ANNEX II - GENERAL CONDITIONS

PART A: IMPLEMENTATION OF THE PROJECT

Article 1 - Definitions
Article 2 - Management of the project
Article 3 - The Community's financial contribution
Article 4 - Submission of project deliverables and of summary statements of amounts transferred by the principal contractor
Article 5 - Membership agreement
Article 6 - Subcontracts
Article 7 - Liability
Article 8 - Termination of the contract and of the participation of the principal contractor or of a member

PART B: RULES RELATING TO INTELLECTUAL AND INDUSTRIAL PROPERTY, PUBLICITY AND CONFIDENTIALITY

Article 9 - Ownership of knowledge
Article 10 - Protection of knowledge
Article 11 - Making available knowledge not resulting from the project and pre-existing know-how
Article 12 - Dissemination of knowledge
Article 13 - Publicity and communications concerning the project and knowledge resulting from the project
Article 14 - Confidentiality
Article 15 - Communication of data for evaluation and standardisation purposes
Article 16 - Incompatible or restrictive commitments

PART C: REIMBURSEMENT OF COSTS

Article 17 - Eligible costs - general principles
Article 18 - Personnel costs
Article 19 - Costs linked to Networking
Article 20 - Indirect costs
Article 21 - Justification of costs

PART D: AUDITING

Article 22 - Financial audit
Article 23 - Technical verification of the project

PART E-1: MODEL COST STATEMENT
PART E-2: MODEL INTEGRATED COST STATEMENT TO BE SUBMITTED BY THE PRINCIPAL CONTRACTOR FOR THE MEMBERS

8
PART E-3: Model summary statement of amounts transferred by the Principal contractor
PART F: MODEL MEMBERSHIP agreement
PART A: IMPLEMENTATION OF THE PROJECT

Article 1 - Definitions


3. "Contracting parties" means the Community and the principal contractor.

4. "Principal contractor" means a legal entity, an international organisation, or the Joint Research Centre (JRC), which has concluded this contract with the Community.

5. "Member" means a legal entity, an international organisation, or the JRC, which has concluded a membership agreement signed with a principal contractor in agreement with the Community and in accordance with this contract and having, by virtue of that membership agreement, the same rights and obligations as the principal contractor unless the former stipulates otherwise.

6. "Participants" means the principal contractor and the members.

7. "Membership agreement" means the agreement concluded between the participants for the specific needs of the project in accordance with the conditions of this contract and whereby they act jointly and severally towards the Community for the implementation of the project.

\(^6\) [OJ L 26, 1.2.1999, p. 46.]
\(^7\) [OJ L 26, 1.2.1999, p. 56.]
\(^8\) [OJ L 122, 12.5.1999, p. 9.]
\(^9\) [OJ L 190, 23.7.1999, p. 3.]
8. "Subcontract" means an agreement to provide services, supplies or goods concluded between a participant and one or more subcontractors for the specific needs of the project.

9. "Subcontractor" means a legal entity, an international organisation or the JRC, which has concluded a subcontract.

10. "Project" means all the work referred to in Annex I to this contract.

11. "Project commencement date" means the date referred to in Article 2 (1) of this contract.

12. "Duration of the project" means the period of performance of the project as referred to in Article 2 (1) of this contract.

13. "Contract completion date" means the date referred to in Article 2(2), second subparagraph, of this contract.

14. "Project deliverables" means the reports and the cost statements referred to in Article 4 of this contract and Article 4 of this Annex as well as any element designated as such in Annex I to this contract.

15. "Associated State" means a State party to an international agreement concluded with the Community, in particular on the basis of [Article 170 of the Treaty establishing the European Community]. [Article 101 of the Treaty establishing the European Atomic Energy Community] under which [that State makes a financial contribution to the framework programme] [the State in question makes a financial contribution to the framework programme. That agreement relates to co-operation on research and development].

16. "Third country" means a country other than a Member State or an Associated State.

17. "Change of control" means any change in the control exercised over the participant, within the meaning of Article 5(1), third subparagraph, of the Regulation. Such control may result, in particular, from:

- direct or indirect holding of a majority of the share capital of a participant or a majority of the voting rights of the latter's shareholders or associates,

or

- direct or indirect holding, in fact or in law, of decision-making powers within a participant
18. "Force majeure" means any unforeseeable and insuperable event affecting the carrying out of the project by one or more participants.

19. The "interests of the Community" are to be assessed in particular with regard to:
   - the objective of strengthening the international competitiveness of Community industry,
   - the objective of providing appropriate incentives for maintaining and creating jobs in the Community,
   - the objective of promoting sustainable development and improving the quality of life in the Community,
   - the needs of other Community policies in support of which indirect RTD actions are carried out,
   - the existence of scientific and technical co-operation agreements between the Community and third countries or international organisations.

20. "Knowledge" means the results, including information, arising from any project covered by [Decision No 182/1999/EC of the European Parliament and Council of 22 December 1998 relating to the Fifth Framework Programme of the European Community for research, technological development and demonstration activities (1998 to 2002)]\(^{10}\) [Council Decision 1999/64/Euratom of 22 December 1998 concerning the Fifth Framework Programme of the European Atomic Energy Community for research and training activities (1998 to 2002)]\(^{11}\) as well as copyright or rights attaching to the results following applications for or the issue or registration of patents, designs and models, plant varieties, additional certificates or other similar forms of protection.

21. "Pre-existing know-how" means information, other than knowledge, held by the participants prior to the conclusion of the contract or the membership agreement or acquired in parallel with them and necessary for carrying out the project, as well as copyright or rights attaching to such information following applications for or the issue or registration of patents, designs and models, plant varieties, additional certificates or other similar forms of protection.

22. "Dissemination" means the disclosure of knowledge by any appropriate means other than publication resulting from the formalities for protecting the knowledge for the purpose of promoting scientific and technical progress.

23. "Legitimate interest" means any interest, in particular of a commercial nature, of a participant which may be invoked in the cases provided for in this Annex provided that this participant demonstrates that damage to that interest is likely, given the

\(^{10}\) [OJ L 26, 1.2.1999, p. 1.

\(^{11}\) [OJ L 26, 1.2.1999, p. 34.]
circumstances, to cause a prejudice that is disproportionate, considering the objectives of the provision in respect of which it is invoked.

