

## **ANNEX II**

### **General Conditions**

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### GENERAL CONDITIONS

#### **PART A: IMPLEMENTATION OF *THE PROJECT***

Article II.1 - Definitions

Article II.2 - Management of *the project* and role of the *coordinator*

Article II.3 - Submission of *project deliverables*

Article II.4 - Evaluation and approval of *project deliverables*

Article II.5 - Subcontracts

Article II.6 - Liability

Article II.7 - Technical collective responsibility

Article II.8 - Financial joint responsibility

Article II.9 - Termination of the agreement or of the participation of a *beneficiary*

#### **PART B: RULES RELATING TO INTELLECTUAL AND INDUSTRIAL PROPERTY, PUBLICITY AND CONFIDENTIALITY**

Article II.10 - Ownership of knowledge

Article II.11 - Publicity

Article II.12 - Confidentiality

#### **PART C: FINANCIAL PROVISIONS**

Article II.13 - *Eligible costs* - general principles

Article II.14 - Direct costs

Article II.15 - Indirect costs

Article II.16 - Justification of costs

Article II.17 - Payment of the Community financial contribution

#### **PART D: CONTROLS, RECOVERIES AND PENALTIES**

Article II.18 - Financial audit

Article II.19 - Technical review of *the project*

Article II.20 - Reimbursement to the Commission and Recovery Orders

Article II.21 - Penalties

## **PART A: IMPLEMENTATION OF *THE PROJECT***

### **Article II.1 - Definitions**

“*Agreement completion date*” means the date referred to in Article 4(2), subparagraph 2, of this agreement.

“*Associated State*” means a State which is party to an international agreement with the Community, under the terms or on the basis of which it makes a financial contribution to the programme under which the present agreement is financed.

“*Beneficiary*” means a legal entity which participates in this agreement concluded with the Community.

“*Change of control*” means any change in the control exercised over a *beneficiary*. Such control may result in particular from:

- *direct* or *indirect holding* of a majority of the share capital of the *beneficiary* or a majority of the voting rights of the latter's shareholders or associates,

or

- *direct* or *indirect holding* in fact or in law of decision-making powers in the *beneficiary*.

“*Consortium*” means all the *beneficiaries* participating in *the project* covered by this agreement.

“*Consortium agreement*” means an agreement concluded between *beneficiaries* in order to specify or supplement, between themselves, the provisions of this agreement.

“*Coordinator*” means the *beneficiary* carrying out the tasks provided for in Article II.2(1) and signing this agreement on behalf of the *consortium*.

“*Date of entry into force*” means the date referred to in Article 4(1) of this agreement.

“*Deliverables*” mean the reports and the financial statements referred to in Article 7 of this agreement and Article II.3 as well as any element designated as such in Annex I to this agreement.

“*Duration of the project*” means the period of implementation of *the project* as referred to in Article 4(2) of this agreement.

“*Eligible costs*” means the costs referred to in Articles II.14 and II.15, in compliance with the conditions set out in Articles II.13 and II.16. and subject to any special conditions in Article 8 of the agreement.

“*Financial Regulation*” means the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the *Financial Regulation* applicable to the General Budget of the European Communities<sup>1</sup> and the Commission Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC) No 1605/2002 on the *Financial Regulation* applicable to the General Budget of the European Communities<sup>2</sup>, and any subsequent amendment thereto in force at the time of the signature of this grant agreement

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<sup>1</sup> OJ L 248, 16.9.2002, p.1  
<sup>2</sup> OJ L 357, 31.12.2002, p.1

“*Force majeure*” means any unforeseeable and exceptional situation or event beyond the control of the Community or the *beneficiaries* which prevents either of them from fulfilling any of their obligations under this agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence.

“*Pre-financing*” means any part of the Community financial contribution which is paid in order to provide advance funds for *the project*.

“*The project*” means the work set out in Annex I to this agreement.

“*Substantial irregularity*” means any infringement of a provision of Community law or a provision of the agreement resulting from an act or omission on the part of the *beneficiary(ies)* which causes or might cause a loss to the Community budget.

“*Third country*” means a country other than a Member State or an *Associated State*.

