



Education, Audiovisual and Culture Executive Agency

«DEFU\_UNOP»

## GRANT AGREEMENT FOR AN ACTION WITH MULTIPLE BENEFICIARIES

**AGREEMENT NUMBER - «NO\_REF»**  
**PROJECT NUMBER - «PROJ\_REF\_SK»**

The Education, Audiovisual and Culture Executive Agency (the "Agency"), acting under powers delegated by the Commission of the European Union (the "Commission"), and represented by Mr Klaus Haupt, Head of Unit P10 «DEFU\_UNOP»,

of the one part,

and

«DEMA\_NOM\_CONT»  
«ADRE\_RUE», «ADRE\_NUM»  
«ADRE\_BUILD»  
«ADRE\_BOX»  
«DEMA\_ST\_NAME» - «ADRE\_COD\_POS» «DEMA\_ST\_CITY»

hereinafter called the "co-ordinator" represented for the purposes of signature of this Agreement by «RESI\_NOM», the legal representative,

and the following "co-beneficiaries" (see Annex V)

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

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

of the other part,

HAVE AGREED

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

<b>Annex I</b>	Description of the action
<b>Annex II</b>	Estimated budget of the action
<b>Annex III</b>	Mandates conferring powers of attorney from the co-beneficiaries to the co-ordinator
<b>Annex IV</b>	Technical implementation reports and financial statements to be submitted
<b>Annex V</b>	List of co-beneficiaries

which form an integral part of this Agreement (the "Agreement").

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

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

## **I - SPECIAL CONDITIONS**

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

- I.1.1 A European Union grant is awarded, under the terms and conditions set out in the Special Conditions, the General Conditions and the Annexes to the Agreement, which the beneficiaries hereby declare that they have taken note of and accept, for the action entitled «**PROJ\_TIT**» «**PROJ\_TIT2**» ("the action").
- I.1.2 The beneficiaries accept the grant and undertake to do everything in their power to carry out the action as described in Annex I, in accordance with the terms and conditions of this Agreement.

### **ARTICLE I.2 - DURATION**

- I.2.1 The Agreement shall enter into force on the date when the last party signs.
- I.2.2 The action and the period of eligibility of costs shall begin on «**DEDE\_DAT\_DEB\_CON**» (the "starting date of the action") and shall end on «**DEDE\_DAT\_FIN\_CON**» (the "closing date of the action").

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

- I.3.1 The co-ordinator shall:
- a) have full responsibility for ensuring that the action is implemented in accordance with the Agreement;
  - b) be the intermediary for all communication between the co-beneficiaries and the Agency in accordance with Article I.8. Any claims that the Agency might have in respect of the Agreement shall be addressed to, and answered by, the co-ordinator, save where specifically stated otherwise in the Agreement;
  - c) be responsible for supplying all documents and information to the Agency which may be required under the Agreement, in particular in relation to the requests for payment. The co-ordinator shall not delegate any part of this task to the co-beneficiaries or to any other party. Where information from the co-beneficiaries is required, the co-ordinator shall be responsible for obtaining and verifying this information and for passing it on to the Agency;
  - d) inform the co-beneficiaries and the Agency of any event of which the co-ordinator is aware that is liable to substantially affect the implementation of the action;
  - e) inform the Agency of transfers between headings of eligible costs, as provided in Article I.4.4;
  - f) make the appropriate arrangements for providing the financial guarantee when requested, under the provisions of Article I.5;
  - g) establish the payment requests on behalf of the beneficiaries, in accordance with the Agreement, the estimated eligible costs as foreseen in Annex II, and the actual costs incurred. All payments by the Agency are made to the bank account(s) referred to in paragraph 1 of Article I.7;
  - h) as sole recipient of payments on behalf of all of the beneficiaries, ensure that all the appropriate payments are made to the co-beneficiaries without unjustified delay and shall, with the reports submitted in accordance with Article I.6 and at any time upon request of the Agency, inform the Agency of the distribution of the European Union financial contribution between the beneficiaries and of the date of transfer;
  - i) be responsible, in the event of audits, checks or evaluations, as described in Articles II.19 and II.6, for providing all the necessary documents, including the accounts of the co-beneficiaries, the accounting documents and signed copies of sub-contracts, if any have been concluded by the beneficiaries in accordance with Article II.9;
  - j) send a copy of this signed Agreement to each co-beneficiary without delay.