24. "Favourable conditions" means conditions more favourable than market conditions owing to discounts of any kind.

25. "Non-commercial user rights" means user rights relating to knowledge or pre-existing know-how transferred under the conditions provided for in this Annex for non-commercial purposes and solely carrying out the project.

26. "Young researcher" refers to a researcher aged 35 years or less at the time of his appointment by a participant in the frame of this contract under the conditions specified in article 18 (2) of this annex. An allowance to this age limit may be made for the actual time spent in compulsory military or civil service or child care (a maximum of two years per child for the actual time spent off work).

27. "Eligible costs" means the costs referred to in Articles 18, 19 and 20 of this Annex, in compliance with the conditions set out in Article 17 thereof.

28. "Scientific Network Co-ordinator" refers to a member of the staff of the principal contractor who shall direct and co-ordinate the project under the responsibility of the principal contractor.
Article 2 - Management of the project

1. The Principal Contractor

Without prejudice to paragraph 2 of this Article, the principal contractor shall be in charge of the scientific, financial and administrative co-ordination of the project. In this respect,

a) he is the intermediary between the members and the Commission. In particular, he shall be responsible for transmitting to the Commission all documents and correspondence relating to the project. Any written notice requested or approval required under the contract should be sent by recorded delivery or registered post,

b) he shall inform the Commission of

- the actual date of commencement of the work,
- the person designated by each member in accordance with paragraph 2(a) of this Article,
- the designated scientific network co-ordinator as referred to under point i) of this paragraph and the scientist in charge, if different from the scientific network co-ordinator,

c) he shall transmit to the Commission a copy of the membership agreement duly signed by the participants and guarantee that the membership agreement is in conformity with this contract,

d) he shall submit to the Commission

- the cost statements provided for in Article 4 of this contract and of this Annex,
- the reports provided for in Article 4 of this contract and of this Annex after incorporating the content of the data provided by all the members and verifying their consistency with the corresponding cost statements,

e) in his capacity as representative of the members, he shall receive, subject to the special conditions set out in Article 6 of this contract, all the payments made by the Commission to the account referred to in Article 3 (3) first subparagraph of this contract,

f) not being the beneficiary of payments intended for the members pursuant to this contract, he shall transfer to them within 30 days of receipt of the funds paid by the Commission the amount owing to them up to the maximum provided under Article 3(3) subparagraph 3 of this contract. He shall inform the Commission of the distribution of the funds and of the date of transfer by means of the form in Part E-3,

g) he shall inform the Commission of any event liable of which he is aware, to substantially affect the project, including any damage in a person referred to in paragraph 2 (a) of this article, any change of control with regard to him and any
circumstance affecting the conditions of participation referred to in Articles 3 to 12 of the Decision.

h) he shall inform the Commission of transfers in the budget set out in the table of indicative breakdown of the estimated eligible costs, between the participants carried out in compliance with article 17 (4) of this Annex,

i) he shall designate a member of his staff who as scientific network co-ordinator shall direct and co-ordinate the project under his responsibility.

Without prejudice to Article 8(3) point b), should the principal contractor fail to meet his obligations, the Commission may, in agreement with the members, designate another principal contractor from among the members. An amendment to the contract and to the membership agreement will be necessary.

2. The Members

a) shall agree upon appropriate arrangements for the proper performance of the work incumbent upon them pursuant to Annex I to this contract. To this end, they shall designate among their staff a scientist in charge who shall direct the work and ensure that the tasks assigned to each member according to Annex I to this contract are correctly performed,

b) shall inform the principal contractor of any event which they are aware of which is liable to substantially affect the project, including any change of the person mentioned at point a) of this paragraph, any change of control at their level and any circumstance affecting the conditions of participation referred to in Articles 3 to 12 of the Decision,

c) shall forward to the principal contractor the data needed to draw up the reports provided for in Article 4 of this contract and this Annex and forward the corresponding cost statements,

3. The Participants

a) shall take decisions on a re-apportionment of the indicative breakdown of the estimated eligible costs in compliance with the conditions set out in Article 17 (4) of this Annex,

b) shall take part in meetings concerning the supervision, monitoring and evaluation of the project which are relevant to them,

c) shall provide all detailed data requested by the Commission for the purposes of the proper administration of this contract,

4. The Commission may be assisted by independent experts in the framework of the meetings referred to under paragraph (3)(b) of this Article.
circumstance affecting the conditions of participation referred to in Articles 3 to 12 of the Decision,

h) he shall inform the Commission of transfers in the budget set out in the table of indicative breakdown of the estimated eligible costs, between the participants carried out in compliance with article 17 (4) of this Annex,

i) he shall designate a member of his staff who as scientific network co-ordinator shall direct and co-ordinate the project under his responsibility.

Without prejudice to Article 8(3) point b), should the principal contractor fail to meet his obligations, the Commission may, in agreement with the members, designate another principal contractor from among the members. An amendment to the contract and to the membership agreement will be necessary.

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b) shall inform the principal contractor of any event which they are aware of which is liable to substantially affect the project, including any change of the person mentioned at point a) of this paragraph, any change of control at their level and any circumstance affecting the conditions of participation referred to in Articles 3 to 12 of the Decision,

c) shall forward to the principal contractor the data needed to draw up the reports provided for in Article 4 of this contract and this Annex and forward the corresponding cost statements,

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b) shall take part in meetings concerning the supervision, monitoring and evaluation of the project which are relevant to them,

c) shall provide all detailed data requested by the Commission for the purposes of the proper administration of this contract,

4. The Commission may be assisted by independent experts in the framework of the meetings referred to under paragraph (3)(b) of this Article.
It shall take appropriate steps to ensure that such experts treat confidentially the data that are communicated to them. Prior to such meetings, it shall disclose to the principal contractor the identity of the experts scheduled to attend. It shall take account of any objection on the part of the participants based on legitimate interests.

Article 3 - The Community's financial contribution

1. The Community's financial contribution shall be paid to the principal contractor in accordance with the following principles:

   a) An initial advance shall be paid within a maximum period of 60 days running from the date of the last signature of the contracting parties. The period of 60 days may be suspended until the date of receipt by the Commission of the membership agreement duly signed by all the participants. The principal contractor shall allocate the advance in accordance with Article 3 (3) of the contract.

