



EXECUTIVE AGENCY FOR HEALTH AND CONSUMERS

Director

## GRANT AGREEMENT FOR AN ACTION - MULTIPLE BENEFICIARIES

AGREEMENT NUMBER – 2012 [NUMBER]

The Executive Agency for Health and Consumers (EAHC) (hereinafter referred to as "the Executive Agency"), acting under powers delegated by the Commission of the European Union (hereafter referred to as "the Commission"), and represented for the purposes of signature of this agreement by Mr Luc Briol, Director, or his duly authorised representative,

of the one part,

and

[Full official name] [ACRONYM]

[Official legal form]

[Official registration No]

[Official address in full]

[VAT number],

hereinafter called "the co-ordinator", represented for the purposes of the signature of the present agreement by [Mr/Ms] [first name + surname of the signatory and function]

and the following "co-beneficiaries":

[Option 1 for signing:

- [Full official name – (ACRONYM) – established in [country]]
- [Full official name – (ACRONYM) – established in [country]]
- ....]

who have conferred powers of attorney for the purposes of the signature of the present agreement to the representative of the co-ordinator,

[Option 2 for signing:

[Full official name]

[ACRONYM]

[Official legal form]<sup>3</sup>

[Official registration No]<sup>4</sup>  
[Official address in full]  
[VAT number],

represented for the purposes of signature of this agreement by [Mr/Ms][first name + surname and function]

[idem for each co-beneficiary]

collectively “the beneficiaries”, and each individually identified as “beneficiary” for purposes of this agreement where a provision applies without distinction to the co-ordinator or a co-beneficiary

of the other part,

collectively *"the parties to the agreement"*

#### HAVE AGREED

the **Special Conditions**, **General Conditions** and **Annexes** below:

- Annex I** Description of the action [Technical Annex]
  - Annex II** Estimated budget of the action [comprising a consolidated version together with a breakdown of costs and receipts between each beneficiary]
  - Annex III** Reporting requirements
- [Option 1 for signing:
- Annex IV** Letters of mandates conferring powers of attorney from the co-beneficiaries to the co-ordinator]
  - Annex V** Instructions concerning the eligibility of travel and subsistence expenses (if Commission's rules apply)

which form an integral part of this agreement (“the agreement”).

The terms set out in the Special Conditions shall take precedence over those in the other parts of the agreement.

The terms of the General Conditions shall take precedence over those in the Annexes.

## I – SPECIAL CONDITIONS

### ARTICLE I.1 – PURPOSE OF THE GRANT

I.1.1 The Executive Agency has decided to award a grant, under the terms and conditions set out in the Special Conditions, the General Conditions and the Annexes to the agreement, which the beneficiaries hereby declare that they have taken note of and accept, for the action entitled [Title + Acronym of the project] (*“the action”*).

I.1.2 The beneficiaries accept the grant and undertake to do everything in their power to carry out the action as described in Annex I, acting on their own responsibility.

### ARTICLE I.2 – DURATION

I.2.1 The agreement shall enter into force on the date when the last party signs.

Without prejudice to Article II.16.5, unless otherwise agreed by the parties in writing, the agreement expires four months after the date of notification by the Executive Agency of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article II.17, or failing that four months after the date on which the payment of the balance was received.

[Option 1 for Art I.2.2:

I.2.2 The action shall run for [insert number] months from [the first day [of the month] following the date when the last party signs the agreement] (*“the starting date of the action”*).]

[Option 2 for Art I.2.2:

I.2.2 The action shall run for [insert number] months from [insert date] (*“the starting date of the action”*).]

[Option 3 for Art I.2.2:

I.2.2 The action shall run for [insert number] months from the latest of the following dates [insert date] / the first day [of the month] following the date when the last party signs the agreement (*“the starting date of the action”*).]

### ARTICLE I.3 – ROLE OF THE BENEFICIARIES

I.3.1 The co-ordinator shall 'inter alia':

- a) have full responsibility for ensuring that the action is implemented in accordance with the agreement;
- b) be the intermediary for all communication between the co-beneficiaries and the Executive Agency in accordance with Article I.8. Any claims that the Executive Agency might have in respect of the agreement shall be addressed to, and answered by, the co-ordinator, save where specifically stated otherwise in the agreement;
- c) be responsible for supplying all documents and information to the Executive Agency which may be required under the agreement, in particular in relation to the requests for payment. The co-ordinator shall not delegate any part of this task to the co-beneficiaries or to any other party. Where information from the co-beneficiaries is required, the co-ordinator shall be responsible for obtaining and verifying this information and for passing it on to the Executive Agency;
- d) inform the co-beneficiaries of any event of which the co-ordinator is aware that is liable to substantially affect the implementation of the action;
- e) inform the Executive Agency of transfers between items of eligible costs, as provided in Article I.4.4;
- f) make the appropriate arrangements for providing the financial guarantee or the joint guarantee of the beneficiaries participating in the action, when requested, under the provisions of Article I.5;
- g) establish the payment requests on behalf of the beneficiaries, detailing the exact share and amount assigned to each beneficiary, in accordance with the agreement, and in particular the estimated eligible costs as foreseen in Annex II, and the actual costs incurred. All payments by the Executive Agency are made to the bank account(s) referred to in paragraph 1 of Article I.7;
- h) where designated the sole recipient of payments on behalf of all of the beneficiaries, ensure that all the appropriate payments are made to the co-beneficiaries without unjustified delay in accordance with paragraph 3 of Article I.7 and shall inform the Executive Agency of the distribution of the Union financial contribution between the co-beneficiaries and of the date of transfer;
- i) be responsible, in the event of audits, checks or evaluations, as described in Articles II.20 and II.6, for providing all the necessary documents, including the accounts of the co-beneficiaries, the original accounting documents and signed copies of sub-contracts, if any have been concluded by the beneficiaries in accordance with Article II.9.

### I.3.2 The co-beneficiaries shall 'inter alia':

- a) agree upon appropriate arrangements between themselves for the proper performance of the action; [The beneficiaries are deemed to have concluded an internal co-operation agreement regarding their internal operation and co-ordination. The co-operation agreement shall include all aspects necessary

for the management of the beneficiaries and the implementation of the action;]

- b) forward to the co-ordinator the data needed to draw up the reports, financial statements and other documents provided for in the agreement including its Annexes;
- c) ensure that all information to be provided to the Executive Agency is sent via the co-ordinator, save where the agreement specifically stipulates otherwise;
- d) inform the co-ordinator immediately of any event liable to substantially affect or delay the implementation of the action of which they are aware;
- e) inform the co-ordinator of transfers between items of eligible costs, as provided in Article I.4.4;
- f) provide the co-ordinator with all the necessary documents in the event of audits, checks of evaluations, as described in Articles II.20 and II.6.

#### **ARTICLE I.4 – BREAKDOWN OF COSTS – FINANCING THE ACTION**

- I.4.1 The total cost of the action is estimated at EUR [insert amount in figures and words], as shown in the estimated budget in Annex II. The estimated budget shall give a detailed breakdown of the costs that are eligible for Union funding under the terms of Article II.14, of any other costs that the action may entail, and of all receipts, so that receipts and costs balance.

The estimated budget in Annex II shall include a table indicating the breakdown of estimated eligible costs and receipts between each beneficiary. The table shall be agreed collectively by the beneficiaries and shall be deemed to form an integral part of the estimated budget of the agreement.