## **Article II.2 - Management of *the project* and role of the *coordinator***

1. The *coordinator* shall be in charge of the technical, financial and administrative coordination of *the project*. In this respect,
  - (a) he shall be the intermediary between the *beneficiaries* and the Commission. In particular, he shall be responsible for transmitting to the Commission all documents and correspondence relating to *the project*;
  - (b) he shall submit to the Commission the *deliverables* as defined in Article II.1 after incorporating the data provided by all the *beneficiaries* and verifying their consistency with the corresponding financial statements;
  - (c) in his capacity as representative of the *beneficiaries* he shall make the payment request on behalf of the *beneficiaries* and receive, subject to the special conditions set out in Article 8 of this agreement, all the payments made by the Commission to the account referred to in Article 6(2) of this agreement. He shall inform the Commission of the distribution of the funds and of the date of transfer;
  - (d) he shall inform the other *beneficiaries* and the Commission of any event liable to substantially affect *the project* of which he is aware.
  - (e) Without prejudice to Article II.9.3, point b) of this Annex, should the *coordinator* fail to meet his obligations, the Commission may, in agreement with the other *beneficiaries*, designate another *coordinator* from among the *beneficiaries*.
2. The *beneficiaries*:
  - (a) the *beneficiaries* shall make appropriate arrangements for the proper performance of the work incumbent upon them pursuant to Annex I to this agreement. To this end, the *beneficiaries* shall designate one or more persons who shall direct their work and ensure that the tasks assigned are correctly performed;
  - (b) the *beneficiaries* shall inform the *coordinator* of any event liable substantially to affect *the project*, including any *change of control*;
  - (c) the *beneficiaries* shall keep duly signed original copies of subcontracts, if any have been concluded;

- (d) the *beneficiaries* shall forward to the *coordinator* the data needed to draw up the *deliverables* as defined in Article II.1 and forward any corresponding financial statements;
- (e) the *beneficiaries* shall take part in meetings concerning the supervision, monitoring and evaluation of *the project* which are relevant to them;
- (f) the *beneficiaries* shall provide all detailed information requested by the Commission for the purposes of the proper administration of this agreement.
- (g) The *beneficiaries* undertake to take all the necessary measures to prevent any risk of conflicts of interests which could affect the impartial and objective performance of the agreement. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest. Any situation constituting or likely to lead to a conflict of interests during the performance of the agreement must be brought to the attention of the Commission, in writing, without delay. The *beneficiaries* shall undertake to take whatever steps are necessary to rectify this situation at once. The Commission reserves the right to check that the measures taken are appropriate and may demand that the *beneficiary* take additional measures, if necessary, within a certain time.

### **Article II.3 - Submission of *project deliverables***

1. The following *deliverables* shall be submitted for approval by the Commission:
  - (a)
    - (i) progress reports: reports containing information about the progress of work, resources employed, departures from the work schedule, and results;
    - (ii) elements designated as *deliverables* in Annex I ;
    - (iii) the financial statements;
    - (iv) a final report covering all the work, objectives, results and conclusions, including a summary of all the latter, suitable for publication;
    - (v) other information to be supplied in response to a request of the Commission.
  - (b) These *deliverables* shall be submitted on the due date set out in the table of *deliverables* contained in Annex I. The format and layout of the *deliverables* shall conform to the rules communicated by the Commission.
  - (c) *Deliverables* shall be submitted in one original (paper) copy and one electronic copy, at addresses specified by the Commission. The data in the original (paper) copy will be taken into account should there be a difference with the electronic copy. Only the date of receipt of the original (paper) copy by the Community will be taken into account for the time limits set out in the agreement.
2. As regards financial statements:
  - (a) Costs incurred in currencies other than the euro shall be reported in euro on the basis of the conversion rate published in the Official Journal of the European Union applicable on the first day of the month following the end of the reporting period.

- (b) *Beneficiaries* shall send a statement of their own *eligible costs* and total costs and income of *the project* to the Commission through the *coordinator* in the format specified by the Commission. In addition, the *coordinator* shall submit the corresponding integrated financial statements in euro in the format specified by the Commission. A final, integrated financial statement shall be submitted by all *beneficiaries* through the *coordinator* with the submission of the final *deliverables*.
- (c) Each *beneficiary* receiving payments for this *project* shall provide an audit certificate where required by the *Financial Regulation*.

Each *beneficiary* is free to choose any external auditor, including their habitual external auditor, provided that they meet the cumulative following professional requirements:

- (i) the external auditor must be independent from the *beneficiary*;
- (ii) the external auditor must be qualified to carry out statutory audits of accounting documents in accordance with the 8<sup>th</sup> Council Directive 84/253/EEC of 10 April 1984 or similar national regulations.