   If the project has not effectively commenced within three months of the payment of the initial advance, the Commission may:

   (i) either terminate the contract pursuant to Article 8 (3)(a) of this Annex, or
   (ii) decide to add interest to the initial advance from the date of payment until the effective date of commencement of the work at the monthly rate applied by the European Central Bank for its main refinancing operations applicable on the first day of the month during which the three-month time-limit has expired.

   Such interest shall be deducted from the subsequent payment made by the Commission.

   b) Periodic payments shall be made within a maximum period of 60 days from the date on which the Commission approves or is deemed, in accordance with Article 4(3), fourth subparagraph, of this Annex, to have approved the periodic reports and the corresponding cost statements, or other project deliverables.

   The amounts of the periodic payments shall be calculated on the basis of the eligible costs approved by the Commission. On each periodic payment, an amount corresponding to part of the initial advance shall be recovered, which amount is calculated on the basis of the relationship between the eligible costs approved by the Commission and the forecasts of expenses for the period in question.

   c) The final payment of the Community's financial contribution shall be made within a maximum period of 60 days from the date on which the Commission approves or is deemed, in accordance with Article 4 (3), fourth subparagraph, of this Annex, to have approved the last project deliverable.

   The final payment shall correspond to the difference between the total amount of eligible costs approved by the Commission and the amount of the initial advance
and any periodic payments. However, the Community's total financial contribution may not exceed the maximum amount provided for in Article 3(2) of this contract.

The payments referred to at points (a) to (c) of the first subparagraph of this paragraph shall be regarded as having been effected on the date on which the Commission's account is debited.

The Commission may suspend the period of 60 days referred to under b) and c) of the first subparagraph of this paragraph at any time by notifying the principal contractor that it considers that additional checks should be carried out. The period shall continue to run once the Commission has completed the additional checks.

On expiry of the period provided for and without prejudice to the third subparagraph of this paragraph, the principal contractor may claim, at the latest within two months of receiving the late payment, interest at the rate applied by the European Central Bank for its main refinancing operations applicable on the first day of the month during which the time-limit has expired, plus one and a half percentage points. The interest shall cover the period running from the day after the time-limit for payment until the date of actual payment.

2. Where the Commission suspects fraud or serious financial irregularity on the part of a participant, it may suspend payments or order the principal contractor to refrain from making any payment to the member concerned. The participant concerned shall remain bound by his contractual obligations pursuant to this contract or the membership agreement.

3. Subject to Article 22 of this Annex, all payments shall be treated as advances until the last project deliverable is approved.

4. Where the total financial contribution due from the Community, taking into account any adjustments, including as a result of a financial audit as referred to in Article 22 of this Annex, is less than the total amount of the payments referred to in paragraph 1, first subparagraph, of this Article, the participant concerned shall reimburse the difference in euro, within the time-limit set by the Commission in its request sent by registered letter with acknowledgement of receipt.

In the event of non-reimbursement by the participant within the set time limit set out by the Commission, the latter shall add interest to the sums due at the rate applied by the European Central Bank for its main refinancing operations on the first day of the month during which the time limit set by the Commission has expired, plus one and a half percentage points, unless interest is due pursuant to another provision of this contract. The interest shall cover the period running from the day after the expiry of the time-limit of its reimbursement request until the date of receipt of the funds to be reimbursed.

Bank charges resulting from any reimbursement of sums due to the Community shall be borne exclusively by the participant concerned.
The recovery order regarding payments made by the Commission drawn up by the latter and transmitted to the principal contractor in accordance with Article 22 (4) of this Annex, shall be enforceable within the meaning of [Article 256 of the Treaty establishing the European Community] [Article 164 of the Treaty establishing the European Atomic Energy Community].

The Commission may decide to set off sums to be reimbursed to the Community against sums of any kind due to the principal contractor or member concerned.

5. After the contract completion date, the termination of the contract or of the participation of the principal contractor or a member, the Commission may or shall, as appropriate, request from the principal contractor, including with regard to one of his members, repayment of the entire Community contribution paid to it, where fraud or serious financial irregularities are discovered in the course of an audit. Interest at the rate applied by the European Central Bank for its main refinancing operations on the first day of the month during which the principal contractor received the funds plus two percentage points shall be added to the amount to be repaid. The interest shall cover the period between the receipt of the funds and their repayment.

Article 4 - Submission of project deliverables and summary statements of amounts transferred by the principal contractor

1. As regards reports:

a) The principal contractor shall submit the following reports for approval to the Commission, after incorporating the content of data provided by the members and verifying their consistency with the corresponding cost statements, where applicable:

(i) a database report, to be updated annually, suitable for publication in an electronic database. The database report shall be submitted initially within two months of the project commencement date,

(ii) periodic progress reports, each 12 months from the project commencement date, containing information about the progress of the joint programme of work, details of the execution of training programme and the networking activities, departures form the work schedule, and results,

(iii) a mid-term review report, to be the basis of the discussion at the Mid-Term Review Meeting,

(iv) a final report covering all the project’s work, objectives, results and conclusions, including a summary of the latter suitable for publication,

b) The layout of the reports shall conform to the rules communicated by the Commission. Each report should be of a suitable quality to enable direct reproduction.

7 See Article 23(5)
2. As regards the cost statements:

a) The Cost statements shall be expressed in Euro and in the currency used in the accounting of the participant. The Euro conversion and exchange rates for cost statements and related payments shall be the rates published by the Commission for the implementation of the budget and in force on the first working day of the month following the period covered by the cost statement concerned. No account shall be taken of exchange rate gains or losses between the time of establishment of the cost statement and the receipt of the corresponding payment.

b) Participants shall submit their cost statements to the Commission through the principal contractor in the format specified in part E-1. In addition, the principal contractor shall submit the corresponding integrated cost statement in euro in the format specified in part E-2.

Participants that do not benefit from a financial contribution from the Community are required to submit only a description of the efforts deployed and the resources used in order to carry out the project.

3. Each periodic progress report and the corresponding cost statements, including the integrated cost statement, a data base report, as well as, where applicable, each supplementary report shall be submitted to the Commission within two months of the end of the period covered by the report.

The final report and the cost statements for the final period, including the integrated cost statement, shall be submitted to the Commission within two months of the end of the duration of the project.

The other project deliverables shall be submitted by the deadlines specified in Annex I to this contract.