I.3.2 The co-beneficiaries shall:

- a) forward to the co-ordinator the data needed to draw up the reports, financial statements and other documents provided for in the Agreement including its Annexes;
- b) ensure that all information to be provided to the Agency is sent via the co-ordinator, save where the Agreement specifically stipulates otherwise;
- c) inform the co-ordinator immediately of any event liable to substantially affect or delay the implementation of the action of which they are aware;
- d) inform the co-ordinator of any modification of their individual budget;
- e) provide the co-ordinator with all the necessary documents in the event of audits, checks or evaluations, as described in Articles II.19 and II.6, including signed copies of sub-contracts, if any have been concluded in accordance with Article II.9.

I.3.3 The co-ordinator and the co-beneficiaries shall:

agree upon appropriate arrangements between themselves for the proper performance of the action, including the establishment and maintenance of an estimated budget of costs per beneficiary. The beneficiaries are deemed to have concluded an internal co-operation agreement regarding their internal operation and co-ordination. The co-operation agreement shall include all aspects necessary for the management and the implementation of the action.

#### **ARTICLE I.4 - FINANCING THE ACTION**

I.4.1 The total cost of the action is shown in the estimated budget in Annex II. The estimated budget shall give a detailed breakdown of the costs that are eligible for European Union funding under the terms of Article II.14, of any other costs that the action may entail, and of all receipts, so that receipts and costs balance.

I.4.2 The total eligible costs of the action for which the European Union grant is awarded are estimated at **EUR «DEDE\_MNT\_ELI»**, as shown in the estimated budget in Annex II.

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

I.4.3 The Agency shall contribute a maximum of **EUR «DEDE\_MNT\_PRO»**, equivalent to **«PCT\_FINANCE»**% of the estimated total eligible costs indicated in paragraph 2. The final amount of the grant shall be determined as specified in Article II.17, without prejudice to Article II.19.

The European Union grant may not finance the entire costs of the action. The amounts and sources of co-financing other than from European Union funds shall be set out in the estimated budget referred to in paragraph 1. In this respect, contributions in kind shall not be accepted as part of the co-financing of the action, unless it is specifically provided for in Article I.11 of the present Agreement.

I.4.4 By way of derogation from Article II.13, the co-ordinator may, in agreement with the co-beneficiaries, when carrying out the action, adjust the estimated budget by transfers between headings of eligible direct costs, provided that this adjustment of expenditure does not affect the implementation of the action and the transfer between headings does not exceed 10% of the amount of each heading of estimated eligible direct costs for which the transfer is intended, and without exceeding the total eligible costs indicated in paragraph 2. He shall inform the Agency in writing.

## **ARTICLE I.5 -PAYMENT ARRANGEMENTS**

### **I.5.1 Pre-financing:**

Within 45 days of the date when the last of the parties signs the Agreement<sup>1</sup> a pre-financing payment shall be made to the co-ordinator, representing 60% of the amount specified in Article I.4.3.

### **I.5.2 Further pre-financing payment:**

Pre-financing may be paid in several instalments. In that case the second instalment of pre-financing to the co-ordinator may not be made until at least 70% of the previous pre-financing payment has been used up.

The request for payment of the second pre-financing instalment must be accompanied by the documents specified in Article II.15.2 and by a progress report on the action's implementation.

Within 45 days after the Agency receives the request for payment for the second pre-financing instalment, together with the documents referred to in the previous subparagraph, a pre-financing payment shall be made to the co-ordinator, equivalent to 30% of the amount specified in Article I.4.3.

The Agency may suspend the period for payment in accordance with the procedure in Article II.16.2.

### **I.5.3 Interim payment:**

Not Applicable.

### **I.5.4 Payment of the balance:**

The request for payment of the balance shall be accompanied by the final technical implementation report and financial statement specified in Article II.15.4 and, for grants of EUR 750 000 or more, by an external audit report on the action's financial statements and underlying accounts.

The Agency shall have 45 days to approve or reject the documents accompanying the request for payment or to request additional supporting documents or information under the procedure laid down in Article II.15.4. In that case, the co-ordinator shall have 60 days to submit the additional information or a new report.

A payment representing the balance of the grant determined in accordance with Article II.17 shall be made to the co-ordinator within 45 days following approval by the Agency of the documents accompanying the request for payment of the balance.

The Agency may suspend the period for payment in accordance with the procedure in Article II.16.2.

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

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

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<sup>1</sup> The EACEA will be the last to sign.