Where a *beneficiary* is a public body, they may opt for a competent public officer provided that the relevant national authorities have established his legal capacity to certify such document.

Certification by external auditors does not affect the liability of *beneficiaries* according to this agreement nor the rights of the Community arising from Article II.19.

- (d) *Beneficiaries* who do not benefit from a financial contribution from the Community are required to submit only a description of the efforts deployed and the resources used in order to carry out *the project*.

#### **Article II.4 – Evaluation and approval of *deliverables***

1. The Commission shall evaluate *deliverables* and at its discretion, approve them, reject them or ask for changes.
2. Where the Commission asks for changes in relation to any *deliverable*, the time-limit for approval shall be suspended until the *beneficiaries* have responded to them. In the absence of remarks from the Commission within 45 days of receipt of *deliverables*, the latter shall be deemed to be approved.
3. The Commission may revise the approval of any *deliverable*, following an audit or a review carried out in accordance with the provisions of Articles II.18 or II.19.

#### **Article II.5 - Subcontracts**

1. *Beneficiaries* shall ensure that the work to be performed, as identified in Annex I, can be carried out by them. However, where it is necessary to subcontract certain elements of the work, this should be clearly identified in Annex I.

Any subcontract, the costs of which are to be claimed as an *eligible cost*, must be awarded to the bid offering best value for money (best price-quality ratio), under conditions of transparency and equal treatment. Costs for subcontracting should be in accordance with market prices.

Unless Annex I to this agreement contains sufficient detailed data, the Commission's prior written approval is required:

- (a) where the cumulative amount of the subcontracts of a *beneficiary* exceeds:
    - 20% of his estimated *eligible costs*,
    - EUR 100 000,whichever amount is the lower;
  - (b) where the subcontractor is established in a *third country*.
2. The *beneficiary* shall ensure that subcontracts include an obligation for the subcontractors:
- to submit invoices making reference to *the project* and giving details of the service or supply rendered,
  - to abide by the terms of Articles 4.3, II.10, II.11 and II.12 and to submit to the audits provided for in Articles II.18 and II.19 .

The *beneficiary* shall retain sole responsibility for carrying out the work set out in Annex I and for compliance with the provisions of the agreement. He undertakes to make the necessary arrangements to ensure that the winner of the subcontract waives all rights in respect of the Commission under the agreement.

#### **Article II.6 - Liability**

1. The liability between the parties to this agreement with regard to any losses, damages or injuries suffered in the context of the performance of this agreement shall be governed by the law indicated in Article 10 of the agreement.
2. The measures to be taken in the event of *force majeure* shall be agreed between the parties to this agreement. Any default of a product or service or delays in making them available (unless due to *force majeure*) for the purpose of performing this agreement and affecting such performance including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties does not constitute *force majeure*.
3. The Community cannot be held liable for acts or omissions of the *beneficiaries* in the performance of this agreement. It shall not be liable for any defects in respect of any products or services created on the basis of the project results.

The *beneficiaries* shall bear sole responsibility for assessing that the use of acronyms within the framework of this agreement, including but not limited to the acronyms of *the project*, does not infringe existing trademarks, registered patents and other similar rights.

The *beneficiaries* shall fully guarantee the Community, and shall undertake to indemnify it in the event of any action, complaint or proceeding brought by a third party against it as a result of damage caused either by an act or omission of the *beneficiaries* in the performance of this agreement or on account of any products or services created on the basis of knowledge resulting from *the project*, only to the extent that the *beneficiaries* have contributed to or are responsible for the loss or damage concerned.

In the event of any action brought by a third party against the Community in connection with the performance of this agreement, *beneficiaries* who may bear responsibility shall be required to assist the Community.

4. In the event of any action brought by a third party against a *beneficiary* in connection with the performance of this agreement, the Commission may, without prejudice to

paragraph 1 of this Article, assist the latter upon written request. The costs incurred by the Commission in this connection shall be borne by the *beneficiary* concerned.

#### **Article II.7 - Technical collective responsibility**

The technical implementation of *the project* shall be the collective responsibility of the *beneficiaries*. To that end, each *beneficiary* shall take all necessary and reasonable measures to attain the objectives of *the project*, and to carry out the work incumbent on the defaulting *beneficiary*.

