

SEVENTH FRAMEWORK PROGRAMME ERC GRANT AGREEMENT - ANNEX V-A-

ANNEX V-A FORM - TERMS OF REFERENCE FOR THE CERTIFICATE OF FINANCIAL STATEMENTS

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Terms of Reference for an Independent Report of Factual Findings on costs claimed under a ERC Grant Agreement financed under the Seventh Research Framework Programme (FP7)

The following are the terms of reference ('ToR') on which <name of the Beneficiary> 'the Beneficiary' agrees to engage < name of the audit firm> 'the Auditor' to provide an independent report of factual findings on a Financial Statement(s)¹ prepared by the Beneficiary and to report in connection with a European Union financed ERC grant agreement concerning the Seventh Research Framework Programme (FP7), concerning < title and number of the ERC grant agreement> (the 'ERC Grant Agreement'). Where in these ToR the 'European Research Council Executive Agency' (the "Agency") is mentioned this refers to its quality as signatory of the ERC Grant Agreement with the Beneficiary. The European Union is not a party to this engagement.

1.1 Responsibilities of the Parties to the Engagement

'**The Beneficiary**' refers to the legal entity that is receiving the grant and that has signed the ERC Grant Agreement with the Agency.

- The Beneficiary is responsible for preparing a Financial Statement for the Action financed by the ERC Grant Agreement in compliance with such agreements and providing it to the Auditor, and for ensuring that this Financial Statement can be properly reconciled to the Beneficiary's accounting and bookkeeping system and to the underlying accounts and records. Notwithstanding the procedures to be carried out, the Beneficiary remains at all times responsible and liable for the accuracy of the Financial Statement.
- The Beneficiary is responsible for the factual statements which will enable the Auditor to carry out the procedures specified, and will provide the Auditor with a written representation letter supporting these statements, clearly dated and stating the period covered by the statements.
- The Beneficiary accepts that the ability of the Auditor to perform the procedures required by this engagement effectively depends upon the Beneficiary providing full and free access to the Beneficiary's staff and its accounting and other relevant records.

'**The Auditor**' refers to the Auditor who is responsible for performing the agreed-upon procedures as specified in these ToR, and for submitting an independent report of factual findings to the Beneficiary.

The Auditor must be independent from the Beneficiary.

- [*Option 1: delete if not applicable*] The Auditor is qualified to carry out statutory audits of accounting documents in accordance with the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC or similar national regulations.
- [*Option 2: delete if not applicable*] The Auditor is a Competent Public Officer for which the relevant national authorities have established the legal capacity to audit the Beneficiary and has not been involved in the preparation of the financial statements.

¹ Financial Statement in this context refers solely to Annex IV by which the Beneficiary claims costs under the ERC Grant Agreement.

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- The procedures to be performed are specified by the European Commission and the Auditor is not responsible for the suitability and appropriateness of these procedures.

1.2 Subject of the Engagement

The subject of this engagement is the *<interim or final; delete what is not applicable>* Financial Statement in connection with the ERC Grant Agreement for the period covering *<dd Month yyyy to dd Month yyyy>*.

1.3 Reason for the Engagement

The Beneficiary is required to submit to the Agency a certificate on a Financial Statement in the form of an independent report of factual findings produced by an external auditor in support of the payment requested by the Beneficiary under Article II.4 of the ERC Grant Agreement. The Authorising Officer of the Agency requires this Report as he makes the payment of costs requested by the Beneficiary conditional on the factual findings of this Report.

1.4 Engagement Type and Objective

This constitutes an engagement to perform specific agreed-upon procedures regarding an independent report of factual findings on costs claimed under the ERC Grant Agreement.

As this engagement is not an assurance engagement the Auditor does not provide an audit opinion and expresses no assurance. The Agency derives its assurance by drawing its own conclusions from the factual findings reported by the Auditor on the Financial Statement and the payment request of the Beneficiary relating thereto.

The Auditor shall include in its Report that no conflict of interest exists between it and the Beneficiary in establishing this Report, as well as the fee paid to the Auditor for providing the Report.

1.5 Scope of Work

1.5.1 The Auditor shall undertake this engagement in accordance with these ToR and:

- in accordance with the International Standard on Related Services ('ISRS') 4400 *Engagements to perform Agreed-upon Procedures regarding Financial Information* as promulgated by the IFAC;
- in compliance with the *Code of Ethics for Professional Accountants* issued by the IFAC. Although ISRS 4400 provides that independence is not a requirement for agreed-upon procedures engagements, the Agency requires that the Auditor also complies with the independence requirements of the *Code of Ethics for Professional Accountants*.

