

## **Annex II General Conditions**

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## **Part A - Implementation of the work.**

### Article 1 - General provisions

1.1 The participating institutions shall make their best efforts to achieve the objectives of the project and shall comply with all Ukrainian laws applicable to the project.

1.2 The participating institutions shall, in particular, comply with all laws and regulations applicable to safety.

1.3 The recipient(s) shall notify the Center's project representative without delay of any event or circumstance which may materially affect the project.

### Article 2 – Justification of changes

2.1 The project manager, on behalf of participating institutions, shall submit any required change in the original estimates of expenditures as set forth in Annex I.

2.2 The original estimates of expenditures may be adjusted by the project manager between categories with the prior approval of the Center, except for reductions in personnel costs, and provided that the transfers do not fundamentally alter the scope or content of the project.

2.3 The project manager may increase the time commitments of any individual by up to 10 percent during a quarter without approval of the Center but may not change any daily rate without approval of the Center. The project manager may request more significant changes in personnel commitments; including changes in the names of personnel. Such significant changes must be fully justified in writing. Changes in scientific personnel must provide for the new individual participants to have technical credentials and previous weapons experience comparable to those of the individual participants they replace.

2.4 The project manager may request changes in procurements, services, travels, or other direct costs, against estimated expenditures as set forth in Annex I. Significant changes must be fully justified in writing with references to the related activities in the technical schedule, and provided that the transfers do not fundamentally alter the scope or content of the project.

### Article 3 - Monitoring of the work

3.1 The Center, or its representatives, shall:

(a) Have access to portions of facilities where the project is being carried out and to all equipment, documentation, information, data systems, materials, supplies, personnel, and services which concern the project for monitoring the progress of the project as described in Annex I.

(b) Be provided with technical and cost information concerning the management and progress of the project requested at any time.

(c) Give the institution not less than 20 days advance notice of any intended on-site monitoring of the project.

3.2 Each financing party, or its representatives, shall be entitled to the same rights as the Center under Article 3.1 of this annex should they choose to exercise them through the Center.

3.3 The participating institutions have the right to protect those portions of facilities that are not related to the project.

3.4 After completion or termination of the project, the participating institutions may utilize the facility or portion of the facility previously used for the project for other work. However, all documentation and records, including those associated with equipment, data systems, materials, supplies, and services utilized on the project must be maintained and made available for review by the Center, the financing parties, or their representatives, for two years following the project's completion or termination.

3.5 The coordinating institution shall, if requested by the Center, participate and assist in meetings to review or evaluate the project during the lifetime of the project.

#### Article 4 - Reports

4.1 The recipient(s), represented by the project manager, shall submit the following reports, in English and Ukrainian (Russian optional, if the project is located in other CIS State), in hard copy and in electronic format on disk (Microsoft Word and Excel), to the Center for approval:

- (a) Periodic cost statements and progress reports, as required in Articles 6 and 7 of the agreement;
- (b) Technical reports containing a description of the significant results according to the Milestones defined in the work schedule (see section 9 of Annex I);
- (c) Annual reports, as required in Article 7;
- (d) A final report suitable for publication, covering all the work, objectives, results, and conclusions of the project, including a suitable summary of all these aspects, and
- (e) Reports, as mutually agreed, prepared in a suitable form for publication and satisfactory to the Center.

4.2 The recipient(s), represented by the project manager, shall submit all reports and other deliverables specified in the agreement.

4.3 The recipient(s) should clearly identify and mark any reports or portions of reports that contain confidential business information as defined in Part E, Article 14.4 of this annex. The recipient(s) also may include a suitable disclaimer in any report against possible claims by third parties.

#### Article 5 - Completion or expiration of the agreement

5.1 The agreement shall be deemed to be completed on the approval by the Center of the last deliverable required or last payment by the Center, whichever shall be the latter.

5.2 Subject and without prejudice to the provisions in Part D of this annex, the participating institutions shall be deemed to have discharged their obligations in respect of the performance of the work after the approval of all the reports and any other deliverables required by the agreement.

### **Part B - Payments**

#### Article 6 - Payments by the Center

Payments of allowable costs shall be made in accordance with the following principles:

6.1 Within Ukraine, all cash payments will be made in the national currency of Ukraine. Conversion of US dollars or Euro to the national currency of Ukraine will be according to the Interbank Rate of Ukraine exchange rate.

