

## **GRANT AGREEMENT - GENERAL CONDITIONS**

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

#### **ARTICLE 1 - LIABILITY**

- 1.1 The beneficiary shall have sole responsibility for complying with any legal obligations incumbent on him/her.
- 1.2 The NA or the Commission 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 NA or the Commission shall not entertain any request for indemnity or reimbursement accompanying any such claim.
- 1.3 Except in cases of *force majeure*, the beneficiary shall make good any damage sustained by the NA or the Commission as a result of the execution or faulty execution of the action.
- 1.4 The beneficiary 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 2 - CONFLICT OF INTERESTS**

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

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

- 3.1 Unless stipulated otherwise in the agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the beneficiary.
- 3.2 Without prejudice to paragraph 1, the beneficiary grants the NA 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 its confidentiality obligations or existing industrial and intellectual property rights.

#### **ARTICLE 4 - CONFIDENTIALITY**

The NA and the beneficiary 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 5 - PUBLICITY**

5.1 Unless the NA requests otherwise, any communication or publication by the beneficiary about the action, including at a conference or seminar, shall indicate that the action has received funding from the Community.

Any communication or publication by the beneficiary, in any form and medium, shall indicate that sole responsibility lies with the author and that neither the NA nor the Commission is responsible for any use that may be made of the information contained therein.

5.2 The beneficiary authorises the NA and the Commission to publish the following information in any form and medium, including via the Internet:

- the beneficiary's name and address,
- the subject and purpose of the grant,
- the amount awarded.

Upon a reasoned and duly substantiated request by the beneficiary, the NA may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the beneficiary's security or prejudicing his/her commercial interests.

#### **ARTICLE 6 - EVALUATION**

Whenever the NA, the Commission or any outside body mandated by the NA or the Commission carries out an interim or final evaluation of the action's impact measured against the objectives of the Community programme concerned, the beneficiary undertakes to make available to the NA, the Commission and/or persons authorised by them all such documents or information as will allow the evaluation to be successfully completed and to give them the rights of access specified in Article 18.

#### **ARTICLE 7 – SUSPENSION**

7.1 The beneficiary may suspend implementation of the action if exceptional circumstances make this impossible or excessively difficult, notably in the event of *force majeure*. S/he shall inform the NA without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

- 7.2 If the NA does not terminate the agreement under Article 11.2, the beneficiary shall resume implementation once circumstances allow and shall inform the NA accordingly. The duration of the action shall be extended by a period equivalent to the length of the suspension. In accordance with Article 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 8 – FORCE MAJEURE**

- 8.1 *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under this agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. 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.
- 8.2 A party faced with *force majeure* shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.
- 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*.
- 8.4 The action may be suspended in accordance with Article 7.

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

- 9.1 If the beneficiary has to conclude contracts in order to carry out the action and they constitute costs of the action giving rise to a Community grant, s/he shall award the contract to the bid offering best value for money; in doing so s/he shall observe the principles of transparency and equal treatment of potential contractors and shall take care to avoid any conflict of interests.
- 9.2 Recourse to the award of contracts referred to in paragraph 1 must be justified having regard to the nature of the action and what is necessary for its implementation;

The beneficiary shall retain sole responsibility for carrying out the action and for compliance with the provisions of the agreement; the beneficiary must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Commission under the agreement;

The beneficiary must undertake to ensure that the General conditions applicable to him/her under the agreement are also applicable to the contractor.

## **ARTICLE 10 - ASSIGNMENT**

- 10.1 Claims against the NA may not be transferred.

- 10.2 In exceptional circumstances, where the situation warrants it, the NA may authorise the assignment to a third party of the agreement or part thereof and payments flowing from it, following a written request to that effect, giving reasons, from the beneficiary. If the NA 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 NA.
- 10.3 In no circumstances shall such an assignment release the beneficiary from his/her obligations to the NA.

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

### **11.1 Termination by the beneficiary**

In duly justified cases, the beneficiary may withdraw his/her 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 NA does not accept the reasons, the beneficiary shall be deemed to have terminated this agreement improperly, with the consequences set out in the fourth sub-paragraph of paragraph 4.

### **11.2 Termination by the NA**

The NA may decide to terminate the agreement, without any indemnity on its part, in the following circumstances:

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

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

### **11.3 Termination procedure**

The termination procedure is initiated by registered letter with acknowledgement of receipt or equivalent.

In the cases referred to in points (a), (b), (d), (e), (g) and (h) above, the beneficiary shall have 30 days to submit his/her observations and take any measures necessary to ensure continued fulfilment of his/her obligations under the agreement. If the NA fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the procedure shall continue to run.

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

### **11.4 Effects of termination**

In the event of termination, payments by the NA shall be proportionate to the actual progress made in carrying out the action on the date when termination takes effect, in accordance with Article 16.

