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i></p>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
<p>3b: For the average costing approach, the Beneficiary should state:</p> <ul style="list-style-type: none"> • The methodology used to calculate the average personnel hourly rate(s) represent(s) the usual cost accounting practice of the organisation; • Persons are allocated to the appropriate groups in accordance with the described methodology and the Full Time Equivalent (FTE) ratio is applied correctly; • Average personnel costs charged are based on the personnel costs registered in the statutory accounts of the organisation; • The calculation of the average personnel costs excludes ineligible items as defined in Art.II.14.3, Annex II to the Grant Agreement or any costs claimed under other cost categories. 	<p>3b:</p> <ul style="list-style-type: none"> • The auditor reviewed all relevant manuals and/or internal guidance describing the methodology used to calculate average personnel cost; • Obtained a list of all average personnel rates calculated by the beneficiary in accordance with the methodology used; • Obtained a list of all relevant employees (working on EU projects + not working on EU projects) based on which the average personnel rate(s) are calculated; • The auditor reviewed the allocation of employees to the relevant group(s) and verified the correctness of the Full Time Equivalent (FTE). • The auditor performed a numerical reconciliation between the total amount of personnel costs taken into consideration for the calculation of the average personnel rate and the total amount of personnel costs recorded in the statutory accounts; • The auditor reviewed that any ineligible items in particular those enumerated in Article II.14.3 of Annex II to the Grant Agreement or any costs claimed under other costs categories are excluded from the average personnel costs calculation. <p>Finding:</p> <p>3a:</p> <ul style="list-style-type: none"> • No differences arose from the comparisons listed above. • The result of the above reconciliation ('chargeable' personnel costs) in all cases did not exceed the costs recorded in the accounting records. • The Auditor confirms that the rates used were not budgeted or estimated amounts. <p>3b:</p> <ul style="list-style-type: none"> • The auditor found no discrepancies between the method described in the relevant documents and the method used by the beneficiary;

Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. <i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
	<ul style="list-style-type: none"> No differences arose from the numerical reconciliation. The Auditor confirms that the rates used for the calculation of the average personnel costs were not based on budgeted or estimated amounts.
Overheads/ Indirect costs	
<p>4. The Beneficiary confirms the following:</p> <p>Indirect costs only include those costs which cannot be allocated to specific projects and support the functioning of the organisation as a whole.</p> <p>The indirect costs do not include costs which relate exclusively to non-research parts of the organisation.</p> <p>If the organisation carries out activities other than research (e.g., manufacturing, education etc), these indirect costs are transparently separated via cost accounting and do not form part of the claim.</p> <p><i>(This procedure does not apply to beneficiaries using a flat rate to claim indirect costs in accordance with Annex II of the Grant Agreement attached to the grant agreement being reviewed.)</i></p>	<p>Procedure:</p> <p>The Auditor obtained the calculation of hourly overhead rates (indirect costs), including a detailed breakdown of the indirect costs to be allocated to research activity;</p> <p>Finding:</p> <p>This breakdown did not contain costs relating to direct project activity, such as the cost of research personnel, project consumables and expenses;</p> <p>This breakdown does not contain costs relating to education or manufacturing, or other non-research activities of the Beneficiary;</p> <p>The breakdown of indirect costs used to calculate overhead rates was reconciled to the accounting records.</p>
<p>5. The accounting system provides for fully traceable elimination of:</p> <ol style="list-style-type: none"> identifiable indirect taxes including value added tax, duties, interest owed, provisions for possible future losses or charges, exchange losses, cost related to return on capital, costs declared or incurred, or reimbursed in respect of another JU, Union or Euratom project, debt and debt service charges, excessive or reckless expenditure⁵. 	<p>Procedure:</p> <p>The Auditor inspected the accounting records and chart of accounts.</p> <p>The Auditor reviewed the breakdown provided by the Beneficiary in order to check that the ineligible items specified were eliminated;</p> <p>The Auditor also checked (if necessary also via a written declaration/ representation of the Beneficiary) that no implicit interest was included, e.g., by finance leasing or other credit arrangements.</p> <p>Finding:</p> <p>The Auditor was able to obtain confirmation that no implicit interest was included, and</p>

⁵ Excessive or reckless expenditure as defined in guidance notes issued by the Commission.

Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. <i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
<p>With regard to excessive or reckless expenditure, the Beneficiary confirms that purchases are made according to the principles of best value for money (best price-quality ratio), transparency and equal treatment between the FCH – JU funded grant agreement and any other agreement or convention that the Beneficiary may have.</p> <p>Where the Beneficiary is allocating shared costs, they should provide a list of allocation methods used (usage records, floor space, activity-based-costing, headcount, etc.)</p> <p><i>(This procedure does not apply to beneficiaries using a flat rate to claim indirect costs in accordance with Annex II of the Grant Agreement attached to the grant agreement being reviewed.)</i></p>	<p>did not find costs which explicitly relate to any of the items specified.</p> <p>For each allocation method used by the Beneficiary, the Auditor reconciled the amount to be allocated to the accounting records, and reconciled the allocation basis to the relevant management accounting information (usage records, floor space, activity-based-costing, headcount, etc.)</p> <p>Only the types of excessive and reckless expenditure listed in the Commission's guidance should be considered, the Auditor is not required to exercise professional judgement or provide assurance in this matter.</p>
<p>6. If the organisation is using a simplified indirect cost calculation (either due to the lack of analytical accounting or use of a form of cash-based accounting) all estimates are clearly described and are based on factual criteria which can be objectively confirmed.</p> <p>The Beneficiary must provide a list of cost allocations which are not based on underlying accounting information.</p> <p>In general costs which cannot be identified and allocated using a traceable source of information should not be included in the indirect cost calculation.</p> <p><i>(This procedure does not apply to beneficiaries using a flat rate to claim indirect costs in accordance with Annex II of the Grant Agreement attached to the grant agreement being reviewed.)</i></p>	<p>Procedure:</p> <p>The Auditor was able to trace all cost allocation to underlying accounting and management information.</p> <p>Finding:</p> <p>Percentage estimates were traced to the supporting factual criteria used by the Beneficiary and were found to be in agreement.</p>
<p>7. Allocation of indirect costs to the project is via</p> <ul style="list-style-type: none"> - a percentage of personnel costs - a fixed personnel hourly rate - another cost driver to be specified by the beneficiary <p><i>(This procedure does not apply to beneficiaries using a flat rate to claim indirect costs in</i></p>	<p>Procedure:</p> <p>The Auditor checked that the allocation of indirect costs to the project corresponds with the methodology specified by the Beneficiary;</p> <p>Finding:</p>

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Grant Agreement FCH JU – Annex VI – Form E

Updated by GB on 5 June 2012

Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. <i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
<i>accordance with Annex II of the Grant Agreement attached to the grant agreement being reviewed.)</i>	The allocation of indirect costs to the project corresponds with the methodology specified by the Beneficiary; Where percentages are used the Auditor found that, the ' chargeable ' personnel costs (defined above) multiplied by the overhead percentage does not exceed the total indirect costs to be allocated defined above; Where a fixed hourly rate is used, the productive hours figures used to distribute indirect costs and personnel were found to be the same. Where another cost driver not based on personnel is used, the Auditor found that the result of its application does not exceed the total amount of indirect costs to be allocated.

*[legal name of the Beneficiary]**[legal name of the audit firm]**[name and function of an authorised representative]**[name and function of an authorised representative]*

<dd Month yyyy>

<dd Month yyyy>

<Signature of the Beneficiary>

<Signature of the Auditor>