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## **PART A: IMPLEMENTATION OF THE *PROJECT***

### **Article 1 - Definitions**

1. “*Decision*” means Council Decision 1999/65/EC of 22 December 1998 concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the Fifth Framework Programme of the European Community (1998-2002)<sup>2</sup>.
2. “*Regulation*” means Commission Regulation (EC) No 996/1999 of 11 May 1999 on the implementation of Council Decision 1999/65/EC concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the Fifth Framework Programme of the European Community (1998-2002)<sup>3</sup>.
3. “*Contracting parties*” means the Community, *principal contractors* and *assistant contractors*.
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. “*Assistant contractor*” means a legal entity, an international organisation, or the JRC, other than a *principal contractor*, which has concluded this contract with the Community, acting under the technical supervision of one or more *principal contractors* and having the same rights and obligations as them, except as regards the extent of its responsibility for carrying out the *project* and *access rights*.
6. “*Contractor*” means a *principal contractor* or an *assistant contractor*.
7. “*Coordinator*” means the *principal contractor* carrying out the tasks provided for in Article 2(1) of this Annex.
8. “*Subcontract*” means an agreement to provide services, supplies or goods concluded between a *contractor* 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.

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<sup>2</sup> OJ L 26, 1.2.1999, p. 46.

<sup>3</sup> OJ L 122, 12.5.1999, p. 9.

13. "*Contract completion date*" means the date referred to in Article 2(2) subparagraph 2 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. "*Consortium agreement*" means an agreement concluded between *contractors* in order to specify or supplement, between themselves, the provisions of this contract.
16. "*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, under which that State makes a financial contribution to the Framework Programme.
17. "*Third country*" means a country other than a Member State or an *Associated State*.
18. "*Change of control*" means any change in the control exercised over a *contractor*, 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 the *contractor* 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 in the *contractor*.
19. "*Force majeure*" means any unforeseeable and insuperable event affecting the carrying out of the *project* by one or more *contractors*.
20. 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 cooperation agreements between the Community and third countries or international organisations.

21. "*Knowledge*" means the results, including information, arising from any *project* covered by Decision No 182/1999/EC of the European Parliament and of the Council of 22 December 1998 concerning the Fifth Framework Programme of the European Community for research, technological development and demonstration activities (1998 to 2002)<sup>4</sup> (hereinafter referred to as the "Fifth Framework Programme"), 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.
22. "*Pre-existing know-how*" means information, other than *knowledge*, held by the *contractors* prior to the conclusion of the contract or acquired in parallel with it 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.
23. "*Access rights*" means licences and user rights in respect of *knowledge* or *pre-existing know-how*.
24. "*Complementary contract*" means a contract concluded with the Community in respect of work technically related to the *project*, including for *use* purposes, and recognised in writing by the contractors to each contract as being complementary.
25. "*Complementary contractor*" means a legal entity or an international organisation or the JRC, which has concluded a *complementary contract*.
26. "*Principal contractor under the same specific programme*" means a legal entity or an international organisation or the JRC, which has concluded, as *principal contractor*, a research contract with the Community under the specific programme to which this contract relates.
27. "*Use*" means the direct or indirect use of *knowledge* in research activities or for *exploitation* purposes.
28. "*Exploitation*" means the direct or indirect use of knowledge for creating and marketing a product or process or for creating and providing a service.
29. "*Dissemination*" means the disclosure of *knowledge* by any appropriate means other than the publication resulting from the formalities for protecting the *knowledge*, for the purposes of promoting scientific and technical progress.
30. "*Dissemination and use plan*" means the intentions of the *contractors* regarding the *use* of possible *knowledge*, as set out in their proposal.
31. "*Technological implementation plan*" means the report the content of which is defined in Article 17 of this Annex.

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<sup>4</sup> OJ L 26, 1.2.1999, p. 1.

32. “*Legitimate interest*” means any interest, in particular of a commercial nature, of a *contractor* which may be invoked in the cases provided for in this Annex provided that the contractor demonstrates that the damage to that interest is likely, given the circumstances, to cause a specific prejudice that is disproportionate, considering the objectives of the provision in respect of which it is invoked.
33. “*Eligible costs*” means the costs referred to in Articles 23 and 24 of this Annex, in compliance with the conditions laid out in Article 22(1) to (4).

## **Article 2 - Management of the *project* and role of the *coordinator***

1. Without prejudice to paragraph 2 of this Article, the *coordinator* shall be in charge of the scientific, financial and administrative coordination of the *project*. In this respect,
- (a) he shall be the intermediary between the *contractors* and the Commission. In particular, he shall be responsible for transmitting to the Commission all documents and correspondence relating to the *project*;
  - (b) he shall inform the Commission of the actual date of commencement of the work and of the person designated by each *contractor* in accordance with paragraph 2(a) of this Article;
  - (c) he shall submit to the Commission:
    - the cost statements provided for in Article 4 of this contract and Article 4 of this Annex, and
    - the periodic, final and supplementary reports provided for in Article 4 of this contract and Article 4 of this Annex after incorporating the content of data provided by the *contractors* and verifying their consistency with any corresponding cost statements,
    - the summary of the *technological implementation plan* referred to in Article 17(2) of this Annex, as well as any other *project deliverable* except where Annex I to this contract provides otherwise;
  - (d) in his capacity as representative of the *contractors* 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;
  - (e) not being the beneficiary of payments intended for other *contractors* 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), third subparagraph, 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;

- (f) he shall inform the other *contracting parties* of any event of which he is aware which is liable to substantially affect the *project*, including any change in the person mentioned in paragraph 2(a) of this Article, any *change of control* with regard to a *contractor* and any circumstance affecting the conditions of participation referred to in Articles 3 to 12 of the *Decision*;
- (g) he shall inform the Commission of transfers in the budget laid out in the table of indicative breakdown of the estimated *eligible costs* between *contractors* and between categories carried out in compliance with Article 22(5) of this Annex upon notification by those concerned.

Without prejudice to Article 7(3)(b) of this Annex, if the *coordinator* fails to perform his obligations, the Commission may, in agreement with the other *contractors*, designate another *coordinator* from among the *principal contractors*.

