



**DECISION OF THE PUBLIC AUTHORITIES BOARD OF THE ARTEMIS JOINT UNDERTAKING APPROVING THE AMENDED TEMPLATE OF THE ADMINISTRATIVE AGREEMENT BETWEEN THE JOINT UNDERTAKING AND NATIONAL FUNDING AUTHORITIES**

THE PUBLIC AUTHORITIES BOARD OF THE ARTEMIS JOINT UNDERTAKING,

Having regard to the Statutes annexed to Council Regulation (EC) No 74/2008 of 20 December 2007 on the establishment of the 'ARTEMIS Joint Undertaking' to implement a Joint Technology Initiative in Embedded Computing Systems<sup>1</sup>, and in particular Article 12(3) and Article 6(2)(m) thereof;

Having regard to the Decision of the Governing Board of the ARTEMIS Joint Undertaking of 22/2/2008<sup>2</sup> assigning to the Public Authorities Board the approval of the template Memorandum of Understanding between the Joint Undertaking and national funding authorities;

Having regard to the template of the Administrative Agreement between the Joint Undertaking and the national funding authorities approved by the Public Authorities Board on 22 February 2008<sup>3</sup>,

Whereas:

(1) The Public Authorities Board should approve the template of the Administrative Agreement (previously called 'Memorandum of Understanding'), required by Article 12(3) of the Statutes, to be signed between the Joint Undertaking and national funding authorities,

HAS ADOPTED THIS DECISION:

*Article 1*

The amended template of the Administrative Agreement between the ARTEMIS Joint Undertaking and the national funding authorities as annexed to this Decision is hereby approved.

*Article 2*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 17<sup>th</sup> April 2008

For the Public Authorities Board

Chairperson of the Public Authorities Board

THIERRY VAN DER PYL

<sup>1</sup> OJ L 30, 04.02.2008, p. 52.

<sup>2</sup> ARTEMIS-GB-23/08.

<sup>3</sup> ARTEMIS-PAB-13/08.

**ANNEX****ADMINISTRATIVE AGREEMENT BETWEEN THE ARTEMIS JOINT  
UNDERTAKING AND [NATIONAL FUNDING AUTHORITY]****1. Parties**

This document constitutes an agreement between the ARTEMIS Joint Undertaking (hereinafter the 'Joint Undertaking') and [national funding authority] designated by [ARTEMIS Member State] according to Articles 3(4) and 12(3) of the Joint Undertaking's Statutes, as annexed to Council Regulation (EC) No 74/2008 of 20 December 2007 on the establishment of the 'ARTEMIS Joint Undertaking'<sup>1</sup>, providing for the establishment of administrative arrangements between the Joint Undertaking and the national entities designated by the ARTEMIS Member States in order to enable the implementation of Projects and the granting of public funds.

**2. Scope**

This agreement sets out the detailed requirements applying to both parties in view of implementing the Projects selected by the Joint Undertaking. It should be read in conjunction with Council Regulation (EC) No 74/2008 on the establishment of the "ARTEMIS Joint Undertaking", the Joint Undertaking's Calls for Proposals, the Joint Undertaking's financial rules and, where appropriate, the act of accession of [ARTEMIS Member State] to the Joint Undertaking.

This agreement is binding on the Joint Undertaking and the [national funding authority] designated by [ARTEMIS Member State].

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<sup>1</sup> OJ L 30, 04.02.2008, p. 52

### **3. Interpretation of this Agreement**

The [national funding authority] is required to interpret the requirements in this document, and to otherwise act, so as to enable the implementation of Projects and the granting of public funds, as provided for in Article 12(3) of the Joint Undertaking's Statutes.

Appropriate measures should be taken to prevent irregularities and fraud in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests<sup>2</sup>, Council Regulation (EC, Euratom) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities<sup>3</sup>, and Regulation (EC) No 1073/1999 of the European Parliament and of the Council concerning investigations concluded by the European Anti-Fraud Office<sup>4</sup>.

Terms used in this document shall have the same meaning as in Council Regulation (EC) No 74/2008 on the establishment of the "ARTEMIS Joint Undertaking", in the Joint Undertaking's Calls for Proposals and in the Joint Undertaking's financial rules.

