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Grant agreement

EUROPEAN COMMISSION

**DIRECTORATE-GENERAL INFORMATION SOCIETY AND
MEDIA**

Grant agreement Number

[title of the project]

GRANT AGREEMENT NO _____

The European Union (“the Union”), represented by the European Commission (“the Commission”), itself represented for the signature of this agreement by Mr Fabio Colasanti, Director-General for Information Society and Media, or his duly authorised representative,
of the one part

and

- (name of the *coordinator* and legal form) (acronym), established in (name of State and full address), represented by its legal/statutory representative[s], [Mr/Ms (insert name), [function], [Mr/Ms (insert name), [function], or [his] [her] [their] authorized representative[s]],

(the “*coordinator*”) and the other *beneficiaries* identified in Article 1.2 below,
of the other part,

HAVE AGREED to a project called “[*name of project*]” to be carried out in the framework of the [*name of the programme*] under the following terms and conditions.

Article 1 – Scope

1. The *consortium*¹ shall carry out the work set out in Annex I to this agreement (“*the project*”) in accordance with the conditions set out in this agreement.

Subject to cases of *force majeure*, the *beneficiaries* shall use reasonable endeavours to achieve the results aimed at by *the project* and shall carry it out jointly and severally vis-à-vis the Union.

2. The *consortium* is composed of the *beneficiary* acting as *coordinator* and the following legal entities, who shall accede to the agreement in accordance with the procedure referred to in Article 2, as *beneficiaries* assuming the rights and obligations established by the agreement with effect from the date on which it enters into force:

- [*name of beneficiary*] ([*acronym*]), established in [*name of State and full address*], represented by its legal/statutory representative[s], [Mr/Ms [*insert name*], [*function*], [Mr/Ms [*insert name*], [*function*], or [his] [her] [their] authorized representative[s],
- [*name of beneficiary*] ([*acronym*]), established in [*name of State and full address*], represented by its legal/statutory representative[s], [Mr/Ms [*insert name*], [*function*], [Mr/Ms [*insert name*], [*function*], or [his] [her] [their] authorized representative[s],
- [*name of beneficiary*] ([*acronym*]), established in [*name of State and full address*], represented by its legal/statutory representative[s], [Mr/Ms [*insert name*],

¹ The terms in italics are used in accordance with the definitions given in Article 1 of Annex II to this agreement.

[function], [Mr/Ms *insert name*], [function], or [his] [her] [their] authorized representative[s],

- [*name of beneficiary*] ([*acronym*]), established in [*name of State and full address*], represented by its legal/statutory representative[s], [Mr/Ms *insert name*], [function], [Mr/Ms *insert name*], [function], or [his] [her] [their] authorized representative[s]
3. The *consortium* shall make appropriate arrangements for its internal operation and management which may include any intellectual property provisions. To this end, a *consortium agreement* may be established which will cover any other additional aspects necessary for the *consortium* management and the implementation of *the project*.

Article 2 – Constitution of the consortium

1. The *coordinator* shall ensure that the *beneficiaries* complete the formalities for them to accede to the agreement. At the latest 45 calendar days after the entry into force of the agreement, the *coordinator* shall send to the Commission one of the three duly completed and signed originals of Form A (set out in Annex III), which shall be obtained from each of the *beneficiaries*. The two remaining signed originals shall be kept by the *coordinator* and the *beneficiary* concerned and be made available for consultation at the request of any other *beneficiary*.
2. Should any legal entity identified in Article 1.2 fail or refuse to accede to the agreement within the deadline established in the previous paragraph, the Commission is no longer bound by its offer to the said legal entity(ies). The Commission may terminate the agreement, where any legal entity identified in Article 1.2 does not accede to the agreement in accordance with the provisions established by the Commission.
3. In the case of termination, no costs incurred by the *consortium* under *the project* can be accepted as eligible for reimbursement by the financial contribution of the Union. Any *pre-financing* provided to the *consortium* and any interest generated by the *pre-financing* must be returned in full to the Commission within 30 days of notification of termination.
4. However, the *consortium* may propose appropriate solutions to the Commission to ensure the implementation of *the project* including, where necessary, the accession to the agreement of legal entities other than those identified in Article 1.2 in accordance with the provisions of Article 3. The Commission may accept or reject the proposals of the *consortium*.

Article 3 – Evolution of the consortium

1. The *consortium* may be enlarged to include other legal entities, which shall accede to the agreement by means of form B (set out in Annex III), subject to acceptance in writing by the Commission of the request for accession.

2. The new *beneficiaries* shall be bound by the terms of the agreement with effect from the date of their accession to the agreement. *Beneficiaries* leaving the *consortium* shall be bound by the provisions of the agreement regarding the terms and conditions applicable to the termination of their participation.