2. The *contractors*:

- (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 one or more persons among those referred to in Article 23(1) of this Annex who shall direct their work and ensure that the tasks assigned are correctly performed;
- (b) shall conclude amongst themselves, if necessary, a *consortium agreement* in accordance with the provisions of this contract and the competition rules. Such agreement may, *inter alia*, specify the organisation of the work and supplement the provisions concerning the *access rights* referred to in Article 12 to 15 of this Annex;
- (c) shall inform the *coordinator* of any event liable to substantially affect the *project*, including any change in the person mentioned at point (a) of this paragraph, any *change of control* with regard to them and any circumstance affecting the conditions of participation referred to in Articles 3 to 12 of the *Decision*;
- (d) shall keep duly signed original copies of *subcontracts*, if any have been concluded;
- (e) shall forward to the *coordinator* the data needed to draw up the reports provided for in Article 4 of this contract and Article 4 of this Annex, and forward the corresponding cost statements, if any. With the exception of the individual part of the *technological implementation plan* referred to under (g), they shall do likewise in respect of any other *project deliverable*, except where Annex I provides otherwise;
- (f) shall inform the *coordinator* of transfers in the budget laid out in the table of indicative breakdown of the estimated *eligible costs* between them and between categories as soon as they have carried out such transfers in compliance with the conditions set out in Article 22(5) of this Annex;

- (g) shall each submit to the Commission the individual part of the *technological implementation plan* referred to in Article 17(3) of this Annex;
  - (h) shall each notify the Commission of the measures taken to implement the *technological implementation plan* and of any significant changes thereto, in accordance with Article 16(3) of this Annex;
  - (i) shall take part in meetings concerning the supervision, monitoring and evaluation of the *project* which are relevant to them;
  - (j) shall provide all detailed data requested by the Commission for the purposes of the proper administration of this contract. They shall communicate such data for the purposes of approval of the *technological implementation plan*, in accordance with Article 16(2) of this Annex, in so far as they consider them relevant.
3. The table of indicative breakdown of estimated *eligible costs* following the signatures on this contract determines the relations of technical supervision between *principal contractors* and *assistant contractors*.
  4. The Commission may be assisted by independent experts in the framework of the meetings referred to under paragraph 2(i) 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 the identity of the experts scheduled to attend. It shall draw the appropriate conclusions from any objection on the part of *contractors* based on *legitimate interests*.

### **Article 3 - The Community's financial contribution**

1. The Community's financial contribution shall be paid in accordance with the following principles:
  - (a) An initial advance shall be paid to the *coordinator* within a maximum period of 60 days running from the date of the last signature of the *contracting parties*. The *coordinator* allocates the advance in accordance with the table of indicative breakdown of estimated *eligible costs* following the signatures on this 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 7(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 rate applied by the European Central Bank for its main refinancing operations applicable on the first day of the month during which the three months 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 a part of the initial advance shall be recovered, which amount is calculated on the basis of the relation between the *eligible costs* approved by the Commission and the forecast expenses for the period considered.

- (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 and fifth subparagraphs, of this Annex, to have approved the last *project deliverable*.

The final payment shall correspond to the difference between the amount owed by the Commission on the basis of the *eligible costs* which it has approved and the amount of the initial advance and the 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 *contractors* concerned 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 *contractors* concerned or the *coordinator*, acting on behalf of all the *contractors*, 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. The Commission may, in case of suspected fraud or serious financial irregularity on the part of a *contractor*, suspend payments and/or instruct the *coordinator* not to make any payment to such *contractor*. The latter shall remain bound by his contractual obligations.
3. Subject to Article 26 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 26 of this Annex, is less than the total amount of the payments referred to in paragraph 1, first subparagraph, of this Article, the *contractors* 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 *contractor* within the time limit set 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 interests shall cover the period running from the day after the expiry of the time limit 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 *contractor* concerned.

The recovery order regarding payments made by the Commission drawn up by the latter and transmitted to a *contractor* who owes an amount to be reimbursed shall be enforceable within the meaning of Article 256 of the Treaty establishing the European Community.

The Commission may decide to proceed with the reimbursement of sums owed to the Community by way of set-off against sums of any kind due to the *contractor* concerned.

5. After the *contract completion date*, or the termination of the contract or of the participation of a *contractor* the Commission may or shall, as relevant, where fraud or serious financial irregularities have been discovered during a financial audit, claim from the *contractor* the repayment of all the Community's financial contribution paid to him. 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 *contractor* concerned has 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 of summary statements of amounts transferred by the *coordinator***

1. As regards reports:
  - (a) The following reports shall be submitted to the Commission for approval:
    - (i) periodic reports containing information about the progress of work, resources employed, departures from the work schedule, and results,
    - (ii) supplementary reports containing information required by Annex I to this contract,

- (iii) a final report covering all the work, objectives, results and conclusions, including a summary of all the latter,
  - (iv) where the reports referred to in points (i), (ii) and (iii) cannot be published in full, they shall, in addition, be presented in a suitable form for publication by the *contracting parties*. The final report suitable for publication shall include sufficient information on new developments to enable third parties established in the Member States or in *Associated States* to be informed of opportunities to request licences in respect of *knowledge*.
  - (v) a *technological implementation plan*.
- (b) The layout of the reports shall conform to the rules communicated by the Commission. The reports for publication should be of a suitable quality to enable direct reproduction. The layout of the *technological implementation plan* shall comply with the conditions set out in Article 17 of this Annex.

2. As regards cost statements:

- (a) Cost statements shall be expressed in euro and in the currency used in the accounting of the *contractor*. 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) *Contractors* shall submit their cost statements to the Commission through the *coordinator* in the format specified in part E-1. In addition, the *coordinator* shall submit the corresponding integrated cost statements in euro in the format specified in part E-2.

*Contractors* 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 report and the corresponding cost statements, including the integrated cost statement, as well as 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(s) 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*, except the *technological implementation plan*, shall be submitted within the time-limits set out in Annex I to this contract.

In the absence of observations by the Commission, the *project deliverables*, except the *technological implementation plan*, shall be deemed to be approved within two months of their receipt.

The *technological implementation plan* shall be submitted and approved within the time limit set out in Article 16 of this Annex.

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-limits laid down in paragraph 3 of this Article or in Annex I as relevant, a cost statement or a periodic report or other *project deliverable*.

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 limits laid down in paragraph 3 of this Article:

- the cost statements for the final period,
- the final report(s) or other *project deliverable*,
- the *technological implementation plan*,

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

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

#### **Article 5 - Subcontracts**

1. *Contractors* may conclude *subcontracts* where this proves necessary for the performance of their work. Where a *subcontract* is concluded for the performance of coordination tasks, the related expenses may not be charged as direct costs.

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

- (a) where the cumulative amount of the *subcontracts* for the *contractor* exceeds:

- 20% of his estimated *eligible costs*,
- EUR 100 000,

whichever amount is the lowest.

- (b) where the *subcontractor* is established in a *third country*, unless the *contractor* concerned is established there.

The Commission's approval shall be deemed to be granted in the absence of observations within one month of receipt of the request made by the *coordinator*.

2. The *contractor* shall ensure that *subcontracts* include an obligation for the subcontractors:
  - to submit invoices making reference to the *project* and providing a detailed description of the tasks or supply concerned,
  - to submit to the controls provided for in Articles 26 and 27 of this Annex.

## **Article 6 - 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 *principal contractors* shall take all necessary and reasonable measures to carry out the work incumbent on a defaulting *contractor*. However, they shall not be required to reimburse amounts owed by a *contractor* unless they have contributed to the latter's default.

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 default of a product or service used for the purpose of performing this contract and affecting such performance, including, for instance, 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 committed by the *contractors* performing this contract. It shall not be liable for any defaults of any products or services created on the basis of *knowledge* resulting from the *project*, including, for instance, anomalies in the functioning or performance thereof resulting from, or linked to the millennium date change (year 2000 problem).

*Contractors* fully guarantee the Community, and agree to indemnify it, in case of any action, complaint or proceeding brought by a third party against it as a result of damage caused, either by any act or omission committed by the *contractors* in performing this contract, or because of any products or services created on the basis of *knowledge* resulting from the *project*, only to the extent that the *contractors* have contributed to or are responsible for the loss or damage concerned.