In the absence of observations by the Commission, the reports mentioned in paragraph 1 and related cost statements shall be deemed to be approved within two months of their receipt.

4. The Commission reserves the right to withhold part or, exceptionally, all of the payment of the Community's financial contribution until the period covered by the next cost statement in case of failure to submit, within the time limit laid down in paragraph 3 of this Article or in Annex I as relevant, a cost statement or a periodic report or other project deliverables.

The Commission may decide not to make the payment corresponding to the costs incurred during the final period in case of failure to submit, within the time-limit set out in paragraph 3 of this Article:

- the cost statements for the final period,
- the final report(s) or other *project deliverables*,

subject to one month's written notice of non-receipt of that document.

5. The *principal contractor* shall attach to the cost statements the summary statements referred to in Article 2(1) first subparagraph point f) second sentence of this Annex. However, where they concern the transfer of the final payment of the Community's financial contribution, the *principal contractor* shall submit them to the Commission immediately following such transfer.

**Article 5 – Membership agreement**

1. The *principal contractor* shall conclude a *membership agreement* with the *members*. No *member* may enjoy the benefits of this contract until the *membership agreement* has entered into force.

   a) When concluding the *membership agreement*, the *principal contractor* shall ensure that:

   (i) the *membership agreement* is in conformity with this contract,

   (ii) that his *members*

   - perform the tasks assigned to them in accordance with Annex I to this contract,

   - acquire identical rights to those of the *principal contractor* pursuant to this contract,

   - receive their share of the Community’s financial contribution in accordance with the conditions of the *membership agreement* concluded in accordance with this Article after receipt of the funds paid by the Commission,

   - are jointly and severally responsible with the *principal contractor* in the fulfilment of the work defined in Annex I to this contract, in particular, as regards the training of young researchers.

b) The *membership agreement* shall be drawn up on the basis of the model specified in part F of this Annex.

   A copy of the *membership agreement* duly signed by the authorised representatives of the *principal contractor* and the *members* shall immediately be sent to the Commission.

c) The *principal contractor* shall include in the *membership agreement* appropriate provisions to enable the Commission or its authorised representatives as well as, where appropriate, the Court of Auditors, to carry out the financial audits and technical verifications in accordance with Articles 22 and 23 of this Annex.
Article 6 - Subcontracts

1. Participants may conclude subcontracts where this proves necessary for the performance of their work under the contract. No subcontract may be concluded for the performance of co-ordination tasks pursuant to this contract.

Unless Annex I to this contract contains sufficient detailed data, the Commission's prior approval is required:

a) where the cumulative amount of the subcontracts for the participant exceeds:

- 20% of its estimated eligible costs,
- EUR 50,000

whichever amount is the lower,

b) where the subcontractor is established in a third country, unless the participant is established there.

In the absence of observations within one month of receipt of the request made by the principal contractor, the written Commission's approval shall be deemed to be granted.

2. The participants shall ensure that subcontracts include an obligation for the subcontractors:

- to submit invoices making reference to the project and giving details of the service or supply concerned,
- to submit to the audits provided for in Articles 22 and 23 of this Annex.

Article 7 – Liability

1. The liability of the contracting parties amongst themselves with regard to any losses, damages or injuries suffered in the context of the performance of this contract shall be governed by the law indicated in Article 5(1) of the contract.

2. The measures to be taken in the event of force majeure shall be agreed between the contracting parties. The contracting parties expressly agree that any defect in respect of a product or service used in the performance of this contract and affecting such performance, including, for example, anomalies in the functioning or performance of such product or service resulting from or linked to the millennium date change (year 2000 problem), does not constitute force majeure.

3. The Community cannot be held liable for acts or omissions of the participants in the performance of this contract. It shall not be liable for any defects in respect of any products or services created on the basis of knowledge resulting from the project,
including, for example, anomalies in the functioning or performance thereof resulting from or linked to the millennium date change (year 2000 problem).

The participants shall fully guarantee the Community, and shall undertake to indemnify it in the event of any action, complaint or proceeding brought by a third party against it as a result of damage caused either by an act or omission of the participants in the performance of this contract or on account of any products or services created on the basis of knowledge resulting from the project only to the extent that the participants have contributed to or are responsible for the loss or damage concerned.

4. In the event of any action brought by a third party against the Community in connection with the performance of this contract, the principal contractor who may bear responsibility shall be required to assist the Community.

5. In the event of any action brought by a third party against the principal contractor in connection with the performance of this contract, the Commission may, without prejudice to paragraph 1 of this Article, assist the latter upon written request. The costs incurred by the Commission in this connection shall be borne by the principal contractor concerned.

Article 8 - Termination of the contract or of the participation of a participant

1. The Commission may terminate the contract or the participation of the principal contractor for major technical or economic reasons substantially affecting the project (including where the resumption of the performance of the contract following its suspension on account of force majeure proves impossible).

   The Commission shall determine, in a registered letter with acknowledgement of receipt, the notice period, which shall not exceed one month from the date of receipt of such letter.

2. The Commission shall not object to the termination of the contract, at the written request of the principal contractor, on the grounds mentioned in paragraph 1 of this Article,

   The termination of the contract or the withdrawal of the principal contractor shall be effective:

   - on the date of the letter of acceptance by the Commission notified by registered letter with acknowledgement of receipt,

   - at the latest one month following receipt of notification by the principal contractor in the absence of written observations by the Commission within that time-limit.

3. The Commission may immediately terminate this contract or the participation of the principal contractor or request the principal contractor to terminate the participation of one of his members from the date of receipt of the registered letter with acknowledgement of receipt sent by the Commission or, in the case of a member, by the principal contractor in accordance with paragraph 6, third subparagraph, of this Article:
(a) where the project has not effectively commenced within three months of the payment of the initial advance and the new date proposed is considered unacceptable by the Commission,

(b) where the participant has not fully performed his contractual obligations despite a written request from the Commission, or, in the case of a member, the principal contractor, to remedy a failure to comply with such obligations within a period not exceeding one month,

(c) where a change of control over a participant is likely substantially to affect the project or the interests of the Community,

(d) in the event of bankruptcy, of winding up, of cessation of trading, of winding up by court order or composition, suspension of activities of a participant or any similar proceeding provided for by national laws or regulations and leading to a similar result,

(e) in the event of a serious financial irregularity.