- I.4.2 The total eligible costs of the action for which the Executive Agency grant is awarded are estimated at EUR [insert amount in figures and words], as shown in the estimated budget in Annex II.

Indirect costs are eligible for flat-rate funding up to a maximum of 7 % of the total direct costs eligible, subject to the conditions laid down in Article II.14.3.

- I.4.3 The Executive Agency shall contribute a maximum of EUR [insert amount in figures and words], equivalent to [insert number] % of the estimated total eligible costs indicated in Article I.4.2. The final amount of the grant shall be determined as specified in Article II.17, without prejudice to Article II.19.

The Union grant may not finance the entire costs of the action. The amounts and sources of co-financing other than from Union funds shall be set out in the estimated budget referred to in Article I.4.1.

- I.4.4 By way of derogation from Article II.13, the co-ordinator may, in agreement with the co-beneficiaries, when carrying out the action, adjust the estimated budget by transfers between headings of a given beneficiary's total eligible

costs. This adjustment of expenditure must not affect the implementation of the action and the transfer between the concerned beneficiary's headings shall not exceed **10 %** of the amount of the total eligible costs **for that beneficiary.**, The co-ordinator shall inform the Executive Agency in writing.

## ARTICLE I.5 – PAYMENT ARRANGEMENTS

### I.5.1 Pre-financing:

Within 45 days of the latest of the following dates: the date when the last of the parties signs the agreement / the starting date of the action [/ receipt of a financial guarantee which has been approved by the Executive Agency and amounting to EUR [insert amount in figures and words]], a pre-financing payment of EUR [insert amount in figures and words] shall be made to the co-ordinator, representing [insert figure] % of the amount specified in Article I.4.3.

### I.5.2 Further pre-financing payments:

Pre-financing may be paid in several instalments. In that case, payment of each further instalment to the co-ordinator may not be made until at least 30 % of the previous pre-financing payment has been used up [and shall be conditional on the co-ordinator producing a financial guarantee of [insert amount in figures and words] EUR [or equivalent to the aggregate amount of prefinancing] which has been approved by the Executive Agency]. Where the consumption of the previous pre-financing is less than 70 %, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing<sup>1</sup>.

Every request for payment of a further pre-financing instalment must be accompanied by the documents specified in Article II.15.2 [and by [a progress report on the action's implementation] [as well as an external audit certificate] [[or, in case of public bodies,] a certificate produced by a competent and independent public officer] on the action's financial statements and underlying accounts for each amount exceeding [insert amount in figures and words] EUR per beneficiary].

Within 45 days after the Executive Agency receives the request for payment of a further instalment, together with the documents referred to in the previous subparagraph, the compliance of the technical implementation of the action with Annex I will be assessed. Next, upon approval of the technical implementation, within 45 days a pre-financing payment of [insert amount in figures and words] EUR shall be made to the [co-ordinator][ co-beneficiaries], equivalent to [insert figure] % of the amount specified in Article I.4.3.

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<sup>1</sup> The new pre-financing instalment shall be reduced by the amount corresponding to the difference between the 70 % threshold and the amount that was actually consumed. (Example: previous pre-financing 300 of which 100 (<70 %) was consumed; calculation: 210 (70 % threshold of 300) – 100 consumed = deduction of 110 from following pre-financing instalment).

The period for payment referred to in the previous sub-paragraph of this article may be suspended by the Executive Agency in accordance with the procedure in Article II.16.2.

### I.5.3 Payment of the balance:

The request for payment of the balance shall be accompanied by the documents specified in Article II.15.4 [and by [an external audit certificate] [[or, in case of public bodies,] a certificate produced by a competent and independent public officer] on the action's financial statements and underlying accounts for each amount exceeding [insert amount in figures and words] EUR per beneficiary. The purpose of the audit is to certify that the financial documents submitted to the Executive Agency by the co-ordinator comply with the financial provisions of the agreement, that the costs declared are the actual costs and that all receipts have been declared].

The Executive Agency shall have 45 days to approve or reject the technical and financial implementation report or to request additional supporting documents or information under the procedure laid down in Article II.15.4. In that case, the co-ordinator shall have 20 days to submit the additional information or a new report.

A payment representing the balance of the grant determined in accordance with Article II.17 shall be made to the [co-ordinator][ co-beneficiaries] within 45 days following approval by the Executive Agency of the technical implementation report accompanying the request for payment of the balance. The Executive Agency may suspend the period for payment in accordance with the procedure in Article II.16.2.

## **ARTICLE I.6 – SUBMISSION OF REPORTS AND OTHER DOCUMENTS**

The provisions relating to the submission of the technical implementation reports, financial statements and other documents referred to in Article I.5 are contained in Annex III.

The technical implementation reports, financial statements and other documents referred to in Article I.5 must be submitted by the co-ordinator in [insert number] copies in [insert language] on the following dates:

- Interim reports and other documents related to a request for a [first] further pre-financing as specified in Article I.5.2 [within 2 months following a period of [insert number] months after the starting date of the action specified in Article I.2.2], covering the period [insert dates];
- [Interim reports and other documents related to a request for a second further pre-financing as specified in Article I.5.2 [within 2 months following a period of [insert number] months after the starting date of the action specified in Article I.2.2], covering the period [insert dates]];

- Final reports and other documents related to a request for payment of the balance as specified in Article I.5.3 [within 2 months following the closing date of the action specified in Article I.2.2], covering the whole project duration].

## **ARTICLE I.7 – BANK ACCOUNT**

- I.7.1 All payments shall be made to the co-ordinator’s bank account or sub-account denominated in euros, as indicated below:

Name of bank:	[...]
Address of the branch:	[...]
Precise denomination of the account holder:	[...]
IBAN account code:	[...]

- I.7.2. This account or sub-account must identify the payments made by the Executive Agency for carrying out the action for which the grant is awarded. Moreover, the funds paid to this account or sub-account shall yield interest or equivalent benefits under the law of the State on whose territory the account or sub-account is opened. Such interest or benefits shall, if they are generated by the share of pre-financing not transferred to the co-beneficiaries at the end of the delay set in Article I.7.3, be deducted from the payment of the balance or recovered by the Executive Agency as specified in Article II.16.4.
- I.7.3. Within 45 days of the day on which the bank account under I.7.1 has been credited, the co-ordinator shall transfer to each co-beneficiary the amounts corresponding to their participation in the action in accordance with their pro rata share of the estimated costs as defined in the breakdown in Annex II when pre-financing payments are made, and their share of validated costs actually incurred when other payments are made.

## **ARTICLE I.8 – GENERAL ADMINISTRATIVE PROVISIONS**

- I.8.1. Any communication in connection with the agreement shall be in writing, indicating the number of the agreement, the title and acronym of the action and shall be sent to the following addresses:

For the Executive Agency:

Technical reports, requests for payment and any other correspondence must be addressed to:

Executive Agency for Health and Consumers (EAHC)  
 Health Unit  
 DRB A3/050  
 L-2920 Luxembourg  
 eahc@ec.europa.eu

- 1.8.2. Ordinary mail shall be considered to have been received by the Executive Agency on the date on which it is formally registered by the Executive Agency unit responsible referred to above.
- 1.8.3 Any communication from the Executive Agency to the co-ordinator and/or co-beneficiaries and vice versa shall be in writing and shall be made via the co-ordinator, save where specifically indicated otherwise in the agreement. It shall indicate the number of the agreement and shall be sent to the following address:
- For the co-ordinator:
- [Mr/Ms] [...]  
 [Function]  
 [Official denomination]  
 [Full official address]  
 [Telephone]  
 [Fax]  
 [Email address]
- 1.8.4. Any change of address by the beneficiary shall be communicated in writing to the Executive Agency.

