

# Study of Strongly Interacting Matter



# HadronPhysics



**REQUESTED AMENDMENT TO  
THE CONSORTIUM AGREEMENT**

**Governing Board Meeting – LNF, 29 March 2012**

# **BENEFICIARIES REQUESTING MODIFICATIONS TO THE CONSORTIUM AGREEMENT**

- **9 – FAU: Friedrich-Alexander-Universitaet Erlangen Nurnberg**
- **16 – TUM: Technische Universitaet Muenchen**
- **17 – UA: Universitaet Augsburg**
- **18 – UB0: Rheinische Friedrich-Wilhelms-Universitaet Bonn**
- **23 – UREG: Universitaet Regensburg**
- **44 – KTH: Kungliga Tekniska Hogskolan**

# MODIFICATION REQUESTED

- 18 – UBO
- 44 – KTH

8.1 - General Principles on Liabilities

- 9 – FAU
- 16 – TUM
- 17 – UA
- 23 – UREG

8.2 - Liability towards the Commission

9.5.4 – Access Rights for Use of Foregrounds

# CONTACTS

1. Legal representatives of Beneficiaries
2. Legal Office of the European Commission  
Niki Atzoulidou, Deputy Head of Unit
3. Checklist for a Consortium Agreement of the European Commission
4. DESCA – The simplified FP7 Model for a Consortium Agreement ([www.DESCA-FP7.eu](http://www.DESCA-FP7.eu))

## 8.1 - General Principles Proposal 1 (KTH)

Each *Beneficiary* agrees to assume all the financial consequences in all cases where its liability is asserted on the basis of direct damage but not indirect nor consequential damage caused to any other *Beneficiary* or to a third party in the scope of the performance of its assigned tasks in this Project. The total limit of liability of each *Beneficiary* to all of the other *Beneficiaries* collectively in respect of any and all such claims shall not exceed that Beneficiary's Project Share. **This limitation shall not apply in case of willful act or gross negligence.**

## 8.1 - General Principles Proposal 1 (KTH)

Each *Beneficiary* agrees to assume all the financial consequences in all cases where its liability is asserted on the basis of direct damage but not indirect nor consequential damage caused to any other *Beneficiary* or to a third party in the scope of the performance of its assigned tasks in this Project. The total limit of liability of each *Beneficiary* of the other *Beneficiaries* collectively in respect of any and all such claims shall not exceed the *Beneficiary's* Project Share.

**This limitation shall not apply in case of willful act or gross negligence.**

## 8.1 - General Principles Proposal 1 (KTH)

Each *Beneficiary* agrees to assume all the financial consequences in all cases where its liability is asserted on the basis of direct damage but not indirect nor consequential damage caused to any other *Beneficiary* or to a third party in the scope of the performance of its assigned tasks in this Project. The total limit of liability of each *Beneficiary* to all of the other *Beneficiaries* collectively in respect of any and all such claims shall not exceed that Beneficiary's Project Share.

## 8.1 - General Principles Proposal 2 (UBO)

Each *Beneficiary* agrees to assume all the financial consequences in all cases where its liability is asserted on the basis of direct damage but not indirect nor consequential damage caused to any other *Beneficiary* or to a third party in the scope of the performance of its assigned tasks in this Project. The total limit of liability of each *Beneficiary* to all of the other *Beneficiaries* collectively in respect of any and all such claims shall not exceed that Beneficiary's Project Share. This limitation shall not apply in case of willful act **or gross negligence.**



## 8.1 - General Principles Proposal 2 (UBO)

Each *Beneficiary* agrees to assume all the financial consequences in all cases where its liability is asserted on the basis of direct damage but not indirect nor consequential damage caused to any other *Beneficiary* or to a third party in the scope of the performance of its assigned tasks in this Project. The total limit of liability of each *Beneficiary* to all of the other *Beneficiaries* is limited to the extent of its Project Share. This limitation shall not apply in case of willful act or gross negligence.