In the event of any action brought by a third party against the Community in connection with the performance of this contract, *contractors* which may bear responsibility shall be required to assist the latter.

4. In the event of any action brought by a third party against a *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 *contractor* concerned.

## **Article 7 - Termination of the contract or of the participation of a *contractor***

1. The Commission may terminate the contract or the participation of a *contractor*:
  - (a) 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),
  - (b) if the *use* potential of the results of the *project* diminishes to a considerable extent.

The Commission shall determine, in the registered letter with acknowledgment 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:
  - (a) to the termination of the contract, at the written request of the *coordinator* in agreement with all the other *contractors*, on the grounds mentioned in paragraph 1 of this Article,
  - (b) to the withdrawal of a *contractor* from the *project* where all the other *contractors* have given their prior agreement in writing, unless this withdrawal substantially affects the carrying out of the *project*.

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

- on the date of the letter of acceptance by the Commission notified by registered letter with acknowledgment of receipt,
  - at the latest one month following receipt of notification by the interested part(y)(ies) 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 a *contractor* from the date of receipt of the registered letter with acknowledgment of receipt:
    - (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 *contractor* has not fully performed his contractual obligations, and after a written request of the Commission, or of the *coordinator* in agreement with:
      - (i) the other *principal contractors* and the *assistant contractors* directly concerned, if he is a *principal contractor*,
      - (ii) the *principal contractors* and the other *assistant contractors* directly concerned, if he is an *assistant contractor*,

- to rectify the situation within a period not exceeding one month,
- (c) where a *change of control* over a *contractor* 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 *contractor* or any similar proceeding provided for by national laws or regulations and leading to a similar results,
  - (e) in the event of a serious financial irregularity.
4. The Commission shall immediately terminate this contract or the participation of a *contractor* from the date of receipt of the registered letter with acknowledgment of receipt:
- (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 *contractor* 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,
  - (c) where the *contractor* concerned has not submitted the individual part of the *technological implementation plan* referred to in Article 17(3) of this Annex within the time-limit specified in Article 16(1) of this Annex and has not remedied the default within a period not exceeding one month from the receipt of the Commission's request.
5. Any letter of the Commission serving to terminate the participation of a *contractor* (including in the event of his withdrawal) or to terminate the contract shall be addressed in the first case to the party concerned and in the second case to the *coordinator* in accordance with the procedures set out in paragraphs 1 to 4 of this Article. A copy of the letter shall be sent in the first case to the *coordinator* and in the second case to the other *contractors*.
6. *Contractors* shall take appropriate action to cancel or reduce their commitments, upon receipt of the letter from the Commission notifying them of the termination of the contract or of their participation or upon the dispatch of their request for termination or withdrawal, as the case may be.

In the event of termination of the contract or of the participation of a *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 a *contractor*:

- (a) pursuant to paragraph 2, first subparagraph, point (b), paragraph 3(b) or (d) or paragraph 4(c) of this Article, the Commission may require reimbursement 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, the Commission shall only reimburse the *eligible costs* relating to approved *project deliverables* and incurred before the event giving rise to the termination of the contract or of the participation of a *contractor*, and also *eligible costs* subsequently incurred in good faith before the date mentioned in the first subparagraph of this paragraph,
  - (c) pursuant to paragraph 3(a) or (e) or paragraph 4(b) of this Article, the Commission may require repayment of all or part of the Community's financial contribution. Interest at the rate applied by the European Central Bank to its main refinancing operations on the first day of the month during which the *contractor* concerned has 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.
7. The termination of the participation of a *contractor* shall not prejudice the *access rights* for the carrying out of the *project* which the contractor granted before that date pursuant to Articles 11 and 12 of this Annex. He shall grant such *access rights* to any *contractor* taking over all or part of the work incumbent on him:
- on a royalty-free basis, if his participation is terminated pursuant to paragraph 3(b) or (e), or paragraph 4(b) of this Article,
  - in accordance with the conditions laid down in Articles 11 and 12 of this Annex, in other cases.

*Access rights for use* shall be granted by *contractors*, in accordance with Articles 11, 13, 14 and 15 of this Annex, in so far as necessary for the *use* of new *knowledge* generated before the participation of the *contractor* terminated. Where *use* is contemplated, the *contractors*, including the one whose participation terminates, shall submit a *technological implementation plan* which complies with Articles 16 and 17 of this Annex. However, a *contractor* whose participation terminates pursuant to paragraph 3(b), (c) or (e), or paragraph 4(b) or (c) of this Article shall not have *access rights for use*.

8. Notwithstanding the termination of the contract or of the participation of a *contractor*, the following provisions shall continue to apply after that date subject to the limits specified therein, as the case may be:
- Articles 5, 6 and 8 of this contract,
  - Article 2(1), first subparagraph, points (a), (d), (e) and (f), Article 2(2) (c), (d), (h) and (j), Article 3(4) and (5), Article 4(5), Article 6, Articles 9 to 21 and Articles 25, 26 and 28 of this Annex.



The *contractors* shall submit the *project deliverables* relating to the work performed until the date of termination of the contract or when their participation ends.

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

**Article 8 - Ownership of *knowledge***

1. *Knowledge* shall be the property of the *contractors* who carried out the work leading to the *knowledge*.
2. Where several *contractors* have carried out work generating *knowledge*, 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 *contractor* may claim rights to *knowledge*, the 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 *contractor* transfers ownership of *knowledge*, he shall take steps or conclude agreements to pass on his 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 *contractor* shall inform the other *contracting parties* in advance of the conditions of the assignment.

**Article 9 - Protection of *knowledge***

1. *Contractors* shall provide adequate and effective protection for *knowledge* owned by them which is capable of *use*, in particular in the case of joint ownership.

The terms of the protection, including protection periods, shall be defined in the *technological implementation plan*, which must be in conformity with the principles set out in Articles 16 and 17 of this Annex.

2. Where a *contractor* does not intend to protect his *knowledge* in a country specified by the Commission or waives such protection, the latter may take measures to that end in agreement with the former. The *contractor* concerned may not refuse without good reason.

In such cases the Community shall assume the obligations referred to in Articles 10 to 14 of this Annex instead of the *contractor*.

The *contractor* shall, on request, be entitled to *access rights* in the country in question on a royalty-free basis, and may grant sublicences on the *knowledge*.

3. A *contractor* may publish, or allow the publication of, data, on whatever medium, concerning *knowledge* it owns provided that this does not affect the protection of that *knowledge*.

The other *contracting parties* shall be given, in good time, prior notice of any planned publication and the scheduled date thereof. A copy of the medium containing these data shall be communicated to them if they so request within 30 days after receipt of such notice. They may object to such publication, provided that due reasons for the objections are given, within a new period of 30 days after receipt of such data where, from their point of view, it would adversely affect the protection of the *knowledge* referred to in paragraph 1 of this Article.

The *consortium agreement* may specify the details of such a right to object and the measures necessary to ensure a speedy publication without prejudicing the protection.

