



ANNEX 5 to the Terms of Reference

DRAFT FRAMEWORK PARTNERSHIP AGREEMENT Concerning the European Topic Centre on Biological diversity 2014-2018

EEA/NSV/13/001-ETC/BD

The European Environment Agency (hereinafter referred to as "the Agency"), which is represented for the purpose of the signature of this framework partnership agreement by Prof. Jacqueline McGlade, Executive Director,

of the one part,

and

[official name in full], established in [official address in full], which is represented for the purpose of the signature of this framework agreement by [name in full and function], or [his/her] authorised representative, the partner acting as coordinator of the consortium (the "coordinator") and the other partners identified in Article I.2.1 below,

of the other part,

HAVE AGREED

on the **Preamble**, the **Special Conditions**, the **General Conditions** and **Annexes** below which make up the present framework partnership agreement (the "framework agreement").

The Preamble sets out the context of the partnership to form the European Topic Centre on Biological diversity.

The Special Conditions and the General Conditions define the scope and the duration of the framework agreement as well as the operational arrangements for the partnership.

The following documents are annexed to the framework agreement:

- Annex I Terms of Reference No EEA/NSV/13/001 of 30.1.2013
- Annex II The consortium's proposal submitted on xx/xx/2013 (extracts)
- Annex III Specific grant agreement template
- Annex IV Consortium and cost statement forms

The terms of the Special Conditions, of which the preamble forms an integral part, shall take precedence over those in the other parts of the framework agreement. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the specific grant agreement shall take precedence over those in the Terms of Reference (Annex I), the latter taking precedence over the proposal (Annex II).

Subject to the above, the several instruments forming part of the framework agreement are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Agency subject to the rights of the partners under Article I.7 should they dispute any such instruction.

PREAMBLE

Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (codified version) describes in its articles 4(4)-(6) European Topic Centres as part of the aforementioned network. Within the overall framework of the Agency Strategy and multiannual work programme, and in direct support of the annual management plans of the Agency, Topic Centres deal, for instance, with the harmonisation of environmental information of the member countries, the processing of databases, the analysis of information including the use of models to describe the present and foreseeable state of the environment, and the presentation of information to support policy making.

In this context, the Agency selects a consortium of partners (hereinafter referred to as “the partners”), particularly active in the domain of biological diversity, with whom it shares common general objectives and wishes to establish a durable co-operation aiming at fulfilling all tasks of a European Topic Centre.

The general objectives which the Agency shares with the consortium in the above-mentioned domain and which justify the establishment of a partnership are laid down in Annex I.

I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT

- I.1.1 The framework agreement is concluded as part of an on-going, formalised relationship of cooperation between the Agency and the partners (“the partnership”) on the basis of the Agency objectives and priorities set out in Annex I, in order to contribute to the objectives of the Agency Regulation referred to in the Preamble.
- I.1.2 The purpose of the framework agreement is to define the respective roles and responsibilities of the Agency and the partners in implementing their partnership. The specific agreements that may be signed under the framework agreement shall relate to grants for an action.
- I.1.3 Under the conditions laid down in Annex I, the partners shall each year submit a draft work programme which shall be negotiated and jointly agreed by the parties, the Agency satisfying itself *inter alia* that the work programme is coherent with its annual management plan. The jointly agreed work programme shall serve as the basis for the award of any grants during the year in question.

ARTICLE I.2 – COMPOSITION OF THE CONSORTIUM

- I.2.1 The consortium is composed of the partner acting as coordinator and the following legal entities (hereinafter referred to as “the partners”), who shall accede to the framework agreement in accordance with the procedure referred to in Article I.2.4, as partners assuming the rights and obligations established by the framework agreement with effect from the date on which it enters into force as specified in Article I.4.1:
- [official name in full of the partner][acronym], established in [official address in full], represented by [name in full and function] or [his][her] authorised representative (“the partner”);
 - [official name in full of the partner][acronym], established in [official address in full], represented by [name in full and function] or [his][her] authorised representative (“the partner”);
 - [...]
- I.2.2 The partners shall carry out the work set out in Annex I in accordance with the conditions set out in this framework agreement.
- I.2.3 The partners shall conclude a consortium agreement regarding the internal operation of the consortium including all aspects necessary for the management of the consortium and the implementation of the framework agreement and specific agreements. Such agreement may as well supplement the provisions concerning the intellectual property rights referred to in Article II.4, within the limits established in this framework agreement.

- I.2.4 The coordinator shall ensure that the legal entities identified in Article I.2.1 complete the formalities for them to accede to the contract. At the latest 60 (sixty) calendar days after the entry into force of the framework agreement, the coordinator shall send to the Agency one of the 3 (three) duly completed and signed originals of Form A (set out in Annex IV), which shall be obtained from each of the partners identified in Article I.2.1. The 2 (two) remaining originals shall be kept by the coordinator and the partner concerned and be made available for consultation at the request of any other partner.
- I.2.5 Should any legal entity identified in Article I.2.1 fail or refuse to accede to the framework agreement within the deadline established in Article I.2.4, the Agency is no longer bound by its offer to contract with the said legal entity. The Agency may terminate the framework agreement in accordance with Article II.12.2, where any legal entity identified in Article I.2.1 does not accede to the framework agreement in accordance with the provisions established by the Agency. However, the partners may propose appropriate solutions to the Agency to ensure the implementation of the partnership including, where necessary, the accession to the framework agreement of legal entities other than those identified in Article I.2.1 in accordance with the provisions of Article I.2.6. In the case of termination, no costs incurred by the partners under the partnership up to the date of termination of the framework agreement can be approved or accepted as eligible for reimbursement by the Agency financial contribution. Any pre-financing provided to the partners and any interest generated by the pre-financing must be returned in full to the Agency within 30 (thirty) calendar days of notification of termination.
- I.2.6 The consortium may be enlarged to include other legal entities, which shall accede to the framework agreement by means of Form B (set out in Annex IV). The Agency is deemed to have accepted a new legal entity as a partner in the consortium, if it does not object within 45 (forty-five) calendar days of receipt of Form B. Any new partner shall comply with any condition required by the applicable Financial Rules and/or other formalities that may be required by any other provision of this framework agreement.
- I.2.7 Acceding legal entities referred to in Article I.2.6 shall assume the rights and obligations of partners as established by the framework agreement with effect from the date of their accession to the framework agreement as specified in the duly completed and signed Form B. Partners leaving the consortium shall be bound by the provisions of the framework agreement regarding the terms and conditions applicable to the termination of their participation.