## **ARTICLE I.9 – LAW APPLICABLE AND COMPETENT COURT**

The grant is governed by the terms of the agreement, the Union rules applicable and, on a subsidiary basis, by the law of Luxembourg relating to grants.

The beneficiaries may bring legal proceedings regarding decisions by the Executive Agency concerning the application of the provisions of the agreement and the arrangements for implementing it before the General Court of the European Union and, in the event of appeal, the Court of Justice.

## **ARTICLE I.10 – DATA PROTECTION<sup>2</sup>**

- 1.10.1. Any personal data included in the agreement shall be processed pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the agreement by the Executive Agency, without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

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<sup>2</sup> Any question on the application of Regulation (EC) N° 45/2001 should be referred to the Data Protection Officer of the Agency. More information, including the privacy statement on grants and the contact details of the Data Protection Officer of the Agency, are available on the Agency's website ([http://ec.europa.eu/eahc/about/data\\_protection.html](http://ec.europa.eu/eahc/about/data_protection.html)).

- I.10.2. The beneficiaries shall have the right of access to their personal data and the right to rectify any such data. Should the beneficiaries have any queries concerning the processing of their personal data, they shall address them to the Executive Agency.
- I.10.3. The beneficiaries shall have the right of recourse at any time to the European Data Protection Supervisor.
- I.10.4. Where the agreement requires the processing of personal data by the beneficiaries, the beneficiaries may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.
- I.10.5. The beneficiaries shall limit access to the data to the staff strictly necessary for the implementation, management and monitoring of the agreement.
- I.10.6. The beneficiaries undertake to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
    - i) unauthorised reading, copying, alteration or removal of storage media;
    - ii) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
    - iii) unauthorised persons from using data-processing systems by means of data transmission facilities;
  - b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
  - c) record which personal data have been communicated, when and to whom;
  - d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
  - e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
  - f) design their organisational structure in such a way that it meets data protection requirements.

## **ARTICLE I.11 – FURTHER SPECIAL CONDITIONS**

The following special conditions apply to this agreement:

- I.11.1 The co-ordinator shall submit the payment requests in accordance with article I.5, including the underlying financial statements, in euros. By way of

- derogation from Article II.16.1, any conversion of actual costs into euros shall be made by the beneficiary at the monthly accounting rate established by the Commission and published on its website for the first day of the month following the end of the reporting period<sup>3</sup>.
- I.11.2 Without prejudice to Articles II.1.and II.3.2, the beneficiaries grant the Executive Agency and the Commission the right to publish results and reports in hard copy or electronic form.
- I.11.3 Without prejudice to Article II.5.1, unless the Executive Agency requests or agrees otherwise, all communications or publications by the beneficiaries collectively or one of the beneficiary individually, which are related to the action, including conferences, seminars, videos, electronic communications or printed matter shall include the following statement: *“This [insert appropriate description, e.g. publication, conference, etc.] arises from the project [insert project title] which has received funding from the European Union, in the framework of the Health Programme.”*
- I.11.4 By way of derogation from Article II.14.2, the definition of ‘public officials’ shall be applied according to the following: “An official of a public administration or body who is directly remunerated by the budget of the State or a local authority and his/her work concerns the implementation of tasks typically devolved to public institutions. By extension, it does concern all public officials who work in international organisations”.

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<sup>3</sup> <http://ec.europa.eu/budget/inforeuro/index.cfm?fuseaction=home&Language=en>

## **II – GENERAL CONDITIONS**

### **PART A – LEGAL AND ADMINISTRATIVE PROVISIONS**

#### **ARTICLE II.1 – LIABILITY**

- II.1.1 The beneficiaries shall be responsible for complying with any legal obligations incumbent on them.
- II.1.2 The Executive Agency shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the agreement relating to any damage caused during the action's execution. Consequently, the Executive Agency will not entertain any request for indemnity or reimbursement accompanying any such claim.
- II.1.3 Except in cases of force majeure, the beneficiaries shall make good any damage sustained by the Executive Agency as a result of the execution or faulty execution of the action.
- II.1.4 The beneficiaries shall bear sole liability vis-à-vis third parties, including for damage of any kind sustained by them while the action is being carried out.

#### **ARTICLE II.2 – CONFLICT OF INTERESTS**

- II.2.1 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.
- II.2.2 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 Executive Agency, in writing, without delay. The beneficiaries shall undertake to take whatever steps are necessary to rectify this situation at once.
- II.2.3 The Executive Agency reserves the right to check that the measures taken are appropriate and may demand that the beneficiaries take additional measures, if necessary, within a certain time.

#### **ARTICLE II.3 – OWNERSHIP/USE OF THE RESULTS**

- II.3.1 Unless stipulated otherwise in the agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the beneficiaries.

- II.3.2 Without prejudice to paragraph 1, the beneficiaries grant the Executive Agency the right to make free use of the results of the action as it deems fit, and, in particular, to display, reproduce by any technical procedure, translate or communicate the results of the action by any medium, including on the website of the Executive Agency and/or on the Europa website, provided it does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights.
- II.3.3. Where industrial and intellectual property rights, including rights of third parties, exist prior to the agreement being entered into ("pre-existing intellectual property rights"), the beneficiaries shall establish a list which shall specify all rights of ownership and use in the pre-existing intellectual property rights and disclose it to the Executive Agency at the latest prior to the commencement of implementation. The beneficiaries shall ensure that they have all rights to use any pre-existing intellectual property rights in implementation of the agreement.

#### **ARTICLE II.4 – CONFIDENTIALITY**

The Executive Agency and the beneficiaries undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the agreement that is duly classed as confidential, if disclosure could cause prejudice to the other party. The parties shall remain bound by this obligation beyond the closing date of the action.

#### **ARTICLE II.5 – PUBLICITY**

- II.5.1 Unless the Executive Agency requests otherwise, any communication or publication by the beneficiaries collectively or any one of the beneficiaries individually about the action, including at a conference or seminar, shall indicate that the action has received funding from the Union.

Any communication or publication by the beneficiaries collectively or any one of the beneficiaries individually, in any form and medium, shall indicate that sole responsibility lies with the author and that the Executive Agency is not responsible for any use that may be made of the information contained therein.

- II.5.2 The beneficiaries authorise the Executive Agency to publish the following information in any form and medium, including via the Internet:
- the beneficiaries' names and addresses,
  - the subject and purpose of the grant,
  - the amount granted and the proportion of the action's total cost covered by the funding.

Upon a reasoned and duly substantiated request by the co-ordinator, the Executive Agency may agree to forgo such publicity if disclosure of the

information indicated above would risk compromising the beneficiaries' security or prejudicing their commercial interests.

## **ARTICLE II.6 – EVALUATION**

Whenever the Commission carries out an interim or final evaluation of the action's impact measured against the objectives of the Union programme concerned, the co-ordinator with the support of the co-beneficiaries undertake to make available to the Commission and/or persons authorised by it all such documents or information, including information in electronic format, as will allow the evaluation to be successfully completed and to give them the rights of access specified in Article II.20.