#### **Article 10 - Use of knowledge**

1. The *contractors* shall use or cause to be used the *knowledge* which they own within a reasonable time-limit in accordance with the *interests of the Community* and in compliance with international agreements concluded with the Community.

The terms of *use*, including a reasonable time-limit within which it must take place, shall be set out in the *technological implementation plan* referred to in Articles 16 and 17 of this Annex. They shall take account, in particular, of the area of activity concerned.

2. If the *knowledge* is not used in accordance with the terms and time-limits referred to in paragraph 1, second subparagraph, of this Article, the *contractors* shall disseminate such *knowledge*, in accordance with:

- the need to safeguard intellectual and industrial property rights,
- confidentiality,

and taking into account the benefits of rapid *dissemination* and their *legitimate interests*.

Should the *contractors* fail to do so, the Community shall disseminate the *knowledge* itself under the same conditions.

#### **Article 11 - General principles relating to access rights**

1. *Access rights* shall be granted by *contractors* on request on the conditions provided for in Articles 12 to 15 of this Annex. *Access rights* shall be granted to *pre-existing know-how* provided that the *contractor* concerned is free to grant such rights.

2. *Access rights* shall be granted, depending on the case:
  - free of charge and subject to no other condition than those specified in this Annex (on a royalty-free basis),
  - on conditions that are more favourable than the market conditions, as a result of the granting of any kind of rebate (preferential conditions),
  - on market conditions.

*Access rights* may be granted by any *contractor* on financial conditions that are more favourable for the requester.

3. The granting of *access rights* may be made conditional on the conclusion of specific agreements aimed at ensuring that they are used only for the intended purpose and appropriate confidentiality agreements.
4. Except where the *contractor* granting *access rights* so agrees, *access rights* shall not confer any entitlement to grant sublicences.
5. The essential transfer costs for the granting of *access rights* shall be borne by the beneficiary.
6. In accordance with Article 2(2)(b) of this Annex, the *contractors* may, through the conclusion of a *consortium agreement*, grant additional *access rights* or supplement the rules of this Annex concerning *access rights*.

#### **Article 12 - *Access rights* for the carrying out of the *project***

1. *Principal contractors* shall enjoy *access rights* to the *knowledge* needed to carry out their work in the framework of the *project*. They shall be granted on a royalty-free basis.

*Assistant contractors* shall be entitled to *access rights* to the *knowledge* needed to carry out their work in the framework of the *project*. Those rights shall be granted on a royalty-free basis by the *principal contractors* to whose technical supervision they are subject or their other *assistant contractors*. When they are requested from other *contractors*, *access rights* shall be granted on favourable conditions.

Subject to *legitimate interests* of the *contractor* concerned, *principal contractors* under the same specific programme shall, where they are established in a Member State or an Associated State, enjoy *access rights* to the *knowledge* needed to carry out their work in the framework of that programme. They shall be granted on favourable conditions.

2. *Principal contractors* shall enjoy *access rights* to *pre-existing know-how* needed to carry out their work in the framework of the *project*. They shall be granted on favourable conditions.

*Assistant contractors* shall enjoy access rights to the *pre-existing know-how* needed to carry out their work in the framework of the *project*. Such rights shall be granted on favourable conditions by the *principal contractors* to whose technical supervision they are subject or their other *assistant contractors*. When they are requested from other *contractors*, *access rights* shall be granted on market conditions.

3. Subject to paragraph 1, third subparagraph, of this Article, where *contractors* designate a contract under the framework programme as being a *complementary contract*, they shall determine with the contractors involved in that project the arrangements for the granting of *access rights* to the latter, the period during which they can be claimed, and the financial conditions attaching to them.
4. *Access rights* for the carrying out of the *project*, as referred to in paragraphs 1 and 2 of this Article, shall be granted until the end:
  - of the *duration of the project*, where the requester is a *contractor*,
  - of the duration of the project to which the requester contributes, where the latter is a *principal contractor under the same specific programme*.

#### **Article 13 - Access rights for use**

1. *Principal contractors* shall enjoy *access rights* to all *knowledge* resulting from the *project* in order to *use* that *knowledge* or in order to use *knowledge* that they themselves have generated. They shall be granted on a royalty-free basis.

A *contractor* who does not generally undertake commercial activities and who is unable to exploit the *knowledge* he has generated may decide on his own to grant *access rights* to such *knowledge* to the *principal contractors* referred to in the first subparagraph of this paragraph with a view to its *exploitation* on financial or similar conditions that are reasonable and acceptable in relation to his contribution to the project and the potential of that *knowledge*. Such *contractor* shall not use such *knowledge* for the purpose of *exploitation*. The negotiation of the conditions shall not delay the granting of *access rights*.

*Assistant contractors* shall enjoy *access rights* to the *knowledge* needed to *use* the *knowledge* that they have generated in the framework of the *project*. Such rights shall be granted by the *principal contractor* or *principal contractors* to whose technical supervision they are subject or their other *assistant contractors* on preferential conditions. When they are requested from other *contractors*, *access rights* shall be granted on market conditions.

Subject to *legitimate interests* of the *contractor* concerned, *principal contractors under the same specific programme* shall, where they are established in a Member State or an Associated State, enjoy *access rights* to the *knowledge* generated by the *project* needed to *use* the *knowledge* that they have generated in the framework of that programme. They shall be granted on market conditions.

2. *Principal contractors* shall enjoy *access rights* to *pre-existing know-how* and *knowledge* other than that generated in the framework of the *project* to the extent necessary to *use knowledge* resulting from the *project*. Those *access rights* shall be granted on favourable conditions.
3. When the *access rights* referred to in paragraphs 1 and 2 of this Article are granted for the purpose of using *knowledge* in subsequent research activities, the granting of such rights may be made conditional on the submission of a duly substantiated request and on the conclusion of a specific agreement to ensure that they are used only for the intended purpose and of appropriate confidentiality commitments. In such a case, the *access rights* granted shall not confer entitlement to grant sub-licences, unless the *contractor* granting such rights agrees thereto.
4. Subject to the provisions of paragraph 1, fourth subparagraph, of this Article, where *contractors* designate a contract under the framework programme as being a *complementary contract*, they shall determine with the contractors involved in that project the arrangements for the granting of *access rights* to the latter, the period during which they may be claimed, and the financial conditions attaching thereto.
5. *Access rights for use*, as referred to in paragraphs 1 and 2 of this Article, may be requested until:
  - five years after the end of the *duration of the project*, unless a longer time limit is provided for the *use of knowledge* in the *technological implementation plan*,
  - two years after the end of the duration of the project to which the requester contributes, where the latter is a *principal contractor under the same specific programme*.

#### **Article 14 - Conditions governing exclusive *access rights* for *exploitation***

1. As a rule, *access rights* shall be granted on a non-exclusive basis.

*Contractors* may, exceptionally, grant exclusive *access rights* to their *knowledge* resulting from the *project* for *exploitation* purposes:

- in compliance with competition policy, and in particular the Community rules adopted pursuant to Article 81(3) of the Treaty establishing the European Community,

and

- provided that they are economically indispensable, taking into account in particular the market, the risks involved and the investments required.

They must be granted on market conditions.