1.5.2 Planning, procedures, documentation and evidence

The Auditor should plan the work so that the procedures can be effectively performed. For this purpose he performs the procedures specified in 1.9 of these Terms of Reference ('Scope of Work – Compulsory Report Format and Procedures to be Performed') and uses the evidence obtained from these procedures as the basis for the Report of factual findings.

1.6 Reporting

The Report of factual findings, an example of which is attached to this ToR, should describe the purpose and the agreed-upon procedures of the engagement in sufficient detail in order to enable the Beneficiary and the Agency to understand the nature and extent of the procedures performed by the Auditor. Use of the reporting format attached as Annex V-A of the ERC Grant Agreement is

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compulsory. The Report should be written in the language indicated for the financial management reporting in Article .4 of the ERC Grant Agreement. In accordance with Article II.22 of the ERC Grant Agreement, the Agency, the European Commission and the Court of Auditors have the right to audit any work carried out under the project for which costs are claimed from *the Union*, including the work related to this engagement.

1.7 Timing

The Report should be provided by [DATE].

1.8 Other Terms

[The Beneficiary and the Auditor can use this section to agree other specific terms such as Auditor's fees, out of pocket expenses, liability, applicable law, etc.]

[legal name of the audit firm]

[name & function of authorised representative]

<dd Month yyyy>

<Signature of the Auditor>

[legal name of the Beneficiary]

[name & function of authorised representative]

<dd Month yyyy>

<Signature of the Beneficiary>

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1.9 Scope of Work – Compulsory Report Format and Procedures to be Performed

Independent Report of Factual Findings on costs claimed under a ERC Grant Agreement financed under the Seventh Research Framework Programme (FP7)

To be printed on letterhead paper of the Auditor

<Name of contact person(s)>, < Position>

< Beneficiary's name>

<Address>

<dd Month yyyy>

In accordance with our contract dated <dd Month yyyy> with <name of the Beneficiary> “the Beneficiary” and the terms of reference attached thereto (appended to this Report), we provide our Independent Report of Factual Findings (“the Report”), as specified below.

Objective

We [*legal name of the audit firm*], established in [*full address/city/state/province/country*] represented for signature of this Report by [*name and function of an authorised representative*] have performed agreed-upon procedures regarding the cost declared in the Financial Statement(s)² of [*name of beneficiary*] hereinafter referred to as the Beneficiary, to which this Report is attached, and which is to be presented to the Agency under ERC grant agreement [*ERC grant agreement reference: title, acronym, number*] for the following period(s) [*insert period(s) covered by the Financial Statement(s) per Activity*]] and for the following amount [*insert amount in EUR*]. This engagement involved performing certain specified procedures, the results of which the Agency uses to draw conclusions as to the eligibility of the costs claimed.

Scope of Work

Our engagement was carried out in accordance with :

- the terms of reference appended to this Report and:
- International Standard on Related Services (‘ISRS’) 4400 *Engagements to perform Agreed-upon Procedures regarding Financial Information* as promulgated by the International Federation of Accountants (‘IFAC);
- the *Code of Ethics for Professional Accountants* issued by the IFAC. Although ISRS 4400 provides that independence is not a requirement for agreed-upon procedures engagements, the Agency requires that the Auditor also complies with the independence requirements of the *Code of Ethics for Professional Accountants*;

As requested, we have only performed the procedures set out in the terms of reference for this engagement and we have reported our factual findings on those procedures in the table appended to this Report.

The scope of these agreed upon procedures has been determined solely by the European Commission and the procedures were performed solely to assist the Agency in evaluating whether the costs claimed by the Beneficiary in the accompanying Financial Statement has been claimed in accordance with the ERC Grant Agreement. The Auditor is not responsible for the suitability and appropriateness of these procedures.

² Financial Statement in this context refers solely to Annex IV by which the Beneficiary claims costs under the Grant Agreement.

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Because the procedures performed by us did not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance on the Financial Statements.

Had we performed additional procedures or had we performed an audit or review of the Financial Statements of the Beneficiary in accordance with International Standards on Auditing, other matters might have come to our attention that would have been reported to you.

Sources of Information

The Report sets out information provided to us by the management of the Beneficiary in response to specific questions or as obtained and extracted from the Beneficiary's information and accounting systems.

Factual Findings

The above mentioned Financial Statement(s) per Activity was (were) examined and all procedures specified in the appended table for our engagement were carried out. On the basis of the results of these procedures, we found:

All documentation and accounting information to enable us to carry out these procedures has been provided to us by the Beneficiary. Except as indicated below, no exceptions were noted.

