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Sixth Framework Programme
Checklist for a Consortium Agreement

Introduction:

The *Consortium Agreement ("CA")* is an agreement made between participants to indirect actions in the Sixth Framework Programme (FP6), as defined by the rules adopted by the *European Parliament and the Council for the participation of undertakings and for the dissemination of the research results*[1] (known as the Rules for Participation – hereafter the "Rules"). A consortium agreement is required for all projects financed under the Sixth Framework Programme except those exempted from this obligation by the call for proposals to which they have applied.. The *Community* is not a party to these agreements and plays no active role in the choices made by the parties of the clauses they deem appropriate to the nature and purpose of their collaboration and interests. The *Consortium Agreement* must comply with the Rules and the EC contract.

This checklist is provided to assist *contractors* in an EC-funded project to identify issues that may arise during the implementation of a research project and which may be facilitated or governed by means of the *Consortium Agreement*.

Neither the Commission nor any person acting on its behalf may be held responsible for the use made of information contained in this checklist, which is provided for general information only. The checklist and its contents are not intended to replace consultation of legal sources or the necessary advice of a legal expert, where appropriate.

General background to FP6 Rules for Participation:

"Consortium" is defined by the Rules and the EC model contract for the implementation of FP6 (the "Contract"). According to the Rules it means *"all the 'participants' in the same 'indirect action'*[2] and according to the Contract "*all the contractors participating in the project covered by this contract*".

"Consortium agreement" is also defined in both the Rules and the Contract. According to the Rules, it means *"an agreement that participants in an indirect action conclude amongst themselves for its implementation. Such an agreement shall not affect participants' obligations to the Community and to one another arising out of the Regulation and the Contract."*[3] According to the Contract "*an agreement that contractors conclude amongst themselves for the implementation of this contract. Such an agreement shall not affect the contractors' obligations to the Community and/or to one another arising from this contract*."

The conclusion of a 'consortium agreement' ("CA") is mandatory, unless otherwise specified in the call for proposals[4]. The EC contract will also indicate whether the project is required to have a consortium agreement. Under FP6, participants have greater autonomy to manage the project and to regulate

[1] Regulation (EC) N° 2321/2002 of the European Parliament and of the Council of 16 December 2002 concerning the rules for the participation of undertakings, research centres and universities in, and for the implementation of the European Community Sixth Framework Programme (2002-2006) or Regulation N° 2322/2002of the Council concerning the participation of undertakings for the implementation of the European Atomic Energy Community (Euratom) framework programme (2002-2006).

[2] Article 2(9) of the Rules.

[3] Article 2(6) of the Rules.

[4] Article 12(5) of the Rules.

amongst themselves a number of issues relating to its management and operation, as well as issues relating to intellectual property. This is one of the reasons why the consortium agreement is mandatory, except in those cases where specifically excluded by the call for proposals.

The Rules require the *Commission* to publish non-binding guidelines on points that may be addressed by the CA, such as:

- Ø the internal organisation and management of the consortium;
- Ø intellectual property arrangements;
- Ø settlement of internal disputes, pertaining to the CA.

The provisions in the Rules that should be addressed include:

a) Provisions for ensuring the technical implementation of the project: '**The consortium shall implement the indirect action and shall take all necessary and reasonable measures to that end'**[5]. This means that the management structure and composition (steering groups, technical groups, etc.) should be established by the consortium to ensure efficient and effective management of the operational, technical and financial aspects of the project;

b) **'Collective responsibility'** is applicable to most actions except SME specific actions, certain specific support actions and actions to promote and develop human resources and mobility. This responsibility can be divided into two aspect, the technical and the financial. **Technical implementation of the action shall be the collective responsibility of the participants**. (See also Article II.17 of Annex II to the Contract). **Collective financial responsibility** (See also Article II.18 of Annex II to the Contract) *requires that "Each participant shall also be liable for the use of the Community financial contribution in proportion of his share of the project up to a maximum of the total payments he has received.* [6] Therefore, the consortium agreement could cover potential solutions to problems relating to technical implementation (i.e. what to do if one partner does not perform) and, for those contracts in which financial collective responsibility is imposed, solutions to potential financial problems;

c) The EU contribution is to be paid to the co-ordinator "**designated by the 'consortium'**" and identified in the Contract, who administers the *Community* financial contribution **according to decisions taken by the 'consortium'** regarding its allocation to 'participants' and activities. Therefore, decisions on how, when and where the financial contribution will be made as well as to whom, must be addressed by the consortium itself.