Article 4 - Entry into force of the agreement and duration of the project

1. This agreement shall enter into force following its signature by the *coordinator* and the Commission, on the day of the last signature.
2. The *duration of the project* shall be [*insert number*] months from [the first day of the month after the signature of the Commission] [*insert date*].
3. The *beneficiaries* shall not assign any of the rights and obligations arising from the agreement without the prior written authorisation of the Commission and the other *beneficiaries*.

Article 5 - Financial contribution of the Union

1. The financial contribution of the Union shall be in the form of a grant. The final contribution of the Union shall be calculated in accordance with the provisions of this grant agreement, in particular Article II.18.
2. The maximum contribution of the Union to *the project* shall be EUR [*insert amount*] (in words: [*insert amount in word*] EURO). Annex I contains an estimated breakdown of costs and activities between the *beneficiaries*. The financial contribution of the Union shall be limited to the amount obtained by applying the maximum rates of contribution per activity and *beneficiary* identified in Article 8 to the actual *eligible costs* approved by the Commission.

Article 6 – Payment

1. The financial contribution of the Union to *the project* shall be paid to the *coordinator* on behalf of the *beneficiaries* in accordance with the following provisions:
 - (a) the *coordinator* shall distribute each tranche of the financial contribution of the Union between the *beneficiaries*, in accordance with this agreement, and in particular the estimated breakdown of costs and of activities between *beneficiaries* in Annex I.
 - (b) the payment of the financial contribution of the Union to the *coordinator* discharges the Commission from its obligation to make this payment to the *beneficiaries*.
 - (c) the coordinator shall distribute the contribution of the Union without unjustified delay.
2. The financial contribution of the Union shall be paid to the *coordinator's* bank account denominated in euro, identified as follows:

Name of bank:

Address of branch:

Exact designation of account holder:

Full account number including codes:

[IBAN² code]:

This account or sub-account must identify the payments made by the Commission and any related interest. Otherwise, the accounting methods of the *coordinator* must make it possible to identify the payments by the Commission and the interest or other benefits yielded by these funds.

3. The financial contribution of the Union shall be paid in accordance with the provisions of Article II.18 and the following:

- (a) pre-financing

pre-financing of [amount] EURO (up to 80% of the financial contribution of the Union indicated in Article 5.2) payable in [*insert no. of instalments*] equal instalments.

The first instalment is payable within 45 days following the [*date of entry into force of the agreement*][date on which the Commission is informed of the accession of the last *beneficiary* required to constitute the minimum number of *beneficiaries* established in the *work programme* and as detailed in the call for proposals to which *the project* is related][date on which the Commission is informed of the accession of all the *beneficiaries* identified in Article 1.2].

The *coordinator* may request subsequent instalments upon delivery of progress reports, financial statements and other *deliverables* according to the schedule defined in Annex I, in accordance with the terms of the agreement. The Commission shall make the appropriate payment within 45 days of the approval of the reports and *deliverables* in accordance with Article II.4. Payment in full will be conditional on provision of a statement that *each beneficiary* has incurred by that instalment date *eligible costs* corresponding to financial contribution of the Union equivalent to at least 70% of the total amount of any earlier *pre-financing* per *beneficiary*. Where the consumption of the previous *pre-financing* of a *beneficiary* is less than 70%, the amount of the new *pre-financing* payment shall be reduced by the unused amounts of the previous *pre-financing*.

The Commission may request a financial guarantee or a financial protective measure to cover the payment of the pre-financing. The pre-financing may be reduced if beneficiaries do not provide the guarantees or do not conform to the protective measure requested by the Commission.

²

BIC code for countries with no IBAN code

(b) the outstanding balance shall be paid on submission of a payment request and final financial statement, conditional on the approval by the Commission of the *deliverables* as defined in Article II.1. This payment shall be considered as final, subject to the results of any audit or review, which may be carried out pursuant to the provisions of Article II.19 and II.20.

The Commission shall make the appropriate payment within 45 days of the approval in accordance with Article II.4 of the *deliverables* and associated financial statements.

Article 7 – Project Deliverables

The *deliverables* required under this agreement shall be submitted by the *coordinator* in [language] in accordance with Article II.3 to this agreement.

Article 8 - Special conditions

[The following special conditions apply to this agreement:]

(See list attached in Appendix A)

Article 9 - Amendments

1. All the amendments to the agreement shall be made in writing.
2. Requests for amendments submitted by the *coordinator* are requested on behalf of the *consortium*. The *coordinator* shall ensure that adequate proof of the *consortium*'s agreement to such a request exists and is made available in the event of an audit. The absence of a response from the Commission does not constitute approval of the request.
3. Proposals for amendments made by the Commission shall be handled by the *coordinator* on behalf of the *consortium*. When accepting the amendment, the *coordinator* shall ensure that adequate proof of the *consortium*'s agreement to the amendment exists and is made available in the event of an audit.
4. Amendments 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 the proposers or *beneficiaries*.