Exceptions

- In some cases, the Auditor was not able to successfully complete the procedures specified. These exceptions are as follows:

Exceptions such as inability to reconcile key information, unavailability of data which prevented the Auditor from carrying out the procedures, etc. should be listed here. The Agency will use this information to decide the amounts which will be reimbursed.

Use of this Report

This Report is solely for the purpose set forth in the above objective.

This Report is prepared solely for the confidential use of the Beneficiary and the Agency and solely for the purpose of submission to the Agency in connection with the requirements as set out in Article II.4 of the ERC Grant Agreement. This Report may not be relied upon by the Beneficiary or by the Agency for any other purpose, nor may it be distributed to any other parties. The Agency may only disclose this Report to others who have regulatory rights of access to it, in particular the European Commission, the European Anti Fraud Office and the European Court of Auditors.

This Report relates only to the Financial Statement(s) specified above and does not extend to any other financial statements of the Beneficiary.

No conflict of interest exists between the Auditor and the Beneficiary in establishing this Report. The fee paid to the Auditor for providing the Report was € _____.

We look forward to discussing our Report with you and would be pleased to provide any further information or assistance which may be required.

[legal name of the audit firm]

[name and function of an authorised representative]

<dd Month yyyy>, <Signature of the Auditor>

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Procedures performed by the Auditor

The Auditor designs and carries out his work in accordance with the objective and scope of this engagement and the procedures to be performed as specified below. When performing these procedures the Auditor may apply techniques such as inquiry and analysis, (re)computation, comparison, other clerical accuracy checks, observation, inspection of records and documents, inspection of assets and obtaining confirmations or any others deemed necessary in carrying out these procedures..

The European Commission reserves the right to issue guidance together with example definitions and findings to guide the Auditor in the nature and presentation of the facts to be ascertained. The European Commission reserves the right to vary the procedures by written notification to the Beneficiary. The procedures to be performed are listed as follows:

Procedures	Standard factual finding and basis for exception reporting
Personnel Costs	
<p>1. Recalculate hourly personnel and overhead rates for personnel (full coverage if less than 20 employees, otherwise a sample of minimum 20, or 20% of employees, whichever is the greater), indicate the number of productive hours used and hourly rates.</p> <p>Where sampling is used, selection should be random with a view to producing a representative sample.</p> <p>'Productive hours' represent the (average) number of hours made available by the employee in a year after the deduction of holiday, sick leave and other entitlements. The auditor obtained the calculation of the productive hours after inspecting all necessary records, national legislation, labour agreements, contracts, any other relevant documentation. The calculation should be based on the period(s) corresponding to the Financial Statement(s) or on the last closed financial year (whichever is used by the beneficiary).</p>	<p>The auditor sampled _____ employees out of the total of _____ employees.</p> <p>For each employee in the sample of ____, the Auditor obtained the personnel costs (salary and employer's costs) from the payroll system together with the productive hours from the time records of each employee.</p> <p>For each employee selected, the Auditor recomputed the hourly rate by dividing the actual personnel costs by the actual productive hours, which was then compared to the hourly rate charged by the Beneficiary.</p> <p>No exceptions were noted.</p> <p>The average number of productive hours for the employees selected was _____.</p> <p>The productive hours calculation corresponds to the usual accounting practice of the beneficiary.</p> <p>If the productive hours or costs of personnel cannot be identified, they should be listed (together with the amounts) as exceptions in the main report.</p> <p>If the productive hours calculation does not correspond to the usual accounting practice of the beneficiary, this should be listed as an exception in the main report.</p>
<p>2. For the same selection examine and describe time recording of employees (paper/ computer, daily/weekly/monthly, signed, authorised).</p>	<p>Employees record their time on a daily/ weekly/ monthly basis using a paper/computer-based system. The time-records selected were authorised by the project manager or other superior.</p> <p>If no time records are available which fit the above description, this should be listed as an exception in the main report.</p>
<p>3. Employment status and employment conditions of personnel. The Auditor should obtain the employment contracts of the employees selected and compare with the standard</p>	<p>For the employees selected, the Auditor inspected their employment contracts and found that they were:</p> <ul style="list-style-type: none"> – directly hired by the Beneficiary in accordance with its national legislation, – under the sole technical supervision and responsibility of the latter, and