The granting of such exclusive rights shall not affect the obligation, in accordance with Article 13(1), first and third subparagraphs, of this Annex, to grant *access rights* to the requester for the *use* of his own *knowledge*.

2. A *contractor* who intends to grant *access rights* on his *knowledge* resulting from the *project* on an exclusive basis shall inform the other *contractors* in good time of the identity of the requester and of the arrangements for granting such rights.

*Principal contractors* may, within 30 days after receipt of this information, indicate their commitment to exploit such *knowledge* on the basis of non-exclusive *access rights*. In that case, the *access rights* may not be granted on an exclusive basis pursuant to paragraph 1, first subparagraph, of this Article.

#### **Article 15 - Refusal to grant *access rights* for *exploitation***

A *contractor* may refuse to grant *access rights* for the *exploitation* of *knowledge* resulting from the *project* if he is exploiting it himself. The details thereof may be defined in the *consortium agreement*. Such refusal shall only be justified, however, when it is economically indispensable in view, in particular, of the market, the risks and the investment required to exploit the *knowledge*.

Such refusal shall not affect the obligation, in accordance with Article 13(1), first and third subparagraphs, of this Annex, to grant *access rights* to a requester for the *use* of his own *knowledge*.

#### **Article 16 - *Technological implementation plan***

1. A *technological implementation plan* drawn up in accordance with the principles set out in Article 17 of this Annex shall be submitted to the Commission no later than two months after the end of the *duration of the project*. It shall reflect, except in particular circumstances, the broad outlines of the *dissemination and use plan*.
2. The *technological implementation plan* shall be approved by the Commission taking into account compliance with the *interests of the Community* and international agreements concluded with the Community, as well as the interests of the *contractors*. To this end, the *contractors* shall submit to the Commission on request the documentation they consider relevant in the light of Article 17 of this Annex, whatever its medium, and in an appropriate form.

Approval of the *technological implementation plan* by the Commission shall be limited to verification of compliance with the obligations set out in the contract. It shall be without prejudice to Articles 14 and 15 of this Annex.

In the absence of observations by the Commission, the *technological implementation plan* shall be deemed to be approved within two months of its receipt.

3. *Contractors* shall inform the Commission of the arrangements for implementing the *technological implementation plan* at the latest on the expiry of the time-limits provided for therein.

They shall give proper justification for any change made to the *technological implementation plan* that significantly alters the conditions of *use*. In the absence of observations within one month of its receipt, such change shall be deemed to be approved by the Commission.

## **Article 17 - Content of the *technological implementation plan***

1. The *technological implementation plan* shall include a summary of the project and a forecast of the intentions of the *contractors*, as well as a description of their achievements regarding the *use* of the *knowledge*.
2. The summary of the project shall be sent by the *coordinator* to the Commission for *dissemination* and shall contain a description of the *project* and its results as well as the names of the *contractors* owning the results.
3. The forecast of the intentions of the *contractors* regarding *use* of the *knowledge* as well as their achievements in that field shall be sent to the Commission by each *contractor* individually and shall contain, in particular, the following data:
  - (a) protection measures obtained or planned and steps taken to that effect,
  - (b) data necessary to ascertain the terms of *use* as described in Article 10(1), second subparagraph, of this Annex, including an indicative timetable and an outline of the resources contemplated for that purpose,
  - (c) any other data necessary to ascertain the extent of the Community added-value,
  - (d) differences compared with the *dissemination and use plan*.

The Commission shall keep confidential any data, *knowledge* and document expressly communicated to it as confidential.

## **Article 18 - Publicity and communications concerning the *project and knowledge***

1. Without prejudice to Article 9(3) of this Annex concerning the publication of data on the *knowledge* and taking into account their *legitimate interests*, *contractors* 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 *contractors*.

*Contractors* 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 estimated total cost, the duration and the state of progress of the *project*, to the Community's financial contribution and to the *knowledge*, as described in the final report. The legal designation of *contractors* and the names of the laboratories carrying out the work shall also be published unless they object to this in advance on the grounds of overriding *legitimate interests*.

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

On request and where he is free to do so, each *contractor* 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 *contractor*.

3. In the case of the reports referred to in Article 4(1)(a)(i), (ii) and (iii) of this Annex which cannot be published, the Commission may, on request, transmit these documents to other Community institutions on a confidential basis and subject to limits of such requests.
4. 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 *contractor*, state that the author is solely responsible for it and that it does not represent the opinion of the Community, and that the Community is not responsible for any use that might be made of data appearing therein.

Where use of the European emblem is envisaged, prior approval shall be required from the Commission. Standards, in particular with regard to graphics, in force within the Commission must be complied with.

#### **Article 19 - Confidentiality**

1. Without prejudice to Article 18 of this Annex and any other obligation contained in this contract, the *contracting parties* 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 those 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 those data, *knowledge*, documents and *pre-existing know-how* have been communicated without any confidentiality restrictions or where the party communicating them subsequently waives their confidentiality.
2. Where this contract provides for the communication of any data, *knowledge*, *pre-existing know-how* or document referred to in paragraph 1 of this Article, the *contracting parties* 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.



## **Article 20 - Communication of data for evaluation and standardisation purposes**

1. Without prejudice to Article 19 of this Annex, *contractors* 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 Articles 9, 10 and 19 of this Annex, *contractors* 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 21 - Incompatible or restrictive commitments**

1. *Contractors* shall take all necessary steps to avoid commitments that are incompatible with the obligations provided for in Articles 10 to 20 of this Annex.
2. Without prejudice to paragraph 1 of this Article, *contractors* shall be informed, as soon as possible, by the *contractor* required to grant *access rights*, as referred to in Articles 12 and 13 of this Annex, as the case may be, of any limitations on the granting of *access rights* to *pre-existing know-how*, obligations to grant rights to *knowledge* or any restriction which might substantially affect the granting of *access rights*.

## PART C: REIMBURSEMENT OF COSTS

### Article 22 - *Eligible costs* - general principles

1. *Eligible costs* are the costs defined in Articles 23 and 24 of this Annex. They shall fulfil the following conditions:

- be necessary for the *project*,
- 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 *contractor*, 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,

and

- exclude any profit margin.

Without prejudice to the provisions of the first subparagraph,

- the costs for drawing up the final report shall be eligible when incurred by the *coordinator* within a maximum period of two months from the end of the *duration of the project*,
- the durable equipment may have been purchased or leased with option to buy before the *project commencement date*, within the limits specified in Article 23(2), fifth subparagraph.

2. In the case of *contractors* covered by the additional costs system (those without an accounting system that allows the share of their direct and, without prejudice to Article 24(1)(b) of this Annex, indirect costs relating to the *project* to be distinguished), the *eligible costs* shall be as follows:

- the direct costs specified in Article 23 of this Annex which are additional to their recurring costs,

and

- the indirect costs specified in Article 24(2) of this Annex.