6.2 The financial contribution by the Center shall be paid in installments as specified in Article 5 of the agreement.

6.3 If the Center considers that the work has not effectively been commenced within three months of the payment of the first advance, the Center may require the reimbursement of the advance, together with any interest earned on the advance.

6.4 If on completion, cessation, or termination of the work, the payments made by the Center exceed the actual allowable costs, the participating institutions shall promptly reimburse the difference to the Center. Interest may be added to this amount at the prevailing market rate as determined by the Center one month after the reimbursement date specified by the Center.

### **Part C - Allowable costs**

#### Article 7 - Accounting principles, allowable costs, and transfer of costs

7.1 Costs shall include actual costs incurred for the project after the operative commencement date which are necessary for the performance of the project. Allowable costs may include only the cost categories defined in Articles 8 and 9 of this annex.

7.2 The participating institutions shall ensure that no unnecessary cost or unnecessarily high or extravagant cost is charged to the agreement.

#### Article 8 - Direct costs

##### 8.1 Personnel

8.1.1 Personnel costs shall be separated into two categories as described in Annex I. Even though some or all of these costs may be reimbursed by the Center through direct grant payments to individual participants, the project manager or participating institution manager is responsible for certifying the times devoted to the project by the individual participants within their respective institutes, as reflected in project time cards prepared by individual participants.

8.1.2 Personnel costs charged to the project shall be in increments of one hour.

8.1.3 Personnel costs for a specific period of time may not be charged to this project if pay (except regular employment salary from the Institute/Recipient) is being received from other sources for the same period of time.

8.1.4 The Center will not pay personnel costs associated with holidays, vacations, overtime, or sick leave. Such additional costs, if any, are the responsibility of the participating institutions.

8.1.5 The project manager or participating institution manager shall ensure that the scheduling of annual leave by the individual participants does not interfere with accomplishment of the work plan in Annex I.

8.1.6 The participating institutions are responsible for any medical expenses or compensation claims for injuries or other losses for personnel working on the project which are directly or indirectly related to the project.

8.1.7 Individual participants must record the hours worked on STCU projects on time cards according to the following procedures:

#### Project Manager and Participating Institution Manager Responsibilities

Project managers and Participating Institution Managers are required to do the following:

- i. Provide project participants with a separate time card for each STCU project that they will work on. Each time card must contain a project number.
- ii. Ensure that project participants understand which time card must be used to record hours worked on each project.
- iii. Ensure that all project participants correctly record the hours worked on STCU projects according to the procedure described in the project participant responsibilities section below.
- iv. Transmit completed time cards to the STCU no later than the 10th of each month.
- v. Control blank time cards provided by the STCU.
- vi. Certify that the hours recorded on the time cards are true and accurate by signing them.
- vii. Obtain signatures of two other project participants on their own (project managers' and participating institution managers') time cards in addition to their own signature.

#### Project Participant Responsibilities

Project participants are required to do the following:

- i. Complete a separate time card for each STCU project that they work on. Time cards are for a period of one month.
- ii. Personally complete their time cards **each working day and in ink**.
- iii. Correct time cards by crossing out mistakes and inserting the correct information on the next line; no erasures may be made to time cards. Project workers must initial the corrections.
- iv. Sign their own time cards at the end of each month.
- v. Record actual hours worked on their own timecard.
- vi. Certify, on an as needed basis, that the hours recorded on the time cards of the project manager or participating institution manager are true and accurate by signing their cards.

8.1.8 Payments to individual participants will be based on properly completed time cards as described in Section 8.1.7 above.

8.1.9 The Center will provide blank time cards for use on this project. Such time cards will be printed on card stock and will be serially numbered. Only time cards provided by the STCU may be used to record hours worked on STCU projects; photocopied time cards are not acceptable.

8.1.10 Project participation is limited as described in the STCU Standard Operating Procedure XXIV – Project Participation in STCU Projects: A copy of the this procedure may be obtained on the STCU's website at the following address:

<http://www.stcu.int/documents/internal/sop/sop07.php>

## 8.2 Equipment

8.2.1 The cost of equipment used in the project, which is purchased, fabricated, or leased, may be charged to the project as a direct cost. The total lease costs may not exceed the purchase price of the equipment.