The beneficiary shall have 60 days from the date when termination takes effect, as notified by the NA, to produce a request for final payment in accordance with Article 14.2. If no request for final payment is received within this time limit, the NA shall not contribute to the financing of expenditure incurred by the beneficiary up to the date of termination, and it shall recover any amount of pre-financing granted.

By way of exception, at the end of the period of notice referred to in paragraph 3, where the NA is terminating the agreement on the grounds that the beneficiary has failed to produce the final report within the deadline stipulated in the Special Conditions and the beneficiary has still not complied with this obligation within two months following the written reminder sent by the NA by registered letter with advice of delivery or equivalent, the NA shall not pay the balance and shall recover any amount of pre-financing granted.

By way of exception, in the event of improper termination by the beneficiary or termination by the NA on the grounds set out in points (a), (e), (g), (h) or (i) above, the NA may require the partial or total repayment of sums already paid under the agreement, in proportion to the gravity of the failings in question and after allowing the beneficiary to submit his/her observations.

## **ARTICLE 12 - FINANCIAL CORRECTIONS**

- 12.1 By virtue of the Financial Regulation applicable to the general budget of the European Communities, any beneficiary declared to be in grave breach of his/her obligations shall be liable to financial corrections of between 2% and 10% of the value of the grant in question, with due regard for the principle of proportionality.
- 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.
- 12.3 Where the beneficiary has made false declarations regarding the lump sum or flat-rate financing, the NA may impose financial corrections up to 50% of the total amount of the lump sum or flat-rate financing.
- 12.4 The beneficiary shall be notified in writing of any decision by the NA to apply such financial corrections.

## **ARTICLE 13 – SUPPLEMENTARY AGREEMENTS**

- 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.
- 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.
- 13.3 If the request for amendment is made by the beneficiary, s/he must send it to the NA 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 NA.

## **PART B - FINANCIAL PROVISIONS**

### **ARTICLE 14 – REQUESTS FOR PAYMENT**

Payments shall be made in accordance with the payment arrangements set out in the Special Conditions.

#### **14.1 Pre-financing**

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

Where required by the Special Conditions, the beneficiary shall furnish a financial guarantee from a bank or an approved financial institution established in one of the Member States of the European Union.

The guarantor shall stand as first call guarantor and shall not require the NA to have recourse against the principal debtor (the beneficiary).

The guarantee shall remain in force until the balance is paid. The NA undertakes to release the guarantee within 30 days of that date.

#### **14.2 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 actual implementation. It may take the form of a recovery order if previous pre-financing payments exceed the amount of the final grant determined in accordance with Article 16.

By the appropriate deadline indicated in the Special Conditions, the beneficiary shall submit a request for payment of the balance accompanied by the following documents:

- a final report on the implementation of the action;
- an explanation of the amount of the grant requested in the form of real cost and flat-rate funding using scales of unit costs as laid down in the Special Conditions on the basis of the actual implementation of the action;
- a declaration certifying that the information provided in his/her request for payment is full, reliable and true ; in particular, s/he shall also certify that the action has been carried out in accordance with the agreement and that his/her request for payment is substantiated by documentation which may be checked;
- a full summary statement of the actual receipts and final expenditure of the action for the period of implementation defined in the Special Conditions;
- where required by the Special Conditions, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or, in case of public bodies, by a competent and independent public officer. The purpose of the audit is to certify that the conditions for awarding the grant set out in the agreement have been fulfilled, that the reports and other documents submitted to the NA by the beneficiary comply with the provisions of the agreement, and that the request for payment is justified; it shall also certify that the full summary statement of the actual receipts and final expenditure is full, reliable and true , and corresponds to the actual costs incurred and financing received for the action.

On receipt of these documents, the NA shall have the period specified in the Special Conditions in order to:

- approve the final report on implementation of the action;
- ask the beneficiary for supporting documents or any additional information it deems necessary to allow the approval of the report;
- reject the report and ask for the submission of a new report.

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

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

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

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

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

In the event of renewed rejection, the NA reserves the right to terminate the agreement by invoking Article 11.2(b).

## **ARTICLE 15 - GENERAL PROVISIONS ON PAYMENTS**

15.1 Payments shall be made by the NA in euro. Payments by the NA shall be deemed to be effected on the date when they are debited to the NA's account.

15.2 The NA may suspend the period for payment laid down in the Special Conditions at any time for the purposes of additional checks by notifying the beneficiary that his/her 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.

The NA may also suspend its payments at any time if the 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 18.

The NA may also suspend its payments:

- if there is a suspicion of irregularity committed by the beneficiary in the implementation of the grant agreement;



- if there is a suspected or established irregularity committed by the beneficiary in the implementation of another grant agreement or grant decision funded by the General Budget of the European Communities 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 NA shall inform the beneficiary as soon as possible of any such suspension by registered letter with acknowledgment of receipt or equivalent, setting out the reasons for suspension.

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

- 15.3 On expiry of the period for payment specified in the Special Conditions and without prejudice to paragraph 2, the beneficiary is entitled to interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euro, 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 Article 15.1, inclusive. The suspension of payment by the NA 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 beneficiary only upon demand submitted within two months of receiving late payment.

- 15.4 The NA shall deduct the interest yielded by pre-financing which exceeds EUR 50 000 as provided for in the Special Conditions from the payment of the balance of the amount due to the beneficiary. The interest shall not be treated as a receipt for the action.

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

Where the interest yielded exceeds the balance of the amount due to the beneficiary as indicated in Article 14.2, or is generated by pre-financing referred to in the previous subparagraph, the NA shall recover it in accordance with Article 17.

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

- 15.5 The beneficiary shall have two months from the date of notification by the NA of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article 16 or, failing that, 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 shall no longer be considered. The NA 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 beneficiary's right to appeal against the NA's decision. Under the terms of national legislation in this matter, such appeals must be lodged within 15 days following the notification of the decision to the beneficiary or, failing that, following the date on which the beneficiary learned of the decision.

## **ARTICLE 16 - DETERMINING THE FINAL GRANT**

- 16.1 Without prejudice to information obtained subsequently pursuant to Article 18, the NA shall adopt the amount of the final payment to be granted to the beneficiary on the basis of the documents referred to in Article 14.2 which it has approved.
- 16.2 The amount paid by the NA to the beneficiary may not exceed the maximum total amount of the grant laid down in the Special Conditions in any circumstances.

Financing in the form of lump sums is limited to the amounts referred to in the above Article of the Special Conditions. Flat-rate financing using scales of unit costs is determined by application of the formulas provided for in Special Conditions on the basis of the actual implementation of the action and within the ceilings laid down in the Special Conditions.

If the specific grounds for these contributions (i.e.: lump sums or flat-rate financing in the form of scales of unit costs), as set out in the Special Conditions, are not fulfilled or are only partially fulfilled on completion of the action, the NA shall withdraw or reduce its contributions in line with the actual extent of fulfilment of the conditions or requirements.

- 16.3 Without prejudice to the right to terminate the agreement under Article 11 or to the right of the NA to apply the corrections referred to in Article 12 if the action is not implemented or is implemented poorly, partially or late, the NA may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in this agreement.
- 16.4 On the basis of the amount of the final payment determined in this way and of any pre-financing payments already made under the terms of the agreement, the NA shall set the amount of the payment of the balance as being the amount still owing to the beneficiary. Where the amount of the pre-financing payments already made exceeds the amount of the final grant, the NA shall issue a recovery order for the surplus.

## **ARTICLE 17 - RECOVERY**

- 17.1 If any amount is unduly paid to the beneficiary or if recovery is justified under the terms of the agreement, the beneficiary undertakes to repay the NA the sum in question on whatever terms and by whatever date the NA may specify.
- 17.2 If the beneficiary fails to pay by the date set by the NA, the sum due shall bear interest at the rate indicated in Article 15.3. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the NA 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.
- 17.3 If payment has not been made by the due date, sums owed to the NA may be recovered by offsetting them against any sums owed to the beneficiary, after informing him/her accordingly, by registered letter with acknowledgment of receipt or equivalent, or by calling in the financial guarantee provided in accordance with Article 14.1. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Communities, the NA may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required.
- 17.4 Bank charges occasioned by the recovery of the sums owed to the NA shall be borne solely by the beneficiary.
- 17.5 The beneficiary understands that the non compliance with the request of repayment of the amount in question may result in legal action against him by the NA in accordance with national legislation.

## **ARTICLE 18 - CHECKS AND AUDITS**

- 18.1 The beneficiary undertakes to provide any detailed information, including information in electronic format, requested by the NA, the Commission or by any other outside body authorised by the NA or the Commission to check that the action and the provisions of the agreement are being properly implemented.
- 18.2 The beneficiary shall keep at the NA's and Commission's disposal all original documents relating to the agreement, especially accounting and tax records including records on the actual receipts and expenditure of the action, or, in exceptional and duly justified cases, certified copies of original documents related to the agreement on any appropriate medium which ensures their integrity in line with applicable national legislation, for a period of five years from the date of payment of the balance.
- 18.3 The beneficiary agrees that the NA, the national authority supervising the NA or the Commission may have an audit of the use made of the grant carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the agreement until the balance is paid and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the NA.
- 18.4 Where the checks on the event generating the lump sum or flat-rate financing reveal that the event has not occurred and an undue payment has been made to the

beneficiary, the NA shall be entitled to recover up to the amount of the lump sum or flat-rate financing. Where the beneficiary has made false declarations, the NA may impose financial corrections in accordance with Article 12.

- 18.5 The beneficiary undertakes to allow NA and Commission staff and outside personnel authorised by the NA 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.
- 18.6 By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and of 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 Community law for the protection of the financial interests of the European Communities against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the NA.
- 18.7 The European Court of Auditors shall have the same rights as the NA and the Commission, notably right of access, as regards checks and audits.

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