ARTICLE I.3 – AWARD OF GRANTS

- I.3.1 The Agency may consult the partners in order to obtain a proposal for action in line with the objectives and priorities set out in Annex I and the jointly agreed annual work programmes referred to in Article I.1.3. Such consultation shall take place on the basis of an invitation to submit a proposal. The Agency shall to that end stipulate the technical and financial criteria that the actions must satisfy if they are to qualify for a grant. The partners shall be free to submit a proposal for action to the Agency in response to the consultation carried out. The Agency shall be free to accept or refuse the proposal submitted; it shall give the reasons for its decision.

- I.3.2 Where the Agency decides to accept a proposal for an action, it shall send to the coordinator a specific agreement in accordance with the model in Annex III. The specific agreement is governed by the terms of the framework agreement and must be signed by the authorised representatives of the parties under the same conditions as the framework agreement.
- I.3.3 By signing the specific agreement, the partners undertake to carry out the action under their own responsibility on the terms laid down in the specific agreement and the annexes thereto and in compliance with the undertakings entered into under the framework agreement.
- I.3.4 Signature of the framework agreement by the parties shall not give rise to any obligation on the Agency to award a grant.

ARTICLE I.4 – DURATION

- I.4.1 The framework agreement shall enter into force on the date when the Agency signs.
- I.4.2 It shall be concluded for a period of 60 (sixty) months starting from the date of its entry into force.
- I.4.3 Specific agreements must be signed before the date when the framework agreement expires. Where the actions are carried out after the above-mentioned date, the terms of the framework agreement shall continue to apply to the implementation of the corresponding specific agreements.

ARTICLE I.5 – FINANCING THE ACTIONS

- I.5.1 Co-financing amounting to not less than 10% of the estimated total eligible cost of an action shall be required for each action for which an Agency grant is awarded.
- I.5.2 The co-financing may be provided either from the partners' own resources or from other sources of external finance.

If considered necessary and appropriate, contributions in kind from third parties may be accepted as co-financing provided that the value calculated for such contributions does not exceed:

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

Contributions involving real estate shall be excluded from the calculation of the amount of the co-financing.

- I.5.3 The provisions relating to the submission of the deliverables relating to the action and the arrangements for payment of the grant are set out in the specific agreement.

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

I.6.1 Any communication in connection with this framework agreement or a specific agreement shall be made in writing in paper or electronic form and shall bear the number of the agreement concerned.

Ordinary mail shall be deemed to have been received by the Agency on the date on which it is registered by the Agency.

Electronic communication must be confirmed by paper communication if requested by either party. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses:

For the Agency:

Cost statements and any other financial and legal information must be addressed to:

European Environment Agency
Ms Eva Carlson
Kongens Nytorv 6
1050 Copenhagen K
Denmark
Tel.: +45 33 36 72 38
Fax: +45 33 36 72 93
E-mail: eva.carlson@eea.europa.eu

Request for payment indicating the reference number of the specific agreement concerned shall be addressed to:

invoices@eea.europa.eu

Technical reports and all other correspondence must be addressed to:

European Environment Agency
Mr Ronan Uhel
Kongens Nytorv 6
1050 Copenhagen K
Denmark
Tel.: +45 33 36 71 30
Fax: +45 33 36 72 93
E-mail: ronan.uhel@eea.europa.eu

For the coordinator:

[Official name in full]
[Name of the responsible project manager/authorised representative]
[Official address in full]
Tel.: + [complete]

Fax: + [complete]
E-mail: [complete]

- I.6.2 Any change of contact details by the coordinator shall be communicated in writing to the Agency.

ARTICLE I.7 – LAW APPLICABLE AND COMPETENT COURT

- I.7.1 Grants are governed by the terms of the framework agreement and specific agreements, the Union law applicable and, on a secondary level, by the law of Denmark relating to grants.
- I.7.2 Any partner of the consortium may bring legal proceedings regarding decisions by the Agency concerning the application of the provisions of the above-mentioned agreements, and the arrangements for implementing them, before the General Court of the European Union and, in the event of appeal, the Court of Justice of the European Union.

ARTICLE I.8 – DATA PROTECTION

- I.8.1 Any personal data included in the framework agreement and specific agreements, or related to these agreements and their implementation, shall be processed pursuant to 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. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the framework agreement and specific agreements by the Agency, without prejudice to possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law. The Agency may use the personal data of the partners (i.e. name, functions and contact details) for information and communication purposes.
- I.8.2 Any partner of the consortium shall have the right of access to his personal data and to rectify any such data that is inaccurate or incomplete. Should a partner have any queries concerning the processing of his personal data, he shall address them to the Agency.
- I.8.3 Any partner of the consortium shall have the right of recourse to the European Data Protection Supervisor at any time.
- I.8.4 Where the framework agreement or specific agreements require the processing of personal data by the partners, they may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his rights.
- I.8.5 The partners shall limit access to the data to the staff strictly necessary for the implementation, management and monitoring of the framework agreement.

- I.8.6 The partners undertake to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - unauthorised reading, copying, alteration or removal of storage media;
 - unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - unauthorised persons from using data-processing systems by means of data transmission facilities;
 - b) ensure that authorised users of a data-processing system can access only the personal data to which their access rights refer;
 - c) record which personal data have been communicated, when and to whom;
 - d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Agency;
 - e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
 - f) design its organisational structure in such a way that it meets data protection requirements.