8.2.2. Equipment purchased for the project should be identified as described in the STCU Standard Operating Procedure XXIII - Identification of Equipment Purchased for Stcu Projects. A copy of the this procedure may be obtained on the STCU's website at the following address:  
[http://www.stcu.int/documents/reports/financial/Forms\\_Common\\_For\\_All\\_Countries/SOP\\_XXIII\\_Identification\\_of\\_STCU\\_Equipment\\_at\\_Project\\_Site\\_\(Russian\).pdf](http://www.stcu.int/documents/reports/financial/Forms_Common_For_All_Countries/SOP_XXIII_Identification_of_STCU_Equipment_at_Project_Site_(Russian).pdf).

### 8.3 Materials

8.3.1 The costs of materials required for the project shall be allowable costs.

### 8.4 Services and Other direct costs

8.4.1 Costs associated with (1) testing facilities, (2) computer services, (3) communication, (4) security services, (5) repairing/maintenance of equipment, (6) laboratory tests outside, (7) publications, and (8) patenting, but excluding items covered by Article 11 of Annex II, may be charged as direct costs to the project through cost allocation formulas approved by the Center, provided such facilities and services contribute to the project and are accessible for monitoring and auditing in accordance with Article 9 of this agreement.

### 8.5 Travel and per diem

The following travel costs may be charged to the project:

- i. Airline Tickets. Reimbursement is limited to the cost of coach or economy class airfare by the most direct, cost-effective routing.
- ii. Train Tickets. Reimbursement for first class rail fare is authorized.
- iii. Lodging.
  - A. Within Country of Residence, reimbursement is limited to the lower of the actual cost or \$100.00 (taxes not included) per day.
  - B. Outside Country of Residence, reimbursement is limited to the lower of the actual cost or the maximum amount allowed in the U.S. Joint Travel Regulations (taxes not included). If lodging is pre-arranged for the traveler because of conference participation funded by the STCU, then the maximum amount allowed in the U.S. Joint Travel Regulations may be exceeded by up to 25% (taxes not included). In those exceptional cases where there are no accommodations available within the maximum amount allowed or accommodations are unacceptable, then the most cost-effective accommodation is authorized with prior approval of the responsible Deputy Executive Director. Maximum lodging rates outside of a country of residence may be obtained from the STCU treasurer or at <http://www.state.gov/m/a/als/prdm/xxxx><sup>1</sup>
  - C. Lodging without receipt is not compensated.
- iv. Meals and Incidental Expenses (M&IE).
  1. Within Country of Residence, the M&IE is \$35.00 per day.

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<sup>1</sup> Where "xxxx" is the year the travel will begin. For example: 2004.

2. Outside Country of Residence, the M&IE is \$50.00 per day.
- v. Other Costs. Actual cost of passports, visa, or conference registration is authorized with receipt. Withdrawal fees accepted by the STCU.
- vi. Use of Privately Owned Vehicle. Reimbursement for the use of a privately owned vehicle to perform travel is authorized at the rate of \$.15 per kilometer. Records must be kept for this activity, including destination and kilometers traveled, and odometer readings. Documents must be signed and approved by project manager.
- vii. Local Travel. Reimbursement for the actual cost of local travel (taxi, bus, etc.) is authorized. Receipts must be obtained.

8.5.1 Additional Travel and per diem information is contained in STCU Standard Operating Procedure V – Project Participants Travel. A copy of the this procedure may be obtained on the STCU’s website at the following address:

<http://www.stcu.int/documents/internal/sop/sop05.php>.

#### Article 9 - Overhead

9.1 A fixed amount may be charged for project overhead to cover the cost of such items as general administration, institutional management, depreciation of buildings and equipment, maintenance, utilities, staff training or any other cost at discretion of the institute management.

9.2 The total fixed amount may not exceed 10 percent of total direct costs, exclusive of the cost of items provided in-kind by the Center.

#### Article 10 - Retain age

One half of the direct overhead costs will be retained by the Center until project completion.

#### Article 11 - Costs not allowed

Allowable costs shall not include:

- (a) Profit;
- (b) Contributions to pension, medical, or other social funds;
- (c) Provisions for possible future losses or liabilities;
- (d) Taxes, including profit tax, value added tax, personal income tax, local taxes, tariffs, dues, customs duties, import duties, or others; and
- (e) Costs allocable to another project.