4. The Commission shall immediately terminate this contract or the participation of the principal contractor or shall request the principal contractor to terminate the participation of one of his members from the date of receipt of the registered letter with acknowledgement of receipt sent by the Commission or, in the case of a member, by the principal contractor in accordance with paragraph 6, third subparagraph, of this Article:

(a) where the conditions for participation in the project mentioned in Articles 3 to 12 of the Decision are no longer satisfied, unless it considers that the project is essential to the implementation of the specific programme,

(b) where the participant has made false declarations for which he may be held responsible or has deliberately withheld information in order to obtain the Community’s financial contribution or any other advantage provided for in the contract.

5. Any letter from the Commission to terminate the participation of the principal contractor or a member or to terminate a contract shall be addressed to the principal contractor in accordance with the procedures set out in paragraphs (1) to (4) of this Article.

6. The principal contractor shall take appropriate action to cancel or reduce his commitments upon receipt of the letter from the Commission notifying him of the termination of the contract or of his participation or upon the dispatch of his termination or withdrawal request, as the case may be.

The same obligation shall apply to members from the date of receipt of the letter from the principal contractor notifying them of the termination of the contract or of their participation in accordance with the third subparagraph of this paragraph.
In the case of a request from the Commission to the principal contractor to terminate the participation of a member, the principal contractor shall have a period of 15 days to send to the member the Commission's request to terminate the participation of that member.

The Commission will not reimburse a member's costs if they are due to the fact that the principal contractor omitted to send the termination notice referred to in paragraph 3, points (b), (c), (d) and (e) or paragraph 4, points (a) and (b) of this Article within the time-limit specified in the third subparagraph of this paragraph.

In the event of termination of the contract or of the participation of the principal contractor pursuant to paragraph 1 or paragraph 2, first subparagraph, point (a), of this Article, the Community's financial contribution shall cover eligible costs relating to project deliverables approved by the Commission and also eligible costs subsequently incurred in good faith before the date mentioned in the first subparagraph of this paragraph.

In the event of termination of the contract or of the participation of the principal contractor or a member:

(a) pursuant to paragraph 3, first subparagraph, point (b) or (d) of this Article, the Commission may require repayment of all or part of the Community's financial contribution, taking into account the nature and results of the work carried out and its usefulness to the Community in the context of the specific programme concerned,

(b) pursuant to paragraph (3)(c) or paragraph (4)(a) of this Article, only the eligible costs relating to project deliverables approved by Commission and incurred before the event which caused the termination of the contract or of the participation of the principal contractor or member, and also eligible costs subsequently incurred in good faith before the date mentioned in the first subparagraph of this paragraph in the case of the principal contractor or in the second subparagraph of this paragraph in the case of a member, shall be reimbursable,

(c) pursuant to paragraph 3(a) or (e) or paragraph 4(b) of this Article, the Commission may require reimbursement of all or part of the Community's financial contribution. Interest at a rate of 2% above the rate applied by the European Central Bank for its main refinancing operations on the first day of the month during which the principal contractor received the funds will be added to the amount to be repaid. The interest shall cover the period between the receipt of the funds and their repayment.

7. The termination of the participation of the principal contractor or a member shall not prejudice the non-commercial user rights for the carrying out of the project which he granted before that date pursuant to Article 11 of this Annex. He must grant such rights under the conditions set out in that Article to any participant taking over all or part of the work incumbent on him.

8. The participants shall submit the project deliverables relating to the work performed until the date of termination of the contract or when their participation ends.
9. The contract shall not be terminated in the event of the termination of the participation of the principal contractor pursuant to the first paragraph of this Article. However, the replacement of the principal contractor by a member or by a third party proposed by the members shall require express approval by the Commission.

Except in the case of duly substantiated exceptions, the contract shall be terminated in the event of the termination of the participation of the principal contractor pursuant to the paragraphs 3 and 4 of this Article.

PART B: RULES RELATING TO INTELLECTUAL AND INDUSTRIAL PROPERTY, PUBLICITY AND CONFIDENTIALITY

Article 9 - Ownership of knowledge

1. Knowledge resulting from the project shall be owned by the principal contractor and the members who carried out the work generating that knowledge.

2. Where several participants have carried out work generating knowledge resulting from the project, they shall agree among themselves on the allocation and the terms of exercising the ownership of the knowledge in accordance with this contract.

3. If persons employed by a participant may claim rights to knowledge resulting from the project, this participant shall take steps or reach appropriate agreements to ensure that these rights are exercised in a manner compatible with its obligations under this contract.

4. Where a participant transfers ownership of knowledge resulting from the project, it shall take steps or conclude agreements to pass on its obligations under this contract to the assignee, in order to take account, inter alia, of the interests of the Community and in compliance with international agreements concluded by the Community.

The participant concerned shall give the Commission and the other participants prior warning of the terms and conditions of the assignment.

Article 10 - Protection of knowledge

Participants shall provide adequate and effective protection for knowledge which they own.

Article 11 - Making available knowledge not resulting from the project and pre-existing know-how

1. Non commercial user rights shall be granted any participant, on request and in accordance with the conditions provided for in paragraphs 2 to 4 of this Article, provided that the participant concerned is free to grant such rights.

2. The granting of non commercial user rights may be subject to the conclusion of specific agreements aimed at ensuring that they are used only for the purpose for which they are
granted, and of appropriate undertakings as to confidentiality.

3. The *participants* shall enjoy, on a royalty-free basis, *non commercial user rights* to the *knowledge* not resulting from the *project* and to the *pre-existing know-how*, generated at the time of the implementation of research work associated with the content of the *project* and needed to carry out their own work in the framework of the *project*.

4. The *participants* shall enjoy, under *preferential conditions*, from *non commercial user rights* to the *knowledge* not resulting from the *project* and to *pre-existing know-how*, generated at the time of the implementation of research work non associated with the content of the *project* and needed to carry out their own work in the framework of the *project*.

5. The *non commercial user rights* shall be granted until the end of the *duration* of the *project*.

**Article 12 - Dissemination of knowledge**

1. The *participants* shall disseminate or arrange the dissemination of the *knowledge* resulting from the *project* which could be disseminated and of which they are the owners.

2. The *participants* shall agree with the Commission on terms for the *dissemination of knowledge* within a reasonable time, having regard to the need to safeguard the intellectual and industrial property rights, the confidentiality and their *legitimate interests*.