## ARTICLE I.7 - BANK ACCOUNT

I.7.1 All payments shall be made on behalf of all the beneficiaries to the co-ordinator's bank account or sub-account denominated in euros, as indicated below:

Name of bank: «**DEST\_BAN\_NOM**»  
Address of branch: «**DEST\_BAN\_RUE**», «**DEST\_BAN\_NUM\_BAT**»  
«**DEMA\_ST\_NAME**» - «**DEST\_BAN\_COD\_POS**» «**DEST\_BAN\_VIL**»  
Precise denomination of the account holder: «**DEST\_NOM**»  
Full account number (including bank codes): «**DEST\_NUM\_COM**»  
IBAN account code<sup>2</sup>: «**DEST\_IBAN\_CD**»

I.7.2 This account or sub-account must identify the payments made by the Agency. If the total pre-financing payment exceeds 50 000 euros and the funds paid to this account yield interest or equivalent benefits under the law of the State on whose territory the account is opened, such interest or benefits shall, if they are generated by pre-financing payments, be recovered by the Agency as specified in Article II.16.4.

## ARTICLE I.8 -GENERAL ADMINISTRATIVE PROVISIONS

I.8.1 Any communication addressed to the Agency in connection with this Agreement shall be in writing in English, French or German, preferably in the language of this contract, indicating the number of the Agreement, and shall be sent to the following address:

Education, Audiovisual and Culture Executive Agency (EACEA)  
Mr Klaus Haupt  
Head of Unit P10  
BOUR 02/17  
1, Avenue du Bourget  
1140 Brussels  
Belgium  
Email address: [EACEA-Tempus-Project-Management@ec.europa.eu](mailto:EACEA-Tempus-Project-Management@ec.europa.eu)

I.8.2 Ordinary mail shall be considered to have been received by the Agency on the date on which it is formally registered by the Agency unit responsible referred to above. Email shall be considered as received on the date it is received. However, if the co-ordinator receives a reply asking them to redirect the email, it shall not be considered received until the correctly redirected email is received.

I.8.3 Any communication to the beneficiaries in connection with the Agreement shall be in writing and shall be made via the co-ordinator, save where specifically indicated otherwise in the Agreement. It shall indicate the number of the Agreement and shall be sent to the following address:

«**REPR\_PRE**» «**REPR\_NOM**»  
«**DEMA\_NOM\_CONT**»  
«**REPR\_ADRE\_RUE**», «**REPR\_ADRE\_NUM**»  
«**REPR\_ADRE\_BUILD**»  
«**REPR\_ADRE\_BOX**»  
«**REPR\_ST\_NAME**» - «**REPR\_ADRE\_COD\_POS**» «**REPR\_ST\_CITY**»

I.8.4 Any changes of address by the co-ordinator shall be communicated in writing to the Agency.

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<sup>2</sup> BIC code for countries where the IBAN code does not apply.

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

The grant is governed by the terms of the Agreement, the Union law applicable and, on a subsidiary basis, by the law of Belgium relating to grants. The Courts of Brussels shall have exclusive jurisdiction for any dispute between parties with regards to its validity, its interpretation and/or its application.

## **ARTICLE I.10 – DATA PROTECTION**

All personal data contained in or relating to this 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 European Union institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the implementation, the management and the follow-up of this Agreement by the Controller, without prejudice to the possible transmission of the data to the bodies in charge with monitoring or inspection tasks in conformity with Union law [the Court of Auditors, the European Anti-Fraud Office (OLAF), the Financial Irregularities Panel, auditors, etc].

Any beneficiary shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should a beneficiary have a query concerning the processing of his personal data, he shall address it in writing to the Controller. Any beneficiary shall also have the right of recourse to the European Data Protection Supervisor at any time.

For the purpose of this provision, the «Controller» is the person who has represented the Agency for the purpose of the signature of this Agreement.

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

The following additional special conditions apply to this Agreement:

### **I.11.1 Exchange rate applicable for the conversion of currencies into euros:**

The co-ordinator shall submit the payment requests in accordance with article I.5, including the underlying financial statements, in euros. Any conversion of actual costs into euros shall be made by the beneficiary at the monthly accounting rate established by the Commission and published on its website<sup>3</sup> applicable on the month of the first pre-financing until the second pre-financing is received, after which the rate of the month of the second pre-financing must be applied.

### **I.11.2 Implementation contracts:**

Where the value of the procurement contract awarded in accordance with the provisions of Article II.9 of the General Conditions exceeds EUR 25 000, the beneficiary shall obtain quotations from at least three suppliers and retain the one offering best value for money.