Article 10 - Applicable law and jurisdiction

1. The grant is governed by the terms of the agreement, the Union rules applicable, in particular the *Financial Regulation*, and, on a subsidiary basis, the law of [country of the seat of the authorising officer responsible under the internal rules on the execution of the general budget of the European Union].
2. The beneficiaries may bring legal proceedings regarding decisions by the Commission concerning the application of the provisions of the agreement and the

arrangements for implementing it before the General Court and, in the event of appeal, the Court of Justice of the European Union.

Article 11 – Data protection

1. All personal data contained in the *grant agreement* shall be processed in accordance with 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 *Union* institutions and bodies and on the free movement of such data. Such data shall be processed by the Controller solely in connection with the implementation and follow-up of the *grant agreement* and the evaluation and impact assessment of *Union* activities, including the *use* and *dissemination* of *foreground*, without prejudice to the possibility of passing the data to the bodies in charge of a monitoring or inspection task in accordance with *Union* legislation and this *grant agreement*.
2. *Beneficiaries* may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. They should address any questions regarding the processing of their personal data to the Controller. *Beneficiaries* may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.
3. For the purposes of this grant agreement, the Controller is the Head of Unit "IST operations", Directorate "Lisbon Strategy and Policies for the Information Society", Directorate-General Information Society and Media.

Article 12 - Final provisions

1. The following Annexes are an integral part of this agreement:
 - Annex I - Description of work
 - Annex II - General conditions
 - Annex III -Form A – consent of the *beneficiaries* to accede to the agreement
 - Form B – accession request of new legal entities to the agreement
2. In the event of any conflict between Annex I and any other provision of this agreement, the latter shall take precedence.
3. The special conditions set out in Article 8 of this agreement shall take precedence over any other provisions.

Done at Luxembourg in [language],

Signatures

APPENDIX A: Special conditions

1. For members of integrated networks (Safer Internet Centres) and for targeted projects

- (1) For public bodies, SMEs and non-profit organisations

The financial contribution of the Union for the *beneficiary* [name] shall be up to 75% of eligible costs as defined in Articles II.14, II.15 and II.16.

- (2) For organisations which do not enter into one of the above categories

The financial contribution of the Union for the *beneficiary* [name] shall be up to 50% of eligible costs as defined in Articles II.14, II.15 and II.16.

2. For network coordinators of integrated networks and for Knowledge enhancement Projects

Eligible costs shall be limited to direct costs as defined in Article II.14 and II.15, necessary for achieving the specific objectives of the project. The financial contribution of the Union shall be up to 100% of eligible costs.

3. For thematic networks

Eligible costs shall be limited to direct costs as defined in Article II.14 and II.15 of co-ordinating and implementing the network. *Eligible costs* for *beneficiaries* other than the *coordinator* are limited to travel and subsistence expenses for events organised by the network or attended by a *beneficiary* on behalf of the network. The financial contribution of the Union shall be up to 100% of *eligible costs*.

4. Certificate on the financial statements and underlying accounts

1 In accordance with Article II.3.2(c) of this grant agreement, a certificate on the financial statements and underlying accounts must be delivered together with the final financial statement by any *beneficiary* where the maximum total contribution of the Union for the *beneficiary* is equivalent to or higher than EUR 750 000. This certificate shall cover all financial statements. Its purpose is to certify that the costs declared by the *beneficiary* in the financial statements meet the conditions of the grant agreement.

2 Public bodies and international organisations referred to in Article 43 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 (the "Implementing Rules of the Financial Regulation") as last amended by Commission Regulation 478/2007 of 23 April 2007 are not required to provide certificates on the financial statements and underlying accounts, unless the Commission requests the submission of such certificates on the basis of an analysis of risks.

5. Exemption from joint financial responsibility

The provisions of Article II.8 of this grant agreement do not apply to *beneficiary* (ies) [name of beneficiary]

6. Staff changes

All beneficiaries shall inform the Commission of changes in the staff working on the project.

7. New Hotline

The beneficiary (beneficiaries) shall not start taking reports of illegal content from the public before the written approval by the Commission of the following deliverables listed in Annex I to the agreement:

- D.3.1-1 Prototype of Web site
- D3.2 Operational procedures manual with endorsement by law enforcement bodies
- D6.1 Application for INHOPE provisional membership

8. Pre-financing in one single instalment

Article 6.3(a) is replaced by the following:

pre-financing

Pre-financing of 50% of the estimated financial contribution of the Union indicated in Article 5.2, payable in 1 instalment.

The *pre-financing* is payable within 45 days following the date of entry into force of the agreement. (SINGLE BENEFICIARY)

The *pre-financing* is payable within 45 days following the date on which the Commission is informed of the accession of all the *beneficiaries* identified in Article 1.2. (MULTI-PARTNER).