3. *Non-eligible costs* are in particular the following:

- costs related to return on capital employed,
- provisions for possible future losses or charges,
- interest owed,

- provisions for doubtful debts,
  - resources made available to a *contractor* 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 reasonable expenses accepted by the Commission as being absolutely necessary for carrying out the *project*,
  - any cost incurred or reimbursed, in particular in respect of another Community, international or national project, subject to the provisions of Article 23(2), fifth subparagraph, second indent.
4. No cost may be charged to more than one of the *eligible cost* categories referred to in Articles 23 and 24 of this Annex.
5. *Contractors* shall be authorised to transfer between themselves the budget set out in the table of the indicative breakdown of estimated *eligible costs*, 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,
- and
- the amounts transferred do not exceed 20% of the amount allocated to the beneficiary in the table of the indicative breakdown of estimated *eligible costs*.

Any other properly substantiated transfer approved by all the *principal contractors* and the *assistant contractors* directly concerned shall require prior written approval by the Commission.

In the absence of observations within one month of receipt of the request made by the *coordinator*, the approval of the Commission shall be deemed to have been given.

Each contractor shall be authorised to transfer the budget set out in the table of the indicative breakdown of estimated *eligible costs* between categories of costs, in compliance with the first and second subparagraphs. However, he shall not be required to obtain the agreement of the other *contractors*.

The budget for the costs for the protection of *knowledge* may not be the subject of a transfer to other categories of *eligible costs*.

## Article 23 - Direct costs

### 1. Personnel

With regard to personnel costs,

- (a) Only the costs of the actual hours worked by the persons directly carrying out the scientific and technical work under the *project* may be charged to the contract.

In compliance with Article 8(3) of this Annex, such persons must:

- be directly employed by the *contractor* in accordance with his national legislation,
- be under the sole technical supervision of the latter,

and

- be remunerated in accordance with the normal practices of the *contractor*, provided that these are regarded as acceptable by the Commission.

All the working time charged to the contract must be recorded throughout the *duration of the project*, or, in the case of the *coordinator*, no later than two months after the end of the *duration of the project*, and be certified at least once a month by the person in charge of the work designated by the *contractor* in accordance with Article 2(2)(a) of this Annex or by the duly authorised responsible financial officer of the *contractor*.

- (b) For *contractors* using the full costs system, personnel costs shall comprise:

- the actual costs (gross remuneration and related charges),
- average employment costs, where these correspond to the normal practices of the *contractor* concerned, provided that such costs do not differ significantly from the actual costs and that such practices are regarded as acceptable by the Commission.

- (c) For *contractors* using the additional costs system, costs shall be limited to the actual costs of the personnel employed on the *project* (gross remuneration and related charges) where the latter has concluded:

- a temporary contract for Community RTD projects (permanent personnel paid for working full-time for the *contractor* is excluded from this cost-charging system),
- a temporary contract for completing a doctorate,
- a contract which depends upon external funding additional to the normal recurring funding of the *contractor*. In that case, the costs charged to this contract must exclude any costs borne using such recurring funding.

## 2. Durable equipment

Costs relating to the purchase or leasing with option to buy of durable equipment shall be charged to the contract pursuant to this paragraph.

Hire costs shall be charged to the contract pursuant to paragraph 3 of this Article.

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:

$$A/B \times C \times D$$

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.

## 3. Subcontracting

With the exception of costs charged to the contract pursuant to paragraph 1 of this article, the actual costs of *subcontracts* may be charged to the contract if:

- they are incurred in compliance with the conditions set out in Article 5 of this Annex,
- the *subcontracts* are awarded and concluded in accordance with the usual procedures of the *contractors*,
- they are in accordance with market prices,

and

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

#### 4. Travel and subsistence

Actual travel and related subsistence costs for personnel working on the *project* may be charged to the contract.

The prior approval of the Commission shall be required for any destination outside the territory of the Member States, the *Associated states* or a third country where a *contractor* is established, unless such a destination is provided for in Annex I.

In the absence of observations within one month of receipt of the request made by the *coordinator*, the approval of the Commission shall be deemed to have been given.

Travel and subsistence costs shall be established on the basis of the usual rules of the *contractor*.

#### 5. Consumables

The actual costs relating to consumables, including software licences, that are specifically acquired for the *project* and whose purpose so justifies may be charged to the contract.

However, *contractors* using the full costs system and charging actual overheads shall include these costs in the indirect costs where this is reasonably practical and in accordance with their normal accounting conventions.

#### 6. Computing

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

However, *contractors* using the full costs system and charging actual overheads shall include these costs in the indirect costs where this is reasonably practical and in accordance with their normal accounting conventions.

#### 7. 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. In the absence of observations within one month of receipt of the request made by the *coordinator*, the approval of the Commission shall be deemed to have been given.

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.

Fees paid to advisers for *knowledge* protection purposes shall be reimbursable provided that an application for the granting of an industrial property right has been subsequently filed. Personnel costs incurred in this connection shall be reimbursable, provided that:

- (i) the conditions of paragraph 1(a) and (b) or (c) of this Article shall apply *mutatis mutandis*,

and

- (ii) the time actually worked on the *project* shall be recorded and certified in accordance with paragraph 1(a), third sentence, of this Article.

The Community's financial contribution in respect of the third subparagraph of this paragraph may not exceed EUR 4 000 per industrial property right.

The costs of protection of such *knowledge* shall exclude, in particular:

- translation costs,
- the costs incurred with a view to obtaining the *access rights* referred to in Articles 12, 13 and 14 of this Annex.

#### 8. Other specific costs

Other specific actual costs shall not come into any of the categories of *eligible costs* indicated in paragraphs 1 to 7 and 9 of this Article and in Article 24 of this Annex. They may include, in particular, the costs of prototypes or equipment fabricated, the costs of using large testing equipment and simulators, or the direct costs incurred in the setting-up of financial guarantees requested by the Commission.

They shall only be eligible subject to prior written approval of the Commission unless they are already provided for in Annex I to this contract.

In the absence of observations within one month of receipt of the request made by the *coordinator*, the approval of the Commission shall be deemed to have been given.

## 9. Administrative and financial coordination

Only the coordinator can charge to the contract the following administrative and financial coordination costs:

- the costs of administrative personnel in charge of the administrative and financial coordination of the *project* not included in the indirect costs referred to in Article 24 of this Annex. In this case,
  - (i) the conditions of paragraph 1(a) and (b) or (c) of this Article shall apply *mutatis mutandis* to that personnel,
  - (ii) the time actually worked on the *project* shall be recorded and certified in accordance with paragraph 1(a), third sentence of this Article,

and

- costs indicated in paragraphs 2 and 4 to 8 of this Article, provided that the conditions thereof are also complied with.

### **Article 24 - Indirect costs**

1. *Contractors* using the full costs system may charge overheads calculated:

- (a) on the basis of actual costs, in so far as allowed by their accounting system. Such overheads may include in particular the costs of administration and management, depreciation of buildings and equipment, water, electricity, telecommunications and postal charges, office supplies, and administrative personnel costs not charged to the contract pursuant to Article 23(9) of this Annex.

They shall be calculated in accordance with the normal accounting conventions and principles applicable to the *contractors*, provided that they are regarded as acceptable by the Commission.

- (b) on a flat-rate basis. In this case, they shall charge to this contract a flat-rate amount of 80% of the eligible personnel costs referred to in Article 23(1)(b) and (9) of this Annex. A *contractor* may request a lower percentage when this is required, for instance, by his internal rules.

