

# INNOVATION AID GENERAL TERMS AND CONDITIONS

VERSION 2020.1

**Important preliminary note:** This text is just a translation made for reading convenience purposes. The only [legally binding version is in Dutch](#), which is the sole authentic text.

## Article 1: Agreement and Formation

The Agreement consists of these Innovation Aid General Terms and Conditions, the Decision to Grant Subsidy including any Reference Documents mentioned and all Appendices and, if applicable, the Program-Specific Conditions as well as the alterations later confirmed by the Fund for Innovation and Entrepreneurship in writing.

By submitting a signed application for a Project, the Beneficiary accepts these Innovation Aid General Terms and Conditions. The Beneficiary accepts that the Fund for Innovation and Entrepreneurship can impose special conditions upon awarding the subsidy or at a later time.

The Agreement between the Parties and the Fund for Innovation and Entrepreneurship enters into effect the day of the Decision to Grant Subsidy unless the Beneficiary announces in writing or electronically to not start the Project within one month after the Decision to Grant Subsidy has been sent.

These Innovation Aid General Terms and Conditions can be consulted on the subpage 'Vervolgstappen' at the [VLAIO-website](#) of the support program in which the Project is applied for. Every stakeholder can receive a paper version upon request.

The Reference Documents that are not attached to the Decision to Grant Subsidy as an Appendix can be consulted on the subpage 'Vervolgstappen' at the [VLAIO-website](#) of the support program in which the Project is applied for. Every stakeholder can receive a paper version upon request.

## Article 2: Applicable Decisions

Every Agreement fits in the framework of one of the following Decisions, in function of the submitted project application and the decision made by the Fund for Innovation and Entrepreneurship. These Decisions can be consulted on the subpage 'Wat' at the [VLAIO-website](#) of the support program in which the Project is applied for. The following Decisions apply as well as any changes made to them or to be made to them, any additions or replacements, as well as the implementation measures taken by the Decision Committee of the Fund for Innovation and Entrepreneurship in the context of the intended Decisions:

- 2.1. 'Decision operating aid knowledge-intensive R&D': Decision of 12 May 2017 made by the Flemish government for a program to support enterprises in research and development with a knowledge-intensive character in Flanders (B.S. 20.06.2017);
- 2.2. 'Decision operating aid development and innovation': Decision of 12 May 2017 made by the Flemish government for a program to support enterprises in development and innovation in Flanders (B.S. 22.06.2017);

- 2.3 'Decision operating aid R&D talent': Decision of 12 May 2017 made by the Flemish government for a program to support enterprises with research projects for the purpose of performing (post)doctoral research in collaboration with research organizations (B.S. 29.06.2017);
- 2.4. 'Decision operating aid Partnerships': Decision of 22 December 2017 made by the Flemish government for a program to support consortia of enterprises with research and development embedded in a broader partnership with research organizations (B.S. 12.02.2018);
- 2.5. 'Decision Agricultural Research': Decision of 18 February 2005 made by the Flemish government regarding project-based financing of applied collective research for the agricultural and horticultural sectors (B.S. 01.07.2005) and implementation decisions;
- 2.6. 'COOCK Decision': Decision of 25 May 2018 made by the Flemish government for a program to support projects targeted at collective research and development and collective knowledge dissemination (B.S. 10.07.2018);
- 2.7. 'SBO Decision': Decision of 3 October 2003 made by the Flemish government regarding the implementation of a financing channel for strategic basic research in Flanders (B.S. 04.03.2004);
- 2.8. 'TETRA Decision': Decision of 30 April 2004 regarding the formation of a program to improve the transfer of technology by higher education institutions, and implementation decisions (B.S. 27.10.2004).

## Article 3: Terms

Notwithstanding the terms already described in the Decisions under article 2, the following definitions apply for the application and interpretation of the Agreement.

- 3.1. 'Agency': the internally independent agency without corporate rights established upon the decision of 7 October 2005 by the Flemish government regarding Flanders Innovation and Entrepreneurship, amended upon the Decision of 30 January 2009 and 18 December 2015 by the Flemish government.
- 3.2. 'General Block Exemption Regulation': the regulation (EU) no. 651/2014 of the Commission of 17 June 2014 in which specific support categories are declared compatible with the internal market based on articles 107 and 108 of the Treaty, and all later amendments.
- 3.3. 'Beneficiary': every Party in the Agreement as further indicated in the Decision to Grant Subsidy.
- 3.4. 'Decision to Grant Subsidy': the decision by the Fund for Innovation and Entrepreneurship or by delegates of the Fund for Innovation and Entrepreneurship to grant a Subsidy to a Project including all specific provisions and conditions.
- 3.5. 'Coordinator': the representative of the Beneficiary to the Fund for Innovation and Entrepreneurship, who is also responsible for the coordination of the implementation of, and reporting of the Project. Unless stated otherwise, this is the first Party stated as Beneficiary in the Decision to Grant Subsidy.
- 3.6. 'Economic Added Value': the intended result of the Valorization of the Project Results. For the actual calculation, this term must be interpreted as the sum of the overall personnel expenses (including salaries, social security costs and pensions) and the write-downs and depreciations of capital asset additions.