The Commission may request a financial guarantee or a financial protective measure to cover the payment of the *pre-financing*. The *pre-financing* may be reduced if *beneficiaries* do not provide the guarantees or do not conform to the protective measure requested by the Commission.

9. Pre-financing delayed until project start

Notwithstanding the provisions of Article 6.3(a), the *pre-financing* shall be paid no earlier than the start date of the project.

OR

Notwithstanding the provisions of Art. 6.3(a), the *pre-financing* shall be paid no earlier than 45 days before the start date of the project.

10. Unequal instalments of pre-financing

Article 6.3(a) is replaced by the following:

Pre-financing

pre-financing of up to 80% of the estimated financial contribution of the Union indicated in Article 5.2, payable in [number] instalments.

The first instalment is payable within 45 days following the date on which the Commission is informed of the accession of all the *beneficiaries* identified in Article 1.2.

The *coordinator* may request subsequent instalments upon delivery of progress reports, financial statements and other *deliverables* according to the schedule defined in Annex I, in accordance with the terms of the agreement. The Commission shall make the appropriate payment within 45 days of the approval of the reports and *deliverables* in accordance with Article II.4. Payment in full will be conditional on provision of a statement that *each beneficiary* has incurred by that instalment date *eligible costs* corresponding to financial contribution of the Union equivalent to at least 70% of the total amount of any earlier pre-financing per *beneficiary*. Where the consumption of the previous *pre-financing* of a *beneficiary* is less than 70%, the amount of the new *pre-financing* payment shall be reduced by the unused amounts of the previous *pre-financing*

These instalments are as follows:

Initial instalment: [amount] EURO (amount in word EURO)

2nd instalment: [amount] EURO (amount in word EURO)

3rd instalment: [amount] EURO (amount in word EURO).

The Commission may request a financial guarantee or a financial protective measure to cover the payment of each *pre-financing*. The *pre-financing* may be reduced if *beneficiaries* do not provide the guarantees or do not conform to the protective measure requested by the Commission.

11. Payment of the *consortium* subject to obtaining a financial guarantee from the *coordinator*

Notwithstanding the provisions of Article 6, any payment for this project shall not be made by the Commission until a financial guarantee of a value of [amount] is provided by the *coordinator* to the Commission. The guarantee may be lifted once proof is provided that all the other *beneficiaries* have received their share of the payment.

12. Payment of the *consortium's* pre-financing subject to obtaining a financial guarantee from a *beneficiary*

The *coordinator* shall not distribute to the *beneficiary* [name] any pre-financing until a financial guarantee of a value of [amount] is provided to the Commission by the *consortium* or the *beneficiary*

13. The *beneficiary* agrees that in lieu of a financial guarantee no initial *pre-financing* shall be provided

The *coordinator* shall not distribute to the *beneficiary* [name] any *pre-financing* out of the first instalment of *pre-financing* paid in accordance with Article 6.3(a), second subparagraph. Only subsequent instalments of *pre-financing* payments following approval of reports and *deliverables* and the final payment shall be distributed to this *beneficiary*.

14. Bank account specifically dedicated to the project

The bank account referred to in Article 6(2) of this grant agreement shall be dedicated specifically to the *project*.

15. Payment subject to the establishment of a blocked account or equivalent by the coordinator

Payments referred to in Article 6 shall be made by the Commission only after the *coordinator* provides the Commission with its bank's prior written confirmation of the establishment of a dedicated bank account denominated in euros with the following attributes:

- a) the account is established for the purpose of receiving monies from the Commission specifically for the purpose of carrying out this grant agreement, and
- b) on the basis of a prior irrevocable authority provided by the *coordinator* (as account holder) to its bank with a list of dedicated *beneficiaries* and schedule of transfers approved by the Commission.

The *coordinator* undertakes to immediately transfer the appropriate funds to the participants of the *consortium* identified in the list of *beneficiaries*, in accordance with the schedule.

16. Trust account

The bank account referred to in Article 6(2) of this grant agreement, to which all payments of the financial contribution of the Union shall be made, shall be opened as a trust account to be used exclusively of the purpose of the *project*.

17. Single beneficiary

1. Notwithstanding Article 1.2 of this agreement, the consortium is composed of a single *beneficiary*. All references to the "*beneficiaries*" or to the "*consortium*" or to the "*coordinator*" in the agreement and in the Annexes thereto shall be interpreted as references to the "*beneficiary*".
2. Where the consortium is enlarged in accordance with Article 3 of the agreement, the paragraph above does not apply from the date the enlargement takes effect.

18. Beneficiaries with eligible costs but no EU Contribution

1. Costs incurred by the following *beneficiary(ies)* shall not be taken into consideration for determining the financial contribution of the Union: [name of beneficiary].
2. The *beneficiary(ies)* mentioned in the previous paragraph [is] [are] not subject to financial audits and audits on accounting and management principles referred to in Article II.19.
3. Article II.8, Part C of Annex II and any provisions of Part D deriving from Part C do not apply to that (those) *beneficiary(ies)*.