2. *Contractors* using the additional costs system shall, as such, charge to this contract a flat-rate amount of 20% of the direct costs, excluding the costs of subcontracting. A *contractor* may request a lower percentage when this is required, for instance, by his internal rules.



## **Article 25 - Justification of costs**

*Eligible costs* shall be reimbursed where they are justified by the *contractor*.

To this end, the *contractor* shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which he 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 26 - Financial audit**

1. The Commission, or any representative authorised by it, may initiate an audit 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 shall be deemed to be initiated on the date of receipt of the relevant registered letter with acknowledgment of receipt sent by the Commission.

It 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 *contractors* connected with the *project*, the documentation referred to in Article 25 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, a provisional report shall be drawn up. It shall be sent by the Commission to the *contractor* concerned, who may make observations thereon within one month of receiving it.

The final report shall be sent to the *contractor* concerned. The latter may communicate his observations to the Commission within a month of receiving it. The Commission may decide not to take into account the observations conveyed after that deadline.

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.

4. 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 27 - Technical verification of the *project***

1. The Commission, or any representative authorised by it, may initiate a technical verification of the *project* 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 *contractor*.

The verification procedure shall be deemed to be initiated on the date of receipt of the relevant registered letter with acknowledgment of receipt sent by the Commission.

It 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 26(2) of this Annex.

Prior to the carrying out of the technical verification, the Commission shall communicate to the contractors the identity of the authorised representatives who are intended to perform the verification. It shall draw the appropriate conclusions from any objection on the part of *contractors* based on *legitimate interests*.

3. *Contractors* 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 *contractor* concerned. The latter may communicate his observations to the Commission within a month of receiving it. The Commission may decide not to take into account the observations conveyed after that deadline.

## **Article 28 - Technological audit**

1. The Commission and its authorised representatives may carry out technological audits in order to satisfy themselves that *contractors* are fulfilling the intentions referred to in Article 17(3) of this Annex.

They may initiate such audits after the technological implementation plan has been approved, in accordance with Article 16(2) of this Annex, and up to one year after the expiry of the time limits laid down in it.

The technological audit shall be deemed to be initiated on the date of receipt of the relevant registered letter with acknowledgment of receipt sent by the Commission.

2. In order to carry out their audits, the Commission and its authorised representatives shall have access, on a confidential basis, to all data they consider relevant in the light of Article 17 of this Annex, on whatever medium, in the possession of *contractors*, and may require it to be handed over to them in an appropriate form.

The Commission shall take appropriate steps to ensure that its authorised representatives treat as confidential the data to which they have access or which have been provided to them. Prior to the carrying out of the technological audit, the Commission shall disclose the identity of the authorised representatives who are intended to perform the audit. The *contractors* may object to their intervention on the ground of *legitimate interests*.

3. A technological audit report shall be sent to the *contractor* concerned. The latter may communicate his observations to the Commission within one month of receiving it. The Commission may decide not to take into account the observations conveyed after that deadline.

**Part E-1**  
**COST STATEMENT SUMMARY** (euro/currency)

for the period from \_\_\_\_\_ to \_\_\_\_\_ (reporting period No\_\_ ) Cost basis<sup>1</sup>: \_\_\_\_\_

Project Title:

Contract No:

Name of principal contractor / assistant contractor<sup>2</sup>:

Currency (euro/currency) in which account is kept<sup>3</sup>: \_\_\_\_\_ Exchange/conversion rate in euro<sup>3</sup>: \_\_\_\_\_

Contact person for this cost statement <sup>4</sup> :	Telephone:
E-mail address:	Fax:

Categories of eligible costs	Amount for the period <sup>5</sup>	
	Euro <sup>3</sup>	Currency <sup>3</sup>
<b>Direct Costs</b>		
1. Personnel . . . . .		
2. Durable equipment . . . . .		
3. Subcontracting . . . . .		
4. Travel and subsistence . . . . .		
5. Consumables . . . . .		
6. Computing . . . . .		
7. Protection of <i>knowledge</i> . . . . .		
8. Other specific costs . . . . .		
Subtotal		
<b>Indirect Costs</b>		
9. Overheads . . . . .		
<b>Adjustments</b>		
10. Adjustments to costs previously reported <sup>6</sup>		
<b>Total</b>		
% <sup>7</sup> Community financial contribution: _____		

**Contractor's certificate<sup>8</sup>**

We certify that

- the above costs are derived from the resources employed which were necessary for the work under the contract,
- such costs have been incurred and fall within the definition of eligible costs specified in the contract,
- any necessary permissions of the Commission have been obtained, and
- full supporting documentation to justify the costs hereby declared, including time sheets as referred to in Article 23(1)(a), third subparagraph of Annex II to the contract, is available for audit by the Commission and its authorised representatives or the Court of Auditors and reflects the costs actually incurred.

We certify that any necessary adjustments, for any reason, to costs reported in previous cost statements have been incorporated in the above statement<sup>6</sup>.

Date:	Date:
Name of person in charge of the work:	Name of duly authorised responsible Financial Officer:
Signature of person in charge of the work:	Signature of duly authorised responsible Financial Officer:

1. Insert as appropriate: FC (Full costs); FF (Full costs - Flat-rate); AC (Additional costs).
2. Delete as necessary.
3. The cost statement must be drawn up in euro and in the currency used in the accounting of the contractor. Except where a special condition applies, the exchange/conversion rate is that indicated in Article 4(2)(a) of Annex II to the contract. See website [europa.eu.int/comm/dg19/inforeuro/en/index.htm](http://europa.eu.int/comm/dg19/inforeuro/en/index.htm)
4. One of the persons whose signatures must appear on this form.
5. Net amounts only. Do not include amounts of any indirect taxes, sales taxes or customs duties. Separate details are required for some of the categories specified in the pages which follow.
6. Not applicable for the first cost statement. Any necessary adjustments, for example to reflect actual costs instead of budgeted costs, must be made in subsequent statements. Details and reasons for any adjustments must be provided.
7. Insert the percentage of the Community's financial contribution. See Article 3(2) of the contract.
8. The person in charge of the work (see Article 2(2)(a) of Annex II to the contract) and the duly authorised responsible Financial Officer of the contractor must sign the certificate.