#### **Part D - Justification of costs and auditing**

##### Article 12 - Books of account and documentation

The participating institutions shall maintain, in accordance with the accounting practices set forth in the agreement, proper books of account and appropriate documentation, such as invoices and time cards, to

support and justify the costs reported. These shall be made available for audit by the Center and the financing parties during the period of the project and for a period of two years following completion, cessation, or termination of the project.

#### Article 13 - Auditing

13.1 Cost statements are subject to verification even after the Center has reimbursed costs. The Center and each financing party have the right, pursuant to the STCU agreement and STCU statute, to carry out on-site audits of all activities of the project. The participating institutions will be given not less than 20 days notice of any intended audit. For the purposes of the audit, the participating institutions shall make accessible all portions of facilities, equipment, documentation, information, data systems, materials, supplies, personnel, and services related to the project.

13.2 The participating institutions have the right to protect those portions of facilities that are not related to the project.

13.3 The participating institutions shall maintain all documentation and records, including those associated with equipment, data systems, materials, supplies, and services utilized on the project and shall make such documents, records, and to the extent possible, personnel available for audit for a period of two years following completion, cessation, or termination of the project.

13.4 The Center and the financing parties shall have the right to select audit organizations or individuals to carry out audits of the project. These individuals selected by the financing parties shall be entitled to the same rights, should they choose to exercise them, as the Center and each financing party in respect of access to, and verification of, any document under the agreement for the purpose of any audit.

#### **Part E - Intellectual Property Rights**

##### Article 14 - Definitions

14.1 Intellectual Property Rights: Rights within the meaning of Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967.

14.2 Business Confidential Information: Information containing know-how, trade secrets, or technical, commercial, or financial information, which:

- (i) Has been held in confidence by its owner;
- (ii) Is not generally known or available from other sources;
- (iii) Has not been made available by its owner to others without an obligation concerning its confidentiality; and
- (iv) Is not available to the receiving party without obligations concerning confidentiality.

##### Article 15 - Ownership and License rights

15.1 The recipient entity(ies) (or its designee) shall hold all rights worldwide to intellectual property arising from this agreement, except for the rights in the Financing Party's territory enumerated in paragraph 15.2 below. The recipient entity(ies) (or its designee) shall provide adequate protection of such intellectual property (except as provided below). The Financing Party (or its designee) may, if requested, provide assistance to the recipient entity(ies) in managing the intellectual property. If the recipient entity (or its designee) decides not to protect the intellectual property in the territory of a Party other than the recipient

entity's territory, each such Party and the Financing Party (or its designee) have the option to protect the intellectual property in that territory in conformance with the laws of the recipient entity's territory.

15.2 In the territory of the Financing Party, the Financing Party (or its designee) has the Intellectual Property Rights arising from this agreement. In such cases, the Financing Party (or its designee) and recipient entity(ies) (or its designee) shall agree on appropriate compensation for persons named as the inventors or authors of the intellectual property. Costs of protecting intellectual property in that territory shall be borne by the Financing Party (or its designee). If the Financing Party (or its designee) does not seek protection for intellectual property in its territory within a reasonable time after such intellectual property is created and duly reported in accordance with Art. 17.2, then the recipient entity (or its designee) may seek protection in the Financing Party's territory.

15.3 Each Party and the Center shall be entitled to a non-exclusive, irrevocable, royalty-free license with right to sublicense in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from this agreement. All publicly distributed copies of a copyrighted work arising from cooperation under this agreement shall indicate the names of the authors of the work unless an author explicitly declines to be named.

15.4 Upon the request of the Financing Party (or its designee), the Recipient Entity(ies) (or its designee) shall enter into negotiations for licenses in additional territories on fair and reasonable terms.

15.5 Upon the request of a Non-financing Party (or its designee), a non-exclusive license for commercial purposes, with the right to sub-license, shall be granted in that Non-financing Party's territory, on fair and reasonable terms to be mutually agreed, taking into account that Non-financing Party's contribution to the establishment and operation of the Center; in this case, the Financing Party (or its designee) shall be entitled to a license on the same terms in that Non-financing Party's territory.

15.6 A non-exclusive, irrevocable, royalty-free license for non-commercial purposes, with the right to sublicense, shall be granted to the Center and to each Party (or its designee) for the territory of each Party in which the intellectual property is protected. Upon request, the Parties will exchange information on licenses and sub-licenses granted under this paragraph.

15.7 Persons named as inventors and authors shall receive and share among themselves reasonable compensation but not less than 15% of any royalties earned from licensing intellectual property by any entity obtaining rights to such intellectual property under this agreement.