19. Financial support to third parties

Where implementation of the action requires financial support to be given to third parties, the *beneficiaries* may give such financial support in accordance with the description of the action in Annex I, [subject to the [following] provisions [laid down in Annex [.]]....]

The cost of the financial support, which may not in any event exceed EUR 10,000 per each third party and a total of EUR 100,000 per *beneficiary*, [is shown in the estimated breakdown of costs and of activities between *beneficiaries* in Annex I] [amounts to a maximum of EUR [.].

The financial support takes the form of [reimbursement of a specified proportion of the eligible costs actually incurred by the third party] [[a] lump sum[s]] [flat-rate financing].

[By way of derogation from Article II.14 of this agreement, costs incurred by third parties, recorded in their accounts in accordance with the applicable accounting principles and their usual cost-accounting practices, shall be considered eligible subject to the provisions of Articles II.14 to II.17 and sub-paragraphs 1 and 2 above. The actual eligible costs shall be reimbursed in accordance with the maximum rates of contribution to the eligible costs identified in Article 8.

[The final amount eligible for Union funding of the financial support provided to each third party in the form of [lump sum[s]] [flat-rate financing] is subject to sub-paragraphs 1 and 2 above and the following conditions being fulfilled.

The *beneficiaries* must undertake to ensure that the conditions applicable to them under Articles 4(3), II.2(2), point (g), II.6, II.11, II.12, II.13, II.19 and II.20 of the agreement are also applicable to the third parties.]

20. International Organisations (general rule)

1. Arbitration

a. Any dispute, controversy or claim arising out of or relating to the interpretation, application or performance of this agreement, including its existence, validity or termination, between the Commission (“Party”) and (an) international organisation(s) (“Party”) acting as *beneficiary(ies)* (collectively referred to in this Article of the grant agreement as the “Parties”), which cannot be settled amicably, shall be settled by final and binding arbitration in accordance with the Permanent

Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, as in effect on the date of this agreement.

- b. The *number* of arbitrators shall be three.
- c. The *language* to be used in the arbitral proceedings shall be English.
- d. The *appointing* authority shall be the Secretary-General of the Permanent Court of Arbitration.
- e. The place of *arbitration* shall be Brussels, Belgium.

2. Certificates on the financial statements

With reference to Article II.3(2), certificates on the financial statements to be provided by an international organisation, where required, may be established by its regular internal or external auditor, in accordance with its internal financial regulations and procedures.

3. Controls and audits

The competent bodies of the European Union shall address any requests for controls or audits pursuant to the provisions of Article II.19 to the [Director General] [Secretary General] of the international organisation.

The international organisation shall make available to the competent bodies of the European Union, upon request, all relevant financial information, including statements of accounts concerning the action, where they are executed by the international organisation or by a subcontractor. In conformity with Article 287 of the Treaty on the Functioning of the European Union and with the *Financial Regulation* of the European Union, the competent bodies of the European Union may undertake controls and audits, including on-the-spot checks, related to the action financed by the European Union.

Any control or audit shall be carried out on a confidential basis.

4. Governing law

By way of derogation from Article 10.1 of this agreement, the law applicable on a subsidiary basis shall be the law of a Member State or an EFTA country).

5. Privileges and immunities

Nothing in this agreement shall be interpreted as a waiver of any privileges or immunities accorded to [insert name of the International Organisation] by its constituent documents or international law.

21. Members of integrated networks (Safer Internet Centres) in third countries which have been established as priorities for international co-operation

Eligible costs shall be limited to the following direct costs necessary to take part in the networking activities of Safer Internet Centres:

- Travel and subsistence costs for attending meetings of the European network of Safer Internet Centres, including regional meetings, for taking part in exchange schemes with other Safer Internet Centres, and for attending the Safer Internet Forum and other international events at the request of the European network of Safer Internet Centres or the Commission.
- Personnel costs and other specific costs for network co-operation

The financial contribution of the Union shall be up to 100% of the above-mentioned costs.

ANNEX I

Description of Work

ANNEX II

General Conditions

ANNEX II

GENERAL CONDITIONS

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PART A: IMPLEMENTATION OF *THE PROJECT*

Article II.1 - Definitions

“*Associated State*” means a State which is party to an international agreement with the Union, 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 Union.

“*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.15 and II.16, in compliance with the conditions set out in Articles II.14 and II.17. 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 Communities³ and the Commission Regulation No 2342/2002 of 23

³ OJ L 248, 16.9.2002, p.1

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 Communities⁴, and any subsequent amendment thereto in force at the time of the signature of this grant agreement

“*Force majeure*” means any unforeseeable and exceptional situation or event beyond the control of the Union 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 financial contribution of the Union 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 Union 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 Union 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 project tasks and 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 ensure that all the appropriate payments are made to the *beneficiaries* within 45 days of the day on which the bank account under Article 6(2) has been credited. 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) he shall monitor the compliance by *beneficiaries* with their obligations under this grant agreement.