- 3.7. Fund for Innovation and Entrepreneurship ': the Fund, stated in article 41, par. 1 of the decree of 21 December 2001 regarding policies for the supervision of the budget 2002, as further elaborated in the corresponding implementation decrees. The Decision Committee of the Fund for Innovation and Entrepreneurship is the executive administrative body of the Fund for Innovation and Entrepreneurship. The Fund for Innovation and Entrepreneurship uses the personnel, equipment and systems of the Agency for its own operations and/or their delegated powers. The head of the Agency is also authorized to sign the reports, official reports, exchange of letters and documents regarding the Decision Committee's decision-making process.
- 3.8. 'Agreement': the provisions agreed to by the Parties as intended in article 1 of the Agreement, its Appendices including the Reference Documents stated in the Decision to Grant Subsidy as well as the alterations later confirmed by the Fund for Innovation and Entrepreneurship in writing.
- 3.9. 'Research Partner': the third party working by order of the Beneficiary or a Party as further indicated in the preamble of the Decision to Grant Subsidy.
- 3.10. 'Program-Specific Conditions': the specific conditions related to specific Decisions or support programs. These Program-Specific Conditions can be consulted on the subpage 'Vervolgstappen' at the [VLAIO-website](#) of the support program in which the Project is applied for. Every stakeholder may receive a paper version upon request.
- 3.11. 'Project': all activities subsidized by the Fund for Innovation and Entrepreneurship under the applicable Decision within the context of the Agreement.
- 3.12. 'Project results': the whole of additional immaterial and material results achieved by the execution of the Project.
- 3.13. 'Reference documents': the documents stated in the Decision to Grant Subsidy that form an Appendix to the Agreement and contain further explanation regarding the obligations of the Parties in the context of the Agreement.
- 3.14. 'Co-operation agreement': any agreement that is required for the execution of the Agreement and that is formed between the Parties, between the Beneficiary and one or more Parties, and the Research Partners, as well as the mutual agreements between the Beneficiary or one or more Parties and one or more non-Flemish partners in the context of a Project within an international program.
- 3.15. 'Subsidy': the Fund for Innovation and Entrepreneurship's financial compensation regarding the costs of the Beneficiary for the execution of the Project as determined in the Decision to Grant Subsidy.
- 3.16. 'Valorization of the Project Results': the whole of continued and focused efforts aimed towards making the Project Results profitable as well as using or utilizing the Project Results themselves for the purpose of directly or indirectly realizing Economic Added Value.

## **Article 4: Identifying the Goal of the Agreement and the Parties' role in the Implementation**

- 4.1. The goal of the Agreement is to regulate the Subsidy for the Beneficiary's execution of the Project.  
The Beneficiary is deemed to execute the Agreement as provided in the project application and the Decision to Grant Subsidy. Outsourcing subsidized activities is also possible if this has been provided

for in the Decision to Grant Subsidy. Unforeseen outsourcing of activities or other shifts of costs between the project partners are only permitted if the Beneficiary complies with the contractual obligations, especially with respect to notification and reporting obligations. If a Party falls under the scope of the regulations regarding government procurement, then these regulations must be strictly respected in case of outsourcing activities.

- 4.2. The Beneficiary will do anything that can reasonably be expected to achieve the Project Results within the expected Project duration.
- 4.3. The execution of the Agreement requires a Co-operation agreement if there are multiple Parties and/or if Research Partners are involved in the Project. In such cases, the Decision to Grant Subsidy states which Co-operation agreement(s) are required for the execution of the Agreement.

Unless such a Co-operation agreement is already part of the Appendices of the Agreement, the Parties mutually, and the Parties and Research Partners, will draw up a Co-operation agreement. The Coordinator ensures that the provisions of the Co-operation agreement are and remain compatible with the Agreement and its implementation conditions and that they are subject to the approval of the Fund for Innovation and Entrepreneurship in this respect. The Beneficiary must copy the relevant provisions from the Agreement in the Co-operation agreement with the Research Partners.