## **ARTICLE II.7 – SUSPENSION**

II.7.1 The co-ordinator, in agreement with the co-beneficiaries, may suspend implementation of the action if exceptional circumstances make this impossible or excessively difficult, notably in the event of force majeure. The co-ordinator shall inform the Executive Agency without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

II.7.2 If the Executive Agency does not terminate the agreement under Article II.11.3, the beneficiaries shall resume implementation of the action as initially planned once circumstances allow and the co-ordinator shall inform the Executive Agency accordingly. The duration of the action might be extended by a period equivalent to the length of the suspension. In accordance with Article II.13, a supplementary written agreement shall be concluded to extend the duration of the action and to make any amendments that may be necessary to adapt the action to the new implementing conditions.

## **ARTICLE II.8 – FORCE MAJEURE**

II.8.1 Force majeure shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents them from fulfilling any of their obligations under the agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to force majeure), labour disputes, strikes or financial difficulties cannot be invoked as force majeure by the defaulting party.

II.8.2 A party faced with force majeure shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.

II.8.3 The party faced with force majeure shall not be held in breach of his obligations under the agreement if he's prevented from fulfilling them by force majeure. The parties shall make every effort to minimise any damage due to force majeure.

II.8.4 The action may be suspended in accordance with Article II.7.

**ARTICLE II.9 – AWARD OF CONTRACTS**

- II.9.1 If the beneficiaries have to conclude contracts in order to carry out the action and they constitute costs of the action under an item of eligible direct costs in the estimated budget, they shall seek competitive tenders from potential contractors and award the contract to the bid offering best value for money; in doing so they shall observe the principles of transparency and equal treatment of potential contractors and shall take care to avoid any conflict of interests.
- II.9.2 Contracts as referred to in paragraph 1 may be awarded only in the following cases:
- a) they may only cover the execution of a limited part of the action;
  - b) recourse to the award of contracts must be justified having regard to the nature of the action and what is necessary for its implementation;
  - c) the tasks concerned must be set out in Annex I and the corresponding estimated costs must be set out in detail in the budget in Annex II;
  - d) any recourse to the award of contracts while the action is under way, if not provided for in the initial grant application, shall be subject to prior written authorisation by the Executive Agency;
  - e) the beneficiaries shall retain sole responsibility for carrying out the action and for compliance with the provisions of the agreement. The beneficiaries must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Executive Agency under the agreement;
  - f) the beneficiaries must undertake to ensure that the conditions applicable to them under Articles II.1, II.2, II.3, II.4, II.5, II.6, II.10 and II.20 of the agreement are also applicable to the contractor.

**ARTICLE II.10 – ASSIGNMENT**

- II.10.1 Claims for payments to be carried out by the Executive Agency may not be transferred.
- II.10.2 In exceptional circumstances, where the situation warrants it, the Executive Agency may authorise the assignment to a third party of the agreement and payments flowing from it, following a written request to that effect, giving reasons, from the co-ordinator in agreement with the co-beneficiaries. If the Executive Agency agrees, it must make its agreement known in writing to the co-ordinator before the proposed assignment takes place. In the absence of the above authorisation, or in the event of failure to observe the terms thereof, the assignment shall not be enforceable against and shall have no effect on the Executive Agency.
- II.10.3 In no circumstances shall such an assignment release the beneficiaries from their obligations to the Executive Agency.

## **ARTICLE II.11 – TERMINATION OF THE AGREEMENT**

### **II.11.1 Termination by the co-ordinator**

In duly justified cases, the co-ordinator, in agreement with the co-beneficiaries, may withdraw the beneficiaries' request for a grant and terminate the agreement at any time by giving 60 days' written notice stating the reasons, without being required to furnish any indemnity on this account.

If no reasons are given or if the Executive Agency does not accept the reasons, the agreement shall be deemed to have been terminated improperly, with the consequences set out in the fifth subparagraph of paragraph 5.

### **II.11.2 Termination of the participation of a beneficiary**

In duly justified cases, the co-ordinator may request to terminate the participation of a beneficiary by giving 60 days written notice. The co-ordinator shall include with any such request to the Executive Agency the remaining beneficiaries' proposal to reallocate the tasks of that beneficiary or where relevant to nominate a replacement, the reasons for the termination of the participation and the opinion of the beneficiary whose participation is requested to be terminated.

In duly justified cases, any beneficiary may request the termination of his participation in the agreement. The request must be submitted to the Executive Agency by the co-ordinator by giving 60 days written notice stating the reasons.

If no reasons are given or if the Executive Agency does not accept the reasons, the participation shall be deemed to have been terminated improperly, with the consequences set out in the fifth subparagraph of paragraph 5.

The termination of the participation of the beneficiary concerned shall take effect on the date of the Executive Agency's approval. A written additional agreement shall be concluded to make any amendments necessary to adapt the action to the new implementing conditions resulting from the partial termination.

### **II.11.3 Termination by the Executive Agency**

The Executive Agency may decide to terminate the agreement or the participation of any one or several beneficiaries participating in the action without any indemnity on its part, in the following circumstances:

- a) in the event of a change to the beneficiary's legal, financial, technical, organisational or ownership situation that is liable to affect the agreement substantially or to call into question the decision to award the grant;
- b) if a beneficiary fails to fulfil a substantial obligation incumbent on him under the terms of the agreement, including its annexes;
- c) in the event of force majeure, notified in accordance with Article II.8, or if the action has been suspended as a result of exceptional circumstances, notified in accordance with Article II.7;

- d) if a beneficiary is declared bankrupt, is being wound up or is having his affairs administered by the courts, has entered into an agreement with creditors, has suspended business activities, is the subject of any other similar proceedings concerning those matters or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;
- e) where the Executive Agency has evidence or seriously suspects the beneficiary or any related entity or person of professional misconduct;
- f) if a beneficiary has not fulfilled obligations related to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;
- g) where the Executive Agency has evidence or seriously suspects the beneficiary or any related entity or person of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- h) where the Executive Agency has evidence or seriously suspects the beneficiary or any related entity or person of substantial errors, irregularities or fraud in the award procedure or the performance of the grant;
- i) if the beneficiary has made false declarations or submits reports inconsistent with reality to obtain the grant provided for in the agreement.

In the cases referred to in points (e), (g), and (h) above, any related person shall mean any physical person with powers of representation, decision making or control in relation to the beneficiary. Any related entity shall mean in particular any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive no 83/349/EEC of 13 June 1983.

#### **II.11.4 Termination procedure**

The procedure is initiated by registered letter, with advice of delivery or equivalent. The co-ordinator shall ensure that all beneficiaries are duly informed.

In the cases referred to in points (a), (b), (d),(e), (g) and (h) above, the co-ordinator, in consultation with the co-beneficiaries, shall have 30 days to submit observations and take any measures necessary to ensure continued fulfilment of the beneficiaries' obligations under the agreement. If the Executive Agency fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the procedure shall continue to run.

Where notice is given, termination shall take effect at the end of the period of notice, which shall start to run from the date when notification of the Executive Agency's decision to terminate the agreement or the participation of a beneficiary is received.

Where notice is not given in the cases referred to in points (c), (f) and (i) above, termination shall take effect from the day following the date on which notification of the

Executive Agency's decision to terminate the agreement or the participation of a beneficiary is received.