d) A single legal entity can participate in the contract[7], acting as a sole contractor when it is composed of the minimum number of eligible participants as required by the Rules*)*. In this particular case, the single legal entity will have to identify its own conditions by means of its statutes or other internal rules. A consortium agreement *per se* is not necessary since it is a single contractor (but an agreement between the members of such an entity could be the basis for its statutes or articles of association).

e) "**Changes in 'consortium' membership**", including its modification or extension to include further legal entities contributing to the implementation of the project (where applicable[8] through competitive calls launched, published and evaluated by the 'consortium' itself). A participant's withdrawal shall not affect access rights under the Contract and the 'consortium' must notify any change of its membership to the

[5] Article 13(1) of the Rules.
[6] Article 13(2) of the Rules,
[7] *Article 1(2)* of the Rules
[8] Limited to integrated projects and networks of excellence, where identified in the technical annex to the contract

Commission, which may object within 6 weeks of the notification[9]. Terms and conditions for changing and internal procedures for doing so, in line with the Contract's provisions, must be clarified.

f) Setting out a plan **for the 'use' or 'dissemination' of knowledge submitted by the contractors[10]. This may include:**

- allocation and exercise of **joint ownership;** [11]

- setting out the terms of 'use' in a detailed and verifiable manner, who will exploit what, when and how and any potential access rights which may be necessary;

- granting **additional or more favourable access rights, including access rights to third parties[12]**, or specifying the **requirements applicable to access rights**, but not restricting the latter [such agreement shall comply with the competition rules]. This could identify preferences, potential limits, and potential access rights, which may be necessary.

g) Other issues relating to the intellectual property rights either generated during the project or existing prior to or acquired in parallel with the project:

- **Exclusion of specific pre-existing know-how from the obligation to grant access rights** (this must be done by means of a written agreement *["collaboration agreement"]* between the participants before the contractor concerned signs the Contract). Provisions for identifying alternative sources of such pre-existing know-how, what to do if essential pre-existed know-how is excluded, what and how to deal with newcontractors entering the consortium and *side-ground[13])* (Article II.35.1d of Annex II to the Contract).

- Granting of **sub-licenses (these are subject to the agreement of the participant** owning the licensed rights)

- Royalty-bearing access rights on the results or background [14]

- Extending **the period within which access rights are to be granted** to each other after the end of the project.

Each and every one of these topics should be carefully considered by the participants and, where appropriate, dealt with in a precise and detailed manner in the consortium agreement.

FP CONSORTIUM CHECKLIST - Outline of Contents

- General Information (Identify each party to the agreement – Contractor(s) to the EC contract).

- Preamble (Subject of the Consortium Agreement) including definitions based on the contract, Rules and any additional definitions as needed by the consortium).

- Subject of the contract (Title of project).

[9] Article 15 of the Rules, *Article 10 of the Contract*
[10] Article 23(1) of the Rules
[11] Article 21.3 of the Rules indicates that where several 'participants' have jointly carried out work generating knowledge, they shall have joint ownership of such knowledge and shall agree among themselves on the allocation and the terms of exercising the ownership of the knowledge with the exception of SMEs.
[12] The provisions of Article II.35.1.b of the Contract should be taken into account in such cases.
[13] IPR acquired during the life of the project but not related to the contract
[14] Access rights to the results of the action shall be granted to the participants in the action on a need-to-use, royalty-free basis, unless other conditions were agreed before the signature of the contract and access to background shall be granted on fair and non-discriminatory conditions to be agreed, Annex II.35.3a

- Technical provisions

Technical contribution of each party (as set out in Annex I to the EC contract);
Technical resources made available;
Production schedule for inter-related tasks and for planning purposes
Expected contribution, maximum effort expected
Modification procedure;
Provisions for dealing with non-performing contractor(s).