#### **Article II.8 - Financial joint responsibility**

1. If any *beneficiary* is liable to reimburse any amount to the Commission by virtue of Article II.20 of this agreement, and does not honour that reimbursement, the *consortium* shall reimburse the amount due to the Commission.

The amount due to the Commission may not exceed the value of the contribution due to the *consortium* in accordance with Article 5.2 of this agreement, increased where applicable by interest on late payment.

2. The amount to be recovered shall be allocated between the remaining *beneficiaries*.

This allocation shall be based on the relative weight of those *beneficiaries*, taking into account their share of the provisional costs as indicated in Annex I when *pre-financing* is to be recovered and their share of accepted certified costs when payment is to be recovered.

Any amount claimed from a *beneficiary* shall not exceed the contribution it is entitled to receive according to applicable reimbursement rates. The amount a *beneficiary* is entitled to receive is based on its provisional costs as indicated in Annex I when *pre-financing* is to be recovered and is based on its certified costs accepted by the Commission when a settled payment is to be recovered.

3. The *consortium* is not jointly responsible for penalties referred to in Article II.21 imposed on a defaulting *beneficiary*.

#### **Article II.9 - Termination of the agreement or of the participation of a *beneficiary***

1. The Commission may terminate the agreement or the participation of a *beneficiary*:
  - (a) for major technical or economic reasons substantially affecting *the project* (including where the resumption of the performance of the agreement following its suspension on account of *force majeure* proves impossible),
  - (b) if the use potential of the results of *the project* considerably diminishes.

The Commission shall determine the notice period in a registered letter with acknowledgement of receipt, which period shall not exceed one month from the date of receipt of such letter.

2. The Commission shall not object
  - (a) to the termination of the agreement, at the written request of the *coordinator* in agreement with all the other *beneficiaries*, on the grounds mentioned in paragraph 1 of this Article,
  - (b) to the withdrawal of a *beneficiary* from *the project*, unless this withdrawal substantially affects the implementation of *the project*.

The termination of the agreement or the withdrawal of a *beneficiary* shall be effective:



- on the date of the letter of acceptance by the Commission notified by registered letter with acknowledgement of receipt,
  - at the latest one month following receipt of notification by the interested part(y)(ies) in the absence of written observations by the Commission within that time-limit.
3. The Commission may immediately terminate this agreement or the participation of a *beneficiary* from the date of receipt of the registered letter with acknowledgement of receipt sent by the Commission:
- (a) where *the project* has not effectively commenced within three months of the payment of the *pre-financing* and the new date proposed is considered unacceptable by the Commission,
  - (b) where the *beneficiary* directly concerned has not fully performed his contractual obligations despite a written request from the Commission, or from the *coordinator* in agreement with the other *beneficiaries*, to remedy a failure to comply with such obligations within a period not exceeding one month,
  - (c) where a *change of control* over a *beneficiary* is likely substantially to affect *the project* or the interests of the Community,
  - (d) in the event of bankruptcy, of winding up, of cessation of trading, of winding up by court order or composition, suspension of activities of a *beneficiary* or any similar proceeding provided for by national laws or regulations and leading to a similar result,
  - (e) in the event of a *substantial irregularity* or fraud,
  - (f) where a *beneficiary* is guilty of misrepresentation in supplying the information required by the Commission or has deliberately withheld information in order to obtain the Community's financial contribution or any other advantage provided for in the agreement.
4. Any letter of the Commission to terminate the participation of a *beneficiary* or to terminate the agreement shall be addressed in the first case to the *beneficiary* concerned and in the second case to the *coordinator* in accordance with the procedures set out in paragraphs 1 to 3 of this Article. A copy of the letter shall be sent in the first case to the *coordinator* and in the second case to the other *beneficiaries*.
5. *Beneficiaries* shall take appropriate action to cancel or reduce their commitments, upon receipt of the letter from the Commission notifying them of the termination of the agreement or of their participation or upon the dispatch of their termination or withdrawal request, as the case may be.
6. In the event of termination of the agreement or of the participation of a *beneficiary*, the *beneficiaries* or the *beneficiary* whose participation has been terminated shall submit the *deliverables* relating to the work performed until the date of termination of the agreement or the date when their participation ends. They shall further submit financial statements in conformity with the provisions of Article II.3.2 within 45 days from the date of termination.
7. In the event of termination, payments by the Commission shall be limited to the *eligible costs* relating to accepted *project deliverables* and incurred before the event which caused the termination of the agreement or of the participation of a *beneficiary*, and also *eligible costs* subsequently incurred in good faith before the date as set out in paragraph 5 of this Article.