### **4. National grant agreements**

#### *a. Communication of national eligibility criteria*

The [national funding authority] shall communicate to the Joint Undertaking the national eligibility criteria and other legal and financial requirements applicable for each Call for proposals for the establishment of national grant agreements with Project participants. These criteria and requirements shall be transmitted to the Joint Undertaking before the publication of the ARTEMIS Call for proposals and within [30] days following request by the Executive Director.

The national eligibility criteria that have been communicated according to the previous paragraph shall be included in the ARTEMIS Call for proposals.

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<sup>2</sup> OJ L 312, 23.12.1995, p. 1.

<sup>3</sup> OJ L 295, 15.11.1996, p. 2.

<sup>4</sup> OJ L 139, 31.05.1999, p. 1.

The [national funding authority] shall establish grant agreements with participants in projects in accordance with its national rules taking into account:

- (a) only the eligibility criteria that have been stated in the Call, or in any subsequent amendments of the Call;
- (b) other legal and financial requirements for the establishment of national grant agreements that are imposed by national laws and regulations and that have been communicated to the Joint Undertaking within the deadline foreseen in the previous paragraph.

### ***b . Selection of proposals***

The Joint Undertaking is responsible for the evaluation and selection of proposals and for the allocation of public funding to Project participants in response to the Joint Undertaking's Calls for Proposals.

The evaluation of the submitted Project proposals shall be carried out with the assistance of independent experts.

The Public Authorities Board shall approve a list of selected proposals complemented with the indications of public (Joint Undertaking and/or national) funding allocated per participant and recommendations for the subsequent negotiation phase. The Executive Director of the Joint Undertaking shall communicate these results as well as the scores, remarks and eventual recommendations for changes to applicants and to the [national funding authority] within 15 days from the selection.

Following this communication and on the basis of the list of selected proposals approved by the Public Authorities Board, the Joint Undertaking shall launch, under the responsibility of the Executive Director, technical negotiations to agree the 'Technical Annex'<sup>5</sup>, within the limits of the negotiation mandate and the funding per participant decided by the Public Authorities Board.

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<sup>5</sup> The 'Technical Annex' is a technical document which presents, in as clear and concise a manner as possible, all activities, actions and tasks which the Project participants are committed to undertake in order to fulfil the scientific and research objectives stipulated in the grant agreements. It is based upon the description of scientific/technological objectives and workplan outlined in the Project proposal and possibly modified according to specific recommendations made by the external experts during evaluation and as further discussed during contract negotiations. In addition to its legal significance, the 'technical annex' is meant to serve as benchmark for the grant beneficiaries, the Joint Undertaking, the national funding authorities and possibly external experts to effectively monitor and check the progress during the Project's lifetime.

- In case that the technical negotiations have been successfully completed, the Executive Director shall transmit the results to the Governing Board and the [national funding authority] together with all relevant documentation in order to proceed with the establishment of the national grant agreement.
- In cases of changes not foreseen by the Public Authorities Board mandate or of failure of the technical negotiations, the Executive Director shall transmit the negotiation results together with a Project change request to the Public Authorities Board for approval. The decision of the Public Authorities Board shall be transmitted by the Executive Director to the Governing Board and the [national funding authority] together with all relevant documentation in order to proceed with the establishment of the national grant agreement, where appropriate.

After the end of the negotiations the Joint Undertaking shall transmit to the coordinators of the selected consortia the Joint Undertaking's grant agreement and the accession forms for signature.

### *c. Establishment of national grant agreements*

Following the completion of the selection procedure and the negotiation carried out by the Joint Undertaking, the [national funding authority] shall establish grant agreements with participants in Projects. These grant agreements shall be established in accordance with the [national funding authority's] national rules [even if no national funding is provided for by the Public Authorities Board], in particular as regards eligibility criteria and other necessary financial and legal requirements, with the exception of cases where the national grant agreement cannot be established due to non compliance of Project participants with national eligibility criteria and other financial and legal requirements.

The final approved 'Technical Annex' resulting from the negotiation process carried out by the Joint Undertaking shall be the same<sup>6</sup> for establishing national grant agreements corresponding to the same Project in all ARTEMIS Member States.

The starting date and the duration of the Project shall be specified in the 'Technical Annex'.

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<sup>6</sup> Except for translations, if necessary

The grant agreements shall provide for eligible costs to be charged from the starting date of the Project independently from the date of their signature.

