



GRANT AGREEMENT

AGREEMENT NUMBER – IEE/CA/11/001/SI2.594052

CA ESD II

relating to the implementation of an action in the framework of the

“Intelligent Energy – Europe” Programme

Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007-2013)¹

The Executive Agency for Competitiveness and Innovation (EACI) (hereinafter referred to as “the Agency”), acting under powers delegated by the European Commission (hereinafter referred to as “the Commission”), and represented for the purposes of signature of the present agreement by Mr Patrick LAMBERT, Director, or his duly authorised representative,

of the one part,

of the one part,

NL Agency (ANL),
Croeselaan 15, 3521 BJ, Utrecht, THE NETHERLANDS,
hereinafter referred to as “the coordinator”, represented for the purposes of signature of this agreement by Mr Rob Boeree, Director Energy & Climate Change,

and the following co-beneficiaries,

The Energy Saving Trust Limited (EST),
21 Dartmouth Street, SW1H 9BP, London, UNITED KINGDOM
represented for the purposes of signature of this agreement by Mr Philip Sellwood, Chief Executive Officer,

Austrian energy Agency (A.E.A.),
Mariahilfer Strasse 136, 1150, Wien, AUSTRIA,
represented for the purposes of signature of this agreement by Mr Fritz Unterpertinger, Chief Executive Officer,

¹ OJ L 310 of 9 November 2006, p. 15, Article 37.

Flemish Energy Agency (VEA),
Koning Albert II-laan 20 bus 17, 1000, Brussels, BELGIUM,
represented for the purposes of signature of this agreement by Mr Luc Peeters, Chief Executive,

Energy Efficiency Agency (EEA),
37 Ekzarh Yosif str., 1000, Sofia, BULGARIA,
represented for the purposes of signature of this agreement by Mr Kolio Kolev, Executive
Director,

Ministry of Commerce, Industry and Tourism-Energy Service (YEBT),
13-15 Andrea Araouzou Street, 1421, Nicosia, CYPRUS,
represented for the purposes of signature of this agreement by Mr Solon Kassinis, Director,

Ministry of Economy, Labour and Entrepreneurship (MoELE),
Ulica Grada Vukovara 78, 10000, Zagreb, CROATIA,
represented for the purposes of signature of this agreement by Ms Natasa Vujec, State
Secretary,

State Energy Inspectorate (SEI),
Gorazdova 24, 120 00, Prague 2, CZECH REPUBLIC,
represented for the purposes of signature of this agreement by Mr Pavel Mad'ar, General
Director,

Danish Energy Agency (DEA),
Amaliegade 44, 1256, Copenhagen, DENMARK,
represented for the purposes of signature of this agreement by Mr Henrik Andersen, Director
Energy Efficiency,

Ministry of Economic Affairs and Communications (MKM),
Harju Str. 11, 15072, Tallinn, ESTONIA,
represented for the purposes of signature of this agreement by Ms Merike Saks, Deputy
Secretary General,

Motiva Oy (Motiva),
Urho Kekkosenkatu 4-6A, 00101, Helsinki, FINLAND,
represented for the purposes of signature of this agreement by Mr Jouko Kinnunen, Managing
Director,

French Environment and Energy Management Agency (ADEME),
20 avenue du Gresille, BP 90406, 49004 Angers, FRANCE,
represented for the purposes of signature of this agreement by Mr Philippe Van de Maele,
President and by order by Ms Virginie Schwarz, Executive Director Programs,

Federal Ministry of Economics and Technology (BMWi),
Villemombler Strasse 76, 53123, Bonn, GERMANY,
represented for the purposes of signature of this agreement by Ms Julia Modes, Deputy Head of
Division Energy Efficiency,

Centre for Renewable Energy Sources and Saving (CRES),
19th Km Marathonos Avenue, 19009 Pikermi, GREECE,
represented for the purposes of signature of this agreement by Mr Matthaïos Santamouris,
President,

Energy Centre Non-profit Limited Company (ECHU),
Vaci ut 45, Building "A", floor 6, 1134, Budapest, HUNGARY,
represented for the purposes of signature of this agreement by Mr Miklos Andrasi, Managing
Director,

Department of Communications, Energy and Natural Resources (DCENR)
29-31 Adelaide Road, Dublin 2, IRELAND,
represented for the purposes of signature of this agreement by Ms Claire Collins, Administrative
Officer,

Italian National Agency for New Technologies, Energy and Sustainable Economic Development (ENEA)

Lungotevere Thaon Di Revel 76, 00196, Rome, ITALY,

represented for the purposes of signature of this agreement by Mr Giovanni Lelli, Commissioner,

Ministry of Economics (EM)

Brivibas str.55, 1519, Riga, LATVIA,

represented for the purposes of signature of this agreement by Mr Juris Puce, State Secretary,

State Enterprise Energy Agency (ENA)

Gedimino Pr. 38/ Vasario 16-Osios G.2, 01104, Vilnius, LITHUANIA,

represented for the purposes of signature of this agreement by Mr Marijus Franckevicius, Director,