The co-ordinator must clearly document the tendering procedure and retain the documentation in particular for audit purposes in accordance with article II.19.

### **I.11.3 Publicity obligations:**

a) For the purpose of the application of Article II.5 of the Agreement, relating to publicity, the beneficiary shall use the logo and follow the instructions available on the following Internet website: [http://eacea.ec.europa.eu/tempus/beneficiaries/beneficiaries\\_tempus4\\_en.php](http://eacea.ec.europa.eu/tempus/beneficiaries/beneficiaries_tempus4_en.php)

b) Obligations of the beneficiary:

#### Information about the funding sources:

- The beneficiary shall inform the public, press and media of the action (internet included); which must, in conformity with Article II.5, visibly indicate that “This project has been funded with the support of the European Union” as well as the graphic logos.

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<sup>3</sup> <http://ec.europa.eu/budget/inforeuro>

- The translation of the text can be found at the following Internet website address: [http://eacea.ec.europa.eu/tempus/beneficiaries/beneficiaries\\_tempus4\\_en.php](http://eacea.ec.europa.eu/tempus/beneficiaries/beneficiaries_tempus4_en.php)
  - Where the action, or part of the action, is a publication the mention and graphic logos shall appear on the cover or the first pages following the editor's mention.
  - Use of signs and posters: If the action includes events for the public, signs and posters related to this action shall be displayed. This shall include the logos mentioned under point a).
  - Authorisation to use the logos described in point a) implies no right of exclusive use and is limited to this agreement.
  - If the action is co-financed, the importance given to the above-mentioned publicity must be in proportion with the level of Union financing.
- c) The Agency shall consider this publicity obligation, foreseen in Articles I.11.3 (a) and (b) above and II.5 as a «substantial obligation» within the meaning of Article II.11.3 point b) of the Agreement.

#### I.11.4 Use of the Results:

For the purpose of Article II.3.2 of the Agreement, the use of the results of the action shall include – the right, for the Agency and/or the Commission, to request that the beneficiaries make the said results available to the public via the European Commission-supported information platform «EVE», available at the following Internet address: <http://ec.europa.eu/eve/>

#### I.11.5 Cooperation obligation:

Considering that the Agency cooperates with some bodies for the management of the Tempus Programme, in particular with the National Tempus Offices (NTO), the beneficiaries shall provide these bodies with all the information relevant for the implementation of the tasks entrusted to them and shall grant access to their sites, premises and documents for any question relating to the action.

#### I.11.6 Eligible costs:

In addition to Article II.14.2 replacement costs for European Union academic staff and experts assigned to the action will be considered eligible, provided that the cost is an actual cost incurred by the co-ordinator and co-beneficiaries and that they comply with the provisions set out in the "Guidelines for use of the grant" published on the Tempus website<sup>4</sup>.

#### I.11.7 Eligible costs for activities and related travel:

For the purpose of Article II.14, the guiding principle for activities and related travel is that it is carried out at the project beneficiaries listed in Annex V. Exceptions to this rule, if not set out in the 'guidelines for use of the grant' published on the Tempus website<sup>4</sup>, are subject to prior written authorisation by the Agency.

#### I.11.8 Eligible costs, VAT:

By derogation to Article II.14.4, seventh indent, VAT shall never be an eligible cost for the benefit of Partner Countries<sup>5</sup> in Central Asia covered by Regulation (EC) no. 1905/2006 of the European Parliament and the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ no. L 378 of 27/12/2006).

#### I.11.9 Salary costs of personnel of public administrations or governmental organisations:

By derogation to article II.14.2 salary costs of personnel of public administrations (Ministries, other national, regional and local administrations) or governmental organisations are not eligible.

<sup>4</sup> [http://eacea.ec.europa.eu/tempus/beneficiaries/beneficiaries\\_tempus4\\_en.php](http://eacea.ec.europa.eu/tempus/beneficiaries/beneficiaries_tempus4_en.php)

<sup>5</sup> The partner countries in Central Asia: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

#### I.11.10 Depreciation:

By derogation to article II.14.2, and considering the particular nature of the Tempus programme, the total purchase cost of the equipment will be taken into account by the Agency rather than the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action.