## 8.1 - General Principles Proposal 2 (UBO)

Each *Beneficiary* agrees to assume all the financial consequences in all cases where its liability is asserted on the basis of direct damage but not indirect nor consequential damage caused to any other *Beneficiary* or to a third party in the scope of the performance of its assigned tasks in this Project. The total limit of liability of each *Beneficiary* to all of the other *Beneficiaries* collectively in respect of any and all such claims shall not exceed that Beneficiary's Project Share. This limitation shall not apply in case of willful act.

## 8.2 - Liability towards the Commission

### Proposal 1 (TUM, FAU, UA and UREG)

Each *Beneficiary* shall be **collectively** liable for any losses or damages suffered by the *Commission*, as a consequence of any failure to perform all or part of its obligations under the *Grant Agreement* or under this *Consortium Agreement*.

- Should the *Commission*, in accordance with the provisions of the *Grant Agreement*, claim any reimbursement, indemnity or payment of damages from one or more Beneficiaries, the Beneficiaries agree that:
  - each Beneficiary whose default has caused or contributed to cause such claim shall indemnify each of the other *Beneficiaries* against such claim, and
  - in the event it is not possible to attribute the default to any *Beneficiary*, the amount claimed by the *Commission* shall be apportioned between all the Beneficiaries, proportionally to their Project Shares.

## 8.2 - Liability towards the Commission

### Proposal 1 (TUM, FAU, UA and UREG)

Each *Beneficiary* shall be **collectively** liable for any losses or damages suffered by the *Commission*, as a consequence of any failure to perform any part of its obligations under the *Grant Agreement* entered into under this *Consortium Agreement*.

- Should the *Commission*, in accordance with the provisions of the *Grant Agreement*, claim any reimbursement, indemnity or part of damages from one or more *Beneficiaries*, the *Beneficiaries* agree that:

- each *Beneficiary* whose default has caused or contributed to cause such claim shall indemnify each of the other *Beneficiaries* against such claim, and
- in the event it is not possible to attribute the default to any *Beneficiary*, the amount claimed by the *Commission* shall be apportioned between all the *Beneficiaries*, proportionally to their *Project Shares*.

## 8.2 - Liability towards the Commission

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Each *Beneficiary* shall be liable for any losses or damages suffered by the *Commission*, as a consequence of any failure to perform all or part of its obligations under the *Grant Agreement* or under this *Consortium Agreement*.

- Should the *Commission*, in accordance with the provisions of the *Grant Agreement*, claim any reimbursement, indemnity or payment of damages from one or more *Beneficiaries*, the *Beneficiaries* agree that:
  - each *Beneficiary* whose default has caused or contributed to cause such claim shall indemnify each of the other *Beneficiaries* against such claim.

## 8.2 - Liability towards the Commission

### Proposal 2 (TUM, FAU, UA and UREG)

Each *Beneficiary* shall be **collectively** liable for any losses or damages suffered by the *Commission*, as a consequence of any failure to perform all or part of its obligations under the *Grant Agreement* or under this *Consortium Agreement*.

- Should the *Commission*, in accordance with the provisions of the *Grant Agreement*, claim any reimbursement, indemnity or payment of damages from one or more Beneficiaries, the Beneficiaries agree that:
  - each Beneficiary whose default has caused or contributed to cause such claim shall indemnify each of the other *Beneficiaries* against such claim, and
  - in the event it is not possible to attribute the default to any *Beneficiary*, the amount claimed by the *Commission* shall be apportioned between all the Beneficiaries, proportionally to their Project Shares.

## 8.2 - Liability towards the Commission

### Proposal 2 (TUM, FAU, UA and UREG)

Each *Beneficiary* shall be **collectively** liable for any losses or damages suffered by the *Commission*, as a consequence of any failure to perform all or part of its obligations under the *Grant Agreement*.

**DELETE WHOLE  
ARTICLE**

Should the *Commission* claim any loss, damage, cost, indemnity or payment of any kind from the *Beneficiaries*, the *Beneficiaries* agree that:

- each *Beneficiary* whose default has caused or contributed to cause such claim shall indemnify each of the other *Beneficiaries* against such claim, and
- in the event it is not possible to attribute the default to any *Beneficiary*, the amount claimed by the *Commission* shall be apportioned between all the *Beneficiaries*, proportionally to their *Project Shares*.