[ARTICLE I.9 – ADDITIONAL SPECIAL CONDITIONS¹

[The following additional special conditions apply to this framework agreement: [...]]

¹ This provision is optional and shall be deleted if deemed unnecessary.

II – GENERAL CONDITIONS

PART A – LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 – PERFORMANCE OBLIGATIONS

II.1.1 The consortium shall:

- (a) take all necessary and reasonable measures to ensure that the framework agreement and the specific agreements are carried out in accordance with the terms and conditions of this framework agreement;
- (b) make appropriate internal arrangements to ensure the efficient implementation of the framework agreement and the specific agreements, and ensure that any agreement concluded between the partners to this end does not contradict the provisions of the framework agreement and the specific agreements. In accordance with Article I.2.3, such agreements may, *inter alia*, specify the organisation of the work to be carried out, decision-making and dispute settlement procedures, and specify provisions concerning intellectual property rights within the limits established in this framework agreement;
- (c) inform the Agency of any event which may affect the implementation of the framework agreement and the specific agreements and the rights of the Agency and of any circumstance affecting the conditions of participation referred to in the Financial Rules and any requirements of the framework agreement, including any change of control;
- (d) provide all detailed data requested by the Agency for the purpose of the proper administration of the framework agreement and the specific agreements.

II.1.2 Each partner shall:

- (a) ensure that all information to be provided to the Agency is sent via the coordinator;
- (b) make appropriate arrangement for the proper performance of the work identified in the jointly agreed annual work programmes referred to in Article I.1.3 and in the specific agreements. To this end, the partner shall designate one or more persons who shall manage and monitor the work, ensure that the tasks assigned are correctly performed and inform the Agency of the name and contact details of the person designated and of any change of that information;
- (c) inform the Agency without delay of any event which might affect the implementation of the framework agreement and the specific agreements and the rights of the Agency;
- (d) provide the Agency and the European Court of Auditors directly with information requested in the framework of controls and audits, as provided for in Article II.22;

- (e) ensure that any agreements or contracts entered into between the partner and any subcontractor, or other third party, contain provisions extending the Agency's and the European Court of Auditors' right to audit any work carried out under the specific agreements for which costs are claimed from the Agency financial contribution;
- (f) undertake to ensure that the conditions applicable to the partner under Articles II.9, II.10, II.11 and II.12 are also applicable to any third party whose costs are claimed under the specific agreements by means of Article II.19;
- (g) take part in meetings concerning the supervision, monitoring and evaluation of the framework agreement and the specific agreements as relevant;
- (h) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this framework agreement and inform the other partners and the Agency without delay of any unavoidable obligations which may arise during the duration of the framework agreement which may have implications for any of his obligations under the framework agreement and the specific agreements;
- (i) carry out the jointly agreed annual work programmes referred to in Article I.1.3 and the specific agreements with fundamental ethical principles;
- (j) endeavour to promote equal opportunities between men and women in the implementation of the framework agreement and the specific agreements;
- (k) ensure that the Agency is informed without delay if and when any eligibility criteria established by the Financial Rules cease(s) to be met during the duration of the framework agreement and the specific agreements;
- (l) take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the framework agreement and the specific agreements and inform the Agency without delay of any situation which could lead to such a conflict of interest.

II.1.3 The coordinator shall:

- (a) ensure that the tasks identified in Articles I.2.4 and I.2.6 regarding accession to the framework agreement are carried out in a timely manner;
- (b) be the intermediary for communication between the partners and the Agency;
- (c) submit to the Agency the cost statements provided for in Article II.19;
- (d) receive all payments made by the Agency to the consortium and administer the Agency's financial contribution regarding its allocation between the partners and activities in accordance with the framework agreement and the specific agreements and the decisions taken by the consortium. The coordinator shall

ensure that all the appropriate payments are made to the partners without unjustified delay;

- (e) keep accounts making it possible to determine at any time what portion of the Agency funds has been paid to each partner for the purposes of the actions;
- (f) inform the Agency of the distribution of the funds and the date of the transfers to the partners.

II.1.4 The Agency shall:

- (a) monitor the scientific, technological and financial execution of the jointly agreed annual work programmes referred to in Article I.1.3 and the specific agreements and ensure that its financial contribution is provided when and where necessary under the conditions established by the framework agreement and the specific agreements;
- (b) carry out review, analysis and approval of deliverables of the actions within the periods indicated in the specific agreements;
- (c) maintain the confidentiality of information, data, reports, or other deliverables or knowledge communicated to it as confidential, in accordance with the provisions of Article II.5.

ARTICLE II.2 – LIABILITY

- II.2.1 The partners shall have sole responsibility for complying with any legal obligations incumbent on them.
- II.2.2 The Agency shall not, in any circumstances or on any grounds, be held liable in the event of a claim under a specific agreement relating to any damage caused during the implementation of an action for which a grant was awarded. Consequently, the Agency will not entertain any request for indemnity or reimbursement accompanying any such claim.
- II.2.3 Except in case of force majeure, the partners shall make good any damage sustained by the Agency as a result of the execution or faulty execution of an action for which a grant was awarded.
- II.2.4 The partners shall assume sole liability towards third parties, including for damage of any kind sustained by them while an action for which a grant was awarded is being carried out.

ARTICLE II.3 – CONFLICT OF INTEREST

- II.3.1 The partners undertake to take all the necessary measures to prevent any risk of conflicts of interest which could affect the impartial and objective performance of the framework agreement and/or of the specific agreements. Such conflicts of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional ties or emotional reasons, or any other shared interest.

- II.3.2 Any situation constituting or likely to lead to a conflict of interest during the performance of the framework agreement and/or the specific agreements must be brought to the attention of the Agency, in writing, without delay. The partner shall undertake to take whatever steps are necessary to rectify this situation at once. The Agency reserves the right to check that the measures taken are appropriate and may demand that the partners take additional measures, if necessary, within a certain time.

ARTICLE II.4 – OWNERSHIP AND USE OF THE RESULTS

- II.4.1 Unless stipulated otherwise in this framework agreement or in a specific agreement, ownership of the results of an action for which a grant was awarded, including industrial and intellectual property rights, and of the reports and other documents relating to it, shall be vested in the partner(s) concerned.
- II.4.2 Where industrial and intellectual property rights, including rights of third parties, exist prior to the specific agreement being entered into (“pre-existing intellectual property rights”), the partner(s) concerned shall establish a list which shall specify all rights of ownership and use in the pre-existing intellectual property rights and disclose it to the Agency at the latest prior to the commencement of implementation. The partner(s) concerned shall ensure that he/they has/have all rights to use any pre-existing intellectual property rights in implementation of the specific agreement.
- II.4.3 Without prejudice to Articles II.4.1 and II.2, the partners grant the Agency the right to use the results of the action for the following purposes:
- (a) use for its own purposes and, in particular, making available to persons working for the Agency, other Union institutions and bodies and to Member States’ institutions, as well as copying and reproducing in whole or in part and in unlimited number of copies;
 - (b) distribution to the public, and in particular, publication in hard copies and in electronic or digital format, publication on the Agency website as downloadable or non-downloadable file, broadcasting by any kind of technique of transmission, public display or presentation, communication through press information services, inclusion in widely accessible databases or indexes;
 - (c) translation;
 - (d) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30.5.2001 regarding public access to European Parliament, Council and Commission documents;
 - (e) storage in paper, electronic or other format;
 - (f) archiving in line with the document management rules applicable to the Agency;
 - (g) right to authorise or sub-licence the modes of exploitation set out in points (b) and (c) to third parties.

Additional rights of use for the Agency may be provided in the specific agreement.

The partners shall warrant that the Agency has the right to use any pre-existing industrial and intellectual property rights, which have been included in the results of the action. Unless specified otherwise in the Special Conditions, those pre-existing rights shall be used for the same purposes and under the same conditions applicable to the rights of use of the results of the action.

Information about the copyright owner shall be inserted when the result is divulged by the Agency. The copyright information shall read: “© - year – name of the copyright owner. All rights reserved. Licenced to the European Environment Agency under conditions.”.

ARTICLE II.5 – CONFIDENTIALITY

- II.5.1 The Agency and the partners undertake to preserve the confidentiality of any document, information or other material directly or indirectly related to the subject of the framework agreement and/or specific agreements that is duly classed as confidential if disclosure could cause prejudice to any of the parties.
- II.5.2 The Agency and the partners shall:
- (a) not use confidential information and documents for any purpose other than fulfilling their obligations under the framework agreement and/or the specific agreements without prior written agreement of the other party;
 - (b) ensure the protection of such confidential information and documents with the same level of protection they use to protect their own confidential information and in no case exercise any less than reasonable care;
 - (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the other party.
- II.5.3 The confidentiality obligations set out in Article II.5.1 shall be binding on the Agency and the partners during the performance of the framework agreement and the specific agreements and beyond the expiry date of these agreements.
- II.5.4 Each partner shall obtain from any natural person with the power to represent him or take decisions on his behalf, as well as from third parties involved in the performance of the framework agreement and/or the specific agreements an undertaking that they will comply with the confidentiality obligation set out in Article II.5.1.

ARTICLE II.6 – PUBLICITY

- II.6.1 Unless the Agency requests otherwise, any communication or publication by the partners about an action for which a grant was awarded, including at conferences or seminars, shall indicate that the action has received funding from the Agency.

Any communication or publication by the partners, in any form and medium, beyond that specified in Annex I to a specific agreement, shall require explicit authorisation by the Agency.

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

II.6.2 The partners authorise the Agency to publish the following information, in any form and medium, including via the internet:

- (a) the partners' names and addresses;
- (b) the subject and purpose of the grants awarded;
- (c) the amount granted and the proportion of the actions' total costs covered by the funding.

Upon a reasonable and duly substantiated request by a partner, the Agency may agree to forego such publicity if disclosure of the information indicated above would risk compromising the partners' security or prejudicing their commercial interests.

ARTICLE II.7 – EVALUATION

Whenever the Agency carries out an interim or final evaluation of an action's impact measured against the objectives of the Agency, the partners undertake to make available to the Agency and/or persons authorised by it 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 II.22.

ARTICLE II.8 – SUSPENSION

II.8.1 The partners may suspend implementation of an action if exceptional circumstances make this impossible or excessively difficult, notably in the event of force majeure. They shall inform the Agency without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

II.8.2 If the Agency does not terminate the specific agreement under Article II.12.2, the partners shall resume implementation once circumstances allow and 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.14, a supplementary 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.9 – FORCE MAJEURE

II.9.1 Force majeure shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevent either of them from fulfilling any of their obligations under the framework agreement and specific agreements, 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.9.2 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.
- II.9.3 Neither of the parties shall be held in breach of their obligations under the framework agreement and the specific agreements 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.9.4 Actions under way may be suspended in accordance with Article II.8.

ARTICLE II.10 – AWARD OF CONTRACTS (SUBCONTRACTS)

- II.10.1 If a partner has to conclude contracts in order to carry out an action and they constitute costs under an item of eligible direct costs in the estimated budget for the action annexed to the specific agreement, he shall seek competitive tenders from potential contractors and award the contract to the bid offering best value for money; in doing so he shall observe the principles of transparency and equal treatment of potential contractors and shall take care to avoid any conflict of interest.
- II.10.2 Contracts as referred to in Article II.10.1 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 the Annex of a specific agreement and the corresponding estimated costs must be set out in detail in the estimated budget for the action;
 - (d) any recourse to the award of contracts while the action is under way, if not provided for in the description of the action, shall be subject to prior written approval by the Agency;
 - (e) the partner concerned shall retain sole responsibility for carrying out the action and complying with the terms of the framework agreement and the corresponding specific agreement. The partner concerned must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Agency under the framework agreement and the specific agreements;
 - (f) the partner concerned must undertake to ensure that the conditions applicable to him under Articles II.2, II.3, II.4, II.5, II.6, II.7, II.11, II.20 and II.22 of the framework agreement are also applicable to the contractor.

ARTICLE II.11 – ASSIGNMENT

II.11.1 Claims against the Agency may not be transferred.

II.11.2 In exceptional circumstances, where the situation warrants it, the Agency may authorise the assignment to a third party of the specific agreement, or part thereof, and any payments flowing from them to a third party, following a written request to that effect, giving reasons, from the partners. 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.11.3 In no circumstances shall such an agreement release the partners from their obligations to the Agency.

ARTICLE II.12 – TERMINATION

II.12.1 Termination by the partners

The partners may terminate the framework agreement at any time by giving 60 (sixty) calendar days' written notice. Where they avail themselves of that right, they must undertake to complete the implementation of any specific agreements which have entered into force before the date when termination of the framework agreement takes effect.

In duly justified cases, the partners may withdraw their request for a grant and terminate a specific agreement at any time by giving 60 (sixty) calendar 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 partners shall be deemed to have terminated this specific agreement improperly, with the consequences set out in Article II.12.4.

II.12.2 Termination by the Agency

The Agency may decide to terminate the framework agreement at any time, without any indemnity on its part, by giving 60 (sixty) calendar days' written notice. Where the Agency avails itself of that right, it must honour the obligations arising from the implementation of any specific agreements which have entered into force before the date when termination of the framework agreement takes effect, insofar as this implementation gives rise to expenditures foreseen in those specific agreements which are reasonable, except in the cases set out below.

The Agency may decide to terminate the framework agreement and/or the specific agreements in the process of being implemented or to terminate the participation of a partner, without any indemnity on its part, in the following circumstances:

- (a) in the event of a change to a partner's legal, financial, technical, organisational or ownership situation that is liable to affect the framework agreement and/or the specific agreements substantially or to call into question the decision to award the grant;

- (b) if a partner fails to fulfil a substantial obligation incumbent on him under the terms of the framework agreement and/or the specific agreements, including their annexes;
- (c) in the event of force majeure, notified in accordance with Article II.9, or if the action has been suspended as a result of exceptional circumstances, notified in accordance with Article II.8;
- (d) if a partner is declared bankrupt, is being wound up, is having his affairs administrated 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 Agency has evidence or seriously suspects a partner or any related entity or person, of professional misconduct;
- (f) if a partner 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 he is established;
- (g) where the Agency has evidence or seriously suspects a partner 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 partner 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 partner 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 partner. Any related entity shall mean in particular any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive No 83/349/EEC of 13 June 1983².

II.12.3 Termination procedure

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

In the cases referred to in points (a), (b), (d), (e), (g) and (h) of Article II.12.2, the partners shall have 30 (thirty) calendar days to submit their observations and take any measures necessary to ensure continued fulfilment of their obligations under the framework agreement and/or the specific agreements. If the Agency confirms acceptance of these observations by giving written approval within 30 (thirty) calendar days of receiving them, the termination procedure shall cease.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31983L0349:en:HTML>

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 the Agency's decision to terminate the agreement is notified.

If notice is not given and in the cases referred to in points (c), (f) and (i) of Article II.12.2, termination shall take effect from the day following the date when the Agency's decision to terminate the agreement is notified.

II.12.4 Effects of termination

In the event of termination of a specific agreement, payments by the Agency shall be limited to the eligible costs actually incurred by the partners up to the date when termination takes effect, in accordance with Article II.18. Costs relating to agreed activities that are not due to be executed until after termination shall not be taken into account.

The partners shall have 60 (sixty) calendar days from the date when termination of a specific agreement takes effect, as notified by the Agency, to produce a request for final payment. If no request for final payment is received within this time limit, the Agency shall not reimburse the expenditure incurred by the partners up to the date of termination and it shall recover any amount if its use is not substantiated by the progress reports and cost statements approved by the Agency.

By way of exception, at the end of the period of notice referred to in Article II.12.3, where the Agency is terminating a specific agreement on the grounds that the partners have failed to produce the final progress report and financial cost statements as stipulated in the agreement and have still not complied with this obligation within 30 (thirty) calendar days following the written reminder sent by the Agency by registered letter with advice of delivery or equivalent, the Agency shall not reimburse the expenditures incurred by the partners up to the date on which the action ended and it shall recover any amount if its use is not substantiated by the progress reports and cost statements approved by the Agency.

By way of exception, in the event of improper termination by the partners or termination by the Agency on the grounds set out in points (a), (e), (g), (h) or (i) of Article II.12.2, the Agency may require the partial or total repayment of sums already paid under a specific agreement on the basis of progress reports and cost statements approved by the Agency, in proportion to the gravity of the failings in question and after allowing the partners to submit their observations.

ARTICLE II.13 – FINANCIAL PENALTIES

II.13.1 By virtue of the Financial Rules applicable to the Agency, any partner declared to be in grave breach of his contractual obligations shall be liable to financial penalties of between 2% and 10% of the value of the grant in question, with due regard to the principle of proportionality.

II.13.2 The rate specified in Article II.13.1 may be increased to between 4% and 20% in the event of a repeated breach in the 5 (five) years following the establishment of the first.

II.13.3 The partners shall be notified in writing of any decision by the Agency to apply such financial penalties.

ARTICLE II.14 – SUPPLEMENTARY AGREEMENTS (AMENDMENTS)

II.14.1 Any amendment to the framework agreement and/or a specific agreement must be the subject of a written supplementary agreement. No oral agreement may bind the parties to this effect.

II.14.2 The supplementary agreement may not have the purpose or the effect of making changes to the framework agreement and/or a specific agreement which might call into question the decision awarding the framework agreement or a grant, or result in unequal treatment of applicants for framework agreements or grants.

II.14.3 If the request for amendment is made by the partners, they must send it to the Agency in good time before it is due to take effect and in the case of specific agreements, no later than 30 (thirty) calendar days before the closing date of the action, except in cases duly substantiated by the partners and accepted by the Agency.

ARTICLE II.15 – TECHNICAL COLLECTIVE RESPONSIBILITY

Technical implementation of the framework agreement and any specific agreement shall be the collective responsibility of the partners. To that end, each partner shall take all necessary and reasonable measures to attain the objectives of the framework agreement and any specific agreement, and to carry out the work incumbent on a defaulting partner.

ARTICLE II.16 – FINANCIAL COLLECTIVE RESPONSIBILITY

II.16.1 Should a specific agreement or the participation of a partner be terminated in accordance with Article II.12.2, and the partner concerned does not honour the reimbursement of the amount due, the other partners will reimburse the amount due to the Agency.

II.16.2 The amount due to the Agency may not exceed the value of the contribution due to the partners as specified in Article 3 of a specific agreement.

The amount to be recovered shall be allocated between the remaining partners other than those referred to in Article II.16.3 in accordance with their pro rata share in the overall estimated budget of the action annexed to the specific agreement. This allocation shall be based on the relative weight of all those partners not excluded by Article II.16.3, taking into account their share of the provisional costs as indicated in the estimated budget of the action annexed to the specific agreement when pre-financing is to be recovered, and their share of accepted certified costs when payment is to be recovered.

Any amount claimed from a partner shall not exceed the contribution he is entitled to receive according to applicable reimbursement rates. The amount a partner is entitled to receive is based on his provisional costs as indicated in the estimated budget of the action annexed to the specific agreement when pre-financing is to be

recovered, and on his certified costs accepted by the Agency when a settled payment is to be recovered.

II.16.3 Articles II.16.1 and II.16.2 do not apply where the defaulting partner is a public law body, an international organisation or a partner whose participation to the action is guaranteed by a member country.

II.16.4 The partners are not collectively responsible for:

- (a) any amount owed by a defaulting partner for any breach discovered after the final implementation date of the action;
- (b) financial penalties referred to in Article II.13 imposed on a defaulting partner.

PART B – FINANCIAL PROVISIONS

ARTICLE II.17 – ELIGIBLE COSTS

II.17.1 Eligible costs of the action are costs actually incurred by the partners and which meet the following criteria:

- (a) they are incurred during the duration of the action as specified in Article 2 of a specific agreement, with the exception of costs relating to the reporting, review or evaluation requirements of this framework agreement;
- (b) they are connected with the subject of the specific agreement and they are indicated in the estimated overall budget of the action annexed to it;
- (c) they are necessary for the implementation of the action which is the subject of the specific agreement;
- (d) they are identifiable and verifiable, in particular being entered in the accounting records of the partners and determined according to the applicable accounting standards of the country where the partners are established and according to the usual cost-accounting practices of the partners;
- (e) they comply with the requirements of applicable tax and social legislation;
- (f) they exclude any profit margin;
- (g) they are reasonable, justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The partners' 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.

No cost may be charged to more than one of the eligible cost categories referred to in Articles II.17.2 and II.17.3.

The eligible costs consist of direct costs and indirect costs.

II.17.2 The eligible direct costs for an action are those costs which, with due regard to the conditions of eligibility set out in Article II.17.1, are identifiable as specific costs directly linked to the implementation of the action and which can therefore be booked to it directly. In particular, the following direct costs are eligible, provided that they satisfy the criteria set out in Article II.17.1:

- (a) The cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, insofar that their costs are in line with the partner's usual policy on remuneration, provided this policy is regarded as acceptable by the Agency.

Only the costs of the actual hours worked by persons directly carrying out the work under the action may be charged to the specific agreement. Such persons

must be directly employed by the partner in accordance with his national legislation and be under the technical supervision of the latter.

All the working time charged to the action must be recorded throughout the duration of the action, or, in the case of the coordinator, no later than 60 (sixty) calendar days after the date when implementation of the action ended, and be certified at least once a month by the designated project manager, or an authorised senior employee of the partner.

- (b) Travel and subsistence costs for staff taking part in the action, insofar that they are in line with the partner's usual practices on travel, provided that these are regarded as acceptable by the Agency.

The prior approval of the Agency shall be required for any destination outside the territory of the Agency's member countries, unless such a destination is provided for in Annex II of a specific agreement.

- (c) The purchase cost of equipment (new or second hand) provided that this is written off in accordance with the formula below. Only the portion of the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purpose of the action may be taken into account by the Agency, according to the following formula:

$$A/B \times C \times D$$

A = the period in months during which the durable equipment is used for the action after invoicing,

B = the depreciation period for the durable equipment: 36 (thirty-six) months for equipment costing less than EUR 25 000 or 60 (sixty) months for other equipment,

C = the actual cost of the durable equipment,

D = the percentage of usage of the durable equipment for the action.

The durable equipment may have been purchased within the 6 (six) months preceding the action commencement date or for a previous agreement concluded with the Agency, provided that the depreciation period has not been exceeded. Only the costs relating to the unexpired depreciation period may be charged.

- (d) Costs entailed by other contracts awarded by the partner for the purpose of carrying out the action ("subcontract"), provided that the conditions laid down in Article II.10 are met.

The partner shall ensure that subcontracts include an obligation for the subcontractors to submit invoices making reference to the action and providing detailed description of the tasks concerned.

- (e) Costs related to the arrangements of meetings for the purpose of the action. These costs may include travel and subsistence costs of participants that are not employed by the partner, provided that they are established on the basis of the applicable rules of the Agency.
- (f) Other specific costs entailed by the action, subject to the prior written approval of the Agency, unless provided for in the estimated budget of the action annexed to a specific agreement.

II.17.3 The eligible indirect costs for an action are those costs which, with due regard to the conditions of eligibility set out in Article II.17.1, are not identifiable as specific costs directly linked to implementation of the action which can be booked to it directly, but which can be identified and justified by the partner using his accounting system as having been incurred in connection with the eligible direct costs for the action. They may not include any eligible direct costs.

A partner may charge indirect costs calculated as a flat-rate amount of 20% of all direct costs referred in points (a), (b), (c), (e) and (f) of Article II.17.2. A partner may request a lower percentage when this is required, for instance, by his internal rules.

II.17.4 The following costs shall not be considered eligible:

- (a) Return on capital;
- (b) Debt and debt service charges;
- (c) Provisions for losses or potential future liabilities;
- (d) Interest owed;
- (e) Doubtful debts;
- (f) Exchange losses;
- (g) Deductible VAT;
- (h) Costs declared by the partner and covered by another action or work programme receiving a Union grant;
- (i) Excessive or reckless expenditure;
- (j) Marketing, sales and distribution costs for products and services.

II.17.5 Contributions in kind shall not constitute eligible costs with the exception specified in Article I.5.2 in regard to co-financing made entirely or in part of 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 partners

shall undertake to obtain these contributions as provided for in the specific agreements.

II.17.6 Partners shall be authorised to transfer between themselves the budget set out in the table of indicative breakdown of estimated eligible costs annexed to the specific agreement, provided that the amounts transferred do not exceed 10% of the amount allocated to any given partner in the table of the indicative breakdown of the estimated eligible costs. The partners shall inform the Agency, through the coordinator, of such transfers. Any other properly substantiated transfer approved by partners directly concerned shall require prior written approval by the Agency.

II.17.7 Each partner shall be authorised to transfer the budget set out in the table of the indicative breakdown of estimated eligible costs between categories of costs, in compliance with the provisions of Article II.17.6, provided he informs the Agency. However, he shall not be required to obtain the agreement of the other partners.

ARTICLE II.18 – JUSTIFICATION OF COSTS

Eligible costs shall be reimbursed where they are justified by the partner. To this end, the partner shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which he is established, the accounts for the action and appropriate documentation to support and justify in particular the costs and time reported in his cost statements. This documentation must be precise, complete and effective.

ARTICLE II.19 – COST STATEMENTS

II.19.1 The partners shall submit cost statements expressed in euro, or, for partners established outside the Eurozone, in national currency and in euro, in the format specified in Annex IV. Any conversion of actual costs into euro shall be made at the monthly accounting rate established by the Commission and published on its website³ applicable on the day when the cost was incurred or applicable in the month of submission of the cost statement to the Agency. The model chosen for the first cost statement shall be applicable for the duration of the framework agreement.

No account shall be taken of exchange gains or losses between the issue of the cost statement and the receipt of any payment.

Partners shall submit their cost statements to the Agency through the coordinator who shall in addition submit the corresponding integrated cost statements in euro in the format specified in Annex IV.

Cost statements, including the integrated cost statement, shall be submitted to the Agency within 30 (thirty) calendar days of the end of the period covered by the cost statement. The final cost statement, including the integrated cost statement, shall be submitted to the Agency within 60 (sixty) days of the end of the duration of the action.

³ http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

The Agency reserves the right to withhold part or, exceptionally, all of the payment of the Agency financial contribution in case of failure to submit a cost statement or other deliverable of the action.

- II.19.2 The Agency may suspend the period for payment laid down in Article 4 of a specific agreement at any time by notifying a partner that his request for payment cannot be met, either because it does not comply with the provisions of the agreement, or because appropriate supporting documents must be produced or because there is a suspicion that some of the expenses in the cost statement are not eligible and additional checks are being conducted.

The Agency shall inform the partners 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 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.19.3 On expiry of the period for payment specified in Article 4 of a specific agreement, and without prejudice to Article II.19.2, the partners may, within 60 (sixty) calendar days 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 refinancing operations in euro ("the reference rate"), plus 3.5 (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 or bodies.

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 II.19.1, inclusive. The interest shall not be treated as a receipt for the purposes of determining the final grant. The suspension of payment by the Agency may not be considered as late payment.

- II.19.4 The partners shall have 60 (sixty) calendar days 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.22, or, failing that, from 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. Any such request submitted after the above-mentioned time limit will not be considered. The Agency undertakes to reply in writing within 60 (sixty) calendar days following the date on which the request for information is received, giving reasons for its reply. This procedure is without prejudice to the partners' right to appeal against the Agency's decision pursuant to Article I.7. Under the terms of Union legislation in this matter, such appeal must be lodged within 2 (two) months following the notification of the decision to the partners, or, failing that, following the date on which the partners learned of the decision.

ARTICLE II.20 – THE AGENCY FINANCIAL CONTRIBUTION

II.20.1 The Agency shall make its contribution to the partners under the following cumulative conditions:

- (a) the contribution is based on the reimbursement of eligible costs claimed by the partners through the coordinator, and
- (b) on the basis of cost statements provided by each partner.

II.20.2 At the time of the submission of the last financial statement, the final amount of the Agency financial contribution will be established taking into account all amounts which the partners have already received.

II.20.3 Partners subject to the provisions of the state aid framework on cumulating public funding must ensure that they comply with its provisions.

II.20.4 Where an action has not effectively commenced within 90 (ninety) calendar days of the payment of the pre-financing, the Agency may:

- (a) determine to add interest on the pre-financing from its payment until the effective commencement date of the action at the rate applied by the European Central Bank for its main refinancing operations in euro, or
- (b) require the reimbursement of the pre-financing together with such interest.

II.20.5 All payments shall be treated as pre-financing until acceptance of the final progress report.

II.20.6 The total amount paid to the partners by the Agency may not in any circumstances exceed the maximum amount of the grant laid down in Article 3 of the specific agreement, even if the total actual eligible costs exceed the estimated total eligible costs specified in the same provision.

II.20.7 If the actual eligible costs at the end of the action are lower than the estimated total eligible costs, the Agency financial contribution shall be limited to the amount obtained by applying the reimbursement rate agreed in the specific agreement to the actual eligible costs approved by the Agency.

II.20.8 The partners hereby agree that the grant shall be limited to the amount necessary to balance the receipts and the expenditure of the action and that it may not in any circumstances produce a profit for them.

Profit shall mean any surplus of all 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 coordinator, for financing other than the Agency grant, to which shall be added the amount of the grant determined by applying the principles laid down in Articles II.20.6 and II.20.7. For the purposes of this Article,

only actual costs of the action falling within the categories set out in the estimated budget annexed to the specific agreement shall be taken into account. Non-eligible costs shall always be covered by resources other than the Agency contribution.

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

II.20.9 Without prejudice to the right to terminate a specific agreement pursuant to Article II.12.2 and without prejudice to the right of the Agency to apply penalties referred to in Article II.13, 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 framework agreement.

II.20.10 On the basis of the amount of the final grant 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 partners. 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.

II.20.11 The Agency undertakes to pay sums due pursuant to a specific agreement within the period for payment laid down in Article 4 of the specific agreement from the date on which the Agency approved or should have approved the report or reports and/or other deliverables ("the date of approval") to the date on which the Agency account is debited.

This payment period may be suspended by the Agency in accordance with the provisions of Article II.19.2, and the partners may claim interest for late payment in accordance with the provisions of Article II.19.3 at the rate applied by the European Central Bank to its refinancing operations in euro, plus 1.5 (one and a half) point.

ARTICLE II.21 – RECOVERY

II.21.1 If any amount is unduly paid to the partners or if recovery is justified under the terms of the framework agreement or a specific agreement, the partners undertake to repay the Agency the sum in question on whatever terms and by whatever date it may specify.

II.21.2 If the partners fail to pay by the date set by the Agency, the sum due shall bear interest at the rate indicated in Article II.19.3. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Agency 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.21.3 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 partners, after informing them accordingly by registered letter with advice of delivery or equivalent, or by calling in any financial guarantee provided in accordance with the terms of a specific agreement. In exceptional circumstances, justified by the necessity to safeguard the

financial interests of the Union, the Agency may recover by offsetting before the due date of the payment. The partners' prior consent shall not be required.

II.21.4 Bank charges occasioned by the recovery of the sums owed to the Agency shall be borne solely by the partners.

II.21.5 The partners understand that, under Article 299 of the Treaty on the Functioning of the European Union (TFEU), the Agency 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 pursuant to Article 263 of the TFEU.

ARTICLE II.22 – CHECKS AND AUDITS

II.22.1 Technical or financial checks or audits and interim or final evaluations

The Agency may carry out technical or financial checks and audits in relation to the usage of the grant. Information and documents provided in the framework of checks and audits shall be treated on a confidential basis.

In addition, the Agency may carry out interim or final evaluations of the impact of the actions against the Agency's objectives.

Checks, audits or evaluations made by the Agency may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such checks, audits or evaluations may be initiated during the implementation of a specific agreement and for a period of 5 (five) years starting from the date of payment of the balance. The check, audit or evaluation procedure shall be deemed to be initiated on the date of receipt of the letter of the Agency announcing it.

II.22.2 Duty to keep documents

The partners shall keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by their respective national law and under the conditions laid down therein, for a period of 5 (five) years starting from the date of payment of the balance. This period shall be longer if there are on-going audits, appeals, litigation or pursuit of claims. In such cases, the partners shall keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

II.22.3 Obligation to provide information

Where a check, audit or evaluation is initiated before the payment of the balance of the grant, the coordinator shall provide any information, including information in electronic format, requested by the Agency or by any outside body authorised by it. Where appropriate, the Agency may request such information to be provided directly by a partner.

Where a check or audit is initiated after the payment of the balance of the grant, such information shall be provided by the partner(s) concerned.

II.22.4 On-the-spot visits

During an on-the-spot visit, the partners shall allow the Agency staff and outside personnel authorised by the Agency to have access to the sites and premises where the action is or was carried out, and to all the necessary information, including information in electronic format.

The partners shall ensure that the information is readily available at the moment of the on-the-spot visit and that the information requested is handed over in an appropriate form.

II.22.5 Contradictory audit procedure

On the basis of the findings made during the audit, a provisional report (“draft audit report”) shall be drawn up. It shall be sent by the Agency or its authorised representative to the partner(s) concerned, who shall have 30 (thirty) calendar days from the date of receipt to submit observations. The final report (“final audit report”) shall be sent to the partner(s) concerned within 60 (sixty) calendar days of expiry of the time limit for submission of observations.

II.22.6 Effects of audit findings

On the basis of the final audit findings, the Agency may take the measures which it considers necessary, including recovery in accordance with Article II.21 of all or part of the payment made by it.

Where, on the basis of an audit of other grants awarded to a partner under similar conditions, the partner is found to have committed systemic or recurrent errors, irregularities, fraud or breach of obligations that have a material impact on the grant being considered, the Agency may take, within the period referred to in Article II.22.1, all measures which it considers necessary, including recovery in accordance with Article II.21 of all or part of the payments made by it under the specific agreement being considered.

In the case of final audit findings made after the payment of the balance, the amount to be recovered shall correspond to the difference between the revised final amount of the grant, determined in accordance with Article II.20, and the total amount paid to the partners under the specific agreement for implementation of the action being considered.

II.22.7 Checks and inspection by the European Anti-Fraud Office

The European Anti-Fraud Office (OLAF) shall have the same rights as the Agency, notably right of access, for the purpose of checks and investigations.

By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11.11.1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities’ financial interests against fraud and other irregularities, and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25.5.1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), 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 Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to recovery by the Agency.

II.22.8 Checks and audits by the European Court of Auditors

The European Court of Auditors shall have the same rights as the Agency, notably right of access, for the purpose of checks and audits.

SIGNATURES

For the Consortium,
[Company name of the coordinator]
[Forename/surname/function of the authorised representative]

For the Agency,
Prof. Jacqueline McGlade,
Executive Director

Signature: _____

Signature: _____

Done at _____, on _____

Done at Copenhagen, on _____

In duplicate in English