15.8 The recipient entity(ies) shall grant on fair and reasonable conditions to any other entity receiving the right to exploit intellectual property arising from this agreement the rights to intellectual property and information arising outside this agreement and owned by the recipient entity(ies) necessary for such exploitation, provided that the recipient entity is free to grant rights to such intellectual property or information and that no major legitimate business interests of the recipient entity(ies) prevent the granting of such rights.

## Article 16 - Promotion of technology and information on results

### Confidentiality

16.1 All reports or portions of reports properly marked as invention information or Business Confidential Information shall be protected from public dissemination unless otherwise agreed by the signatory parties.

16.2 Subject and without prejudice to any rights and obligations under this agreement and in accordance with applicable laws and regulations, each signatory party agrees to keep confidential any invention information or Business Confidential Information communicated to it by the other signatory party or third parties in relation to the execution of this agreement, unless invention information so disclosed is or

becomes legitimately available to the receiving signatory party through other sources without any obligation concerning confidentiality.

#### Information and technology promotion

16.3 The Center and participating institutions shall take appropriate steps to publicize new developments so that third parties may become aware of opportunities to license technology developed with Center support. The final report, publishable under Article 4.1(d) of this annex, shall include adequate information on the results arising from the project, their availability and other aspects of relevance for potential users or interested parties.

16.4 The Center shall be entitled to publish general information on this agreement including the identity of the recipient entity(ies), the title and objective of the agreement, its estimated costs and duration, the Center's financial contribution, and the names of managers and laboratories where the research is being carried out.

16.5 Any communication or publication concerning the project shall acknowledge the participating institutions and the cooperative support of the Center and of the Financing Parties.

#### Article 17 - Reporting of inventions

17.1 The recipient entity(ties) will disclose without delay to the Executive Director of the Center, who will inform the STCU Parties and any other participating institutions in a Center-approved form, every invention made or conceived under this agreement within two (2) months of the date on which such invention is made or conceived. These disclosures must be in sufficiently complete detail to convey a clear understanding, to the extent known at the time of disclosure, of the nature, purpose and operation of the invention.

17.2 The recipient entity(ies) will notify the Executive Director of the Center, who will inform the STCU Parties, of each territory in which the recipient entity(ies) decides to protect inventions through patenting within six (6) months of the reporting of such inventions in accordance with Article 17.1 above.

**17.3 The recipient entity(ies) will file patent applications in each territory in which it decides in accordance with Article 17.2 above to protect each invention through patenting. The first patent application will be filed in the territory where the invention was made within twelve (12) months of reporting the invention in accordance with Article 17.1 above. The remaining patent applications will be filed in the other territories within respective time periods to ensure that the priority date of the first patent application is obtained for these later filed applications. The recipient entity(ies) will provide the Center with copies of all patent applications which recipient entity(ies) files.**

17.4 If the recipient entity(ies) subsequently determines not to file a patent application in any territory of a STCU Party in which it has previously decided in accordance with Article 17.2 above to protect an invention, then said STCU Party may obtain title to that invention and file a patent application in that territory. The determination not to file shall be transmitted to such STCU Party no later than two (2) months prior to the end of the time periods for filing patent applications set forth in Article 17.3 above.

#### Article 18 - Notification of limitations, restrictions and obligations

18.1 The participating institutions shall use reasonable care and diligence in determining whether information or patents are, or may become, subject to the limitation, obligations, or restrictions of this article.

18.2 The participating institutions shall notify the Center prior to the signature of, and promptly during this agreement of:

(a) Any obligation to grant rights for the intellectual property arising under this agreement to a third party, which may affect the exploitation or commercialization of the results of this agreement; and

(b) Any restriction arising from contractual obligations or government or similar regulations which may materially and adversely affect rights necessary for the performance of the work or the exploitation or commercialization of the results of this agreement.

Article 19 - Duration and implementation of Part E

19.1 The rights and obligations of the recipient entity(ties) resulting from this part of this annex shall apply:

(i) For the duration of the Intellectual Property Rights in respect of Articles 15.1, 15.2, 15.6, 15.7 and 15.8; and

(ii) For a period of 10 years after the expiration, or termination, of this agreement in respect of the remaining obligations.

19.2 The cessation of the rights and obligations under this article shall not affect the continuance of any access rights where they were duly requested prior to such cessation.