- Commercial provisions

Confidentiality;
Ownership of results / joint ownership of results / difficult cases (i.e. pre-existing know-how that is very closely linked to the result, making it difficult to distinguish the pre-existing know-how from the result);
Legal protection of results (patent rights);
Commercial exploitation of results and any necessary access rights;
Commercial obligations;
Relevant patents, know-how, and information;
Sub-licensing;
Pre-existing know-how excluded from use in the project.

- Organisational provisions

Committees – establishment, composition, procedures, role and nature:
Steering, management, technical, IPR, financial etc;
Co-ordination of committees;
Amendment **/** revision of the agreement.

- Financial provisions

Financing plan;
Modification procedure;
Mutual payments, common costs;
Distribution of management costs;
Auditing of costs:
Audit certificates;
How to deal with financial collective responsibility;
Provisions for dealing with non-performing contractor(s);
Third party resources **-** identifying parties and resources.

- Legal provisions

Legal form of the co-operation;
Duration of the agreement versus duration of the EC contract (i.e. 6 months one year longer, etc)
Penalties for non-compliance with obligations under the agreement;
Applicable law and the settlement of disputes;
Secondment of personnel;
What to do if all the contractors do not sign the EC contract.

FP CONSORTIUM CHECKLIST IN DETAIL

General Information

In addition to the traditional clauses included to identify the parties, it is desirable to include, if possible, an exhaustive list of the persons likely to work on the contract. This allows for insistence on confidentiality

for the results of the collaboration. In very large projects, at least the key players should be identified. This clause complements and reinforces the confidentiality clauses.
The contribution of any sponsor should be mentioned, as well as any third party providing resources to a contractor participating in the project. (They are not parties to the consortium agreement or to the EC Contract but their contribution or interest should be mentioned if appropriate.)

Preamble

The preamble summarises the context of the agreement and should include the title and acronym of the project and specific RTD programme:

- the strategic reasons for the partners' co-operation, with a possible summary of negotiations;

- reasons why the parties are applying a specific legal framework;

- language(s) used in drafting the agreement and language version considered to be valid in the event of multiple translations;

- definition of terms used in the agreement: commercial, technical, financial, legal. For the sake of clarity, words mentioned in the Consortium Agreement used should have the same definition and meaning as that contained in the EC Contract with the European Commission, including its Annexes, or in the Rules. Additional definitions may be included as necessary for the consortium. .

Subject of the Agreement

The subject of the agreement must be described very precisely as it influences many clauses in the contract and may include a guarantee incurring the liability of the parties, which could turn out to be costly.

It is necessary to stipulate as precisely as possible:

preliminary technical specifications;
and/or the desired technical results;
and/or the work to be accomplished; duration of the agreement – beginning and end and any provisions which extend beyond the end of the agreement.

In order to limit the volume of this section, it may be judicious to include the majority of the technical descriptions in appendices to the agreement and preserve only the basic information in the body of the agreement.

If desired a copy of the EC Contract can be appended to the CA.

Technical Provisions

a. Technical contribution of each party:

- as precise a definition as possible of the tasks that each party intends to carry out (possibly referring to appended technical documents);
- relationships between the tasks of the different participants and any inter-dependence.

b. Technical resources made available:

- human resources;
- equipment and facilities;
- information, whether protected or not.

These means should be as detailed as possible:

- number of persons;
- qualifications;
- nature of the equipment used;
- type of information disclosed: plans, manuals, calculations, prototypes, etc., delivery dates, place at which it is made available, language used.

c. Production schedule, for information:

Out of prudence, the parties should not establish irrevocable schedules unless they are absolutely sure that these can be met. It is much better to include contingency plans for delays or missed deadlines.

An irrevocably accepted production schedule can be considered to be a guaranteed commitment and may involve payment of indemnities if not met.

There are other methods to guarantee minimum compliance with deadlines, as discussed in the section on Organisational Provisions.

d. Maximum efforts:

In view of the nature of the work to be carried out, it may be useful to specify that the commitment of the participants applies to the availability of human, material and intellectual resources and making best efforts to ensure that the results of the project are obtained rather than the actual achievement of the desired results.

It may be advisable to fix a financial ceiling for the outlays that each participant is ready to make.

e. Modification procedures:

The technical provisions give an overview of the co-operation at any given time. The information provided may have to be adjusted or even be discarded altogether as the work progresses, depending on the outcome. To deal with highly volatile situations, it is advisable to provide a very flexible procedure for making changes to the initial specifications. This could go as far as including the termination of certain tasks, the withdrawal of certain parties, the inclusion of new partners, etc.

