

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

Document Reference: MS/AS 2002/09 revised 2/12/2002

Sixth Framework Programme Checklist for a Consortium Agreement (draft)

Introduction:

The Consortium agreement is an agreement between the participants in indirect actions of the Sixth Framework Programme (FP6), as defined in particular, in the rules adopted by the European Parliament and the Council for the participation of undertakings and for the dissemination of the research results¹ ("Rules"). A consortium agreement is required in all projects financed under the sixth Framework Programme except when exempted by means of the call for proposals. The Communities are not a party to these agreements and play no role in the choice made by the parties of the clauses they deem appropriate to the nature and purpose of their collaboration and to their interests. The Consortium agreement must comply with the Rules and the contract.

This checklist is provided to assist contractors to identify issues which 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 given for general information only. This information does not replace the consultation of legal sources or the necessary advice of a legal expert, where appropriate, particularly as regards intellectual property matters.

General background to FP6 Rules for Participation:

"Consortium" is defined by the Rules and the model Contract for the implementation of FP6 ("Contract"). According to the Rules it means "all the 'participants' in the same 'indirect action'²

'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

The conclusion of a 'consortium agreement' ("CA") is mandatory, unless otherwise specified in the call for proposals⁴. Under FP6, the participants are granted increased autonomy to manage the project and regulate amongst themselves a number of issues, including rights and obligations regarding IPR management and access, within the limits set out by their Contract with the Community, which is one of the reasons why the consortium agreement is mandatory except in those cases where excluded by the call for proposals.

¹ Regulation ...of... of the European Parliament and of the Council concerning the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community framework programme (2002-2006) or the Regulation ...of... of 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.

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

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

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

The provisions in the Rules which should be addressed include:

a) provisions for ensuring the technical implementation of the project⁵; the **'consortium' shall implement the indirect action and shall take all necessary and reasonable measures** to that end⁵. This means that 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: **technical implementation of the action shall be the collective responsibility of the participants**. 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 received⁶. 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 paid to the coordinator **"designated by the 'consortium'"**, 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 and to whom must be addressed.

d) a single legal entity can participate in the contract as the 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 as a consortium agreement per se is not necessary (but can be basis for legal entity's articles).

e) **"Changes in 'consortium' membership"**, including its modification or extension to include further legal entities contributing to the implementation of the 'action' (where applicable 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 Commission, which may object within 6 weeks of the notification⁷. Terms and conditions for changing and internal procedures for doing so must be clarified.

⁵ Article 13 of the Rules.

⁶ Article 13(2) of the Rules,

⁷ Article 15 of the Rules,

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

f) setting out a plan for the 'use' or 'dissemination' of knowledge submitted by the contractors⁸.
This may include:

- allocation and exercise of **joint ownership**⁹
- **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**, 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 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 newly entering contractors and side-ground.
- granting of **sublicenses (these are subject to the agreement of the participant owning the licensed rights)**
- royalty-bearing access rights on the results or background¹⁰
- 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.

⁸ Article 23.1 of the Rules

⁹ 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

¹⁰ 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

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

FP CONSORTIUM CHECKLIST

Contents

- **General Information** (Identify each party to agreement -Contractors to EC contract)

- **Preamble** (Subject of the Consortium Agreement)

- **Subject of the contract** (title of project)

- **Technical provisions**

Technical contribution of each party (unless sufficiently detailed in the Annex I to the EC contract)
Technical resources made available
Production schedule, for information
Maximum efforts
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 so closely linked with result difficult to distinguish pre-existing know-how and result)
Legal protection of results (patent rights)
Commercial exploitation of results and any necessary access right
Commercial obligation
Relevant Patents, know-how, and information
Sublicense
Pre-existing know-how excluded from contract

- **Organisational provisions**

Committees – Steering, management, technical, IPR, financial
Coordination of committees
Amendment / revision of the agreement

- **Financial provisions**

Financing plan
Modification procedure
Mutual payments
Audit of expense
Audit certificates
How to deal with financial collective responsibility
Provisions for dealing with non-performing contractor(s)
Third party resources - to identify parties and resources

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

- Legal provisions

Legal form of cooperation

Duration of the agreement vs duration of the EC contract (i. e. 6 months one year longer, etc)

Penalties for non-compliance with obligations under agreement

Applicable law and settlement of disputes

Secondment of personnel

What to do if not all contractors sign EC contract

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.

This clause complements and reinforces the secrecy clause.

The presence of any sponsor should be mentioned, especially if the sponsor has certain rights to the sums that it contributes to the cooperation effort or any third party providing resources to the project.

Preamble

The preamble summarises the context of the agreement:

- the strategic reasons for the partners' cooperation, with a possible summary of negotiations;
- reasons why the parties are applying a specific legal framework;
- languages used in drafting the agreement and language version considered to express the will of the parties (in the event of multiple translations);
- definition of terms used in the agreement: commercial, technical, financial, legal.

Subject of the Agreement

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

It is necessary to stipulate as precisely as possible:

preliminary technical specifications;

and/or the desired technical results;

and/or the works to be accomplished; duration of agreement – beginning and end and any provisions, which extend beyond end of the agreement.

In order to limit the volume of this section, it may be judicious to include the majority of the technical

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

descriptions in appendices to the agreement and preserve only the basic information in the body of the agreement.

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 production programmes of the different participants

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 equipment;
- information disclosed: type (plans, manuals, calculations, prototypes, etc.), delivery date, place at which it is made available, language used

c. Production schedule, for information

Out of prudence, the parties should not accept an irrevocable schedule, unless they are absolutely sure that it can be met because it offers no problems.

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 circumstantial character of many operations, it may be useful to specify that the commitments of the participants apply to the availability of human, material and intellectual resources rather than the 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 cooperation at any given time. The information provided may undergo many changes or even be discarded altogether as the work progresses.

To deal with the highly volatile nature of this situation, it is advisable to provide a very flexible procedure

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

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 of this procedure should be clearly indicated in the contract (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 cooperation, whether initially expected or not.

The basic principle applied in drafting these provisions is to stress the capacities and role played by each party in order to encourage maximum commercial exploitation of the results.

a. Confidentiality

The confidentiality clause should cover the following points.

A secrecy undertaking concerning the information disclosed by the other parties as part of the operation. In most cases, the scope of this undertaking is very wide and subject to few expressly mentioned restrictions (sales literature and relations with any subcontractors).

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

- it was already known to the signatory before the negotiations started, if this can be shown by irrefutable proof;
- it is public property;
- it was disclosed to the signatory by a third party not bound to the other parties by an undertaking of secrecy.

The period during which this undertaking must be respected. Generally, this period greatly exceeds the contract's or 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 to the extent possible, except when there is no solution to separate it between two or more participants. In case of a joint ownership, the participants concerned must conclude a specific agreement, as to the allocation among themselves and the terms of exercising such ownership of the results in accordance with the provisions of the contract. However, certain issues can be determined by the joint owners with respect to the sharing of ownership. These may concern for instance:

- territorial division, by virtue of which one inventing party 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 inventing party 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 EC contract and solely the result of its intrinsic skills rather than shared knowledge, this party will be the exclusive owner of the results, subject

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

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 any, should be inserted 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

Technical cooperation agreements may result in joint ownership of the results. In this case, each party may be free to use them as it sees fit.

Such exploitation is frequently subject to restrictions aimed at optimising effectiveness by limiting the freedom of the parties to their prime speciality:

- territorial division between the participants;
- division of applications markets.

It is obviously necessary to take care in drafting these clauses, whose application is capable of interfering with the principle of the free trade of goods and competition rules within the EC.

If the result is owned by a single party, such a party is free to use it as it sees fit or maybe as subject to restrictions of the type mentioned above:

- territorial division;
- division of markets;
- licenses for the other participants, which are then free to use the same results within the specified limits.

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

e. Obligation to use

The standard EC contract, requires that use of the results of the project be made and that the plan for use be clearly identified. It also requires that where dissemination would not adversely affect use the participants must disseminate results within two years of the end of the project.

f. Dissemination of knowledge

The dissemination process is made under the responsibility of the owner, and in respect of the IPR provisions of the Model Contract (Annex II Part B). However, dissemination process 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 Model Contract (Annex II.17), the participants have to disseminate their knowledge within a period of 2 years after the end of the project. Therefore, the dissemination plan must clearly cover the period, after the end of the project, when the management structure will have disappeared.

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

g. Publication

According to the Model Contract (Annex II.16), 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 request so 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 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 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 which 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 ensure that any access is provided with an obligation of the recipient to use it only to carry out their obligations under the EC contract and that this is 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.

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 has not been excluded by prior agreement, the EC contract provides that access rights to the pre-existing know-how are to be provided on royalty-free grounds for the execution of the project and on fair and non-discriminatory grounds for the use of the contractor's own knowledge.

It is always useful to cover the eventuality of the owner refusing to disclose or license 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. Sublicenses

Generally speaking access rights are granted without the right to sublicense. However, the licensor can authorise the licensee to grant sublicenses 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,

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

and can be broken down into different subgroups such as financial, technical, legal, etc), but its role is always the same:

- to define, divide and develop the tasks;
- to check the progress of the works;
- 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 organisation 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 coordinator (or manager) selected from among the parties. Here, too, the agreement should clearly define his responsibilities and powers.

- Other committees can be created as necessary, which should report to the steering or coordination committee.

b. Cooperation 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 the liability of 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 managed by the steering committee:

- frequent progress meetings (ranging from once a month to one 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 cooperative venture as based on clearly stated reasons.

c. Revision of the agreement

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

- 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.

Decision-making conditions should be mentioned:

- routine steering committee meetings;
- calling of exceptional meetings;

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

- 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 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 many changes. In order to account for this changeable nature, the agreement should clearly specify the conditions governing financial modifications and their consequences on the organisation of the cooperation (see Organisational Provisions).

c. Mutual payments

Under certain circumstances, several parties may incur a common expense (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 heading

Costs for management of the consortium shall be reimbursed up to 100 % of the costs incurred. A share of no more than 7 % of the EC funding shall be reserved for management costs.

This limit of 7% does not allow covering all types of management costs. This is the reason why the management tasks and the related costs must be detailed and easily identified in each participant's accounting system. Reference to Commission's Financial Guidelines.

The tasks considered as Technical should be clearly identified as such. It must be anticipated that coordination and management tasks are of different nature. Beyond the 100% funded 7% management budget there is no funding for management purposes. Hence research coordination activities close to technical issues must be implemented in the RTD work packages to benefit a 50% funding.

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

Legal Provisions

a. Legal cooperation status

Consortium agreements may take different legal forms:

- an agreement;
- an association;
- a consortium;
- 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. Term of the agreement

It is necessary to specify the following items:

- the effective date of the agreement.
- the expiry date of the agreement.
- the termination date fixed in 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 cooperation 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 contract.
- the admission of new partners should be possible without affecting the agreement itself (e.g. by adding an amendment).
- the revision - even basic - of the technical or financial provisions should not entail the automatic cancellation of the agreement.
- agreement modification conditions should be clearly defined (see Organisational Provisions).
- on the expiry date or when a participant withdraws, the contract may provide for the return of all documents exchanged during the cooperation.
- the confidentiality clause may survive the contract for a specified period.
- the arbitration clause (see d. below) may also survive the contract.

c. Penalties for non-compliance with 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 the 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 a secret, etc.), respecting article 7.1- Termination of the Contract by the Contractors - Annex II- General Conditions-

d. Applicable law and 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. French-German contract under Swiss jurisdiction).

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

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

It is not in the interest of the parties to reach the stage of court proceedings. This may be damaging, resulting in:

- a serious deterioration of 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
 - subprojects
 - calls for extension by Commission and implications
 - special calls for extension of consortium membership
 - annual update of 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.*)

This document is a draft for discussion purposes and does not represent the official or final position of the Commission. Its content is subject to the outcome of the ongoing legislative process concerning the Framework Programmes and the related Rules of Participation.

- annual audit certificates / partner
- cost sharing
- how to deal with 7% management activity (costs reimbursed at 100%)

- Networks of Excellence
 - : - measurement of integration
 - subprojects coordination
 - calls for extension by Commission and implications
 - special calls for extension of consortium membership
 - annual update of joint programme of activities
 - annual audit certificates / partner

- Cooperative Research

SMEs *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