The Co-operation agreement must contain all provisions useful for the co-operation and, especially, contain provisions for the mutual agreements regarding the execution of the Project and the Valorization of the Project Results, such as, among other things, the consultation times and the decision-making process, the property rights and the rights of use to the Project Results, confidentiality, reporting obligations, a dispute procedure, liability and damages.

The Co-operation agreement must be drawn up in accordance with the Agreement; it must especially be able to meet the provisions regarding the Valorization of the Project Results. In case of a co-operation with publicly financed research organizations and knowledge institutes, the Co-operation agreement must also be in accordance with the applicable regulations. The conformity of the mutual arrangements with the state aid law cannot be deduced from the approval by the Fund for Innovation and Entrepreneurship and is the sole responsibility of the parties to the Co-operation agreement. In the context of international subsidy programs, additional conditions can be set to the Co-operation agreement. These will be included in the Decision to Grant Subsidy if this is the case.

The Beneficiary must present the Co-operation agreement to the Fund for Innovation and Entrepreneurship within four months after the Beneficiary has received the Decision to Grant Subsidy. The Fund for Innovation and Entrepreneurship is considered to have granted approval if it does not react within 25 working days after the Beneficiary has presented the Co-operation agreement to the Fund for Innovation and Entrepreneurship.

Approval from the Fund for Innovation and Entrepreneurship is also required for any amendments to the Co-operation agreement during the execution of the Agreement.

Notwithstanding the provision of article 9.1 of these Innovation Aid General Terms and Conditions, the Fund for Innovation and Entrepreneurship can also suspend payment of the Subsidy as long as the Co-operation agreement is not presented to the Fund for Innovation and Entrepreneurship or has not been approved by the Fund for Innovation and Entrepreneurship, even if the above-mentioned term of four months has not yet lapsed.

- 4.4. The Fund for Innovation and Entrepreneurship guarantees payment of the Subsidy in accordance with the provisions of the Agreement and observance of the execution of the Agreement by the Beneficiary. This occurs in accordance with the policy guidelines and budgetary provisions for innovation drawn up by the Flemish government.

## Article 5: Granted Subsidy

- 5.1. The Fund for Innovation and Entrepreneurship awards the Subsidy to the Beneficiary based on one of the Decisions mentioned in article 2. The Decision that specifically applies to subsidy granted to the Beneficiary is stated in the Decision to Grant Subsidy.

The granted Subsidy based on the Decision operating aid knowledge-intensive R&D, the Decision operating aid development and innovation, the Decision operating aid R&D talent, and the Decision operating aid Partnerships respectively is in accordance with the General Block Exemption Regulation, known to the EU Commission under the indicated SA reference number stated in the Decision to Grant Subsidy.

The regulations set in the General Block Exemption Regulation apply in full to the Subsidy granted based on the Decision operating aid knowledge-intensive R&D, the Decision operating aid development and innovation, the Decision operating aid R&D talent, and the Decision operating aid Partnerships respectively.

- 5.2. The Subsidy is set as a maximum sum and is granted on the condition that the Beneficiary complies with the Agreement in a meticulous and uninterrupted manner.

In case of Subsidy granted in the sense of start-up aid provided for in article 22 of the General Block Exemption Regulation, the Beneficiary acknowledges that the sum an enterprise can receive as start-up aid is limited to the maximum set by the aforementioned regulation. Additionally, the Beneficiary must ensure that this maximum is respected, including for future requests for government aid.

In particular, the Beneficiary acknowledges that the Fund for Innovation and Entrepreneurship can autonomously suspend the Subsidy, review it and reclaim it under the conditions and contractual conditions set in articles 9, 10 and 11 of these Innovation Aid General Terms and Conditions.

- 5.3. The Beneficiary is obliged to use the Subsidy exclusively for financing the Project. Any breach is considered equivalent to improper use of the Subsidy for the application of articles 10 and 11 of these Innovation Aid General Terms and Conditions.

Admissible projects with military or dual use must meet the applicable conditions. These conditions can be consulted on the subpage 'Voorwaarden' at the [VLAIO-website](#) of the support program in which the Project is applied for.

- 5.4. The Fund for Innovation and Entrepreneurship pays the Subsidy to the Parties or to the Coordinator to the account indicated by the respective Parties as stated in the Decision to Grant Subsidy.

- 5.5. The Fund for Innovation and Entrepreneurship can decide to only pay out a next instalment of the Subsidy, after the Beneficiary has delivered proof of having met all invoiced and claimable financial obligations towards each Research Partner in the manner and within the terms set in the Co-operation agreement.