## 8.2 - Liability towards the Commission

### Proposal 2 (TUM, FAU, UA and UREG)

In accordance with the participation rules, **Public bodies** shall only assume their own debts and shall not bear the debts of any other Beneficiary.

Each Beneficiary, which is **not a public body**, or which does not have a public body status, shall be collectively liable for any losses or damages suffered by the Commission, as a consequence of any failure to perform all or part of its obligations under the Grant Agreement or under this Consortium Agreement.

Should the Commission, in accordance with the provisions of the Grant Agreement, claim any reimbursement, indemnity or payment of damages from one or more Beneficiaries, **non public body**, the Beneficiaries agree that:

- each Beneficiary whose default has caused or contributed to cause such claim shall indemnify each of the other Beneficiaries against such claim, and
- in the event it is not possible to attribute the default to any Beneficiary, the amount claimed by the Commission shall be apportioned between all the Beneficiaries which are **not public body**, proportionally to their Project Shares.



# THIS REQUEST WAS ADMISSIBLE IN FP6

## REGULATION (EC) No 2321/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2002 [RULES FOR PARTICIPATION]

### Article 13

#### Execution of indirect action

(...) Where a participant is an international organisation, a **public body** or a legal entity whose participation in the indirect action is guaranteed by a Member State or an associated State, that participant shall be solely responsible for its own debt and shall not bear the debt of any other participant. (...)

# IT IS NOT ADMISSIBLE IN FP7

REGULATION (EC) No 1906/2006 OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
of 18 December 2006  
**[RULES FOR PARTICIPATION]**

## Article 38

### Risk avoidance mechanism

1. The financial responsibility of **each participant** shall be limited to its own debt, subject to paragraphs 2 to 5.

## 9.5.4. Access Rights for Use of Foreground Proposal 1 (TUM, FAU, UA and UREG)

The *Beneficiaries* agree that the *Access Rights* to *Foreground Needed* for use in research activities shall be granted on a royalty-free basis.

In case of *Access Rights* to the **own** *Foreground for Use* in the development, creation and marketing of a product or process, or for creation and provision of a service, or for further research activities other than those covered by the *Project*, *Access Rights* shall be granted on fair and non discriminatory conditions.

A request for *Access Rights* may be made up to 12 months after the end of the *Project* or after the termination of the requesting *Beneficiary's* participation in the *Project*.

## 9.5.4. Access Rights for Use of Foreground Proposal 1 (TUM, FAU, UA and UREG)

The *Beneficiaries* agree that the *Access Rights* to *Foreground Needed* for use in **internal/non commercial** research activities shall be granted on a royalty-free basis.

In case of *Access Rights* to **own** *Foreground* for Use in the development, production and marketing of a product or process, or for the provision of a service, or for further research activities other than those covered by the *Project*, *Access Rights* shall be granted on non discriminatory conditions.

A request for *Access Rights* may be made up to 12 months after the end of the *Project* or after the termination of the requesting *Beneficiary's* participation in the *Project*.

## 9.5.4. Access Rights for Use of Foreground Proposal 1 (TUM, FAU, UA and UREG)

The *Beneficiaries* agree that the *Access Rights* to *Foreground Needed* for Use in internal/non commercial research activities shall be granted on a royalty-free basis.

In case of *Access Rights* to the *Foreground* for Use in the development, creation and marketing of a product or process, or for creation and provision of a service, or for further research activities other than those covered by the *Project*, *Access Rights* shall be granted on fair and non discriminatory conditions.

A request for *Access Rights* may be made up to 12 months after the end of the *Project* or after the termination of the requesting *Beneficiary's* participation in the *Project*.

## 9.5.4. Access Rights for Use of Foreground Proposal 2 (TUM, FAU, UA and UREG)

The *Beneficiaries* agree that the *Access Rights* to *Foreground Needed* for use in research activities shall be granted on a royalty-free basis.

In case of *Access Rights* to the **own** *Foreground* for *Use* in the development, creation and marketing of a product or process, or for creation and provision of a service, or for further research activities other than those covered by the *Project*, *Access Rights* shall be granted on fair and non discriminatory conditions.

A request for *Access Rights* may be made up to 12 months after the end of the *Project* or after the termination of the requesting *Beneficiary's* participation in the *Project*.