8. In the event of termination pursuant to paragraph 2, first subparagraph, point (b), and paragraph 3 (a), (b), (d), (e) or (f) of this Article, the Commission may require repayment of all or part of the Community's financial contribution, taking into account the nature and results of the work carried out and its usefulness to the Community in the context of the present programme.
9. The termination of the agreement or of the participation of a *beneficiary* shall not affect rights or obligations of the parties which arise before the date of termination. In particular:

The Commission may exercise all rights foreseen by this agreement to accept or reject *deliverables*, to accept, reduce or reject a cost claim and to initiate an audit or a technical review.

The termination of the participation of a *beneficiary* shall not prejudice the user rights in respect of intellectual or industrial property that have been granted in so far as necessary for carrying out *the project* to a *beneficiary* before such date. He shall grant such rights in so far as necessary for the implementation of *the project* to any *beneficiary* taking over all or part of the work incumbent on him.

## **PART B: RULES RELATING TO INTELLECTUAL PROPERTY, PUBLICITY AND CONFIDENTIALITY**

### **Article II.10 - Ownership of knowledge**

1. Knowledge resulting from *the project* shall be the property of the *beneficiaries* carrying out the work leading to that knowledge.
2. Where several *beneficiaries* have carried out the work generating the knowledge, they shall agree among themselves on the allocation and the terms of exercising the ownership of the knowledge in accordance with this agreement.
3. If persons hired by a *beneficiary* may claim rights to knowledge resulting from *the project*, the *beneficiary* shall take steps or reach appropriate agreements to ensure that these rights are exercised in a manner compatible with his obligations under this agreement.
4. On request and without prejudice to paragraph 5, each *beneficiary* shall grant the Commission an irrevocable right, on a royalty-free basis, to translate, reproduce, use, publish and distribute any document, on whatever medium, drawn up in the framework of *the project*.
5. The *beneficiaries* shall indicate to the *coordinator* the pre-existing know-how, in particular the copyrights, relating to any document, on whatever medium, drawn up in the framework of *the project*.

Where a *beneficiary* may not freely dispose of such pre-existing know-how, he shall beforehand take the necessary steps to obtain the authorisation to dispose thereof in compliance with his obligations under this agreement and shall confirm this to the *coordinator*.

The *beneficiary* shall bear any reasonable cost in connection with obtaining such authorisation or for which he may be held liable.

## Article II.11 - Publicity

1. The Commission shall be authorised to publish the following information in any form and medium, including the Internet<sup>1</sup>:

- the *beneficiary's* name and address,
- the subject and purpose of the grant,
- the amount granted and the proportion of *the project's* total cost covered by the funding.

Upon a reasoned and duly substantiated request by the *beneficiary*, the Commission may agree to forego such publicity if disclosure of the information indicated above would risk compromising the *beneficiary's* security or prejudicing his commercial interests.

2. Unless the Commission requests otherwise, any communication or publication by the *beneficiary* about *the project*, including at a conference or seminar, shall mention that *the project* has received funding from the Community, and shall indicate the relevant Community programme.

Where use of the European emblem, or any similar trade mark or logo, is envisaged, prior approval shall be required from the Commission. Standards, in particular with regard to graphics, in force within the Commission must be complied with.

Any communication or publication by the *beneficiary*, in any form or medium, including the Internet, shall state that the author is solely responsible for it and that it does not represent the opinion of the Community and that the Community is not responsible for any use that might be made of information contained therein.

## Article II.12 - Confidentiality

1. Without prejudice to Articles II.10 and II.11 and any other obligation contained in this agreement, the *beneficiaries* and the Commission shall be required to keep confidential any data, knowledge, documents and pre-existing know-how communicated to them on a confidential basis or the disclosure of which may be prejudicial to one of them.

This obligation shall no longer apply:

- where the content of these data, knowledge, documents and pre-existing know-how becomes publicly available through work or actions lawfully performed outside this agreement and not based on activities under it,
- where these data, knowledge, documents and pre-existing know-how have been communicated without any confidentiality restrictions or where the disclosing party subsequently waives their confidentiality.

2. Where this agreement provides for the communication of any data, knowledge, pre-existing know-how or document referred to in paragraph 1 of this Article, the *beneficiaries* and the Commission shall first satisfy themselves that the recipient shall keep it confidential and use it only for the purpose for which it is communicated.