The Beneficiary acknowledges that any payment received from the Fund for Innovation and Entrepreneurship as Subsidy for costs of the Project to another Party or Research Partner according to the Decision to Grant Subsidy is not their property or will not be their property simply because of the reception of these payments, and will immediately be transferred by the Beneficiary to the Party or Research Partner in question.

## Article 6: Ownership and Valorization of the Project Results

- 6.1. The Beneficiary is the owner of the Project Results notwithstanding the provisions in this respect as agreed upon in the Co-operation agreement as intended in article 4.3 of the Innovation Aid General Terms and Conditions.
- 6.2. The Beneficiary is obliged to make all efforts that can be reasonably expected to valorize the Project Results after the execution of the Project for the purpose of achieving maximum Economic Added Value according to the options as described in the project proposal approved by the Fund for Innovation and Entrepreneurship and included as Reference Document on which basis the subsidy is granted.

If the Valorization of the Project Results exclusively takes place from entities established outside of the European Economic Area, then the Fund for Innovation and Entrepreneurship can review the Subsidy and reclaim it in accordance with the provisions of articles 10 and 11.

- 6.3. The Beneficiary is obliged to make all efforts that can be reasonably expected to sufficiently protect the Project Results and to safeguard the Valorization of the Project Results.
- 6.4. Notwithstanding the provisions in article 7.1, every Party is obliged, for any transfer of property rights or exclusive licensing of the Project Results, including in the event of a Party's failure, to take necessary measures to safeguard the compliance with the obligations in question.

The Beneficiary acknowledges that a partial or full transfer of the property rights to the Project Results, including in case of a failure of the Beneficiary or a Party, is only possible with a simultaneous transfer of the obligations resulting from the Agreement, especially in the field of Valorization of the Project Results and taking into account the provision of article 15.6 of the Innovation Aid General Terms and Conditions and the Reference Documents.

Notwithstanding an explicit written decision by the Fund for Innovation and Entrepreneurship to the contrary, such a transfer of Project Results also implies the transfer of the obligation of repayment of the Subsidy in case of any decision to review or reclaim based on articles 10 and 11 of the Innovation Aid General Terms and Conditions.

## Article 7: Notification – Reporting – Publication - Inspection

### 7.1. Obligation to Notify of the Beneficiary

- 7.1.1 Apart from the explicit obligation to notify stipulated elsewhere in the Agreement, the Beneficiary and/or the directly involved Party must immediately notify the Fund for Innovation and Entrepreneurship by registered post the following matters:

- any important change to the Project that affects the intended Project Results.
- any event or circumstance that can endanger the realization of the Project and the intended Project Results, the uninterrupted and meticulous execution of the Agreement by the Beneficiary and/or the Valorization of the Project Results. This obligation to notify applies especially in case of a fundamental change in the shareholdership or management structure, or in the arrangement regarding the ownership and/or exploitation of the Project results, in case of a capital reduction, purchase of own shares, termination of the activities, voluntary settlement, the intention of applying for judicial reorganization, failure of a Party or a Research Partner, or any other circumstance that can have a negative effect on the financial situation of a Party or a Research Partner.
- any delay in the commencement of the execution of the Project by more than one month or any extension of the execution of the Project by more than one month.
- any proposal for a change in the distribution of the Subsidy between the Parties.
- any accumulation with other government aid in the use of the applicable Decision or any other granted aid forms for the Project.
- any change or replacement of the Coordinator.
- the Beneficiary's intention to terminate the Agreement prematurely in application of article 12 of these Innovation Aid General Terms and Conditions.

7.1.2. The Fund for Innovation and Entrepreneurship reserves the right of re-evaluating the further execution of the Agreement taking into account the Beneficiary's notification, if any, and to subsequently take appropriate measures regarding the Subsidy including the application of articles 9, 10 and/or 11 and to accordingly suspend, review and/or reclaim the Subsidy.

## **7.2. Reporting by the Beneficiary**

### **7.2.1. Progress Report**

The Beneficiary is obliged to prove the uninterrupted and meticulous execution of the Project by reporting on it regularly. This obligation also applies to the Research Partner's share in the Project's execution.

### **7.2.2. Financial Report**

The Beneficiary will submit a financial report. This obligation also applies to the Research Partner's share in the Project's execution.

### **7.2.3. Valorization Report**

The Beneficiary reports to the Fund for Innovation and Entrepreneurship on the manner in which the Beneficiary has met its obligations in the field of the Valorization of the Project Results as stipulated in article 6 of these Innovation Aid General Terms and Conditions and further specified in the Decision to Grant Subsidy.