**COORDINATION COSTS (to be filled in by *coordinator*<sup>1</sup>)**

**Only if administrative and financial coordination costs are foreseen as direct costs**

for the period from \_\_\_\_\_ to \_\_\_\_\_ (reporting period No. \_\_) Cost basis<sup>2</sup>: \_\_\_\_\_

Project Title:

Contract No:

Name of *coordinator* :

Currency (euro/currency) in which account is kept<sup>3</sup>: \_\_\_\_\_ Exchange/conversion rate in euro<sup>3</sup>: \_\_\_\_\_

Contact person for this cost statement:	Telephone:
E-mail address:	Fax:

Categories of eligible costs	Amount for the period <sup>4</sup>	
	Euro <sup>3</sup>	Currency <sup>3</sup>
<b>Direct Costs</b>		
1. Personnel <sup>5</sup> . . . . .		
2. Durable equipment ...		
3. Travel and subsistence . . . . .		
4. Consumables		
5. Computing		
6. Protection of <i>knowledge</i>		
7. Other specific costs . . . . .		
<b>Indirect costs</b>		
8. Overheads		
<b>Adjustments</b>		
9. Adjustments to costs previously reported <sup>6</sup>		
<b>Total</b>		
<b>%<sup>7</sup> Community financial contribution:</b> _____		

1. Applicable for administrative and financial *coordinator* in case of split of the coordination.
2. Insert as appropriate: FC (Full costs); FF (Full costs - Flat-rate); AC (Additional costs).
3. The cost statement must be drawn up in euro and in the currency used in the accounting of the *coordinator*.  
Except where a special condition applies, the exchange/conversion rate is that indicated in Article 4(2)(a) of Annex II to the contract. See website [europa.eu.int/comm/dg19/inforeuro/en/index.htm](http://europa.eu.int/comm/dg19/inforeuro/en/index.htm)
4. Net amounts only. Do not include amounts of any indirect taxes, sales taxes or customs duties. Separate details are required for some of the categories specified in the pages which follow.
5. Only personnel of the *coordinator* in charge of the administrative and financial coordination of the *project*.
6. Not applicable for the first cost statement. Any necessary adjustments, for example to reflect actual costs instead of budgeted costs, must be made in subsequent statements. Details and reasons for any adjustments must be provided.
7. Insert the percentage of the Community's financial contribution. See Article 3(2) of the contract.

**COST STATEMENT: Details by Category (euro/currency)**

for the period from \_\_\_\_\_ to \_\_\_\_\_ (reporting period No\_\_)

Cost basis<sup>1</sup>: \_\_\_\_\_

Project Title:

Contract No:

Name of *principal contractor / assistant contractor* <sup>2</sup>: \_\_\_\_\_ to \_\_\_\_\_

Currency (euro/currency) in which account is kept:

**PERSONNEL AND OVERHEADS**

Coo <sup>3</sup>	Name <sup>4</sup>	Title (Mr / Ms)	Category <sup>5</sup>	Status <sup>6</sup> (P / T / [I])	Occupation <sup>7</sup> (FT / PT)	Number <sup>8</sup> of person-hours	Hourly Personnel rate <sup>9</sup>	Hourly Overhead Rate <sup>10</sup>	Personnel Amount	Overheads Amount <sup>11</sup>
						A	B	C	Col. A x B	Col. A x C
<b>Totals</b>										

**TRAVEL AND SUBSISTENCE**

Coo <sup>3</sup>	Name <sup>4</sup>	Destination (City, Country)	Purpose of Travel	Amount <sup>12</sup>
<b>Total</b>				

**DURABLE EQUIPMENT<sup>13</sup>**

Coo <sup>3</sup>	Description	Procurement (P / L) <sup>14</sup>	Cost/Value <sup>15</sup>	Date of invoice	Depreciation 36/60 months	% Allocation to <i>Project</i> <sup>16</sup>	Amount <sup>12</sup>
<b>Total</b>							

**SUBCONTRACTING<sup>17</sup>**

Subcontractors	Description	Amount <sup>12</sup>
<b>Total</b>		

**OTHER SPECIFIC COSTS<sup>18</sup>**

Coo <sup>3</sup>	Description and supplier name if applicable	Amount <sup>12</sup>
<b>Total</b>		

1. Insert as appropriate: FC (Full costs); FF (Full costs - Flat-rate); AC (Additional costs).

2. Delete as necessary.

3. Insert "C" for coordination cost entries. This column is exclusively reserved for the *project coordinator* - see Article 2(1) of Annex II to the contract

4. Full names of individuals working on the *project* whose costs are declared.

5. Clearly identifiable (e.g., engineer, researcher, technician, administrator, clerk, cost centre, department, etc.).

6. Insert "P" for permanent employees, "T" for temporary employees and "I" for in-house consultants.

7. Indicate the occupation status of the individuals, by inserting "FT" for full-time and "PT" for part-time occupation.

8. Time declared must be clearly identifiable to *contractor's* time maintenance.

9. The personnel rate comprises the elements specified in Article 23(1) of Annex II to the contract. It must be consistent with the units in column A.

10. Overheads principles are specified in Article 24 of Annex II to the contract. The rate must be consistent with the units in columns A and B. This column should be left blank by *contractors* on a FF Full costs or Additional costs basis

11. Only if the *contractor* uses the FC Full costs basis

12. Net amount only. Do not include any indirect taxes, sales taxes or customs duties.

13. For eligible costs calculation see Article 23(2) of Annex II to the contract. Unless special conditions.

14. For purchased durable equipment insert "P" and for leased durable equipment insert "L". The eligible cost in case of leasing may not exceed the costs that would have been incurred in case of purchase, taking account of the formula in Article 23(2), fourth subparagraph, of Annex II to the contract.

15. Insert the net cost (excluding indirect taxes, sales taxes or customs duties) for purchased durable equipment. For leased equipment, insert the value thereof.

16. Percentage use of durable equipment on the *project*.

17. Attach certified copies of invoices with reference to the *subcontract* and providing a detailed description of the tasks or supply concerned to support costs declare

18. See Article 23(8) of Annex II to the contract.

**PART E-2 - INTEGRATED COST STATEMENT IN EURO TO BE SUBMITTED BY *COORDINATOR*<sup>1</sup>**

For period from <sup>2</sup> to <sup>3</sup>

<i>Contractors</i>	Costs											
	Costs	Personnel	Durable equipment	Subcontracting	Travel and subsistence	Consumables	Computing	Protection of knowledge	Other specific costs	Administrative and financial coordination costs	Overheads	TOTAL
<i>Coordinator</i> <sup>4</sup>	D <sup>5</sup>											
	A <sup>6</sup>											
<i>Contractor (name)</i>	D											
	A											
<i>Contractor (name)</i>	D											
	A											
<i>Contractor (name)</i>	D											
	A											
<b>TOTAL</b>												

1 - To be filled in by the *coordinator*/administrative and financial *coordinator* (in case of split between administrative and financial coordination and scientific coordination) starting from the second period.

2 - Insert the *project commencement date*.

3 - Insert the end date of the last period covered by the integrated cost statement.

4 - The administrative and financial *coordinator*, in case of split between administrative and financial coordination and scientific coordination.

5 - Costs declared and subject to acceptance of the Commission for the current and previous periods.

6 - Costs accepted by the Commission for previous period(s).



PART E-3 SUMMARY SHEET OF THE AMOUNTS TRANSFERRED TO THE *CONTRACTORS* FROM *COORDINATOR* (euro)<sup>1</sup>

Project Title:

Contract No:

Name of <i>Contractor</i>	Advance:		Period:		Period:		Period:		Final Period <sup>2</sup> :		Other <sup>3</sup> :		Total	Comments
	amount	date	amount	date	amount	date	amount	date	amount	date	amount	date		
Totals														
Amounts paid by the Commission														

1. To be filled in only by the administrative and financial *coordinator* in case of split between the administrative and financial coordination and the scientific coordination.

2. See Article 2(1)(e) subparagraph 2 of Annex II to the contract.

3. Any other amount transferred to a *contractor* during the *duration of the project* .