

## FP7 Grant Agreement - Annex II – General Conditions

### ...Version 3, 15/06/2009

#### 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 *Community*, 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 *Community* law or any breach of obligation resulting from an act or omission by a *beneficiary* which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by them through unjustified expenditure;
11. "*public body*" means any legal entity established as such by national law, and international organisations;
12. A legal entity is qualified as "*non-profit*" when considered as such by national or international law;
13. "*research organisation*" means a legal entity established as a *non-profit* organisation which carries out research or technological development as one of its main objectives;

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

## 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 *Commission* 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 *Commission* may agree to extend this period regarding specific confidential information.

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

2. Paragraph 1 no longer applies where:

- the *confidential information* becomes publicly available by means other than a breach of confidentiality obligations;
- the disclosing party subsequently informs the recipient that the *confidential information* is no longer confidential;
- the *confidential information* is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality;
- the disclosure or communication of the *confidential information* is foreseen by other provisions of this *grant agreement* or the *consortium agreement*;
- the disclosure or communication of *confidential information* is required by the national law of one of the *beneficiaries* and this exception to the confidentiality requirement is foreseen in the *consortium agreement*<sup>1</sup>.

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

4. Notwithstanding the preceding paragraphs, the treatment of data, documents or other material which are classified ("*classified information*") or subject to security restrictions or export- or transfer- control, must follow the applicable rules established by the relevant national and *Community* legislation for such information, including the *Commission's* internal rules for handling *classified information*<sup>2</sup>. Where a *beneficiary* is established in a *third country*, any security agreements between that *third country* and the *Community* shall also apply.

<sup>1</sup> As certain national laws (for example regarding freedom of information) may provide that proprietary information made available under a confidentiality requirement must nevertheless be made public in case access is requested, the *beneficiaries* should inform each other of the existence of such national laws and make appropriate arrangements in the *consortium agreement*.

<sup>2</sup> Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 OJ L 317, 3.12.2001, p. 1 (as last amended by Decision 2006/548/EC, Euratom, OJ L 215, 5.8.2006, p. 38).

## Part C INTELLECTUAL PROPERTY RIGHTS, USE AND DISSEMINATION

### **SECTION 1 – FOREGROUND**

#### **II.26. Ownership**

1. *Foreground* shall be the property of the *beneficiary* carrying out the work generating that *foreground*.
2. Where several *beneficiaries* have jointly carried out work generating *foreground* and where their respective share of the work cannot be ascertained, they shall have joint ownership of such *foreground*. They shall establish an agreement<sup>3</sup> regarding the allocation and terms of exercising that joint ownership.

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

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

#### **II.27. Transfer**

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

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

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

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

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

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<sup>3</sup> The joint owners may of course agree not to continue with joint ownership but decide on an alternative regime (for example, a single owner with access rights for the other *beneficiaries* that transferred their ownership share).

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

In *projects* funded by the European Atomic Energy Community, security considerations must be understood as being the defence interests of the Member States within the meaning of Article 24 of the Treaty establishing the European Atomic Energy Community.

## 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 *Community*:

**The work leading to this invention has received funding from the [European Community's] [European Atomic Energy Community's] Seventh Framework Programme ([FP7/2007-2013] [FP7/2007-2011]) under grant agreement n° [xxxxxx].<sup>4</sup>**

Furthermore, all patent applications relating to *foreground* filed shall be reported in the plan for the *use* and *dissemination* of *foreground*, including sufficient details/references to enable the *Commission* to trace the patent (application). Any such filing arising after the final report must be notified to the *Commission* 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 *Commission* has been informed. The *Commission* must be informed at the latest 45 days prior to the intended *dissemination* activity.

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

## 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 *Commission* to carry out any related audit.

<sup>4</sup> This statement will have to be translated into the language of the patent filing. Translations in all *Community* languages will be provided.

## 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 *Commission* 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*.

In *projects* funded by the European Atomic Energy Community, *dissemination* activities shall also be compatible with the defence interests of the Member States within the meaning of Article 24 of the Treaty establishing the European Atomic Energy Community.

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 *Community*:

**The research leading to these results has received funding from the [European Community's] [European Atomic Energy Community's] Seventh Framework Programme ([FP7/2007-2013] [FP7/2007-2011]) under grant agreement n° [xxxxxx].<sup>5</sup>**

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

## SECTION 2 – ACCESS RIGHTS

### II.31. Background covered

*Beneficiaries* may define the *background* needed for the purposes of the *project* in a written agreement and, where appropriate, may agree to exclude specific *background*<sup>6</sup>.

### II.32. Principles

1. All requests for *access rights* shall be made in writing.

<sup>5</sup> This statement will have to be translated into the language of the patent filing. Translations in all *Community* languages will be provided.

<sup>6</sup> Such an exclusion may be temporary (e.g. to permit the adequate protection of the *background* prior to providing access) or limited (e.g. to exclude only one or more specific *beneficiaries*). As *background* is by definition considered to be needed for implementation or use, the impact of such an exclusion on the *project*, particularly regarding an exclusion which does not have a temporary character, should be examined by the *beneficiaries*.

2. 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 *Commission* may object to the granting of such an exclusive licence, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations.

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

In *projects* funded by the European Atomic Energy Community, the *Commission* may also object to the intended grant of any non-exclusive licence to a third party established in a *third country* not associated to the Seventh Framework Programme on the same conditions as set out in this paragraph. Security considerations shall in case of such *projects* be understood as being the defence interests of the Member States within the meaning of Article 24 of the Treaty establishing the European Atomic Energy Community.

### **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.

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

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

### **II.34. Access rights for use**

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

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

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

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

3. An *affiliated entity* established in a Member State or *Associated country* shall also enjoy *access rights*, referred to in paragraphs 1 and 2, to *foreground* or *background* under the same conditions as the *beneficiary* to which it is affiliated, unless otherwise provided for in the *consortium agreement*. As the *access rights* referred to in paragraphs 1 and 2 require that access is needed to use own *foreground*, this paragraph only applies to the extent that ownership of *foreground* was transferred to an affiliate entity established in a Member State or *Associated country*. The *beneficiaries* may provide for arrangements regarding *access rights* for affiliated entities in their *consortium agreement*, including regarding any notification requirements.

4. A request for *access rights* under paragraphs 1, 2 or 3 may be made up to one year after either of the following events:

- a) the end of the *project*; or
- b) termination of participation by the owner of the *background* or *foreground* concerned.

However, the *beneficiaries* concerned may agree on a different time-limit<sup>7</sup>.

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<sup>7</sup> This can be a longer or shorter time-limit.