To avoid disputes, the conditions for this procedure should be clearly indicated. (see Organisational Provisions).

Rules for dissemination and use

In addition to the basic confidentiality clause, the provisions on use and dissemination mainly specify the allocation of ownership and exploitation rights on the results of the co-operation, whether initially expected or not and any particular provisions regarding access rights.

The basic principle applied in drafting these provisions is to stress the capacities and role played by each party in order to encourage maximum use of the results either by means of commercial exploitation or by further research applications.

a. Confidentiality:

The confidentiality clause should cover the following points:

a) An undertaking as to confidentiality concerning the information disclosed by the other parties as part of the operation and identified as confidential. In most cases, the scope of this undertaking is very wide and subject to few expressly mentioned restrictions (sales literature and relations with any sub-contractors). Particular provisions regarding marking of information and procedures for making such information available can be introduced.

b) Limits on the undertaking in respect of information not considered to be confidential because:

- the content of any of the document, information or material becomes publicly available through work or actions lawfully performed outside this *contract* and not based on activities under it; or

- the content of the document, information or material has been communicated without confidentiality restrictions or these are subsequently waived; or

- the information is lawfully received from a third party who is in lawful possession thereof and under no obligation of confidence to the disclosing party.

c) The period during which this undertaking must be respected. Generally, this period exceeds the EC Contract's duration or the consortium agreement's expiry date (e.g. a 10-year term). Frequently, it equals or exceeds the patent protection period.

b. Ownership of results:

The joint ownership of knowledge should be avoided where possible. Where it is not possible to distinguish the contribution of two or more participants or the result cannot be separated into distinctive parts, joint ownership will be necessary. In cases of joint ownership, the participants concerned must conclude a specific agreement, as to the allocation between themselves of the ownership rights and the terms of exercising such ownership in accordance with the provisions of the Contract. Issues that can be determined by the joint owners with respect to sharing of ownership include:

- territorial division, by virtue of which one party to the invention owns the discovery only in some countries and the other parties are free to register it in other specified countries;
- division of markets, by virtue of which one party to the invention owns the discovery only in business sectors in which it is already active;
- licensing of results for the other parties, within specified limits.

In the event of an invention being the work of a single party to the Contract and solely the result of its intrinsic skills rather than shared knowledge, this party will be the exclusive owner of the results, subject to granting access rights to the other participants where necessary for their execution of the project or the utilisation of their own results. Conditions for such granting of rights, such as scope, limitations and remuneration, if applicable, should be included in the consortium agreement in as much detail as possible.

c. Legal protection of results (patent rights):

It may be useful to stipulate an option clause in the event that the designated owner of the result waives its option to start registration proceedings within the period stipulated in the Contract.

d. Commercial exploitation of results:

The results of EC-funded projects are generally owned by the contractor generating them. However, the nature of the work carried out may result in joint ownership of results. In this case, the parties must determine the terms and conditions for ownership and exploitation. In such cases, use by means of commercial exploitation may be subject to restrictions aimed at optimising effectiveness by focusing the parties' exploitation to that of their main area of speciality:
- territorial division between the participants;
- division of applications markets.

It is necessary to take care in drafting these clauses, to ensure that they do not conflict with the principle of free trade of goods and competition rules within the EC.

If the result is owned by a single party, that party is free to use it as it sees fit (within the requirements of the EC contract). However, where appropriate, parties to the consortium agreement may agree tocertain restrictions such as:
- territorial division;
- division of markets;
- licences for the other participants, which are then free to use the same results within specified limits.

If the participants likely to jointly own and use the results have very similar arrangements, capable of turning them into competitors during the commercial exploitation phase, it is advisable to settle this potential for conflict when signing the agreement. For example, by stipulating that a joint production and marketing structure (Economic Interest Grouping or joint venture) be created to use the results of the co-operation. In this case, the rules governing the organisation of such a structure must be specified.

e. Obligation to use:

The EC Model Contract, requires that the results of the project be used (commercial exploitation or further research applications) and that the plan for use and dissemination be clearly identified in the activity reports. It also requires that where dissemination would not adversely affect use, the participants must disseminate the results within two years of the end of the project.

f. Dissemination of knowledge:

The process of dissemination of results is the responsibility of the owner and must respect the IPR provisions in the EC Model Contract (Annex II Part C). However, dissemination cannot start until either the knowledge is protected or there is an assurance that dissemination will not affect the protection of the results.