⁴ OJ L 357, 31.12.2002, p.1

The coordinator may not subcontract the above-mentioned tasks.

Without prejudice to Article II.10.3, 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 by the Commission of the original (paper) copy will be taken into account for the time limits set out in the agreement.
 - (d) *Deliverables* submitted to the Commission for publication shall be of a suitable quality to enable direct publication and their submission to the Commission in a publishable form shall indicate that no confidential material is included therein.

2. As regards financial statements:

- (a) Costs incurred in currencies other than the euro shall be reported in euro on the basis of the daily 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 a certificate on financial statements and underlying accounts 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 Directive 2006/43/EC of 17 May 2006 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 Union arising from Article II.19.

- (d) *Beneficiaries* who do not benefit from a financial contribution from the Union are required to submit only a description of the efforts deployed and the resources used in order to carry out *the project*.
3. The Commission may decide to recover any *pre-financing* paid and not to pay the outstanding balance in case of failure to submit, within 45 days of the end of the project:
- the payment request and final financial statement,
 - the final report(s) or other project deliverable(s)
- subject to one month's written notice of non-receipt of the respective document(s).

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

1. The Commission shall evaluate *deliverables* within 45 calendar days of their receipt and at its discretion, approve them, reject them or ask for some clarification or additional information. The Commission may be assisted by external experts in the analysis and evaluation of *deliverables*.
2. Where the Commission asks for some clarification or additional information in relation to any *deliverable*, the time-limit for approval shall be suspended until the *beneficiaries* have submitted them. The *coordinator* shall be informed of that request and the extension of the delay for scrutiny by means of a formal document.
3. In the absence of remarks from the Commission within 45 days of receipt of *deliverables*, the latter shall be deemed to be approved.
4. 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.19 or II.20.

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 and duly justified in Annex I. Subcontracts may only cover the execution of a limited part of the *project*.

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. Beneficiaries shall take care to avoid

any conflict of interest in awarding a subcontract. 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.11, II.12 and II.13 and to submit to the audits provided for in Articles II.19 and II.20 .

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 Union 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 Union, 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 Union in connection with the performance of this agreement, *beneficiaries* who may bear responsibility shall be required to assist the Union.

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.21 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 *beneficiaries*.

This allocation shall be based on the relative weight of the *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.22 imposed on a defaulting *beneficiary*.

Article II.9 - Suspension of the project

1. The *coordinator* shall immediately inform the *Commission* of any event affecting or delaying the implementation of the *project*.
2. The *coordinator* may propose to suspend the *project* if *force majeure* or exceptional circumstances render its execution excessively difficult or uneconomic. The *coordinator* shall inform the *Commission* without delay of such circumstances, including all justifications and information relating to the event, as well as an estimation of the date when the work on the *project* may begin again. The suspension shall be subject to written approval by the *Commission* and shall take effect on the date when the *coordinator* receives notification from the *Commission* of its approval.
3. The *Commission* may suspend all of the work under the *project* where it considers that the *consortium* is not fulfilling its obligations under this grant agreement, in order to discuss with it the conditions necessary to reinstate the work again and propose the necessary amendments to the grant agreement to redress the situation. It shall notify the *coordinator* of the justifications for suspension as well as of the conditions necessary for the work to be resumed and give a deadline of not less than 10 days for comments. This suspension shall take effect on the expiry of the deadline or, if the *coordinator* submits comments, on confirmation of the suspension by the *Commission*.
4. During the period of suspension, no costs may be charged to the *project*.

The suspension of the *project* may be lifted once both parties have agreed on its continuation and, as appropriate, once any necessary modification, including the extension of the duration, has been made by means of a written amendment.

Article II.10 - 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 terminate this agreement or the participation of a *beneficiary*:
- (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 legal, financial, organisational or technical change or *change of control* of a *beneficiary* is likely substantially to affect *the project* or the interests of the Union or to call into question the decision to award the grant,
 - (d) in the event of bankruptcy, 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) where the Commission has evidence or seriously suspects a *beneficiary* or any related entity or person, of professional misconduct;
 - (f) where a *beneficiary* has not fulfilled obligations relating 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 Commission has evidence or seriously suspects a *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 Commission has evidence or seriously suspects a *beneficiary* or any related entity or person of a *substantial irregularity* or fraud in the award procedure or the performance of any grant agreement with the Commission;
 - (i) 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 Union's financial contribution or any other advantage 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 n° 83/349/EEC of 13 June 1983.