#### I.11.11 Ineligible costs:

In addition to Article II.14.4, the following costs are ineligible:

- equipment such as: furniture, motor vehicles of any kind, equipment for research and development purposes, telephones, mobile phones, alarm systems and anti-theft systems;
- hospitality costs;
- costs related to the use of materials (computer, laboratory, library, etc.) incurred by universities, institutions, industries or companies when hosting staff;
- registration fees for courses, seminars, symposia, conferences, congresses;
- costs of premises (purchase, rent, heating, maintenance, repairs etc.). Renting of premises is only possible for specific dissemination events with prior written approval from the Agency;
- costs linked to the purchase of real estate;
- expenses for activities - and related travel - that are not carried out on the premises of the project beneficiaries (see Annex V), unless listed as an eligible activity in these guidelines or explicit prior authorisation has been granted by the Agency;
- expenses incurred outside the eligibility period;
- contributions in kind.

#### I.11.12 Costs of financial transfers:

Costs of the transfers are borne in the following way:

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

## **II -GENERAL CONDITIONS**

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

#### **ARTICLE II.1 - LIABILITY**

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

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

- II.2.1 The beneficiaries undertake to take all the necessary measures to prevent any risk of conflicts of interests which could affect the impartial and objective performance of the Agreement. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest.
- II.2.2 Any situation constituting or likely to lead to a conflict of interests during the performance of the Agreement must be brought to the attention of the Agency, in writing, without delay. The beneficiaries shall undertake to take whatever steps are necessary to rectify this situation at once.
- II.2.3 The Agency reserves the right to check that the measures taken are appropriate and may demand that the beneficiaries take additional measures, if necessary, within a certain time.

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

- II.3.1 Unless stipulated otherwise in this Agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the beneficiaries.
- II.3.2 Without prejudice to paragraph 1, the beneficiaries grant the Agency and the Commission the right to make free use of the results of the action as it deems fit, provided it does not thereby breach their confidentiality obligations or existing industrial and intellectual property rights.

#### **ARTICLE II.4 - CONFIDENTIALITY**

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

#### **ARTICLE II.5 - PUBLICITY**

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

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

II.5.2 The beneficiaries authorise the Agency and the Commission to publish the following information in any form and medium, including via the Internet:

- the beneficiaries' names and the addresses,
- the subject and purpose of the grant,
- the amount granted and the proportion of the action's total cost covered by the funding.

Upon a reasoned and duly substantiated request by the co-ordinator, the Agency and/or the Commission may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the beneficiaries' security or prejudicing their commercial interests.

## **ARTICLE II.6 - EVALUATION**

Whenever the Agency and/or the Commission carries out an interim or final evaluation of the action's impact measured against the objectives of the European Union programme concerned, the co-ordinator and the co-beneficiaries undertake to make available to the Agency and the Commission and/or persons authorised by it all such documents or information, including information in electronic format, as will allow the evaluation to be successfully completed and to give them the rights of access specified in Article II.19.

## **ARTICLE II.7 - SUSPENSION**

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

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

## **ARTICLE II.8 - FORCE MAJEURE**

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

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

II.8.3 Neither of the parties shall be held in breach of their obligations under the Agreement if they are prevented from fulfilling them by *force majeure*. The parties shall make every effort to minimise any damage due to *force majeure*.

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

## **ARTICLE II.9 - AWARD OF CONTRACTS**

II.9.1 If the beneficiaries have to conclude contracts in order to carry out the action and they constitute costs of the action under an item of eligible direct costs in the estimated budget, they shall award the contract to the bid offering best value for money; in doing so they shall take care to avoid any conflict of interests.

II.9.2 Contracts as referred to in paragraph 1 may be awarded only in the following cases:

- (a) they may only cover the execution of a limited part of the action;
- (b) recourse to the award of contracts must be justified having regard to the nature of the action and what is necessary for its implementation;
- (c) the tasks concerned must be set out in Annex I and the corresponding estimated costs must be set out in detail in the budget in Annex II;
- (d) any recourse to the award of contracts while the action is under way, if not provided for in the initial grant application, shall be subject to prior written authorisation by the Agency;
- (e) the beneficiaries shall retain sole responsibility for carrying out the action and for compliance with the provisions of the Agreement. The beneficiaries must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Agency under the Agreement;
- (f) the beneficiaries must undertake to ensure that the conditions applicable to them under Articles II.1, II.2, II.3, II.4, II.5, II.6, II.10 and II.19 of the Agreement are also applicable to the contractor.

## **ARTICLE II.10 - ASSIGNMENT**

II.10.1 Claims against the Agency may not be transferred.