At the Fund for Innovation and Entrepreneurship's explicit request, the Beneficiary submits additional reports at times to be determined by the Fund for Innovation and Entrepreneurship. Such a request and the request for any additional information relevant to assess the Valorization of the Project Results is formulated to the Beneficiary, who must provide this follow-up report and the additional

information no later than within two months. Based on these additional reports and the additional information, the Fund for Innovation and Entrepreneurship will determine the full or partial compliance with the obligations in terms of Valorization of the Project Results. In such cases, the Fund for Innovation and Entrepreneurship will apply articles 10 and 11 of these Innovation Aid General Terms and Conditions to review and reclaim the Subsidy.

7.2.4. Each report intended in this article must be drawn up by the Beneficiary or the Research Partner as described in the applicable Reference Document in the Decision to Grant Subsidy.

Each report intended in this article must be submitted via the Coordinator.

The dates on which each report must be delivered are stated in the Decision to Grant Subsidy.

### **7.3. Publications**

#### **7.3.1. Publications by the Fund for Innovation and Entrepreneurship and the Agency**

Notwithstanding the specific publication requirements as prescribed in European regulations regarding government aid for research, development and innovation<sup>1</sup>, the Fund for Innovation and Entrepreneurship has the permission of each of the Parties that make up the Beneficiary to use the following information regarding the Project for publication: the name, the municipality of the registered office (or the place of business) the enterprise number and, if applicable, the SME nature of each of the Parties that make up the Beneficiary, the project number, the aid tool, the year of the Decision to Grant Subsidy and the sum of the Subsidy to each of the Parties that make up the Beneficiary. For Subsidy granted based on one of the following decisions: Decision operating aid development and innovation – in accordance with the provisions for each support program in the relevant Reference Document, Decision Agricultural Research, COOCK Decision, SBO Decision and Tetra Decision, the Fund for Innovation and Entrepreneurship also has permission from each of the Parties that make up the Beneficiary to use the Project's title and Project's summary for publication and broad dissemination. Said summary is to be drawn up in accordance with the guidelines in the relevant Reference Document for granting support on the basis of the aforementioned Decisions.

#### **7.3.2. Publications by the Beneficiary**

With respect to the Project or the Project Results, the Beneficiary is obliged to comply with the [communication guidelines](#) for every communication, publication or publicity by their employees, or by a Research Partner and their employees with the Beneficiary's permission. Standard and common advertising, user manuals or instructions for use, etc. are not subject to this provision.

### **7.4. Inspection by the Fund for Innovation and Entrepreneurship and Third Parties**

The Fund for Innovation and Entrepreneurship verifies the reality, regularity and reasonableness of the charged costs or costs to be charged and determines the final sum of the Subsidy, notwithstanding any inspection by the Court of Audit and any authorized third-party authorities.

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<sup>1</sup> These publication regulations can be found in Regulation (EU) no. 651/2014 of the Commission of 17 June 2014 in which specific support categories are declared compatible with the internal market based on articles 107 and 108 of the Treaty, article 9 and Annex III.

Within its authority to inspect and follow up the execution of the Project, the Fund for Innovation and Entrepreneurship can take all initiative it deems necessary within reason, including visiting the sites where the work is executed if necessary.

Each Party and each Research Partner will store all documents to support the expenses made for the Court of Audit for a period of seven years after the approval of the financial final report in accordance with the Decision to Grant Subsidy.

Notwithstanding the provisions above, inspections can also be performed by third parties, in particular the European Commission or any institution or organization appointed and authorized by the European Commission in the context of a specific program or otherwise if that institution or organization at least has equal authorization as intended in the above provisions.

Each Party will cooperate with these inspections and the provision of information for the follow-up. The Beneficiary includes the same conditions in the Co-operation agreement with the Research Partners.

## **7.5. Correspondence Address**

Correspondence with and notifications to the Fund for Innovation and Entrepreneurship take place addressed to the person stated in the Decision to Grant Subsidy, Fund for Innovation and Entrepreneurship - Koning Albert II-Laan 35, box 12 - 1030 BRUSSELS stating the agreement number.

The correspondence with and notifications to the Beneficiary take place addressed to the Coordinator and/or in some cases the Party directly involved.

## **Article 8: Subsidy Payment Methods**

The Beneficiary receives payment of the Subsidy granted in accordance with the Decision to Grant Subsidy according to the methods as set in the Decision to Grant Subsidy.

## **Article 9: Suspension of the Subsidy**

9.1. The Fund for Innovation and Entrepreneurship suspends the payment of the Subsidy to the Beneficiary and/or the Party directly involved in case a Party does not comply with the conditions and the provisions under which the Subsidy was granted. The Fund for Innovation and Entrepreneurship can suspend the Subsidy in the following non-exclusive cases:

- in case a Party does not comply with its obligations regarding providing information, reporting, cooperation for inspection by the Fund for Innovation and Entrepreneurship and publications as described in article 7 of these Innovation Aid General Terms and Conditions.
- in case, under article 4.3. of these Innovation Aid General Terms and Conditions, the required Co-operation agreement has not been presented to the Fund for Innovation and Entrepreneurship within four months after transferring the Decision to Grant Subsidy to the Beneficiary, or if the Fund for Innovation and Entrepreneurship does not approve the presented Cooperation Agreement.
- in case of a re-evaluation as intended in article 7.1.2 of these Innovation Aid General Terms and Conditions.

- in case a Party does not make the payments to a Research Partner in accordance with the provisions of the Co-operation agreement.
- in case a Party does not comply with the Agreement in general and with the Decision to Grant Subsidy in particular.
- in case a Party does not comply with the obligations resulting from other agreements with the Fund for Innovation and Entrepreneurship or does not comply with them sufficiently.

9.2. The Fund for Innovation and Entrepreneurship informs the Beneficiary and/or the directly involved Party by registered letter of the suspension of payment, the time on which the suspension enters into effect, the reason of the suspension and the term within which the Beneficiary can correct the shortcoming in the execution of the Agreement. The term of suspension is a maximum of four months unless the Fund for Innovation and Entrepreneurship sets a different term.

The Beneficiary or the directly involved Party will, in such a case, inform the other Parties and the Research Partner of the suspension.

After the term of suspension lapses, the Fund for Innovation and Entrepreneurship is authorized to review the Subsidy and reclaim it in application of article 10 or article 11, or can impose additional conditions in accordance with article 7.1.2 of these Innovation Aid General Terms and Conditions.

## Article 10: Possible Review of the Subsidy

10.1. The Fund for Innovation and Entrepreneurship reserves the right at any time during the execution of the Agreement to review the Subsidy entirely or partially if there are reasonable grounds without impairing the property rights of the Project Results. The Fund for Innovation and Entrepreneurship can review the Subsidy in the following non-exclusive cases:

- if a Party does not comply with the conditions and provisions under which the Subsidy was granted.
- in case a Party does not comply with its obligations regarding providing information, reporting, cooperation for inspection by the Fund for Innovation and Entrepreneurship and publications as described in article 7 of these Innovation Aid General Terms and Conditions.
- in case of a Party's improper use of the Subsidy of paid sums.
- if a Party cannot present any actual costs made in accordance with article 5 of these Innovation Aid General Terms and Conditions, or if these cannot be approved by the Fund for Innovation and Entrepreneurship.
- if a Party has made incorrect or incomplete statements with respect to a benefit related to the Subsidy or the Agreement.
- in case of accumulation with other aid by a Party as intended in the applicable Decision.
- in case a Party does not comply with the obligations resulting from this and/or other agreements with the Fund for Innovation and Entrepreneurship or does not comply with them sufficiently.
- in case a Party fails to pay invoiced and claimable financial obligations with respect to a Research Partner.
- in case of premature termination in application of article 12 of these Innovation Aid General Terms and Conditions, among other things due to technical or economic reasons.

10.2. After a formal notice of default by registered letter from the Fund for Innovation and Entrepreneurship to ensure the Beneficiary and/or the directly involved party comply with its obligations, the Fund for

Innovation and Entrepreneurship will decide to review the Subsidy. This decision will be presented to the Beneficiary and/or the directly involved Party via registered letter at least one month after the formal notice of default.

- 10.3. Upon review of the Subsidy and after investigating the validity and the insurmountability of the stated reasons, the Fund for Innovation and Entrepreneurship will determine the size of the Subsidy in function of the costs that have been effectively paid or made on the date of receipt of the registered letter that states the decision to review the Subsidy, as well as of the costs that up to that date have been regularly accepted as obligations, and of any termination compensation for the staff that was specifically acquired for the execution of the Project. The Beneficiary must take all necessary measures to minimize the financial consequences of the obligations entered into and the termination compensation immediately after receiving the registered letter from the Fund for Innovation and Entrepreneurship regarding the decision to review the Subsidy.
- 10.4. Apart from the exceptions stated in the second paragraph of this article, the Beneficiary and/or the directly involved Party can appeal against any decision the Fund for Innovation and Entrepreneurship makes to review the Subsidy.

Such an appeal is not possible, however, if the Fund for Innovation and Entrepreneurship decides to review the Subsidy based on formal findings by the Fund for Innovation and Entrepreneurship, such as, among other things, the untimely submission of reports or the untimely transfer of payments to a Research Partner.

The Beneficiary and/or the directly involved Party will make this appeal to the Fund for Innovation and Entrepreneurship by registered letter within a term of 30 working days after the serving of the Fund for Innovation and Entrepreneurship's decision in question. This letter must at least contain well-founded reasons from the Beneficiary and/or the directly involved Party against the decision to review.

The appealing party will receive a written receipt notification within five working days after receiving the appeal. The Fund for Innovation and Entrepreneurship will decide on the appeal within 60 working days after receipt. The appealing party will be informed in writing of the appeal decision within two working days after this decision.

## **Article 11: Possible Reclaiming of the Subsidy**

- 11.1. Without impairing the property rights to the Project Results, the Fund for Innovation and Entrepreneurship reclaims the Subsidy in the following cases:
- in case the Beneficiary and/or the directly involved Party received sums from the Fund for Innovation and Entrepreneurship that were not owed to them.
  - in case of a review of the Subsidy in accordance with article 10 of these Innovation Aid General Terms and Conditions for those sums of the Subsidy that have already been paid out to the Beneficiary and/or the directly involved Party.
  - in case a Party does not comply with the information and consultation procedures as described in article 35, par. 2 of the Decree of 19 December 1998 regarding provisions for supervising the budget 1999 with respect to collective dismissal of the personnel.

- 11.2. The Fund for Innovation and Entrepreneurship announces the decision to reclaim by means of a registered letter to the Beneficiary and/or the directly involved Party and thus formally declares the Beneficiary to be in default. In case of reclaiming, the European reference interest rate for reclaiming wrongfully granted government aid is used, applicable at the moment the aid was granted from the time of the first notice of default.

## **Article 12: Duration of the Agreement**

- 12.1. The Agreement enters into effect as from the date the Decision to Grant Subsidy is sent, taking into account any suspensive conditions stipulated in the Decision to Grant Subsidy.
- 12.2. With the exception of the application of provisions that, due to their nature, stay in effect in full even after the termination of the Agreement, the Agreement ends at the end of the period stated in the Decision to Grant Subsidy.
- 12.3. Changes apply from the date set in the mutual written agreement to this end.
- 12.4. Each party can prematurely set an end to the Agreement under the methods set by the Agreement by means of a motivated and registered letter. If there are multiple Parties, then this must occur in mutual deliberation with the other Parties for which the necessary measures with respect to the Research Partners also need to be taken. In particular, the Fund for Innovation and Entrepreneurship can terminate this Agreement prematurely after suspension or review of the Subsidy in application of articles 10 and 11 of these Innovation Aid General Terms and Conditions.

## **Article 13: Representations and Warranties of the Beneficiary**

- 13.1. Each Party has always made all reasonable effort to correctly comply with all statutory, regulatory, judicial and state aid provisions and decisions that apply or applied to them. To the best of their knowledge, each Party also possesses all permits, recognitions, concessions, permissions or other (government) approvals required for the legal execution of all activities performed by them. Each Party executes its activities to the best of their knowledge without violating any condition set to them in one or more of the above-mentioned (government) approvals.
- 13.2. Each Party has always made all reasonable effort to ensure the activities performed by them (irrespective of whether they are commercial, administrative or supporting in nature or otherwise) do not infringe on any patents, trademark rights, copyrights (including rights to software), trade names, know-how, formulas, or any other intellectual property rights in and outside of Belgium.  
  
Each Party possesses, either as owner or lawful user, all patents, trademarks, copyrights, trade names, know-how, formulas and other intellectual property rights that are required or useful for the execution of the Project.
- 13.3. The provisions of articles 13.1 and 13.2 apply both at the time of execution of the Agreement and for the full duration of the Agreement and, in particular but not exclusively, relate to the activities performed in the context of the Project.
- 13.4. Each Party declares that they are not a partner in a silent partnership for the execution of the Project or with respect to the Project Results.

- 13.5. Each Party declares that they have been duly established and are a legal entity on the date of the execution of this Agreement. Each Party declares that the person who enters into this Agreement in their name and on their account has legal authority to represent and bind the Party.
- 13.6. The Beneficiary ensures that every Research Partner in the Co-operation agreement makes a similar declaration as the one intended in article 13 in the context of the general standard of due care.