4. The termination procedure is initiated by registered letter of the Commission, with acknowledgement of receipt. The letter shall determine the notice period, which shall not exceed one month from the date of its receipt. In the cases referred to in points (b), (f) and (i), termination shall take immediately effect, from the day following the date on which the Commission's decision to terminate the grant agreement or the participation of a *beneficiary* is received.
5. 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*.
6. *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.
7. 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, within 45 calendar days after the effective date of termination, the *deliverables* relating to the work performed until the date of termination of the agreement or the date when their participation ends. They shall also submit financial statements in conformity with the provisions of Article II.3.2 within 45 days from the date of termination. If no *deliverable* or no financial statement is received within this time limit, the Commission shall not reimburse the expenditure incurred by the *beneficiaries* or the *beneficiary* up to the date of termination and it shall recover any amount, if its use is not substantiated by *deliverables* and financial statements approved by the Commission.
8. 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 6 of this Article.
9. In the event of termination pursuant to paragraph 2, first subparagraph, point (b), and paragraph 3 (a), (c), (e), (g), (h) or (i) of this Article, the Commission may require repayment of all or part of the Union's financial contribution, taking into account the nature and results of the work carried out and its usefulness to the Union in the context of the present programme.
10. 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.11 - 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.12 - Publicity

1. The Commission shall be authorised to publish the following information in any form and medium, including the Internet⁵:
 - the *beneficiary's* name and address,
 - the subject and purpose of the grant,

⁵ 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

- 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 Union, and shall indicate the relevant Union 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 Union and that the Union is not responsible for any use that might be made of information contained therein.

Article II.13 - Confidentiality

1. Without prejudice to Articles II.11 and II.12 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.

Part C: Financial Provisions

Article II.14 - Eligible costs - general principles

1. *Eligible costs* are the costs defined in Articles II.15 and II.16. They shall fulfil the following conditions:

- be actual;
- be necessary for the project, reasonable, justified, exclude any profit margin, and comply with the requirements of sound financial management, in particular regarding economy and efficiency;
- be incurred by the *beneficiary* during the *duration of the project*;
- be connected with the subject of the agreement and be indicated in the estimated overall budget in Annex I;
- be identifiable and verifiable, in particular be recorded in the accounts of the *beneficiary* and be 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*;
- comply with the requirements of applicable tax and social legislation.

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 declared or reimbursed in respect of another Union project.
3. No cost may be charged to more than one of the *eligible cost* categories referred to in Article II.15 and II.16.
 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 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.15 - Direct costs

Direct costs are all those eligible costs which can be attributed directly to the *project* and are identified by the *beneficiary* as such, in accordance with its accounting principles and its usual internal rules.

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).

2. Subcontracting

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.16.

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.16 - Indirect costs

Indirect costs are all those eligible costs which cannot be identified by the *beneficiary* as being directly attributed to the *project* but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the *project*. They may not include any eligible direct costs.

By way of derogation to Article II.14, *beneficiaries* shall charge overheads calculated on a flat rate basis amounting to 30% of the eligible 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.17 - 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 date of the final payment.

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.18 – Payment of the financial contribution of the Union

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.19 or a technical review pursuant to Article II.20. 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 *beneficiaries* are entitled to interest on late payment in accordance with the conditions set out in the *Financial Regulation*, 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 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 does not apply to *beneficiaries* which are public authorities of a Member State.

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. The interest shall not be treated as a receipt for the *project* for the purposes of determining the final grant. Any such interest payment is not considered as part of the financial contribution of the Union 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.

By way of exception, when the interest calculated in accordance with the subparagraphs above is lower than or equal to EUR 200, it shall be paid only upon a demand submitted by the *coordinator* on behalf of the *beneficiaries* within two months of receipt of the late payment.

(d) 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 European Union. The Commission shall deduct the interest yielded by *pre-financing* which exceeds EUR 50 000 as provided for in Article 6 from the payment of the balance of the amount due to the beneficiaries. The interest shall not be treated as a receipt for the project within the meaning of Article II.18(2)(b).

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 Commission 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.18(2), or is generated by *pre-financing* referred to in the previous subparagraph, the Commission shall recover it in accordance with Article II.19.

Interest yielded by *pre-financing* paid to Member States is not due to the Commission.

2. The final contribution of the Union 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 financial contribution of the Union 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.10, and without prejudice to the right of the Commission to apply the penalties referred to in Article II.22, if the action is not implemented or is implemented

poorly, partially or late, the Commission may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in the agreement.

- (d) Where the total financial contribution due from the Union, taking into account any adjustments, including as a result of a financial audit as referred to in Article II.19, 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.21.
- (e) Where it is discovered after the final payment 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 Union's financial contribution or any other advantage provided for in the agreement, the Commission may require repayment of all or part of the Union's financial contribution.

Part D: Controls, Recoveries and Penalties

Article II.19 - 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 date of the final payment.