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

II.10.3 In no circumstances shall such an assignment release the beneficiaries from their obligations to the Agency.

## **ARTICLE II.11 – TERMINATION OF THE AGREEMENT OR OF THE PARTICIPATION OF A BENEFICIARY**

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

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

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

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

a) In duly justified cases, the co-ordinator may request the Agency to terminate the participation of a beneficiary. The co-ordinator shall include with any such request the remaining beneficiaries' proposal to reallocate the tasks of that beneficiary or where relevant to nominate a replacement, the reasons for the termination of the participation and the opinion of the beneficiary whose participation is requested to be terminated. The request shall be deemed to be rejected if the Agency does not send its explicit agreement to the co-ordinator within 60 days of the receipt of the request.

b) In duly justified cases, any beneficiary may request the termination of his participation in the Agreement. The request must be submitted to the Agency by the co-ordinator by giving 60 days written notice stating the reasons and including the remaining beneficiaries' proposal to reallocate the tasks of that beneficiary or where relevant to nominate a replacement. Without prejudice to the Agency's right to terminate the Agreement on the grounds of Article II.11.3, if no reasons are given or if the Agency does not accept the reasons, the participation shall be deemed to have been terminated improperly, with the consequences set out in the fifth subparagraph of paragraph 5.

In the cases foreseen in a) and b) above, the termination of the participation of the beneficiary concerned shall take effect on the date of the Agency's approval. A written supplementary agreement shall be concluded to make any amendments necessary to adapt the action to the new implementing conditions resulting from the partial termination.

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

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

- (a) in the event of a change to any of the beneficiaries legal, financial, technical, organisational or ownership situation that is liable to affect the Agreement substantially or to call into question the decision to award the grant;
- (b) if one or more beneficiaries fail(s) to fulfil a substantial obligation incumbent on him(them) under the terms of the Agreement, including its Annexes;
- (c) in the event of force majeure, notified in accordance with Article II.8, or if the action has been suspended as a result of exceptional circumstances, notified in accordance with Article II.7;
- (d) if a beneficiary is declared bankrupt, is being wound up, or is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (e) where the Agency has evidence or seriously suspects a beneficiary or any related entity or person, of professional misconduct;
- (f) if 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 Agency 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 Agency has evidence or seriously suspects a beneficiary or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the grant;
- (i) if a beneficiary has made false declarations or submits reports inconsistent with reality to obtain the grant provided for in the Agreement.

In the cases referred to in points (e), (g) and (h) above, any related person shall mean any physical person with powers of representation, decision-making or control in relation to the beneficiary. Any related entity shall mean in particular any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive n° 83/349/EEC of 13 June 1983.

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

The termination procedure is initiated by registered letter with acknowledgement of receipt or equivalent. In the case of termination of the participation of a beneficiary, this letter is sent to the beneficiary concerned, with copy to the co-ordinator. In the case of termination of the Agreement, the letter is sent to the co-ordinator. In either case, the co-ordinator shall ensure that all the co-beneficiaries are duly informed.

In the cases referred to in points (a), (b), (d), (e), (g) and (h) above, the co-ordinator, in consultation with the co-beneficiaries, and, as appropriate, the co-beneficiary whose participation is intended to be terminated shall have 30 days to submit observations and take any measures necessary to ensure continued fulfilment of their obligations under the Agreement. If the Agency fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the termination procedure shall continue to run.

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

If notice is not given in the cases referred to in points (c), (f) and (i) above, termination shall take effect from the day following the date on which notification of the Agency's decision to terminate the Agreement or the participation of a beneficiary is received.

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

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

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

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

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

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

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

II.12.1 By virtue of the Financial Regulation applicable to the General Budget of the European Union, any one or several of the beneficiaries declared to be in grave breach of their obligations under the Agreement may be subject to financial penalties of between 2% and 10% of the value of their share of the grant in question, with due regard for the principle of proportionality.

II.12.2 This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the establishment of the first.

II.12.3 The beneficiary concerned shall be notified in writing of any decision by the Agency to apply such financial penalties.

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

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

## **PART B - FINANCIAL PROVISIONS**

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

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

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

The beneficiaries' accounting and internal auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents.