## 9.5.4. Access Rights for Use of Foreground Proposal 2 (TUM, FAU, UA and UREG)

The *Beneficiaries* agree that the *Access Rights* to *Foreground Needed* for use in research activities shall be granted on a fair and non-discriminatory basis.

In case of *Access Rights* for *Foreground Needed* for Use in the development of a product or service, or for further research, or for commercial purposes covered by the *Project*, *Access Rights* shall be granted on fair and non-discriminatory conditions.

A request for *Access Rights* may be made up to 12 months after the end of the *Project* or after the termination of the requesting *Beneficiary's* participation in the *Project*.

## **9.5.4. Access Rights for Use of Foreground Proposal 2 (TUM, FAU, UA and UREG)**

The Beneficiaries agree that the Access Rights to

- the Background Needed for Use in internal/non commercial research activities or/and
- the Foreground Needed for Use in internal/non commercial research activities

shall be granted on a royalty-free basis.

In case of Access Rights to the Background or to the Foreground Needed for Use in the development, creation and marketing of a product or process, or for creation and provision of a service or further research activities other than those covered by the Project, Access Rights shall be granted on fair and non discriminatory conditions.

A request for Access Rights may be made up to 12 months after the end of the Project or after the termination of the requesting Beneficiary's participation in the Project.



## 9.5.4. Access Rights for Use of Foreground Proposal 3 (Project Coordinator)

The *Beneficiaries* agree that the *Access Rights* to *Foreground Needed* for use in research activities shall be granted on a royalty-free basis.

In case of *Access Rights* to the **own** *Foreground* for *Use* in the development, creation and marketing of a product or process, or for creation and provision of a service, or for further research activities other than those covered by the *Project*, *Access Rights* shall be granted on fair and non discriminatory conditions.

A request for *Access Rights* may be made up to 12 months after the end of the *Project* or after the termination of the requesting *Beneficiary's* participation in the *Project*.

## 9.5.4. Access Rights for Use of Foreground Proposal 3 (Project Coordinator)

The *Beneficiaries* agree that the *Access Rights* to *Foreground Needed* for use in research activities shall be granted on a fair and non-discriminatory basis.

In case of *Access Rights* for *Foreground Needed* for Use in the development of a product or service, or for further research, or for any other purpose covered by the *Project*, *Access Rights* shall be granted on fair and non-discriminatory conditions.

A request for *Access Rights* may be made up to 12 months after the end of the *Project* or after the termination of the requesting *Beneficiary's* participation in the *Project*.

# 9.5.4. Access Rights for Use of Foreground Proposal 3 (Project Coordinator)

## 9.5.3. Access Rights for the execution of the Project

According to Article 49 of the Regulation n° 1906/2006 of the *European Parliament* and by the *Grant Agreement*, the *Beneficiaries* agree:

- to provide access on a royalty-free basis to all *Background Needed* by a *Beneficiary* for carrying out the work under the *Project*, limited to the *Background* held by their laboratories, departments or services involved in the *Project*, and except all *Background* according to Article 9.3.2.
- to provide access on a royalty-free basis to all *Foreground Needed* for carrying out the work under the *Project*.

A new *Beneficiary* joining the *Project* shall have access to the *Foreground* obtained prior to its joining the *Project* at the conditions fixed by the HP3GB. In case of a deadlock situation, the issue shall be submitted to the HP3GB for arbitration.

# 9.5.4. Access Rights for Use of Foreground Proposal 3 (Project Coordinator)

## 9.5.4. Access Rights for Use

The *Beneficiaries* agree to provide access to *Background* and *Foreground Needed* for Use of a *Beneficiary's* own *Foreground*, at the conditions provided for by Article 50 of the Regulation n° 1906/2006 of the *European Parliament* and by the *Grant Agreement*,

- on a royalty-free basis for use in internal/non commercial research activities, and
- on fair and non discriminatory conditions for the development, creation and marketing of a product or process, or for creation and provision of a service, or for further research activities other than those covered by the *Project*

A request for *Access Rights* may be made up to 12 months after the end of the *Project* or after the termination of the requesting *Beneficiary's* participation in the *Project*.