### **II.11.5 Effects of termination**

In the event of termination of the agreement, payments by the Executive Agency shall be limited to the eligible costs actually incurred by the beneficiaries up to the date when termination takes effect, in accordance with Article II.17. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

The co-ordinator shall have 60 days from the date when termination of the agreement takes effect, as notified by the Executive Agency, to produce a request for final payment in accordance with Article II.15.4. If no request for final payment is received within this time limit, the Executive Agency shall not reimburse the expenditure incurred by the beneficiaries up to the date of termination and it shall recover any amount if its use is not substantiated by the technical implementation reports and financial statements approved by the Executive Agency.

Where termination affects the participation of a beneficiary, only those eligible costs actually incurred by the beneficiary concerned up to the date when termination of his participation takes effect, in accordance with Article II.17 shall be considered eligible. Costs relating to current commitments that were not due to be executed until after termination shall not be taken into account. The request for payment of the eligible costs incurred up to the date when the termination of the participation of the beneficiary concerned takes effect shall be included in the following payment request due according to the schedule laid down in Article I.6.

By way of exception, at the end of the period of notice referred to in paragraph 4, where the Executive Agency is terminating the agreement on the grounds that the co-ordinator has failed to produce the final technical implementation report and financial statement within the deadline stipulated in Article I.5 and the co-ordinator has still not complied with this obligation within two months following the written reminder sent by the Executive Agency by registered letter with advice of delivery or equivalent, the Executive Agency shall not reimburse the expenditure incurred by the beneficiaries up to the date on which the action ended and it shall recover any amount if its use is not substantiated by the technical implementation reports and financial statements approved by the Executive Agency.

By way of exception, in the event of improper termination of the agreement by the co-ordinator, or a beneficiary's participation in the action, or termination by the Executive Agency on the grounds set out in points (a), (e), (g), (h) or (i) above, the Executive Agency may require the partial or total repayment of sums already paid under the agreement on the basis of technical implementation reports and financial statements approved by the Executive Agency, in proportion to the gravity of the failings in question and after allowing the co-ordinator, and where relevant co-beneficiaries concerned, to submit their observations.

## **ARTICLE II.12 – FINANCIAL PENALTIES**

- II.12.1 By virtue of the Financial Regulation applicable to the general budget of the European Union, any one or several of the beneficiaries declared to be in grave breach of their obligations under the agreement shall be liable to financial penalties of between 2 % and 10 % of the value of their share of the grant in question, with due regard for the principle of proportionality.
- II.12.2 This rate may be increased to between 4 % and 20 % in the event of a repeated breach in the five years following the first.
- II.12.3 The beneficiary concerned shall be notified in writing of any decision by the Executive Agency to apply such financial penalties.

## **ARTICLE II.13 – SUPPLEMENTARY AGREEMENTS**

- II.13.1 Any amendment to the grant conditions must be the subject of a written supplementary agreement. No oral agreement may bind the parties to this effect.
- II.13.2 The supplementary agreement may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of applicants.
- II.13.3 Where the request for amendment is made by the co-ordinator, in agreement with the co-beneficiaries, he must send the request to the Executive Agency in good time before it is due to take effect and at all events one month before the closing date of the action, except in cases duly substantiated by the co-ordinator and accepted by the Executive Agency.

## **PART B – FINANCIAL PROVISIONS**

### **ARTICLE II.14 – ELIGIBLE COSTS**

II.14.1 Eligible costs of the action are costs actually incurred by a beneficiary, which meet the following criteria:

- they are incurred during the duration of the action as specified in Article I.2.2 of the agreement, with the exception of costs relating to final reports and certificates on the action's financial statements and underlying accounts;
- they are connected with the subject of the agreement and they are indicated in the estimated overall budget of the action;
- they are necessary for the implementation of the action which is the subject of the grant;
- they are identifiable and verifiable, in particular being recorded in the accounting records of a beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost-accounting practices of the beneficiary;
- they comply with the requirements of applicable tax and social legislation;
- they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The beneficiaries' accounting and internal 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.

II.14.2 The eligible direct costs for the action are those costs which, with due regard for the conditions of eligibility set out in Article II.14.1, are identifiable as specific costs directly linked to performance of the action and which can therefore be booked to it direct. In particular, the following direct costs are eligible provided that they satisfy the criteria set out in the previous paragraph:

- the cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration;

The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the cost of activities which the

relevant public authority would not carry out if the project concerned were not undertaken;

- travel and subsistence allowances for staff taking part in the action, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the beneficiary and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account by the Executive Agency, except where the nature and/or the context of its use justifies different treatment by the Executive Agency;
- costs of consumables and supplies, provided that they are identifiable and assigned to the action;
- costs entailed by other contracts awarded by a beneficiary for the purposes of carrying out the action, provided that the conditions laid down in Article II.9 are met;
- costs arising directly from requirements imposed by the agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction, etc.), including the costs of any financial services (especially the cost of financial guarantees). Such costs may also include specific costs incurred by the co-ordinator for fulfilling his responsibilities in his capability of the body responsible for the overall management of the action and the co-ordination of the beneficiaries.

II.14.3 The eligible indirect costs for the action are those costs which, with due regard for the conditions of eligibility described in Article II.14.1, are not identifiable as specific costs directly linked to performance of the action which can be booked to it direct, but which can be identified and justified by the co-ordinator or a co-beneficiary using their accounting system as having been incurred in connection with the eligible direct costs for the action. They may not include any eligible direct costs.

By way of derogation from Article II.14.1, the indirect costs incurred in carrying out the action may be eligible for flat-rate funding fixed at not more than 7 % of the total eligible direct costs<sup>4</sup>. If provision is made in Article I.4.2 for flat-rate funding in respect of indirect costs, they need not be supported by accounting documents.

II.14.4 The following costs shall not be considered eligible:

- return on capital;

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<sup>4</sup> The 7 % ceiling may be exceeded by a reasoned Commission decision; provision should be made for this in the Special Conditions.

- debt and debt service charges;
- provisions for losses or potential future liabilities;
- interest owed;
- doubtful debts;
- exchange losses;
- VAT, unless the beneficiary can show that he is unable to recover it according to the applicable national legislation. VAT paid by public bodies is not an eligible cost;
- costs declared by a beneficiary and covered by another action or work programme receiving a Union grant;
- excessive or reckless expenditure;
- contributions in kind.

II.14.5 Not applicable.

II.14.6 By way of derogation from paragraph 3, indirect costs shall not be eligible under a grant for an action awarded to a beneficiary who already receives an operating grant from the Union budget during the period in question.

## **ARTICLE II.15 – REQUESTS FOR PAYMENT**

Payments shall be made in accordance with Article I.5 of the Special Conditions.

### **II.15.1 – PRE-FINANCING**

Pre-financing is intended to provide the beneficiaries with a float.

Where required by the provisions of Article I.5 on pre-financing, the co-ordinator shall furnish a financial guarantee from a bank or an approved financial institution established in one of the Member States of the European Union.

The guarantor shall stand as first demand guarantor and shall not require the Executive Agency to have recourse against the principal debtor (the concerned beneficiary).

The financial guarantee shall provide that it remains in force until the pre-financing is cleared against interim payment(s) or payment of the balance by the Executive Agency to the beneficiaries or, in the absence of such clearing, three months after a recovery is notified to a beneficiary by which the Executive Agency asks him to repay the pre-financing. The Executive Agency undertakes to release the guarantee within the following month.