## Article 14: Liability and Disputes

- 14.1. Belgian law applies to the Agreement.
- 14.2. The execution of this Agreement can under no circumstances make the Fund for Innovation and Entrepreneurship liable in any way for the damage to people, goods or companies that directly or indirectly results from the execution of the Project or the activities performed and actions made by the Beneficiary in general.
- 14.3. Notwithstanding the cases provided in article 14.4 of these Innovation Aid General Terms and Conditions, the Parties and the Fund for Innovation and Entrepreneurship will firstly attempt to settle the disputes that rise between them with respect to the interpretation and execution of this Agreement in mutual deliberation.

To this end, any interested Party will send the other Party an offer to amicably settle the dispute. This offer contains the exact description of the dispute according to the Party, the description of the position of the parties from the same point of view, a proposal regarding the procedure and timing to settle the dispute, and the facts and elements that, as far as this Party and as far as it concerns it, can contribute to the formation of a common solution.

The Party making the offer is legally considered to do so subject to all reservations and without waiving any right until the other Party confirms the acceptance of the offer.

The other Party will investigate the offer in benevolence and make its decision regarding the offer presented, after discussing with the first Party directly if necessary. This decision is presented to the first Party by registered letter within the month starting from the notification date of the offer from the sending Party.

The decision of the other Party regarding the offer of the sending Party is motivated for each of the elements included in the offer of the sending Party.

If the other Party agrees to the offer, then there is an agreement for an amicable settlement: in this case, none of the Parties will present the dispute before the competent court for a period of three months since the notification date of the offer of the sending Party and the Parties will amicably settle on a solution for the dispute in accordance with the provisions of the agreement. In the absence of an agreement, each of the Parties can present the dispute before the competent court. The period of three months can be extended or reduced upon mutual agreement between the Parties. It legally lapses without requiring a notice of default if one of the Parties does not comply with one of the obligations from the procedure, or does not act on the settlement of the dispute that was agreed to.

- 14.4. The procedure provided in 14.3 does not apply to claims from the Fund for Innovation and Entrepreneurship to reclaim not owed sums or other sums owed by the Beneficiary and/or the directly

involved Party to the Fund for Innovation and Entrepreneurship if they did not repay those sums within thirty days after the request.

The procedure provided in article 14.3 can neither be invoked upon suspension of the Subsidy as a result of the condition(s) in article 9, nor in case of the application of the appeal procedure stated in article 10.4 or the review of the Subsidy based on formal findings by the Fund for Innovation and Entrepreneurship stated in article 10.4, par. 2.

- 14.5. Only the competent courts of Brussels are authorized to judge claims regarding disputes with respect to the Agreement.

## Article 15: Final Provisions

- 15.1. Parties explicitly agree that the invalidity or infeasibility of one or more provisions in the Agreement does not affect the validity or feasibility of the other provisions. These latter provisions will remain in full force. The Parties are obliged to replace the null and void or infeasible provisions with other provisions or execution measures that cover the original common intention of the Parties as well as possible.

- 15.2. The descriptive words or sentences at the head of the different articles or parts thereof have only been included to make reading the Agreement and references to provisions easier. They are not part of the Agreement and in no way define, limit or describe the scope or content of the article or paragraph they relate to.

- 15.3. A Party cannot be considered to have waived a right or claim from the Agreement or in relation to a breach of contract on the part of the other Party unless it has been done so explicitly and in writing.

If, in the application of the previous paragraph, a Party waives its rights or claims under the Agreement that are caused by a default or other breach of contract on the part of the other Party, then this waiver can never be interpreted as waiving any other right under the Agreement or regarding a default or other breach of contract on the part of a different Party, even if both cases show major similarities.

- 15.4. All Appendices are part of, and form one comprehensive whole with the Agreement.
- 15.5. The Agreement replaces all prior oral, written or silent agreements and documents between the Parties insofar as they relate to the goal of the Agreement.
- 15.6. The Agreement is entered into by the Fund for Innovation and Entrepreneurship in a private capacity with respect to the Beneficiary. The rights and obligations resulting from the Agreement can, as such, under no circumstances be transferred by the Beneficiary without the prior written approval of the Fund for Innovation and Entrepreneurship. This nontransferability also applies in case of a transfer by universal title, such as a merger, division, incorporation of a branch of activity, or generality.
- 15.7. The Fund for Innovation and Entrepreneurship is responsible for the protection of the information collected in the context of a Project. A [privacy policy](#) has been drawn up for the manner in which this protection is regulated.
- 15.8. Any amendments to the Agreement need to take place in writing and are part of and form one comprehensive whole with the Agreement.

15.9. In case of any conflicts or inconsistencies in the Agreement, the Decision to Grant Subsidy and any later amendments agreed upon in writing prevail.