**Article 13 - Publicity and communications concerning the *project* and *knowledge* resulting from the *project***

1. Taking into account their *legitimate interests*, the *participants* shall, throughout the *duration of the project*, take appropriate measures to ensure suitable publicity for the *project* in order to highlight the support provided by the Community. The Commission may agree on such measures with the *participants*.

   *Participants* shall give the Commission general data in advance concerning the proposed publicity.

2. The Commission may disseminate, by any appropriate means and for as long as necessary, general data relating in particular to the objectives, the total estimated cost, the duration and the state of progress of the *project*, to the Community's financial contribution and to the *knowledge* resulting from the *project*. The legal denomination of the *participants* and the names of the laboratories carrying out the work shall also be published unless they object to this in advance on the basis of essential *legitimate interests*.

Where the measures referred to in subparagraph 1 of this paragraph presuppose access by the Commission or its duly authorised representatives to the premises of the *participants*, the latter may refuse such access on the basis of *legitimate interests*.  

26
On request and where he is free to do so, each participant shall grant the Commission an irrevocable non-exclusive right, on a royalty-free basis, to translate, reproduce and distribute articles for scientific and technical journals, conference papers and other documents drawn up in the framework of the project and published by the participant.

3. Any communication or publication, whatever the form or medium (including the Internet), concerning the state of progress of the project or concerning the knowledge:

- shall mention the relevant specific programme and the support provided by the Community,

and

- shall, where it is made by the participant, specify that the information provided is the sole responsibility of the author and does not reflect the Community's opinion, and that the Community is not responsible for any use that might be made of data appearing in this communication or publication.

Where the utilisation of the European emblem is envisaged, it shall require prior approval by the Commission. Standards, in particular with regard to graphics, in force within the Commission must be complied with.

**Article 14 - Confidentiality**

1. Without prejudice to Article 13 of this Annex and any other obligation contained in this contract, the contracting parties and the members shall be required to keep confidential any data, knowledge, documents and pre-existing know-how communicated to them on a confidential basis or the disclosure of which may be prejudicial to one of them.

This obligation shall no longer apply:

- where the content of these data, knowledge, documents and pre-existing know-how becomes publicly available through work or actions lawfully performed outside this contract and not based on activities under it,

- where these data, knowledge, documents and pre-existing know-how have been communicated without any confidentiality restrictions or where the disclosing party subsequently waives their confidentiality.

2. Where this contract provides for the communication of any data, knowledge, document or pre-existing know-how referred to in paragraph 1 of this Article, the contracting parties and the members shall first satisfy themselves that the recipient will keep it confidential and use it only for the purpose for which it is to be communicated.

3. The participants shall take the appropriate steps to ensure that the experts referred to in Article 19 paragraph (1) point c) of this Annex preserve the confidentiality of information, knowledge, and of any other element communicated to them on a confidential basis.
Article 15 - Communication of data for evaluation and standardisation purposes

1. Without prejudice to Article 14 of this Annex, the participants shall be required to provide, at the request of the Commission or its authorised representatives, data necessary for:

   - the continuous review of the specific programme concerned and the fifth framework programme,

   and

   - the evaluation of Community activities over the five years preceding that evaluation.

Such a request may be made throughout the duration of the contract and up to five years after the contract completion date.

The data collected shall be used exclusively in a statistical form.

2. Without prejudice to the provisions regarding the protection and use of knowledge and confidentiality, set out respectively in article 9, 10, and 19 of this annex, the Participants must inform the Commission and the standardisation bodies without delay, of knowledge resulting from the project which may contribute to the preparation of European or, where appropriate, international standards, or to an industrial consensus on technical issues. To this end, they shall communicate appropriate data on such knowledge to the Commission and to the standardisation bodies during the entire duration of the contract and the two years following the contract completion date.

The provisions of this contract shall be without prejudice to the rules applicable, within the standardisation bodies, to data transmitted to them.

Article 16 - Incompatible or restrictive commitments

1. Participants shall take all necessary steps to avoid commitments that are incompatible with the obligations provided for in Articles 10 to 15 of this Annex.

2. Without prejudice to paragraph 1 of this Article, the participants shall be informed, as soon as possible, by the participant required to grant the non commercial user rights, as referred to in Article 11 of this Annex, as the case may be, of any limitations to the granting of these rights, obligations to grant rights to knowledge or any restriction which might substantially affect the granting of the non commercial user rights.

Part C: REIMBURSEMENT OF COSTS
Article 17 - Eligible costs - general principles

1. **Eligible costs** are the costs defined in Articles 18 to 20 of this Annex. They shall fulfil the following conditions:

- be necessary for the project, especially for the networking of the research work and the appointment of young researchers,
- be incurred during the duration of the project,
- be determined in accordance with the accounting principle based on historic costs and the usual internal rules of the participant, provided that they are regarded as acceptable by the Commission,
- be recorded in the accounts no later than the contract completion date or in the tax documents,
- exclude any profit margin.

A participant may not commit himself to costs before the date of entry into force of the membership agreement.

2. Non-eligible costs are in particular the following:

- costs related to capital employed,
- provisions for possible future losses or charges
- interest owed,
- provisions for doubtful debts,
- resources made available to a participant free of charge,
- value of contributions in kind,
- unnecessary or ill-considered expenses,
- marketing, sales and distribution costs for products and services,
- indirect taxes and duties, including VAT,
- entertainment or hospitality expenses, except such expenses accepted by the Commission as being absolutely necessary for carrying out the contract,
- any cost incurred or reimbursed, in particular in respect of another Community, international or national project,
- any cost related to the research itself.

3. A cost shall only be charged to one of the eligible cost categories set out in Articles 18 to 20 of this Annex.

4. Subject to the agreement of the **principal contractor**, the **participants** directly concerned shall be authorised to transfer between themselves the budget provided for in the table which follows the signatures to this contract, provided that:

- they inform the Commission of such transfer upon signing an agreement confirming that the scope of the project and the conditions of participation referred to in Articles 3 to 12 of the Decision are not fundamentally altered,
- the amounts successively transferred do not exceed 20% of the amount allocated to the beneficiary in the table which follows the signatures to this contract.

Any other properly substantiated transfer approved by all the participants directly concerned shall require prior written approval by the Commission.