**II.15.2 – FURTHER PRE-FINANCING PAYMENTS**

Where pre-financing is divided into several instalments, the co-ordinator may request a further pre-financing payment once the percentage of the previous payment specified in the provisions of Article I.5 on further pre-financing has been used up. The request shall be accompanied by the following documents:

- a progress report on the technical implementation of the action;
- a detailed financial statement of the eligible costs actually incurred, including a consolidated statement and a breakdown between each beneficiary;
- where required by the above-mentioned provisions of Article I.5, a financial guarantee in accordance with paragraph 1;
- where required by the above mentioned provisions of Article I.5, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer for each beneficiary as specified under Article I.5;
- any other documents in support of his request that may be required in support of the request for further pre-financing.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.6 and the annexes.

**II.15.3 – NOT APPLICABLE****II.15.4 – PAYMENT OF THE BALANCE**

Payment of the balance, which may not be repeated, is made after the end of the action on the basis of the costs actually incurred by the beneficiaries in carrying out the action. It may take the form of a recovery order where the total amount of earlier payments is greater than the amount of the final grant determined in accordance with Article II.17.

By the appropriate deadline indicated in Article I.6, the co-ordinator shall submit a request for payment of the balance accompanied by the following documents:

- a final report on the technical implementation of the action;
- a final detailed financial statement of the eligible costs actually incurred, following the structure of the estimated budget, including a consolidated statement and a breakdown between each beneficiary;
- a full summary statement of the receipts and expenditure of the action including a consolidated statement and a breakdown between each beneficiary;
- where required by the provisions of Article I.5 on payment of the balance, a certificate on the action's financial statements and underlying accounts,

produced by an approved auditor or, in case of public bodies, by a competent and independent public officer, for each beneficiary as specified under Article I.5. The certificate shall certify, in accordance with a methodology approved by the Commission, that the costs declared by the beneficiaries in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the agreement.

- any other documents in support of his request for payment of the balance.

The documents accompanying the request for payment shall be drawn up in accordance with the provisions of Article I.6 and the annexes.

The co-ordinator and the co-beneficiaries themselves shall certify that the information provided in their request for payment to the Executive Agency is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the agreement, that all receipts have been declared, and that the request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, the Executive Agency shall have the period specified in Article I.5 in order to:

- approve the final report on the technical implementation of the action and the detailed financial statement;
- ask the co-ordinator for supporting documents or any additional information it deems necessary to allow the approval of the technical implementation report and the financial statement;
- reject the documents referred to in Article I.5.3. and ask for the submission of additional information or a new report.

Failing a written reply from the Executive Agency within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Requests for additional information or a new report shall be notified to the beneficiary in writing.

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The co-ordinator shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The co-ordinator shall have the period laid down in Article I.5 to submit the information or new documents requested.

Extension of the delay for approval of the report may delay the payment by the equivalent time.

Where a report is rejected and a new report requested, the approval procedure described in this Article shall apply.

In the event of renewed rejection, the Executive Agency reserves the right to terminate the agreement by invoking Article II.11.3(b).

#### **II.15.5 – COSTS OF TRANSFERS**

Costs of the transfers are borne in the following way:

- costs of dispatch charged by the bank of the Commission shall be borne by the Executive Agency;
- costs of receipt charged by the bank of a beneficiary shall be borne by the beneficiary;
- all costs of repeated transfers caused by one of the parties shall be borne by the party who caused repetition of the transfer.

#### **ARTICLE II.16 – GENERAL PROVISIONS ON PAYMENTS**

II.16.1 Payments shall be made by the Executive Agency in euro. Any conversion of actual costs into euro shall be made at the daily rate published in the Official Journal of the European Union or, failing that, at the monthly accounting rate established by the Commission and published on its website applicable on the day when they payment order is issued by the Commission, unless the Special Conditions of the agreement lay down specific provisions.

Payments by the Executive Agency shall be deemed to be effected on the date when they are debited to the Executive Agency's account.

II.16.2 The Executive Agency may suspend the period for payment laid down in Article I.5 at any time for the purposes of additional checks by notifying the coordinator that his request for payment cannot be met, either because it does not comply with the provisions of the agreement, or because the appropriate supporting documents have not been produced or because there is a suspicion that some of the expenses in the financial statement are not eligible.

The Executive Agency may suspend its payments at any time if a beneficiary is found or presumed to have infringed the provisions of the agreement, in particular in the wake of the audits and checks provided for in Article II.20.

The Executive Agency may also suspend its payments:

- if there is a suspicion of irregularity committed by a beneficiary in the implementation of the grant agreement;
- if there is a suspected or established irregularity committed by a beneficiary in the implementation of another grant agreement or grant decision funded by the General Budget of the Union or by any other budget managed by it. In such cases, suspension of the payments will only proceed where the suspected or established irregularity can affect the implementation of the current grant agreement.

The Executive Agency shall inform the co-ordinator as soon as possible of any such suspension by registered letter with advice of delivery or equivalent, setting out the reasons for suspension.

Suspension shall take effect on the date when notice is sent by the Executive Agency. 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 Executive Agency.

- II.16.3 On expiry of the period for payment specified in Article I.5, and without prejudice to paragraph 2 of this Article, the beneficiaries are entitled to interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euros, plus three and a half points; the reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union. This provision shall not apply to recipients of a grant which are public authorities of the Member States of the European Union.

Interest on late payment shall cover the period from the final date for payment, exclusive, up to the date of payment as defined in paragraph 1, inclusive. The interest shall not be treated as a receipt for the action for the purposes of determining the final grant within the meaning of Article II.17.4. The suspension of payment by the Executive Agency may not be considered as late payment.

By way of exception, when the interest calculated in accordance with the provisions of the first and second subparagraphs is lower than or equal to EUR 200, it shall be paid to the co-ordinator only upon demand submitted within two months of receiving late payment.

- II.16.4 The Executive Agency shall deduct the interest yielded by pre-financing which exceeds EUR 50 000 as provided for in Article I.5 from the payment of the balance of the amount due to the beneficiaries. The interest shall not be treated as a receipt for the action within the meaning of Article II.17.4.

Where the pre-financing payments exceed EUR 750 000 per agreement at the end of each financial year, the interest shall be recovered for each reporting period. Taking account of the risks associated with the management environment and the nature of actions financed, the Executive Agency may recover the interest generated by pre-financing lower than EUR 750 000 at least once a year.

Where the interest yielded exceeds the balance of the amount due to the beneficiaries as indicated in Article II.15.4, or is generated by pre-financing referred to in the previous subparagraph, the Executive Agency shall recover it in accordance with Article II.19.

Interest yielded by pre-financing paid to Member States is not due to the Executive Agency.

II.16.5 The co-ordinator shall have two months from the date of notification by the Executive Agency of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article II.17, or failing that of the date on which the payment of the balance was received, to request information in writing on the determination of the final grant, giving reasons for any disagreement. After this time such requests will no longer be considered. The Executive Agency undertakes to reply in writing within two months following the date on which the request for information is received, giving reasons for its reply.

This procedure is without prejudice to the beneficiaries' right to appeal against the Executive Agency's decision pursuant to Article I.9 under the terms of Union law in this matter, such appeals must be lodged within two months following the notification of the decision to the applicant or, failing that, following the date on which the applicant learned of the decision.

## **ARTICLE II.17 – DETERMINING THE FINAL GRANT**

II.17.1 Without prejudice to information obtained subsequently pursuant to Article II.20, the Executive Agency shall adopt the amount of the final payment to be granted to the beneficiaries on the basis of the documents referred to in Article II.15.4 which it has approved.

II.17.2 The total amount paid by the Executive Agency may not in any circumstances exceed the maximum amount of the grant laid down in Article I.4.3, even if the total actual costs eligible exceed the estimated total eligible costs specified in Article I.4.2.

II.17.3 If the actual eligible costs when the action ends are lower than the estimated total eligible costs, the Executive Agency's contribution shall be limited to the amount obtained by applying the grant percentage of Union co-funding per beneficiary - specified in the table 'Budget by beneficiary' of Annex II, 'Estimated budget of the action' -, to the respective actual eligible costs approved by the Executive Agency per beneficiary.

II.17.4 The beneficiaries hereby agree that the grant shall be limited to the amount necessary to balance the action's receipts and expenditure and that it may not in any circumstances produce a profit for them.

Profit shall mean any surplus of total actual receipts attributable to the action over the total actual costs of the action. The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the co-ordinator for financing other than the Union grant, to which shall be added the amount of the grant determined by applying the principles laid down in paragraphs 2 and 3 of this article. For the purposes of this article, only actual costs falling within the categories set out in the estimated budget referred to in Article I.4.1 and contained in Annex II shall be taken into account; non-eligible costs shall always be covered by non-Union resources.

Any surplus determined in this way shall result in a corresponding reduction in the amount of the grant.

- II.17.5 Without prejudice to the right to terminate the agreement under Article II.11, and without prejudice to the right of the Executive Agency to apply the penalties referred to in Article II.12, if the action is not implemented or is implemented poorly, partially or late, the Executive Agency may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in the agreement.
- II.17.6 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the agreement, the Executive Agency shall set the amount of the payment of the balance as being the amount still owing to the beneficiaries. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Executive Agency shall issue a recovery order for the surplus.

#### **ARTICLE II.18 – FINANCIAL RESPONSIBILITY**

- II.18.1 The beneficiaries agree to be irrevocably and unconditionally, jointly and severally responsible for any amount due to the Executive Agency by one of them which could not be honoured by the latter. The amount due to the Executive Agency will not exceed the maximum value of the contribution that could be granted to the beneficiaries in accordance with Article I.4.3, increased where applicable by interest on late payment.
- II.18.2 The beneficiaries are not jointly responsible for financial penalties which could be imposed on any defaulting beneficiary in accordance with Article II.12.

#### **ARTICLE II.19 – RECOVERY**

- II.19.1 Where an amount, paid by the Executive Agency to the co-ordinator in his capacity of recipient of all payments, is to be recovered under the terms of the agreement, the co-ordinator undertakes to repay the Executive Agency the sum in question, on whatever terms and by whatever date it may specify, even if he has not been the final recipient of the amount due. In the latter case, if payment has not been made by the due date, the Executive Agency reserves the right to recover directly the amount due from the final recipient.

Where such an amount to be recovered under the terms of the agreement was directly paid by the Executive Agency to a beneficiary, or if recovery is justified under Article II.12 of the agreement, the beneficiary concerned undertakes to pay the Executive Agency the sum in question, on whatever terms and by whatever date it may specify.

- II.19.2 If the obligation to pay the amount due is not honoured by the date set by the Executive Agency, the amount due shall bear interest at the rate indicated in Article II.16.3. Interest on late payment shall cover the period between the date

set for payment, exclusive, and the date when the Executive Agency 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.

- II.19.3 If payment has not been made by the due date, sums owed to the Executive Agency may be recovered by offsetting them against any sums owed to the concerned beneficiary, in cases where the beneficiary also has a claim on the Union or the European Atomic Energy Community, after informing him accordingly by registered letter with acknowledgment of receipt or equivalent, or, depending on the terms of the Special Conditions, by calling in the financial guarantee provided in accordance with Article II.15.1. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Executive Agency and/or the Commission may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required. If the recovery remains unsuccessful under the provisions above, the Executive Agency shall hold all the beneficiaries collectively jointly responsible for the amount due in accordance with Article II.18.
- II.19.4 Bank charges occasioned by the recovery of the sums owed to the Executive Agency shall be borne by the concerned beneficiary.
- II.19.5 The beneficiaries understand that under Article 299 of the Treaty on the functioning of the European Union, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States. An action may be brought against such decision before the General Court of the European Union.

## **ARTICLE II.20 – CHECKS AND AUDITS**

- II.20.1 The co-ordinator undertakes to provide any detailed information requested by the Executive Agency and/or the Commission or by any other outside body authorised by the Executive Agency and/or the Commission to check that the action and the provisions of the agreement are being properly implemented. Where the Executive Agency and/or the Commission so wishes, it may request such information to be provided directly by a co-beneficiary.
- II.20.2 The beneficiaries shall keep at the Executive Agency's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the agreement, stored on any appropriate medium that ensures their integrity in accordance with the applicable national legislation, for a period of five years from the date of payment of the balance specified in Article I.5.
- II.20.3 The beneficiaries agree that the Executive Agency may have an audit of the use made of the grant carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the agreement until the balance is paid and for a period of five years from the date of payment of the balance.

Where appropriate, the audit findings may lead to recovery decisions by the Executive Agency and/or the Commission.

- II.20.4 The beneficiaries undertake to allow Executive Agency staff and outside personnel authorised by the Executive Agency and/or the Commission the appropriate right of access to sites and premises where the action is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.
- II.20.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and the Council, the European Anti-Fraud Office (OLAF) may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Executive Agency and/or the Commission.
- II.20.6 The Court of Auditors shall have the same rights as the Executive Agency and the Commission, notably right of access, as regards checks and audits.

SIGNATURES

<p>For the beneficiaries</p> <p><b>Ms/ Mr First name NAME</b> Function</p>  <p><i>Signature</i></p> <p>Done at [place], on _____</p>	<p>For the Executive Agency</p> <p><b>Mr Luc BRIOL</b> Director</p>  <p><i>Signature</i></p> <p>Done at Luxembourg, on _____</p>
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In [duplicate or three copies or...] in English



**ANNEX I**  
**DESCRIPTION OF THE ACTION**

**ANNEX II**  
**ESTIMATED BUDGET OF THE ACTION**

## ANNEX III REPORTING REQUIREMENTS

### 1. INTERIM IMPLEMENTATION REPORT(S)

The interim technical implementation report(s) will describe the work carried out and the results obtained during the period indicated in Article I.6 of this grant agreement and state in particular:

- the results obtained to date and an indication of any deviation from the initial work programme set out in Annex I to the grant agreement that has occurred or is likely to occur<sup>1</sup>;
- the work programme planned for the following period;
- copies of any publications, products or other relevant outputs or deliverables of the project to date.

The interim financial implementation report(s) will compare the expenditure incurred during the reporting period with the foreseen budget stated in Annex II of this grant agreement. The budget implemented in the interim financial report should follow the same structure as the estimated budget in Annex II.

The interim implementation report(s) and any other documents referred to, must be sent to the Executive Agency before the date indicated in Article I.6.

### 2. FINAL IMPLEMENTATION REPORT

The final implementation report referred to in Article I.6 should include in particular a final technical implementation report and a final financial report<sup>2</sup>:

#### 2.1. Technical implementation report

##### *2.1.1. Detailed description of all the activities conducted*

The description should relate to the activities specifically foreseen in Annex I. This section of the report should summarise the activities specifically foreseen and those directly related to the objectives of the project and present and explain the activity actually done, their correspondence to the foreseen programme and objectives, and show how each activity has contributed to the stated objectives.

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<sup>1</sup> Without prejudice to Art. II.13.

<sup>2</sup> N.B. : The description of the required content of the activity report is not exhaustive

Copies of any publications, products or other relevant outputs or deliverables of the project to date shall be annexed.

Any difference between the programme and objectives foreseen and those actually conducted and achieved must be highlighted and explained.

### ***2.1.2. Manpower for the execution of the activities***

This section of the report should present a complete list of all the persons who have participated in the execution of the project and, for each of them, the man/days of work, the professional level or category and the corresponding unit and total cost. In order to conciliate the man/days of work with the expenditure, the portion of time of each individual carrying out the action must be recorded.

In the case of partner organisations or external bodies, the organisation to which each person belongs should be clearly identified. The activities conducted by each person involved will be described and it will be explained how they relate to the various activities and objectives of the project.

It must be shown how the data requested for Annex II compares with the corresponding information provided with the proposal. It should naturally also correspond to the details provided in the financial report.

### ***2.1.3. Parties involved***

This section should present how the work has been distributed among the co-beneficiaries. It will explain which activities the various partners have conducted, how they have been co-ordinated and how they have contributed to the set objectives.

### ***2.1.4. Countries involved***

This section should explain what activities have been conducted in each of the countries involved and how the results have been made available in each country.

### ***2.1.5. Achievement of the objectives***

This section should explain how the objectives have been achieved. It should present an evaluation of the results achieved and explain on what monitoring, assessment or relevant evidence the conclusions presented on the results achieved are based. Any problem in achieving the objectives must be highlighted and explained.

## **2.2. Financial report**

The beneficiaries should respect the following rules<sup>3</sup>:

- Their final financial report must follow the same structure as the estimated budget in Annex II.

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<sup>3</sup> Templates of the documents are available in the "Guidelines for the balance payment" published on EAHC website.

- The financial report must be certified according to the provisions of Article 180, paragraph 1a of the Implementing Rules<sup>4</sup> and signed.
- The payment request (dated and signed) must be jointed to this report.
- The final detailed financial statement must be accompanied by an external audit report on the beneficiary's accounts for the duration of the action (one copy) if the share in the grant for an action for the beneficiary equals or exceeds EUR 750 000<sup>5</sup> or more, when the cumulative amounts of requests for payment is at least EUR 325 000. The thresholds shall apply to each beneficiary.

**IMPORTANT: The absence of complete, clear and structured information and data as described in this annex will be a reason for non acceptance of the activity report.**

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<sup>4</sup> The beneficiary shall certify on his honour that information contained in requests for payments is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the grant agreement and that requests for payment are substantiated by adequate supporting documents that can be checked.

<sup>5</sup> The audit certificate shall certify that the costs declared by the beneficiary in the financial statements on which the request for payment is based are real, accurately recorded and eligible in accordance with the grant agreement)

**ANNEX IV**  
**LETTERS OF MANDATE<sup>1</sup>**

[full official name] [ACRONYM]  
[official legal form]<sup>2</sup>  
[official registration No]<sup>3</sup>  
[official address in full]  
[VAT number],  
("the co-beneficiary"), represented for the purposes of signature of this mandate by  
[surname, forename and function]  
of the one part,

and

[full official name] [ACRONYM]  
[official legal form]  
[official registration No]  
[official address in full]  
[VAT number],  
("the co-ordinator"), represented for the purposes of signature of this mandate by  
[surname, forename and function]  
of the other part,

**HAVE AGREED**

For the purposes of the implementation of  
the agreement [Title & No 2012...]  
between the Executive Agency and the co-ordinator,

The following:

1. The co-beneficiary grants power of attorney to the co-ordinator, to act in his name and for his account in signing the above-mentioned agreement and its possible

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<sup>1</sup> Please use the headed paper on national language of the organisation who gives mandate.

<sup>2</sup> Delete if the beneficiary is a natural person or a public-sector body.

<sup>3</sup> Delete if the beneficiary is a public-sector body. (For natural persons, also indicate the number of their identity card or, failing that, of their passport or equivalent.)

subsequent riders with the Executive Agency. Accordingly, the co-beneficiary hereby mandates the co-ordinator to take full legal responsibility for the implementation of such an agreement.

2. The co-beneficiary hereby confirms that he has taken careful note of and accepts all the provisions of the above agreement with the Executive Agency, in particular all provisions affecting the co-beneficiary and the co-ordinator. In particular, he acknowledges that, by virtue of this mandate, the co-ordinator alone is entitled to receive funds from the Executive Agency and distribute the amounts corresponding to the co-beneficiary's participation in the action.
3. The co-beneficiary hereby agrees to do everything in his power to help the co-ordinator fulfil the co-ordinator's obligations under the above agreement. In particular, the co-beneficiary hereby agrees to provide to the co-ordinator whatever documents or information may be required, as soon as possible after receiving the request from the co-ordinator.
4. The provisions of the above agreement, including this mandate, shall take precedence over any other agreement between the co-beneficiary and the co-ordinator which may have an effect on the implementation of the above agreement between the co-ordinator and the Executive Agency.
5. A signed copy of this mandate shall be annexed to the above agreement and shall form an integral part of it.

#### SIGNATURES

For the co-beneficiary  
[name/forename/function]

For the co-ordinator  
[name/forename/function]

[signature]

[signature]

Done at [place], [date]

Done at [place], [date]

In duplicate in English

**ANNEX V****INSTRUCTIONS****CONCERNING THE ELIGIBILITY OF TRAVEL AND SUBSISTENCE EXPENSES****(IF COMMISSION'S RULES APPLY)**

1. **Flat-rate subsistence allowances** cover all subsistence expenses during missions, including hotels, restaurants and local transport (taxis and/or public transport). They apply in respect of each day of a mission at a minimum distance of 100 km from the normal place of work. The subsistence allowance varies depending on the country in which the mission is carried out. The daily rates will correspond to the sum of the daily allowance and the maximum hotel price set out in Article 13 of Annex VII of the Staff Regulations.<sup>1</sup>

Missions in countries other than EU 27, Acceding and Applicant countries and EFTA-EEA countries shall be subject to the prior agreement of the Executive Agency. This agreement shall be related to the objectives of the mission, its costs and the reasons therefore. For these other countries not referred to above, the daily rates will correspond to the sum of the daily allowance and the maximum hotel price set out in Commission Decision C(2008) 6215.<sup>2</sup>

2. **Travel expenses** are eligible under the following conditions:
  - travel by the most direct and most economic route;
  - distance of at least 100 km between the place of the meeting and the normal place of work;
  - travel by rail: first class;
  - travel by air: economy class, unless a cheaper fare can be used (e.g. Apex); air travel is allowed only for return journeys of more than 800 km;

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<sup>1</sup> Regulation 31/1962/EEC laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Agency

<sup>2</sup> Commission Decision C(2008)6215 of 18 November 2008: General implementing provisions adopting the Guide to missions for officials and other servants of the European Commission

- travel by car: reimbursed on the basis of the equivalent first class rail fare.