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

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

The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the action concerned were not undertaken;

- travel and subsistence allowances for staff taking part in the action, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the beneficiary and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account by the Agency, except where the nature and/or the context of its use justifies different treatment by the Agency;
- costs of consumables and supplies, provided that they are identifiable and assigned to the action;
- costs entailed by other contracts awarded by a beneficiary for the purposes of carrying out the action, provided that the conditions laid down in Article II.9 are met;

- costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction, etc.), including the costs of any financial services (especially the cost of financial guarantees). Such costs may also include specific costs incurred by the co-ordinator for fulfilling his responsibilities in his capacity of the body responsible for the overall management of the action and the co-ordination of the beneficiaries.

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

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

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

- return on capital;
- debt and debt service charges;
- provisions for losses or potential future liabilities;
- interest owed;
- doubtful debts;
- exchange losses;
- VAT, unless the beneficiary can show that he is unable to recover it according to the applicable national legislation;
- costs declared by a beneficiary and covered by another action or work programme receiving a European Union grant;
- excessive or reckless expenditure.

II.14.5 Contributions in kind shall not constitute eligible costs. However, the Agency can accept, if considered necessary and appropriate, that the co-financing of the action referred to in Article I.4.3 should be made up entirely or in part of contributions in kind. In this case, the value calculated for such contributions must not exceed:

- the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the beneficiary free of charge but bear the corresponding costs;
- the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne.

Contributions involving buildings shall not be regarded as contributions in kind.

In the case of co-financing in kind, a financial value shall be placed on the contributions and the same amount will be included in the costs of the action as ineligible costs and in receipts from the action as co-financing in kind. The beneficiary shall undertake to obtain these contributions as provided for in the Agreement.

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

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

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

### **II.15.1 Pre-financing**

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

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

The guarantor shall stand as first call guarantor and shall not require the Agency to have recourse against the principal debtor.

The financial guarantee shall remain in force until final payments by the Agency match the proportion of the total grant accounted for by pre-financing. The Agency undertakes to release the guarantee within 30 days following that date.

### **II.15.2 Further pre-financing payment**

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

- a detailed statement of the eligible costs actually incurred;
- where required by the above-mentioned provisions of Article I.5, a financial guarantee in accordance with paragraph 1;
- where required by the above-mentioned provisions of Article I.5, an external audit report on the action's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer;
- an updated report on the distribution of the European Union financial contribution between the beneficiaries, including dates of transfer;
- any other documents in support of his request that may be required in support of the request for further pre-financing payments.

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

### **II.15.3 Interim payments**

Interim payments are intended to reimburse the beneficiaries for expenditure on the basis of a detailed statement of the costs incurred, once the action has reached a certain level of completion. It may clear all or part of any pre-financing.

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

- an interim report on implementation of the action;
- an interim financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- where required by the provisions of Article I.5 on interim payment, an external audit report on the action's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer. The external audit report shall certify, in accordance with a methodology approved by the Agency, that the costs declared by the beneficiary in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the Agreement;
- an updated report on the distribution of the European Union financial contribution between the beneficiaries, including dates of transfer.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.6 and the Annexes. The co-ordinator shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the Agreement, that all receipts have been declared, and that the request for payment is substantiated by adequate supporting documents that can be checked.

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

- approve the interim report on implementation of the action and the interim financial statement;
- ask the co-ordinator for supporting documents or any additional information it deems necessary to allow the approval of the reports;
- reject the report(s) and ask for the submission of (a) new report(s).

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

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

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

Where a report is rejected, as not admissible, within 30 days of receipt, and a new report requested, the approval procedure described in this article shall apply.

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

#### **II.15.4 Payment of the balance**

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

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

- a final report on the implementation of the action;
- a final financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- a full summary statement of the receipts and expenditure of the action;
- where required by the provisions of Article I.5 on payment of the balance, an external audit report on the action's financial statements and underlying accounts, produced by an approved auditor, or in case of public bodies by a competent and independent public officer. The external audit report shall certify, in accordance with a methodology approved by the Agency, that the costs declared by the beneficiaries in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the Agreement;
- an updated report on the distribution of the European Union financial contribution between the beneficiaries, including dates of transfer.

The documents accompanying the request for payment shall be drawn up in accordance with the provisions of Article I.6 and the Annexes. The co-ordinator shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the Agreement, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.

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

- approve the final report on implementation of the action and the final financial statement;
- ask the co-ordinator for supporting documents or any additional information it deems necessary to allow the approval of the reports;
- reject the report and ask for the submission of (a) new report(s).

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

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

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

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

Where a report is rejected, as not admissible, within 30 days of receipt, and a new report requested, the approval procedure described in this article shall apply.

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

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

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

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

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

The Agency may also suspend its payments at any time if a beneficiary is found or presumed to have infringed the provisions of the Agreement, in particular in the wake of the audits and checks provided for in Article II.19.

The Agency may also suspend its payments:

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

The Agency shall inform the co-ordinator in writing as soon as possible of any such suspension, setting out the reasons for suspension.

Suspension shall take effect on the date when notice is sent by the Agency. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the Agency.

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

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

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

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

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

Where the interest yielded exceeds the balance of the amount due to the beneficiaries as indicated in Article II.15.4, or is generated by pre-financing referred to in the previous subparagraph, the Agency shall recover it in accordance with Article II.18.

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

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

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

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

- II.17.1 Without prejudice to information obtained subsequently pursuant to Article II.19, the Agency shall adopt the amount of the final payment to be granted to the beneficiaries on the basis of the documents referred to in Article II.15.4 which it has approved.

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

II.17.3 If the total actual eligible costs when the action ends are lower than the estimated total eligible costs, the European Union's contribution shall be limited to the amount obtained by applying the European Union grant percentage specified in Article I.4.3 to the actual eligible costs approved by the Agency.

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

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

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

II.17.5 Without prejudice to the right to terminate the Agreement under Article II.11, and without prejudice to the right of the Agency to apply the penalties referred to in Article II.12, if the action is not implemented or is implemented poorly, partially or late, the Agency may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in this Agreement.

II.17.6 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the Agreement, the Agency shall set the amount of the payment of the balance as being the amount still owing to the beneficiaries. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Agency shall issue a recovery order for the surplus.

## **ARTICLE II.18 - RECOVERY**

II.18.1 Where an amount, paid by the Agency to the co-ordinator in his capacity of recipient of all payments, is to be recovered under the terms of the Agreement, the co-ordinator undertakes to repay the Agency, on the account indicated by the latter, 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 Agency reserves the right to recover directly the amount due from the final recipients proportionally to the amount of the financial contribution effectively received by each of them.

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

II.18.2 If the obligation to pay the amount due is not honoured by the date set by the Agency, the amount due shall bear interest at the rate indicated in Article II.16.3. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

II.18.3 If payment has not been made by the due date, sums owed to the Agency may be recovered by offsetting them against any sums owed to the concerned beneficiary by the Agency or the Commission, after informing him accordingly by registered letter with acknowledgement of receipt or equivalent, or by calling in the financial guarantee provided in accordance with Article II.15.1. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Agency and/or the Commission may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required.

II.18.4 Bank charges occasioned by the recovery of the sums owed to the Agency shall be borne solely by the concerned beneficiary.

II.18.5 The beneficiaries understand that, under Article 299 of the Treaty on the functioning of the European Union, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States. An action may be brought against such decision before the General Court of the European Union.

## ARTICLE II.19 - CHECKS AND AUDITS

II.19.1 The co-ordinator undertakes to provide any detailed information, including information in electronic format, requested by the Agency and/or the Commission or by any other outside body authorised by the Agency and/or by the Commission to check that the action and the provisions of the Agreement are being properly implemented. Where the Agency and/or the Commission so wishes, it may request such information to be provided directly by a co-beneficiary.

II.19.2 The beneficiaries shall keep at the Agency's and the Commission's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the Agreement stored on any appropriate medium that ensures their integrity in accordance with the applicable national legislation, for a period of five years from the date of payment of the balance specified in Article I.5.

II.19.3 The beneficiaries agree that the Agency and/or the Commission may have an audit of the use made of the grant carried out either directly by its or them own staff or by any other outside body authorised to do so on its or them behalf. Such audits may be carried out throughout the period of implementation of the Agreement until the balance is paid and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Agency.

II.19.4 The beneficiaries undertakes to allow the Agency and/or the Commission staff and outside personnel authorised by the Agency and/or the Commission the appropriate right of access to sites and premises where the action is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.

II.19.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and the Council, the European Anti-Fraud Office (OLAF) may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Agency and/or the Commission.

II.19.6 The Court of Auditors shall have the same rights as the Agency and/or the Commission, notably right of access, as regards checks and audits.

## SIGNATURES

For the co-ordinator  
and the co-beneficiaries  
represented by the co-ordinator  
by virtue of the mandates in Annex III

«RESI\_NOM»  
Function:

[signature]

Done at , [place], [date]

In duplicate in English.

For the Agency

«DEFU\_UNOP\_CHEF»  
Head of Unit

[signature]

Done at Brussels, [date]