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<sup>1</sup> Article 169 of Commission Regulation No. 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the *Financial Regulation*, OJ L 357, 31.12.2002, p.1

## Part C: FINANCIAL PROVISIONS

### Article II.13 - *Eligible costs* - general principles

1. *Eligible costs* are the costs defined in Articles II.14 and II.15. They shall fulfil the following conditions:
  - be necessary for *the project*, reasonable and cost-effective
  - be incurred during the *duration of the project*,and
  - exclude any profit margin.Without prejudice to the provisions of the first subparagraph,
  - the costs for drawing up the final report shall be eligible when incurred by the *coordinator* within a maximum period of 45 days as of the end of the *duration of the project*,
  - *eligible costs* incurred after the *duration of the project* shall be limited to those concerning reports, dissemination of knowledge, monitoring and evaluations required by this agreement, the time-limits for which are specified in Annex I.
2. Non-eligible costs are in particular the following:
  - costs related to capital employed,
  - provisions for possible future losses or charges,
  - interest owed,
  - exchange losses,
  - provisions for doubtful debts,
  - resources made available to a *beneficiary* free of charge,
  - value of contributions in kind,
  - unnecessary or ill-considered expenses,
  - marketing, sales and distribution costs for products and services,
  - indirect taxes and duties, including VAT (unless the *beneficiary* can show that he is unable to recover it),
  - entertainment or hospitality expenses, except such reasonable expenses accepted by the Commission as being absolutely necessary for carrying out *the project*,
  - any cost incurred or reimbursed, in particular in respect of another Community, international or national project.
3. No cost may be charged to more than one of the *eligible cost* categories referred to in Article II.14 and II.15.
4. *Beneficiaries* may transfer between themselves the budget set out in the estimated breakdown of costs in Annex I within the limit of 20% of the budget of the recipient. The *coordinator* shall inform the Commission of such transfers in writing. Transfers of a higher amount require an amendment to the agreement.
5. Costs and receipts must be recorded in the accounts in accordance with:
  - the usual accounting principles and the internal rules of the *beneficiary*,
  - the applicable social and tax legislation,

- no later than the *agreement completion date* and in such a way as to allow an audit trail.
6. The *beneficiaries'* internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents.

#### **Article II.14 - Direct costs**

##### 1. Personnel

With regard to personnel costs,

- (a) Only the costs of the actual hours worked by the persons directly carrying out work under *the project* may be charged to the agreement.

Such persons must:

- be directly hired by the *beneficiary* in accordance with his national legislation,
- be under the sole technical supervision of the latter,

and

- be remunerated in accordance with the normal practices of the *beneficiary*, provided that these are regarded as acceptable by the Commission.

- (b) Personnel costs shall comprise:

- the actual costs (gross remuneration and related charges), or
- average employment costs, where these correspond to the normal practices of the *beneficiary* concerned, provided that such costs do not differ significantly from the actual costs and that such practices are regarded as acceptable by the Commission.

##### 2. Subcontracting

With the exception of costs charged to the agreement pursuant to paragraph 1 of this Article, the actual costs of subcontracts may be charged to the agreement if they are incurred in compliance with the conditions set out in Article II.5.

##### 3. Travel and subsistence

Actual travel and related subsistence costs necessary for *the project* may be charged to the agreement.

The prior agreement of the Commission shall be required for travel to or from any place outside the territory of the Member States, the *Associated States* or a *third country* where a *beneficiary* is established, unless such a destination is provided for in Annex I.

In the absence of observations within one month of receipt of the request made by the *coordinator*, the approval of the Commission shall be deemed to be given.

Travel and subsistence costs shall be established on the basis of the usual rules of the *beneficiary*.

#### 4. Other specific costs

Other specific costs shall not come into any of the categories of *eligible costs* set out in paragraphs 1 to 3 of this Article and in Article II.15.

Costs for the organisation of workshops and conferences, Web site hosting, Web site design, printing, translation, the acquisition of software licenses, the cost of certification of financial statements or the direct costs incurred in the setting-up of financial guarantees requested by the Commission are *eligible costs* not requiring specific approval by the Commission. Other costs belonging to this category shall only be eligible subject to written approval by the Commission unless they are already provided for in Annex I to this agreement.

In the absence of observations within one month of receipt of the request made by the *coordinator*, the approval of the Commission shall be deemed to be given.

#### **Article II.15 - Indirect costs**

*Beneficiaries* may charge overheads calculated on a flat rate basis amounting to up to 30% of the personnel costs. A *beneficiary* may request a lower percentage when this is required, for instance, by his internal rules.

Overheads cover the following costs, which may not be charged separately: general management and administration costs, depreciation of buildings and equipment, rent, insurance (including for building, equipment, liability), heating, water, electricity, office furniture, personal computers, office supplies including printer ink and stationery, telecommunications and postal charges.

#### **Article II.16 - Justification of costs**

*Eligible costs* shall be reimbursed where they are justified by the *beneficiary*.

To this end, the *beneficiary* shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which he is established, the accounts for *the project* and appropriate documentation to support and justify in particular the costs and time reported in his financial statements. These accounts should be maintained for at least 5 years after the *agreement completion date*.

All the working time charged to the agreement must be recorded throughout the *duration of the project*, or, in the case of the *coordinator*, within a maximum period of 45 days from the end of *the duration of the project*, and be certified by the person in charge of the work designated by the *beneficiary* in accordance with Article II.2(2)(a) or by the duly authorised financial officer of the *beneficiary*.

This documentation must be precise, complete and effective.

#### **Article II.17 – Payment of the Community financial contribution**

1. The Commission shall make payments in accordance with the following general provisions:
  - (a) The payments by the Commission shall be regarded as having been effected on the date on which the Commission's account is debited.
  - (b) The Commission may suspend any payment where the payment request does not comply with the provisions of this agreement or where supporting documents have not been produced or where additional checks are required or where it has decided to hold a financial audit pursuant to Article II.18 or a technical review pursuant to Article II.19. The Commission may also suspend

its payments or instruct the *coordinator* not to make any payment to a *beneficiary* where it suspects fraud or serious financial irregularity on the part of the *beneficiary*. The Commission shall inform the *beneficiary* of any such suspension by registered letter with advice of delivery or equivalent. Suspension shall take effect on the date when notice is sent by the Commission. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the Commission.

- (c) In the event of late payment the *coordinator* may claim interest on behalf of the *beneficiaries*, within two months of receipt by the *coordinator* of the payment. Interest shall be calculated at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date falls, plus three and a half percentage points. This provision does not apply to *beneficiaries* which are public authorities of a Member State.
- (d) Interest shall be payable for the time elapsed between expiry of the payment deadline and the date on which the payment has been made by the Commission. Any such interest payment is not considered as part of the financial contribution of the Community established by the provisions of Article 5.2 of the agreement. The suspension of payment by the Commission may not be considered as late payment.
- (e) In accordance with the provisions of the *Financial Regulation*, *pre-financing* granted to the *coordinator* on behalf of the *consortium* remains the property of the Communities. The *coordinator* shall inform the Commission of the amount of any interest or equivalent benefits yielded by the *pre-financing* it has received from the Commission. Notification must be made annually if the interest in question represents a significant amount, and in any event when the request for payment of the balance of the grant is made.

The Community financial contribution shall be offset by any such interest or equivalent benefits yielded by the *pre-financing*.

2. The final Community contribution shall be determined according to the following provisions:

- (a) The total amount paid to the *consortium* by the Commission may not in any circumstances exceed the maximum amount of the Community financial contribution laid down in Article 5(2).
- (b) The grant shall be limited to the amount necessary to balance *the project's* receipts and expenditure and may not in any circumstances produce a profit. Profit shall mean any surplus of total actual receipts attributable to *the project* over the total actual costs of the action. Any surplus determined in this way shall result in a corresponding reduction in the amount of the grant.
- (c) Without prejudice to the right to terminate the agreement under Article II.9 and without prejudice to the rights of the Commission to apply the penalties referred to in Article II.21, if *the project* is not implemented or is implemented poorly, partially or late, the Commission may reduce the grant initially provided for or any *pre-financing* as defined in Article 6 of the agreement in line with the actual implementation of the work set out in Annex I. Any request to review the decision to reduce the grant or the *pre-financing* shall be made in

writing by the *coordinator* on behalf of the *consortium* or by the *beneficiary* directly concerned within two months after the relevant payment by the Commission, and must state the reasons for the request.

- (d) Where the total financial contribution due from the Community, taking into account any adjustments, including as a result of a financial audit as referred to in Article II.18, is less than the total amount of the payments made, the *beneficiaries* shall reimburse the difference in euro, within the time-limit set by the Commission in its request sent by registered letter with acknowledgement of receipt, in accordance with the provisions of Article II.20.
- (e) Where it is discovered after the *agreement completion date* that a *beneficiary* has committed fraud or substantial irregularities, is guilty of misrepresentation in supplying the information required by the Commission or has deliberately withheld information in order to obtain the Community's financial contribution or any other advantage provided for in the agreement, the Commission may require repayment of all or part of the Community's financial contribution.

## **PART D: CONTROLS, RECOVERIES AND PENALTIES**

### **Article II.18 - Financial audit**

1. The Commission, or any representative authorised by it, may initiate an audit in respect of a *beneficiary* at any time during the agreement and up to five years after the *agreement completion date*.

The audit procedure in respect of a *beneficiary* shall be deemed to be initiated on the date of receipt by him of the relevant registered letter with acknowledgement of receipt sent by the Commission.

The audit procedure shall be carried out on a confidential basis.

2. The Commission or any authorised representative may have access, at any reasonable time, in particular to the personnel of the *beneficiaries* connected with *the project*, the documentation referred to in Article II.16, computer records and equipment that it considers relevant. In this connection, it may request that data be handed over to it in an appropriate form in order, for instance, to ascertain the eligibility of the costs.

The Commission shall take appropriate steps to ensure that its authorised representatives treat confidentially the data to which they have access or which have been provided to them.

3. On the basis of the findings made during the financial audit in respect of a *beneficiary*, a provisional report shall be drawn up. It shall be sent by the Commission to the *beneficiary* concerned. He may make observations thereon within one month of receiving it. The final report shall be sent to the *beneficiary* concerned.
4. On the basis of the conclusions of the audit, the Commission shall take all appropriate measures which it considers necessary, including the issuing of a recovery order regarding all or part of the payments made by it.
5. The European anti-fraud office and the Court of Auditors may verify the use made of the Community's financial contribution in the framework of this agreement, on the basis of their own rules.



## **Article II.19 - Technical review of *the project***

1. The Commission, or any representative authorised by it, may initiate a technical review up to the *agreement completion date* in order to verify that *the project* is being or has been carried out in accordance with the conditions governing this agreement.

The technical review procedure shall be carried out on a confidential basis.

2. In the framework of the technical review the Commission may be assisted by independent experts.

It shall take appropriate steps to ensure that such experts treat confidentially the data that are communicated to them. Prior to such meetings, it shall communicate to the *coordinator* the identity of the experts who are intended to assist it. It shall take account of any objection on the part of *beneficiaries* based on legitimate interests.

3. The Commission or any authorised representative may have access to the locations and premises where the work is being carried out, and to any document concerning the work, and may request the submission of documents under the same identical conditions as those set out in Article II.18(2).
4. *Beneficiaries* shall provide appropriate assistance to the Commission or the independent experts assigned by the Commission.
5. A report on the technical review of *the project* shall be sent to the *coordinator*. The latter may communicate observations to the Commission within a month of receiving it. The Commission may decide not to take into account the observations conveyed after that deadline.
6. On the basis of the conclusions of the review, the Commission shall take all appropriate measures which it considers necessary, including the rejection of any *deliverables* which were previously approved pursuant to Article II.4, the termination of the agreement pursuant to Article II.9 and the reduction of the grant or any *pre-financing* pursuant to Article II.17.2 (c).

## **Article II.20 - Reimbursement to the Commission and Recovery Orders**

1. If any amount is unduly paid to the *beneficiary* or if recovery is justified under the terms of the agreement, the *beneficiary* undertakes to repay the Commission the sum in question, by whatever date it may specify.
2. If the *beneficiary* fails to pay by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article II.17.1, point c). Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive.  
Any partial payment shall first be entered against charges and interest on late payment and then against the principal.
3. Sums owed to the Commission may be recovered by offsetting them against any sums owed to the *beneficiary*, or by calling in any financial guarantee. The *beneficiary's* prior consent shall not be required.
4. Bank charges occasioned by the recovery of the sums owed to the Commission shall be borne solely by the *beneficiary*.
5. The *beneficiary* understands that under Article 256 of the Treaty establishing the European Community the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States.

## **Article II.21- Penalties**

As established by the *Financial Regulation* any *beneficiary* declared to be in grave breach of his contractual obligations shall be liable to financial penalties of between 2% and 10% of the value of the Community financial contribution received by that *beneficiary*. The rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first breach.