

RFCS GRANT AGREEMENT

ANNEX VII - FORM D - TERMS OF REFERENCE FOR THE CERTIFICATE OF FINANCIAL STATEMENTS

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Preliminary Instructions

As a general rule, the Certificate on the Financial Statements should be composed of three separate documents to be found in this Annex VII (Form D):

- A list of the minimum terms (sections 1.1 to 1.8) required by the Commission to be included in the engagement letter between the beneficiary and the auditor.
The engagement letter must be dated and signed by both parties
- The Auditor's Report of Factual Findings (section 1.9) to be issued on the auditor's letterhead and dated, stamped and signed by the auditor (or competent public officer)
- A detailed description (table of Annex VII - Form D) including the procedures to be performed by the auditor and the findings expected to result there from. This table has to be dated, stamped and signed by the Auditor (or competent public officer) on completion of its work.

Please note that the beneficiary's Financial Statements (Annex VI - Form C) signed by the beneficiary must be attached to the Report of Factual Findings.

Terms of Reference for an Independent Report of Factual Findings on costs claimed under a Grant Agreement financed under the Research Fund for Coal and Steel (RFCS)

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 Community financed grant agreement concerning the Research Fund for Coal and Steel (RFCS), concerning < title and number of the grant agreement> (the 'Grant Agreement'). Where in these ToR the 'European Commission' is mentioned this refers to its quality as signatory of the Grant Agreement with the Beneficiary. The European Community 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 Grant Agreement with the European Commission².

- The Beneficiary is responsible for preparing a Financial Statement for the Action financed by the 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 reliable 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.
- 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 Financial Statement in this context refers solely to Form C - Annex VI by which the Beneficiary claims costs under the Grant Agreement.

² Where applicable, this Form shall be filled in also by Third Parties. In that case, the wording "the Beneficiary" shall be read as "the Third Party".

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 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 European Commission 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 Grant Agreement. The Authorising Officer of the Commission 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 Grant Agreement.

As this engagement is not an assurance engagement the Auditor does not provide an audit opinion and expresses no assurance. The European Commission 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 European Commission 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 European Commission to understand the nature and extent of the procedures performed by the Auditor. Use of the reporting format attached as Annex VII of the Grant Agreement is compulsory. The Report should be written in the language indicated in Article 4 of the Grant Agreement. In accordance with Article II.22 of the Grant Agreement, 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 Community, 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 Beneficiary]

[[name and function of an authorised representative]

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

[legal name of the audit firm]

[[name and function of an authorised representative]

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

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

Independent Report of Factual Findings on costs claimed under a Grant Agreement financed under the programme of the Research Fund for Coal and Steel (RFCS)

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)³ of [*name of beneficiary*] hereinafter referred to as the Beneficiary, to which this Report is attached, and which is to be presented to the Commission of the European Communities under grant agreement [*EC grant agreement reference: title, acronym, number*] for the following period(s) [*insert period(s) covered by the Financial Statement(s) per Activity*]. This engagement involved performing certain specified procedures, the results of which the European Commission 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 European Commission 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 European Commission in evaluating whether the costs claimed by the Beneficiary in the accompanying Financial Statement has been claimed in accordance with the Grant Agreement. The Auditor is not responsible for the suitability and appropriateness of these procedures.

³ Financial Statement in this context refers solely to Form C - Annex VI by which the Beneficiary claims costs under the Grant Agreement.

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 Commission 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 European Commission and solely for the purpose of submission to the European Commission in connection with the requirements as set out in Article II.4.4 of the Grant Agreement. This Report may not be relied upon by the Beneficiary or by the European Commission for any other purpose, nor may it be distributed to any other parties. The European Commission may only disclose this Report to others who have regulatory rights of access to it, in particular 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 interest⁴ exists between the Auditor and the Beneficiary in establishing this Report. The fee paid to the Auditor for providing the Report was € _____.

⁴ A conflict of interest arises when the auditor's objectivity to establish the certificate is compromised in fact or in appearance when the auditor for instance:

- was involved in the preparation of the Financial Statements (Forms C);
- stands to benefit directly should the certificate be accepted;
- has a close relationship with any person representing the beneficiary;
- is a director, trustee or partner of the beneficiary;
- is in any other situation that compromises his or her independence or ability to establish the certificate impartially.

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>

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. Use of actual staff costs, as set out in Article II.15.1.2.4:</p> <p>Recalculate hourly personnel rates of employees having carried out the work on the project (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. Where sampling is used, selection should be random with a view to producing a representative sample</p> <p>'Productive hours' represent the number of hours as set out under Article II.15.1.2.4. This calculation should be provided by the Beneficiary.</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 productive hours as referred to in Article II.15.1.2.4, 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 was _____.</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>2. Use of estimated staff costs, as set out in Article II.15.1.2.5</p>	<p>For each employee having carried out work on the project, 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, the Auditor computed the actual staff costs and the actual productive hours for the work carried out on the <i>project</i>.</p>

Procedures	Standard factual finding and basis for exception reporting
	<p>The auditor will report the employees having carried out the work on the project and report, per staff category, the total actual staff costs and the total actual productive hours for the work carried out on the <i>project</i> .in the factual findings of the main report.</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>3. For the same employees under 1) or 2), examine and describe time recording documents (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>4. Employment status and employment conditions of personnel. The Auditor should obtain the employment contracts of the employees and compare with the standard employment contract used by the Beneficiary. Differences which are not foreseen by the Grant Agreement should be noted as exceptions.</p>	<p>For the employees, 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 – remunerated in accordance with the normal practices of the Beneficiary. <p>Personnel who do not meet all three conditions should be listed (together with the amounts) as exceptions in the main report.</p>
Operating costs	
<p>5. Inspect documents and obtain confirmations that subcontracts other than those referred to in Article II.7 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.</p>	<p>The Auditor obtained tendering documents for the selected subcontracts 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, or that the contract had been awarded as part of an existing framework contract entered into prior to the beginning of the project.</p> <p>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.</p>
Other Direct Costs	
<p>6. Allocation of equipment is correctly identified and allocated to the project, as referred to in Article II.15.1.1. 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 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 calculation method used to charge the equipment to the project was found to be in accordance with Article II.15.1.1.</p> <p>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.</p>
Indirect costs	
<p>7. Allocation of indirect costs through a flat rate amounting to</p>	<p>The Auditor certifies that the flat rate has been calculated on the basis of the eligible staff costs.</p>

Procedures	Standard factual finding and basis for exception reporting
35% of the eligible staff costs as referred to in Article II.15.1.2	
<p>8. 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 amount included in the claim regarding receipts is the same as the amount recorded in the project accounting.</p> <p>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>9. Identification of interest yielded on pre-financing. The Beneficiaries are obliged to declare interest yielded 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.</p> <p>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>