Ministry of the Economy and Foreign Trade (Mineco),

19-21, boulevard Royal, 2449, Luxembourg, LUXEMBOURG,

represented for the purposes of signature of this agreement by Mr Etienne Schneider, First Counsellor of the Government,

Malta Resources Authority (MRA)

Millennia, Aldo Moro Road, MRS 9065, Marsa , MALTA,

represented for the purposes of signature of this agreement by Mr Anthony Rizzo, Chief Executive,

Ministry of Petroleum and Energy (OED)

Einar Gerhardsens plass 1, 0033, Oslo, NORWAY,

represented for the purposes of signature of this agreement by Mr Sigurd Tveitereid, Director General,

Polish National Energy Conservation Agency (KAPE)

Mokotowska 35, 00-560, Warsaw, POLAND,

represented for the purposes of signature of this agreement by Mr Zbigniew Szpak, President of the Managemtn Board, and Mr Arkadiusz Weglarz, Proxy,

Directorate General for Energy and Geology (DGEG)

Av 5 de Outubro 87, 1069-039, Lisboa, PORTUGAL

represented for the purposes of signature of this agreement by Mr José Perdigoto, Director General,

Romanian Energy Regulatory Authority (ANRE)

3 Constantin Nacu Street, 020995, Bucharest, ROMANIA

represented for the purposes of signature of this agreement by Mr Dan Iulius Plaveti, President,

Ministry of Economy of the Slovak Republic (MH SR)

Mierova 19, 827 15, Bratislava, SLOVAK REPUBLIC

represented for the purposes of signature of this agreement by Mr Peter Jesensky, Ing., Head of Administration,

Ministry of the Economy (MG),

Kotnikova 5, 1000 Ljubljana, SLOVENIA,

represented for the purposes of signature of this agreement by Ms Darrja Radic, Minister,

Institute for Diversification and Energy Saving (IDAE)

Calle Madera 8, 28004, Madrid, SPAIN

represented for the purposes of signature of this agreement by Mr Alfonso Beltran Garcia-Echaniz, General Director,

Swedish Energy Agency (STEM)

Kungsgatan 43, 63104, Eskilstuna, SWEDEN

represented for the purposes of signature of this agreement by Ms Anne Norstedt, Head of the Support department,

who shall accede to the agreement in accordance with the procedure referred to in Article I.11.5, as co-beneficiaries assuming the rights and obligations established by the agreement with effect from its date of entry into force as specified in Article I.2.1,

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

of the other part,

collectively "the parties to the agreement",

HAVE AGREED

The **Special conditions** and the **General conditions** below, and the following **Annexes**:

- Annex I Description of the action
- Annex II Estimated budget of the action
- Annex III Technical Implementation Reports and financial statements
- Annex IV Accession to the Agreement

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

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

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

The terms set out in **Annex I** (Description of the Action) shall take precedence over those in the other **Annexes**.

I – SPECIAL CONDITIONS

ARTICLE I.1 – PURPOSE

- I.1.1. The Agency has decided to award a grant, under the terms and conditions set out in the Special Conditions, the General Conditions and the Annexes to the agreement, which the beneficiaries hereby declare that they have taken note of and accept, for the concerted action entitled "Second Concerted Action supporting implementation of Directive 2006/32/EC of the European Parliament and of the Council" (CA ESD II) ("the action").
- I.1.2. The beneficiaries accept the grant and undertake to do everything in their power to carry out the action as described in Annex I, acting under their own responsibility.

ARTICLE I.2 – DURATION

- I.2.1. The agreement shall enter into force on the date when the Agency and the coordinator have signed the agreement ("the date of entry into force of the agreement").
- I.2.2. The action shall run for 36 months from the date of entry into force of the agreement ("the starting date of the action").

ARTICLE I.3 – ROLE OF THE BENEFICIARIES

- I.3.1. The coordinator shall 'inter alia':
 - (a) ensure that the action is implemented in accordance with the agreement;
 - (b) be the intermediary for all communication between the co-beneficiaries and the Agency in accordance with Article I.8. Any claims that the Agency might have in respect of the agreement shall be addressed to, and answered by, the coordinator, except where specifically stated otherwise in the agreement;

- (c) be responsible for supplying all documents and information to the Agency which may be required under the agreement, in particular in relation to the request for payment. The co-ordinator shall not delegate any part of this task to the co-beneficiaries or to any other party. Where information from the co-beneficiaries is required, the coordinator shall be responsible for obtaining and verifying this information and for passing it on to the Agency;
- (d) inform the co-beneficiaries concerning any event, of which he is aware, that is liable to substantially affect or delay the implementation of the action;
- (e) inform the Agency of transfers of budget, as provided in Article I.4.4;
- (f) make the appropriate arrangements for the beneficiaries to provide the financial guarantees when requested, under the provisions of Article I.5;
- (g) establish the payment requests on behalf of the beneficiaries, detailing the exact share and amount assigned to each beneficiary, in accordance with the agreement, the estimated eligible costs as foreseen in Annex II, and the actual costs incurred. All payments by the Agency are made to the bank account referred to in paragraph 1 of Article I.7;
- (h) where designated the sole recipient of payments on behalf of all of the beneficiaries, ensure that all the appropriate payments are made to the co-beneficiaries within 30 days upon receipt of the funds paid by the Agency, unless there is a justified delay, in accordance with Article I.5 and in accordance with Annex II and shall inform the Agency of the distribution of the European Union (hereinafter referred to as "the Union") financial contribution between the co-beneficiaries and of the date of transfer;