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Procedures	Standard factual finding and basis for exception reporting
<p>employment contract used by the Beneficiary. Differences which are not foreseen by the ERC Grant Agreement should be noted as exceptions.</p>	<p>– remunerated in accordance with the normal practices of the Beneficiary. Personnel who do not meet all three conditions should be listed (together with the amounts) as exceptions in the main report.</p>
<p>4. Use of average personnel costs Apply 4a, 4b or 4c according to the existence or not of an approved Methodology Certificate (CoMAv or CoM if it concerns average personnel costs)_</p> <p>4a. With an approved Methodology Certificate including average personnel costs:</p> <p>4b. Without an approved Methodology Certificate (not applicable to SME owners and natural persons not receiving a salary):</p> <ul style="list-style-type: none"> • The auditor reviewed all relevant manuals and/or internal guidance describing the methodology used to calculate average personnel costs; • The auditor obtained a list of all average personnel rates calculated by the beneficiary in accordance with the methodology used; • The auditor verified that the calculation of the average personnel costs excludes ineligible items as defined in Art.II.14.3, Annex II to ECGA or any costs claimed under other cost categories • The auditor obtained a list of all relevant employees (working on EU projects + not working on EU projects) based on which the average personnel rate(s) are calculated; 	<p>4a.</p> <p>The Auditor found that the personnel costs charged to the financial statement:</p> <ul style="list-style-type: none"> - are calculated using average costs in accordance with the methodology as specified in the Report of findings on the methodology dated _____. - have been calculated using amounts derived from the relevant period which can be reconciled to the accounting records of the relevant period. <p>Where categories are used, the Auditor verified that the researcher (or research-related person) had been correctly classified.</p> <p>The Auditor obtained confirmation from the Beneficiary that the rates used were not budgeted or estimated amounts.</p> <p>If amounts cannot be reconciled, or if estimates or budgeted amounts were used, this should be reported as an exception in the main report.</p> <p>4b.</p> <p>The auditor found:</p> <ul style="list-style-type: none"> • no discrepancies between the method described in the relevant documents and the method used by the beneficiary; • The methodology used to calculate the average personnel hourly rate(s) represent(s) the usual cost accounting practice of the organisation; • no differences arose from the numerical reconciliation • The Auditor confirms that the rates used for the calculation of the average personnel costs were not based on budgeted or estimated amounts. <p>If amounts cannot be reconciled, or if estimates or budgeted amounts were used, this should be reported as an exception in the main report.</p> <p>If the usual accounting practice differs from the one described, , this should be reported as an exception in the main report</p>

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Procedures	Standard factual finding and basis for exception reporting
<ul style="list-style-type: none"> • The auditor reviewed the allocation of employees to the relevant group and verified the correctness of the Full Time Equivalent (FTE). • The auditor performed a numerical reconciliation between the total amount of personnel costs taken into consideration for the calculation of the average personnel rate and the total amount of personnel costs recorded in the statutory accounts. • The auditor verified on a sample basis that the appropriate average hourly rate was used for the personnel costs claimed on the audited project. <p>4c. Without an approved Methodology Certificate – applicable only for SME owners and natural persons not receiving a salary:</p> <ul style="list-style-type: none"> • The auditor reviewed payroll and accounting records, contracts and other relevant legal documents in order to verify that the SME owners and the natural persons concerned do not receive any salary. • The auditor obtained documents (such as employment records, CVs, diplomas and other relevant documents) proving professional experience of the persons concerned and supporting determination of appropriate research category in line with 'People' Work Programme. • The auditor verified that the annual living allowance corresponds to the reference year of the publication of the call under which the project was selected for funding and that the beneficiary applied the appropriate country coefficient correction as published in the 'People' work programme of the year of publication of the call. • The Auditor recomputed the hourly rate by dividing the applicable living allowance corresponding to the appropriate research category by the standard number of productive hours (1575) and by multiplying it by the appropriate country correction coefficient. 	<p>4c.</p> <ul style="list-style-type: none"> • SME owners and natural persons charging personnel costs based on a flat rate, do not receive salary. <p>If they receive any salary, it should be listed as an exception in the main report.</p> <ul style="list-style-type: none"> • Time spent on projects was duly recorded by the persons whose personal work costs are charged on the basis of a flat rate. These time-records have been verified by a superior or another person involved in the project. In the absence of any superior or other person working closely with such persons, the Auditor confirms that documentation is available to ascertain the reliability of the time records. <p>If no time records are available, this should be listed as an exception in the main report.</p> <ul style="list-style-type: none"> • The hourly rates applicable to all SME owners and natural persons who do not receiving a salary are correctly calculated. • The total numbers of hours claimed for the European Union project in a year is in line with their time-sheets but is not higher than the standard number of productive hours per SME owner or natural person (1575). • No differences arose from the numerical reconciliation. <p>If the calculation is not correct, or the amounts could not be reconciled, this should be listed as an exception in the main report.</p>