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, to all the information needed in order to conduct such audits, in particular to the offices of the personnel of the *beneficiaries* connected with *the project*, to the documentation referred to in Article II.17, 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 Union's financial contribution in the framework of this agreement, on the basis of their own rules.

Article II.20 - Technical review of *the project*

1. The Commission, or any representative authorised by it, may initiate a technical review up to the date of the final payment 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.19(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 suspension of the project pursuant to Article II.9, the termination of the agreement pursuant to Article II.10 and the reduction of the grant pursuant to Article II.18.2 (c).

Article II.21 - Reimbursement to the Commission and Recovery Orders

1. Where an amount, paid by the Commission to the *coordinator* in his capacity of recipient of all payments, is to be recovered under the terms of the agreement, the *coordinator* undertakes to repay the Commission 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 Commission reserves the right to recover directly the amount due from the final recipient.

2. In the latter case, or if recovery is justified under Article II.22 of the agreement, the *beneficiary* concerned undertakes to repay the Commission the sum in question, on whatever terms and by whatever date it may specify. If the obligation to pay the amount due is not honoured by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article II.18.1, 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.
3. Any partial payment shall first be entered against charges and interest on late payment and then against the principal.
4. Sums owed to the Commission may be recovered by offsetting them against any sums owed to the concerned *beneficiary*, or by calling in any financial guarantee. The *beneficiary's* prior consent shall not be required.
5. Bank charges occasioned by the recovery of the sums owed to the Commission shall be borne solely by the concerned *beneficiary*.
6. 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.

Article II.22- 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 financial contribution of the Union 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.

ANNEX III

Form A – consent of the *beneficiaries* to accede to the agreement

(to be filled in by each beneficiary identified in Article 1.2 of the agreement)

[*full name and legal form of the beneficiary*], represented for the purpose hereof by [*name of legal representative*] (*function*) or her/his/their authorised representative established in (*full address: city/state/province/country*) (*person legally authorised to act on behalf of the legal entity*)] acting as its legal authorised representative, hereby consents to become a *beneficiary* to agreement n° (relating to project [*title*]) signed between the European Commission and [*name of the coordinator and legal form (acronym)*] established in (*full address: city/state/province/country*)), and accepts in accordance with the provisions of the aforementioned agreement all the rights and obligations of a *beneficiary*. [*full name and legal form of the beneficiary*] confirms to have received a copy of the agreement.

Done in 3 copies, of which one shall be kept by the *coordinator* and one by [*name of the beneficiary*], the third being sent to the Commission by the *coordinator* in accordance with Article 2.1 of the agreement.

Name of Legal Entity (*full name of the beneficiary*)

Name of legally authorised representative: (*written out in full*)

Title of legally authorised representative:

Signature of legally authorised representative:

Date:

Stamp of the organisation:

Name of Legal Entity: (*full name of the coordinator*)

Name of legally authorised representative:

Title of legally authorised representative:

Signature of legally authorised representative:

Date:

Stamp of the organisation:

Form B – accession request of new legal entities to the agreement

(To be filled in by each new participant willing to become beneficiary)

[*full name and legal form of new beneficiary*], represented for the purpose hereof by [*name of legal representative*] (*function*) or her/his/their authorised representative established in (*full address: city/state/province/country*)] acting as its legal authorised representative, hereby requests to become a *beneficiary* to agreement n° (relating to project [*title*]) signed between the European Commission and [*name of the coordinator*], and accepts, in accordance with the provisions of the aforementioned agreement, all the rights and obligations of a *beneficiary* starting the (*date*). [*full name and legal form of the beneficiary*] confirms to have received a copy of the agreement.

[*name of the coordinator and legal form (acronym) established in (full address: city/state/province/country°)*], represented for the purpose hereof by [*(name of legal representative)*] (*function*) or her/his/their authorised representative established in (*full address: city/state/province/country*)] acting as its legal authorised representative, hereby certifies as representative of the *beneficiaries* to agreement n°... (relating to project [*title*]) that the *consortium* proposes and agrees to the accession of [*full name and legal form of new beneficiary*] to the aforementioned agreement as *beneficiary* starting on the above-mentioned date.

Enclosures:

agreement Preparation Form duly completed and signed by the new *beneficiary*.
modified Annex I to the *agreement* describing the work to be performed by the new *beneficiary*.

Done in 3 copies, of which one shall be kept by the *coordinator* and one by [*name of new beneficiary*], the third being sent to the Commission by the *coordinator* in accordance with Article 2.1 of the agreement.

Name of Legal Entity: (*full name of the new beneficiary (legal entity)*)

Name of legally authorised representative: (*written out in full*)

Title of legally authorised representative:

Signature of legally authorised representative:

Date:

Stamp of the organisation:

Name of Legal Entity: (*full name of the coordinator (legal entity)*)

Name of legally authorised representative: (*written out in full*)

Title of legally authorised representative:

Signature of legally authorised representative:

Date:

Stamp of the organisation: