

GENERAL CONDITIONS

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. 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 seek competitive tenders from potential contractors and 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.

10.2 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 third paragraph of Article 11.4.

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 or is the subject of any other similar proceedings;
- (e) if the beneficiary is found guilty of an offence involving his/her professional conduct by a judgment having the force of res judicata or if s/he is guilty of grave professional misconduct proven by any justified means;
- (f) if the beneficiary is guilty of misrepresentation or submits reports inconsistent with reality to obtain the grant provided for in the agreement;
- (g) if the beneficiary has intentionally or by negligence committed a substantial irregularity in performing the agreement or in the event of fraud, corruption or any other illegal activity on the part of the beneficiary to the detriment of the European Communities' financial interests; a substantial irregularity consists of any infringement of a provision of an agreement or regulation resulting from an act or an omission on the part of a beneficiary which causes or might cause a loss to the Community budget.

11.3 Termination procedure

The procedure is initiated by registered letter with advice of delivery or equivalent.

In the cases referred to in points (a), (b) and (d) of Article 11.2, 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), (e), (f) and (g) of paragraph 2, 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 (e), (f) or (g) of paragraph 2, 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

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. This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first. 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, flat-rate funding or 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 complete, accurate and honest; in particular, s/he shall 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 complete, accurate and honest, 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. The beneficiary shall have the period laid down in the Special Conditions to submit the information or new documents requested. If additional information is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. 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 euros. 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 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 for the purposes of additional checks.

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 shall inform the beneficiary of any such suspension by registered letter with advice of delivery or equivalent. Suspension shall take effect on the date when notice is sent by the 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 and without prejudice to paragraph 2, the beneficiary may, within two months following the date of receipt of a late payment, request payment of 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.

15.4 The beneficiary shall inform the NA of the amount of any interest or equivalent

benefits yielded by the pre-financing it has received from the NA. Notification must be made annually if the interest in question represents a significant amount, and in any event when the request is made for payment of the balance that clears the pre-financing. The NA shall issue a recovery order in respect of it in accordance with Article 17.

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 one month 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 real cost or flat-rate funding is limited to the amounts referred to in the above Article of the Special Conditions. Financing using scales of unit costs is determined by application of the formulas provided for in the 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 conditions or grounds for granting these contributions, 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, according to national legislation, the NA may adopt an enforceable decision formally establishing an amount as receivable.

ARTICLE 18 - CHECKS AND AUDITS

18.1 The beneficiary undertakes to provide any detailed information 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, 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 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.

18.5 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.

18.6 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.

ARTICLE 19 – DATA PROTECTION

19.1 All personal data contained in the agreement shall be processed in accordance with:

- national legislation by the NA;
- 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 Community institutions and bodies and on the free movement of such data.

19.2 Such data shall be processed solely in connection with the implementation and follow-up of the agreement by the NA and the Commission, without prejudice to the

possibility of passing the data to the bodies responsible for inspection and audit in accordance with Community legislation as set out in Article 18.

19.3 The beneficiary may, on written request, gain access to his/her personal data and correct any information that is inaccurate or incomplete. S/he should address any questions regarding the processing of his/her personal data to the NA. The beneficiary may lodge a complaint against the processing of his/her personal data with the Information Commissioner with regard to the use of these data by the NA, or to the European Data Protection Supervisor with regard to the use of the data by the Commission.