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Procedures	Standard factual finding and basis for exception reporting
<ul style="list-style-type: none"> • The auditor reviewed the time-sheets completed by the persons whose personal work costs were claimed on a flat rate basis. • The auditor performed a numerical reconciliation between the total amount of personnel and the total amount of personnel costs recorded in the statutory accounts. 	
Subcontracting	
5. Obtain a written description from the Beneficiary regarding 3 rd party resources used and compare with Annex 1 to the ERC Grant Agreement.	The Auditor compared the description of the 3 rd party resources provided by the Beneficiary to the specification in Annex 1 to the ERC Grant Agreement, and found them to be the same If the descriptions do not clearly match, this should be reported as an exception in the main report.
6. Inspect documents and obtain confirmations that subcontracts are awarded according to a procedure including an analysis of best value for money (best price-quality ratio), transparency and equal treatment. Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.	The Auditor obtained tendering documents for each subcontract entered into and found that the tendering process was followed and that a written analysis of value-for-money had been prepared by the Beneficiary in support of the final choice of subcontractor, or that the contract had been awarded as part of an existing framework contract entered into prior to the beginning of the project. If the Auditor is not provided with evidence of either of the above situations, the amount of the subcontract should be listed as an exception in the main report.
Other Direct Costs	
7. Allocation of equipment subject to depreciation is correctly identified and allocated to the project. Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.	The Auditor traced the equipment charged to the project to the accounting records and the underlying invoices. The Beneficiary has documented the link with the project on the invoice and purchase documentation, and, where relevant, the project accounting. The asset value was agreed to the invoice and no VAT or other identifiable indirect taxes were charged. The depreciation method used to charge the equipment to the project was compared to the Beneficiary's normal accounting policy and found to be the same. If assets have been charged which do not comply with the above, they should be listed (together with the amounts) as exceptions in the main report.
8. Travel costs correctly identified and allocated to the project (and in line with Beneficiary's normal policy for non-EU work regarding first-class travel, etc.) Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater. The Beneficiary should provide written evidence of its normal policy for travel costs (e.g. use of first class tickets) to enable the Auditor to compare the travel charged with this policy.	The Auditor inspected the sample and found that the Beneficiary had allocated travel costs to the project by marking of invoices and purchase orders with the project reference, resulting in traceable allocation in the project accounts. The costs charged were compared to the invoices and found to be the same. No VAT or other identifiable indirect taxes were charged. The use of first class travel was in line with the written policy provided by the Beneficiary. Costs which are not allocated to project accounts and do not have a clear attribution (normally by writing the project number on the original invoice) should be listed (together with the amounts) as exceptions in the main report.

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Procedures	Standard factual finding and basis for exception reporting
<p>9. Consumables correctly identified and allocated to the project. Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.</p>	<p>The Auditor inspected the sample and found that the Beneficiary had allocated consumable costs to the project by marking of invoices and purchase orders with the project reference, resulting in traceable allocation in the project accounts. The costs charged were compared to the invoices and found to be the same. No VAT or other identifiable indirect taxes were charged. Costs which are not allocated to project accounts and do not have a clear attribution (normally by writing the project number on the original invoice) should be listed (together with the amounts) as exceptions in the main report.</p>
<p>10. Inspect and compare exchange rates into Euros.</p>	<p>The Auditor compared the exchange rates used for conversion with the applicable official exchange rates established by the European Union and the Beneficiary used [choose one]:</p> <ul style="list-style-type: none"> • the conversion rate of the date where the actual costs were incurred • the rate applicable on the first day of the month following the end of reporting period <p>Where rates cannot be agreed, an exception should be noted, (together with the amount) in the main report.</p>
<p>11. Identification of receipts. The Beneficiary is obliged to declare in its claim any receipts related to the project (income from events, rebates from suppliers, etc.)</p>	<p>The Auditor examined the relevant project accounts and obtained representations from the Beneficiary that the amounts listed represent a complete record of the sources of income connected with the project. The amounts included in the claim regarding receipts is the same as the amount recorded in the project accounting. Any discrepancies in the receipts noted in the accounts and those reported by the Beneficiary should be noted (together with the amount) as exceptions in the main report.</p>
<p>12. Identification of interest yielded until 31/12/2012 on pre-financing. The Beneficiary, when it is the coordinator of the project, is obliged to declare interest yielded until 31/12/2012 on pre-financing</p>	<p>The Auditor compared the relevant project accounts with the interest shown in the bank statements and found them to be the same. Any discrepancies in the interest noted in the accounts and those reported by the Beneficiary should be noted (together with the amount) as exceptions in the main report.</p>

legal name of the audit firm]

[name and function of an authorised representative]

<dd Month yyyy>

<Signature of the Auditor>