[In case of dissemination (e.g. a conference), the written agreement of the owner(s) is mandatory.]

According to the EC Model Contract (Article II.34.2 of Annex II), the participants must disseminate their knowledge within a period of 2 years after the end of the project where such dissemination would not adversely affect use. Therefore, the use and dissemination plan must clearly cover that period continuing

after the end of the project. The consortium agreement should make provisions for dealing with this in cases where the consortium's management structure will have ended by this time.

g. Publication

According to the EC Model Contract (Article II.33.3 of Annex II), a participant shall give prior notice of any planned publication of its knowledge to the EC and the other participants. This participant shall communicate a copy of the data, if the EC or the other participants so request, within 30 days after receipt of such notice. The EC and the other participants may object to the publication within a new period of 30 days after receipt of the envisaged data to be published. If the objection is confirmed, the publication is postponed until all requirements regarding protection and confidentiality have been fulfilled.

h. Background Patents, know-how and information

The implementation of a research or innovation project may require the use of pre-existing know-how, owned by one of the parties, resulting from work carried out prior to, or independently of, the agreement. In this case, the EC Model Contract provides that the party owning the knowledge must disclose it to the other participants, unless **specifically excluded** by means of a written agreement before the signature of the Contract. It is important that any pre-existing know-how that is to be excluded from access during the life of the project be identified in the consortium agreement, or in any other agreement between the parties involved. The participants can include conditions or limitations on such access so that the recipient may only use it to carry out their obligations under the EC Contract. Any such restrictions or conditions should be reflected in the agreement.

It is important to distinguish pre-existing know-how held prior to the conclusion of the EC contract from that acquired in parallel with it (side-ground).

In the event that the project produces results, partly based on the patents or know-how owned by one of the parties prior to the agreement, which have not been excluded by prior agreement, the EC contract provides that access rights to the pre-existing know-how are to be provided on a royalty-free basis for the execution of the project and on a fair and non-discriminatory basis for the use of the contractor's own knowledge.

It is always useful to cover the eventuality of the owner refusing to disclose or licence its knowledge if the disclosure of such information is likely to do serious damage to its own business and how to deal with exclusion of necessary pre-existing know-how.

i. Sub-licences:

Generally speaking access rights are granted without the right to sub-licence. However, the licensor can authorise the licensee to grant sub-licences to third parties within clearly defined limits. In this case, it is necessary to indicate:
- [special clause for sublicensing of data]
- the conditions under which such sublicenses are granted;
- the need to obtain the licensor's prior consent in accordance with duly explained grounds.
- the need to maintain any access rights as required under the EC contract.

Organisational Provisions

a. Committees:

- Steering and co-ordination committee

  The creation of a co-ordination structure for the partners is desirable as soon as possible. This structure may have different names (steering committee, liaison committee, management committee, and can be broken down into different sub-groups such as financial, technical, legal, etc), but its role is always the same, namely:

  - to define, divide and develop the tasks;
  - to check the progress of the work;
  - to co-ordinate the research teams;
  - to co-ordinate the preparation of the reports (technical, financial, etc.);
  - to advise and direct the partners on the developments necessary for the project;
  - to permit formal exchanges of information between the partners.

  The agreement should carefully define:

  - the committee's exact delegated responsibilities;
  - its organisational conditions (composition, etc.);
  - its operating conditions (meetings, decisions, chairmanship, etc.);
  - the scope of its power.

  The work of this steering committee is frequently translated into daily management and representation duties by a co-ordinator (or manager) selected from among the parties. Here too, the agreement should clearly define its' responsibilities and powers.

- Other committees can be created as necessary and should report to the steering or co-ordination committee. Provision should be made for the creation of *ad hoc* committees as and when necessary.

b. Co-operation supervision:

Each party undertakes to follow the production schedule and budget specified in the technical provisions of the contract. In view of the uncertain character of many projects, these production timetables are generally given for information only and do not incur liability for the parties.

However, the risk of uncontrolled time and cost escalation is very real in many projects. To limit this risk, it is desirable to provide for a strict and effective inspection and supervision system (possibly via input from scientific or technical committees) managed by the steering committee, and including:

- frequent progress meetings (ranging from once a month to once per quarter);
- frequent technical and financial progress reports (actions completed and results obtained);
- optional exceptional meetings as soon as agreed estimated deadlines are overrun, including the right for the parties to review their position within the co-operative venture based on clearly stated reasons.

c. Revision of the agreement:

In order to avoid disputes, the consortium agreement should provide simple and clear procedures for its revision:

- modification of technical provisions;

- modification of financial provisions;
- withdrawal of partners;
- acceptance of new partners;
- termination of the agreement after full completion of the programme;
- termination prior to full completion or upon early termination of the EC contract.

Decision-making conditions should be mentioned:

- routine steering committee meetings;
- calling of exceptional meetings;
- powers of each party;
- decision-making method (unanimously, majority agreement, etc.).

Financial Provisions

a. Financing plan:

- Detailed estimate of the total cost;
- financial contribution of each party and EC contribution to some;
- outside financial assistance (from authorities, banks, venture capital, etc.);
- expenses and financing plan;
- annual budget.

Detailed documents may be referred to in appendices in order to keep the body of the agreement light.

b. Modification procedures

The data in the financing plan is generally for information only and may undergo changes.
In order to account for this changeable nature, the agreement should clearly specify the conditions governing any financial modifications and their consequences on the organisation of the co-operation (see Organisational Provisions).

c. Mutual payments:

Under certain circumstances, several parties may incur common expenses (personnel, equipment, etc.). It is desirable to provide for the procedure governing the payment of this type of expense by each party in the agreement and to clearly identify its reporting to the Commission for Community contribution to those costs:

- reimbursable advance of a participant and method of reimbursement;
- joint account and conditions of paying in funds;
- terms of payment;
- currency;
- impact of exchange rates and bank transfer costs;
- payment of taxes;
- interest, if any,
- identification of management activity costs beyond that provided by EC contract etc.

d. Selection of Costs to be registered under the management activity heading:

Costs for management of the consortium shall be reimbursed by the Commission financial contribution, up to 100 % of the costs incurred. However, the EC contribution of 100% of management costs is limited to 7 % of the EC funding.

This limit of 7% may mean that some management costs are not covered entirely by the EC financial contribution. For this reason the management tasks and the related costs must be detailed and easily identified in each participant's accounting system. Reference should be made to the EC model contract and the related financial guidelines.

The tasks considered as ***'technical'*** should be clearly identified as such. It must be anticipated that co-ordination and management tasks are of a different nature. Beyond the 100% funded 7% management budget there is no funding for management purposes *per se*. Certain research coordination activities linked to technical issues could be implemented in the RTD work packages to benefit from the funding rates appropriate to those activities.

Legal Provisions

a. Legal co-operation status:

Consortium agreements may take different legal forms:
- an agreement or contract;
- the establishment of an association;
- an Economic Interest Grouping or European Economic Interest Grouping;
- a joint venture.

The advantages and disadvantages of each particular legal structure should be examined and determined in accordance with the needs of the consortium.

b. Terms of the agreement:

It is necessary to specify the following items:

- the effective date of the entry into force of the agreement.
- the expiry date of the agreement.
- termination of the agreement, including the possibility of tacit renewal and extension.
– cancellation, with notice by one of the parties, which should be made particularly easy in order to preserve the flexibility of the contract (e.g. breakdown of the co-operation into several phases with the right to free withdrawal at the end of each phase).
- the withdrawal of a participant should not entail the automatic termination of the consortium agreement.
- the admission of new partners should be possible without affecting the agreement itself (e.g. by means of an amendment to the consortium agreement).
- the revision - even basic - of the technical or financial provisions should not entail the automatic cancellation of the agreement.
- conditions for modifying the consortium agreement should be clearly defined (see Organisational Provisions).
- on the expiry date or when a participant withdraws, or upon termination of the participation of a participant, the agreement may provide for the return of all documents exchanged during the period of co-operation.
- the confidentiality clause may survive the duration of the consortium agreement for a specified period (see provisions of EC model contract).
- the arbitration clause (see d. below) may also survive the duration of the consortium agreement.
- certain IPR provisions should also survive the duration of the consortium agreement (see provisions of EC model contract).

c. Penalties for non-compliance with the agreement's obligations:

In the interest of all parties, it is advisable to stipulate such penalties precisely in the agreement:
- payment of fixed indemnities (delay in providing information, non-compliance with exclusivity clauses, etc.);
- financial compensation to offset any damage;
- payment of interest (delay in payments);
- cancellation of the agreement in the most serious cases (failure to provide information, failure to pay, disclosure of any confidential material, etc.), respecting article 15.1- Termination of the Contract by the Contractors - Annex II- General Conditions-.

d. Applicable law and the settlement of disputes:

The law used to settle disputes is frequently the national law of one of the parties and generally the law offering the highest degree of technological protection. However, any national law can be applied, even if it is not directly connected with the contract (e.g. a French-German contract under Swiss jurisdiction).

The agreement may also stipulate that the rules of international trade will be applied, which are frequently closer to the problems encountered than are Member State laws.

It is not in the interests of the parties to reach the stage of court proceedings. This may be damaging byresulting in:
- a serious deterioration in the relations between the parties,
- wasted time,
- bad publicity.

Most agreements provide a settlement clause under which the parties have recourse to an arbitrator (normally the International Chamber of Commerce) to settle their disputes and find an agreement.
In this case, the agreement must stipulate the applicable arbitration procedure and the scope of its jurisdiction (arbitration site and the way in which recognised experts will intervene).

e. Secondment of personnel:

Many agreements require the participants to second personnel to other organisations, frequently abroad. In this case, it may be useful to stipulate in the contract the main conditions of such secondment, which may entail an independent agreement separate from the main agreement.

The following points might be taken up:

- the work needed to prepare the secondment;
- accommodation;
- interpreters;
- travel allowances;
- working hours;
- remuneration;
- overtime;
- travel expenses;
- holidays;
- medical care and reimbursement of costs;
- other social security items (life insurance, pension funds, etc.);
- settlement of accounts and payment;
- working conditions;
- employer liability;

- insurance;
- applicable law;
- arbitration.

Specific provisions for:

- Integrated Projects
    - sub-projects coordination;
    - calls for extension by the Commission and its implications;
    - special calls for extension of the consortium membership;
    - annual update of the implementation plan;
    - annual update of financial plan (*the implementation plan can also identify the pre-existing know-how and knowledge to which access rights are needed to achieve the objectives and deliverables of the project. In the update, the requests for new pre-existing know-how and knowledge should be listed, including when new participants join in the project*);
    - annual review and consequences of additional work or revisions;
    - annual audit certificates / partner;
    - cost sharing;
    - how to deal with 7% management activity (costs reimbursed at 100%);
    - distribution of the Community financial contribution.

- Networks of Excellence: - measurement of integration;
    - sub-projects co-ordination;
    - calls for extension by the Commission and its implications;
    - special calls for extension of the consortium membership;
    - annual update of joint programme of activities;
    - annual review and consequences of additional work or revisions;
    - annual review resulting in further work with no EC contribution during next period (actions to be taken by the consortium);
    - annual audit certificates / partner;
    - cost sharing;
    - how to deal with 7% management activity (costs reimbursed at 100%);
    - distribution of the Community financial contribution and treatment of cases where costs do not exceed EC contribution.

- Co-operative Research:

    SME *contractors* agree to ensure that, in consideration for the ownership of all knowledge generated by the project, the RTD Performers will be reimbursed in full for their eligible costs under the project. Any EC contribution to the other *contractors* may also be used to this end.

- Collective Research:

    Enterprise groupings agree to ensure that, in consideration for the ownership of all knowledge generated by the project, the RTD Performers will be reimbursed in full for their eligible costs under the project. Any EC contribution to the other *contractors* may also be used to this end.

- Integrated Infrastructure Projects (where more than one contractor)

    - provisions relating to unit costs
    - arrangements with user groups and interaction between different user groups
    - additional reporting requirements