[The [national funding authority] shall ensure that national provisions are in line with Article 107(1) of the ARTEMIS financial rules, which states that, where implementation of the action requires the award of procurement contracts by the beneficiary, the beneficiary shall award the contract to the tender offering best value for money, that is to say, to the tender offering the best price-quality ratio, while taking care to avoid any conflict of interests.] or [The Joint Undertaking shall not reimburse to beneficiaries the percentage of the costs accepted by the [national funding authority] related to subcontracting].

The [national funding authority] shall make best efforts to accelerate its national procedures for concluding the national grant agreements. The national grant agreement shall be signed in a maximum of [30] days after conclusion of negotiations carried out by the Joint Undertaking.

The [national funding authority] shall inform the Joint Undertaking on the signature of the national grant agreement and shall forward to it a copy of the national grant agreement within [15] days from the date of its signature with a beneficiary.

Subsequently, the Joint Undertaking shall inform the [national funding authority] on the signature of the grant agreement between the Joint Undertaking and the beneficiary and shall forward to it a copy of this grant agreement within [15] days from the date of its signature.

The Joint Undertaking's grant agreement shall enter into force after accession of at least three non-affiliated entities established in at least three ARTEMIS Member States on the date of the last accession.

#### ***d. Technical monitoring***

The Joint Undertaking shall be responsible for monitoring the performance of the Project in accordance with the 'Technical Annex'.

The consortium shall submit its technical report(s)<sup>7</sup> and deliverables to the Joint Undertaking according to the reporting periods as defined in the 'Technical Annex' and the grant agreement between the Joint Undertaking and Project participants.

The technical reports and the results of the technical evaluation carried out by the Joint Undertaking shall be made available by the Joint Undertaking to the [national funding authority] within [15] days after their approval and certification by the Executive Director.

The technical evaluation carried out by the Joint Undertaking shall take into account, if necessary, specific national requirements proposed by the [national funding authority] that are needed for the [national funding authority] to accept the cost reimbursement claims of grant beneficiaries.

The [national funding authority] shall not require any additional technical reports other than those required by the Joint Undertaking.

Reports submitted to the Joint Undertaking shall be in English.

#### ***e. Financial Monitoring/Payment***

The [national funding authority] shall process the cost reimbursement claims of grant beneficiaries [in its own language] according to its national procedures and taking into account the results of the technical monitoring carried out by the Joint Undertaking. It shall ensure that claims are valid and that costs are eligible and in line with the national grant agreement. All necessary verifications shall be the responsibility of the [national funding authority].

Where appropriate, the [national funding authority] shall make payment of the national contributions directly to beneficiaries of national grant agreements.

The [national funding authority] shall certify to the Joint Undertaking the amount of accepted costs, any other financial or contractual issues as regards the execution of the national grant agreement and, where appropriate, each payment made to the grant beneficiary. The [national funding authority] shall send this certification to the Joint Undertaking within [15] days from

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<sup>7</sup> The technical report shall comprise an overview of the progress of work towards the objectives of the Project, including achievements and attainment of any milestones and deliverables identified in the 'Technical Annex' and the differences between work expected to be carried out and that actually carried out. The technical report(s) shall also include management reporting information and a revised version of exploitation and dissemination plans.

their execution. The [national funding authority] shall perform the financial and contractual monitoring based on the national regulations and procedures only.

If appropriate, the Joint Undertaking shall proceed with the payment of its contribution to grant beneficiaries within [30] days following receipt of the above certification by the [national funding authority].

The [national funding authority] shall keep records of payments to grant beneficiaries. The [national funding authority] shall keep at the disposal of the Joint Undertaking relevant financial monitoring information.

The Joint Undertaking and the [national funding authority] agree to provide evidence on payments executed in implementation of the respective grant agreements by copy of payment orders on request of the other party.

Each party shall notify<sup>8</sup> the other in the event of withholding or reduction of payment as a result of unsatisfactory performance of the beneficiary or of other reason for withholding payment within [15] days.

## **5. The right to repayment**

Each party shall advise the other in writing as soon as it becomes aware of a beneficiary having breached the grant agreement with this party, including the beneficiary's obligation to use the funds for an approved purpose. For grants subject to a right to repayment, documents relevant to exercising that right (e.g. agreements and payment records) must be kept for the period of possible recovery.

## **6. Amendments and termination of the grant agreements**

It is the responsibility of each party to notify the other if it considers that performance is inadequate and it wishes to make a corresponding change in the payment arrangements for the grant or proceed with the amendment or termination of the grant agreement.

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<sup>8</sup> [to be defined]

If any substantial amendment of the 'Technical Annex' is needed, the Joint Undertaking shall inform the [national funding authority] of the purpose of the amendment. The [national funding authority] shall provide the Joint Undertaking with any specific national requirements within [15] days following this information. The new 'Technical Annex' shall be negotiated by the Joint Undertaking, taking into account any requirement of the [national funding authority]. The Joint Undertaking shall notify the amended 'Technical Annex' to the [national funding authority] within [15] days from conclusion of this negotiation.

Any other amendment of the 'Technical Annex' shall be negotiated by the Joint Undertaking which shall notify<sup>9</sup> the amended 'Technical Annex' to the [national funding authority] within [15] days from conclusion of this negotiation.

It is the responsibility of the Joint Undertaking to notify the [national funding authority] within [15] days from any amendment or termination of the grant agreement between the Joint Undertaking and the beneficiary.

It is the responsibility of the [national funding authority] to notify the Joint Undertaking within [15] days from any amendment or termination of the grant agreement between the [national funding authority] and the beneficiary.

## **7. Audits – controls**

The Joint Undertaking shall carry out on-the-spot checks and financial audits among the recipients of the Joint Undertaking's public funding. These checks and audits shall be performed either directly by the Joint Undertaking or by the [national funding authority] on behalf of the Joint Undertaking following request by the Joint Undertaking. The [national funding authority] may appoint an external body to carry out checks and audits on its behalf. The [national funding authority] may carry out any other checks and audits among the recipients of its national funding as it deems necessary and shall communicate the results to the Joint Undertaking.

Both parties shall communicate to the other the initiation as well as the results of any checks and audits provided for in the previous paragraph within [15] days.

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<sup>9</sup> [to be defined]

## **8. Intellectual Property Policy**

For the purpose of national grant agreements within the framework of this agreement and without prejudice of Community competition rules, the intellectual property arrangements provided for in Council Regulation (EC) No 74/2008 shall prevail over any national, grant or Project agreement rules on intellectual property.

## **9. Confidential information**

With respect to any information supplied by one party to the other in connection with this agreement designated as confidential, each party agrees to:

- (a) protect the confidential information in a reasonable and appropriate manner and in accordance with any applicable professional standards;
- (b) use and reproduce confidential information only for the purposes set out in this agreement;
- (c) not disclose or otherwise make available confidential information other than to its personnel who have a need to know that the information to give effect to the purposes set out in this agreement.

The previous paragraph shall not apply to information:

- (a) which is publicly known; or
- (b) already known to the receiving party;
- (c) where the disclosure of communication of confidential information is required by national law.

## **10. Administration**

The parties to this agreement shall maintain and exchange up to date contact lists of personnel responsible for matters relevant to this agreement<sup>10</sup>.

Both parties shall communicate to the other information on personnel responsible per grant agreement concluded.

All communication between the parties shall be held in [English].

All written communication between the parties relating to this agreement shall state, where appropriate, the contract title and identification number (national and/or Joint Undertaking's).

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<sup>10</sup> [To be defined]

Each party shall respond to the other party's questions relating to this agreement within [7] working days. If after [15] working days, there is still no reply from the other party, the latter shall be deemed as having positively responded.

### **11. Control rights of the European Commission, OLAF and the Court of Auditors**

Both parties shall ensure the exercise of the control rights of the European Commission, the European Anti-Fraud Office and/or the Court of Auditors according to Articles 12(5) and 12(6) of Council Regulation (EC) No 74/2008 with respect to this agreement.

### **12. Settlement of disputes**

The Court of First Instance, or on appeal, the Court of Justice of the European Communities, shall have sole jurisdiction to hear any dispute between the Joint Undertaking and the [national funding authority] concerning the interpretation, application or validity of this agreement.

### **13. Period of the agreement**

This agreement shall enter into force on the date of its signature by both parties and shall remain in force for the duration of the participation of [ARTEMIS Member State] in the Joint Undertaking. This agreement may be amended at any time by the mutual written consent of the parties. This agreement does not involve the exchange of funds nor establish any obligation on the part of either party to make payment now or in the future to the other party.

This agreement constitutes the entire agreement between the parties for its stated purpose, and no modification or addition shall be valid unless signed by the parties and appended to this agreement.

Done in duplicate at [place], on [date]

For the Joint Undertaking

For the [National funding authority]