The principal contractor shall ensure that at least 60% of the estimated eligible costs of the project, as specified in Article 3.2 of the contract, is used to support personnel costs (specified in Article 18 of this Annex).

In case the 60% of the total estimated eligible costs are not used as stipulated in the precedent paragraph, the Commission reserves the right to diminish its contribution for the other eligible costs in proportion of the percentage not used on personnel costs.

Article 18 – Personnel Costs

(1) Personnel costs shall relate to the actual costs of reinforcing the research staffs of the participants through the temporary appointment of young researchers, and shall be limited to:

- the actual salaries or grants paid to the young researchers,
- any social charges and pension costs related to their appointment,
- any registration or tuition fees specific to their appointment,
- relocation costs of the young researchers when taking up the appointment at a participant,
- travel costs (public transport costs only) for one visit to their home scientific community, per nine-monthly period of their appointment by a participant, only in the case of travel to a Member State or Associated State.

(2) For the personnel costs of a young researcher to be charged to the project, the following conditions must be satisfied:

- the young researcher must be a holder of a doctoral degree or of a degree, obtained from a university or equivalent institution of higher education, which qualifies him to embark on a doctoral degree; and

- his appointment must be temporary and for a fixed-term starting after the project commencement date of the contract; and

- he must be appointed specifically either to carry out research associated with the project or to assist the principal contractor in the scientific co-ordination of the project; and

- he must be a national of a Member State of the Community or of an Associated State or residing in the Community for at least five years prior to his appointment by a participant in the frame of this contract; and

- he must not be a national of the state in which the participant's research team
appointing him is located and he must not have carried out his normal activities in that state for more than 12 of the 24 months prior to his appointment.

- in the case of a national of a third country, he is not permitted to move to a host country in which he was residing for more than two years in the last five years immediately prior to the appointment date.

(3) Personnel costs shall exclude the costs of all other persons employed by or working in the research teams of the participants.

(4) The appointment of young researchers does not require the prior approval of the Commission.

(5) All personnel time charged to the project must be recorded and certified. This requirement will be satisfied by, at the minimum, the maintenance of attendance records, certified at least monthly by the designated scientist in charge, or an authorised senior employee, of the participant concerned.

(6) Personnel costs related to the appointment of a young researcher shall be charged to the contract in accordance with the internal rules (including pay and conditions) of the participant concerned.

Article 19—Costs linked to the Networking

The cost categories summarised under this heading may be charged to the project only to the extent that they relate to the networking of the research work associated with the project:

(1) Travel and subsistence costs

(a) for mobility of those research staff and technical support staff, working on the project in the participants' teams, relating to:

. meetings with other participants in the project,
. secondments between the participants of young researchers,
. secondments between the participants of more experienced researchers and technical support staff not exceeding three months,
. representation of the project at international workshops, seminars and conferences;

(b) for interviewing prospective young researchers for an appointment by a participant;

(c) for young researchers who are or had previously been appointed by a participant and who are invited to take part in the Mid-Term Review Meeting.

(d) for invited external experts participating in a network meeting, seminar or workshop of the participants.
Travel and subsistence shall be charged to the project in accordance with the normal internal rules and procedures of the participant concerned. Travel and subsistence costs may not be charged for mobility within a single state, unless the mobility concerns a young researcher or a meeting of the project at which all participants are to be represented.

The prior agreement of the Commission shall be required for any travel outside (to or from) the territory of the Member States and the Associated States or a third country where a participant is established, unless it is provide for in Annex I to this contract. The approval of the Commission shall be deemed as given in the absence of observations within one month of receipt of the request made by the principal contractor.

(2) Subcontracting

With the exception of costs charged to the contract pursuant to Article 18, the actual costs of subcontracts may be charged to the contract if:

- they are incurred in compliance with the conditions set out in Article 6 of this Annex,

- the subcontracts are awarded and concluded in accordance with the usual procedures of the participants,

- they are in accordance with market prices,

and

- the copies of the relevant invoices, certified by the participants concerned, are attached to the corresponding cost statements.

(3) Consumables

Costs for consumables necessary for the execution of the project.

The costs of day-to-day telephone and postal services as well as the costs for routine and minor usage of computing and consumables are not eligible, as they are deemed to be included in the contribution to indirect costs (overheads).

(4) Computing

Computing costs, including the costs resulting from the use of computer services and media at the disposal of participants, may be charged to the contract. They must be substantiated in accordance with the rules applicable to the participants.

(5) Protection of knowledge

The costs of the protection of knowledge generated in the framework of the project
shall comprise the actual costs necessary for adequate and effective protection for such knowledge, taking into account the interests of the Community. They shall be eligible only in so far as the Commission has given its prior written approval to the contractors and in so far as the competition rules, in particular those under the Community framework for State aid to research and development, are complied with.

They comprise:

- the costs of documentary research preliminary to the filing of an application for the granting of an industrial property right,

- the fees paid to the competent authorities that are necessary with a view to the granting of an industrial property right or its territorial extension, provided that prior documentary research, as referred to in the first indent, has been carried out,

and

- the fees paid to the competent authorities to extend the duration of the industrial property right.

The costs of protection of knowledge and measures to demonstrate the potential for use of knowledge exclude also the costs of creating and marketing a product or process and the costs of creating and providing a service.

(6) Durable equipment

Cost relating to the purchase or leasing with option to buy of durable equipment may be charged to the contract with the prior approval of the Commission, but only if it is used to equip a Participant's research team situated in a Less-Favoured Region of the Community in which a researcher who has been trained abroad for a minimum duration of one year at a post-doctoral level is appointed to an established position in that legal entity and will be active in the project. Only those researchers having held an established position for 5 years or less are eligible for the research team’s reimbursement of durable equipment.

The eligible costs for durable equipment leased with option to buy shall not exceed the costs that would have been incurred if the equipment had been purchased, taking account of the formula below.

The costs to be charged to the contract shall be calculated according to the following formula:

\[ \frac{A}{B} \times C \times D \]

A = the period in months during which the durable equipment is used for the project after invoicing,

B = the depreciation period for the durable equipment: 36 months for computer equipment costing less than EUR 25 000 or 60 months for other equipment,
C = the actual cost of the durable equipment,

D = the percentage of usage of the durable equipment for the *project*.

The durable equipment may have been purchased or leased with option to buy:

- within the six months preceding the *project commencement date*,
- for a previous contract concluded with the Community, provided that the depreciation period has not been exceeded. Only the costs relating to the unexpired depreciation period may be charged.

### (7) Other Specific Costs

(a) For the organisation of network meetings of the *participants*.

(b) International workshop, seminar and conference fees for research staff of the *participants* when representing the *project* at such events.

(c) Costs of exchanging information between the *participants*, including the costs of setting up and maintaining a site on the Internet, the use of high-bandwidth communication networks, the access to electronic-based information transfer systems and the costs of newsletters.

(d) Costs of joint publications, aimed at disseminating the collective results of the *project* (the costs of publishing the results of an individual *participant* will not be supported).

(e) User fees for the access to external scientific research facilities.

(f) Costs of exchanging materials and reference products between the *participants*.

### Article 20 - Indirect Costs

A flat-rate amount of 20% of the direct costs, but excluding subcontracting costs, may be charged as overheads related to the carrying out of the work specified in the *project*. Such overheads are intended to include *inter alia* the costs of non-specialist personnel, administrative personnel and secretarial personnel not charged as direct costs pursuant to Article 18 of this Annex, as well as the depreciation of buildings and equipment, water, electricity, telecommunications and postal charges, and office supplies.

### Article 21 - Justification of costs

*Eligible costs* shall be reimbursed where they are justified by the *participant*.
To this end, the participant shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which it is established, the accounts for the project and appropriate documentation to support and justify in particular the costs and time reported in his cost statements.

This documentation must be precise, complete and effective.

**PART D : AUDITING**

**Article 22 - Financial audit**

1. The Commission, or any representative authorised by it, may initiate an audit in respect of a participant at any time during the contract and up to five years after each payment of the Community contribution, as referred to in Article 3(1), first subparagraph, of this Annex.

   The audit procedure in respect of the principal contractor shall be deemed to be initiated on the date of receipt of the relevant registered letter with acknowledgement of receipt sent by the Commission to the principal contractor concerned.

   In the case of an audit procedure in respect of a member, the principal contractor shall have a period of 15 days to send to the member concerned the registered letter with acknowledgement of receipt from the Commission.

   The audit procedure in respect of a member shall be deemed to start on the date of receipt of a registered letter with acknowledgement of receipt from the Commission sent by the principal contractor concerned to the member concerned.

   The audit procedure shall be carried out on a confidential basis.

2. The Commission or any authorised representative may have access, at any reasonable time, in particular to the personnel of the participant connected with the project, the documentation referred to in Article 21 of this Annex, computer records and equipment that it considers relevant. In this connection, it may request that data be handed over to it in an appropriate form in order, for instance, to ascertain the eligibility of the costs.

   The Commission shall take appropriate steps to ensure that its authorised representatives treat confidentially the data to which they have access or which have been provided to them.

3. On the basis of the findings made during the financial audit in respect of the principal contractor, a provisional report shall be drawn up. It shall be sent by the Commission to the principal contractor, who may make observations thereon within one month of receiving it.

   The final report is sent to the principal contractor. The latter may make his observations to the Commission within one month of receiving it. The Commission may decide not to
take into account the observations conveyed after the deadlines.

Where findings are established during a financial audit in respect of a member, the principal contractor shall have a maximum period of 15 days to send the member concerned, by registered letter with acknowledgement of receipt, the provisional report drawn up by the Commission.

The former shall have a maximum period of one month from the date of receipt thereof to transmit observations to the principal contractor by registered letter with acknowledgement of receipt.

The principal contractor concerned shall then have a maximum period of 15 days to transmit to the Commission, by registered letter with acknowledgement of receipt, the observations of the member concerned.

The procedure and time-limits indicated in paragraph 3, third, fourth and fifth subparagraphs, of this Article shall apply mutatis mutandis to the final report from the Commission in the case of a financial audit in respect of a member.

The Commission may decide not to take into account observations conveyed after the deadlines.

4. On the basis of the conclusions of the audit, the Commission shall take all appropriate measures which it considers necessary, including the issuing of a recovery order regarding all or part of the payments made by it. The recovery order shall be addressed to the principal contractor concerned or involved in the case of financial audit in respect of one of his members.

5. The Court of Auditors may verify the use made of the Community's financial contribution in the framework of this contract, on the basis of its own rules.

Article 23 - Technical verification of the project

1. The Commission, or any representative authorised by it, may initiate a technical verification in respect of a participant up to the contract completion date in order to verify that the project is being or has been carried out in accordance with the conditions indicated by the principal contractor or his members.

The verification procedure in respect of a principal contractor shall be deemed to be initiated on the date of receipt of the relevant registered letter with acknowledgement of receipt sent by the Commission to the principal contractor concerned.

In the case of a technical verification procedure in respect of a member, the principal contractor concerned shall have a period of 15 days to transmit the letter relating to it to the member from the date of the letter from the Commission.

The technical verification procedure in respect of a member shall be deemed to start on the date of receipt of the registered letter with acknowledgement of receipt concerning it
from the principal contractor.

The technical verification procedure shall be carried out on a confidential basis.

2. The Commission or any authorised representative may have access to the locations and premises where the work is being carried out, and to any document concerning the work, and may request the submission of documents under the same conditions as those set out in Article 22(2) of this Annex.

Prior to the carrying out of the technical verification, the Commission shall communicate to the principal contractors and the members through the principal contractor the identity of the authorised representatives who are intended to perform the verification. It shall take account of any objection on the part of participants based on legitimate interests.

3. Participants shall provide appropriate assistance to the Commission or its authorised representatives.

4. A report on the technical verification of the project shall be sent to the principal contractor. The latter may communicate his observations to the Commission within one month of receiving it.

In the case of a technical verification procedure in respect of a member, the principal contractor shall have a period of 15 days to transmit to the member concerned the report on the technical verification of the project from the Commission. The member may, through the principal contractor, communicate his observations to the Commission within one month of receipt of the report.

The Commission may decide not to take into account observations conveyed after these deadlines.

5. The Mid-Term Review

The principal contractor shall organise a Mid-Term Review Meeting between representatives of all the participants and the Commission. The meeting shall take place no later than when two-thirds of the duration of the work to be performed under the contract has elapsed. The principal contractor shall agree with the Commission the date and the agenda for the meeting at least two months in advance of the meeting.