1.3.2. The co-beneficiaries shall 'inter alia':

- (a) agree upon appropriate arrangements for the proper performance of the work incumbent upon them pursuant to Annex I.
- (b) forward to the coordinator the data needed to draw up the reports, financial statements and other documents provided for in the agreement including its Annexes;
- (c) ensure that all information to be provided to the Agency is sent via the coordinator, except where the agreement specifically stipulates otherwise;
- (d) inform the coordinator immediately concerning any event, of which they are aware, that is liable to substantially affect or delay the implementation of the action;
- (e) inform the Agency via the coordinator of transfers of budget, as provided in Article I.4.4;
- (f) provide the coordinator with all the necessary documents in the event of audits, checks or evaluations, as described in Articles II.19 and II.6.

ARTICLE I.4 – FINANCING THE ACTION

- 1.4.1. The total costs of the action are estimated at EUR 2,999,803.00 (two million nine hundred and ninety-nine thousand eight hundred and three euro and zero cent), as shown in the estimated budget in Annex II. The estimated budget shall give a detailed breakdown of the costs that are eligible for Union funding under the terms of Article II.14, of any other costs that the action may entail, and of all receipts, so that receipts and costs balance.

The estimated budget in Annex II shall include a table indicating the breakdown of estimated eligible costs and receipts between each beneficiary. The table shall be agreed collectively by the beneficiaries and shall be deemed to form an integral part of the budget of the agreement.

- I.4.2. The total eligible costs of the action for which the grant is awarded are estimated at EUR 2,999,803.00 (two million nine hundred and ninety-nine thousand eight hundred and three euro and zero cent) as shown in the estimated budget in Annex II.

Subject to the conditions laid down in Article II.14.3, indirect costs are eligible for flat-rate funding fixed at 60% of the beneficiaries total eligible direct staff costs, as shown in the estimated budget in Annex II.

- I.4.3. The Agency shall contribute a maximum of EUR 2,999,803.00 (two million nine hundred and ninety-nine thousand eight hundred and three euro and zero cent), equivalent to 100 % of the estimated total eligible costs indicated in Article I.4.2. The final amount of the grant shall be determined as specified in Article II.17, without prejudice to Article II.19.

The grant may not finance the entire costs of the action. Payment of costs incurred by the beneficiaries for the activities described in Annex I may only be made after due substantiation of the corresponding national activities, which must be documented in accordance with the specific reporting requirements stated in Annex 1.

- I.4.4. By way of derogation from Article II.13, a beneficiary may, when carrying out the action, adjust the estimated budget by transfers between items of eligible costs, provided that this adjustment of expenditure does not affect the implementation of the action and the transfer between items does not exceed 20% of the total costs of this beneficiary. The beneficiary shall inform the Agency in writing through the coordinator at the latest at the time of the final report.

By way of derogation from Article II.13, beneficiaries may, when carrying out the action, transfer between themselves the estimated budget set out in Annex II, provided that this adjustment of expenditure does not affect the implementation of the action and the transfer does not exceed 20% of the total eligible costs of the recipient beneficiary. The coordinator shall inform the Agency in writing at the latest at the time of the final report.

ARTICLE I.5 – PAYMENT ARRANGEMENTS

The grant to the action shall be paid in accordance with the provisions of Article II.15 of the General Conditions and the following provisions:

I.5.1. First pre-financing

Within 45 (forty-five) calendar days from either the date when the Agency is informed of accession to the agreement of all the co-beneficiaries identified in the preamble to the agreement or the expiration of the delay of 45 calendar days as referred to in the first paragraph of Article I.11.5, a pre-financing payment of EUR 899,940.90 (eight hundred and ninety-nine thousand nine hundred forty euro and ninety cent) representing 30% of the amount specified in Article I.4.3, shall be made to the coordinator.

An amount of EUR 201,756.00 (two hundred and one thousand seven hundred and fifty six euro and zero cents) of the pre-financing referred to in the first sub-paragraph shall be retained by the Agency until the beneficiary EST provide to the Agency, within 60 (sixty) calendar days from the date of entry into force of the agreement as provided in Article I.2.1, a financial guarantee equivalent to the amount of this beneficiaries' first pre-financing.

In case not all co-beneficiaries listed in the preamble of this agreement have acceded to the agreement within 45 calendar days after the date of entry into force, an amount equal to 30% of the(ir) individual contribution, as defined in Annex II, shall be retained by the Agency.

I.5.2. Second pre-financing

The coordinator may request a second pre-financing payment provided that 100% of the first pre-financing payment has been used up.

The aggregate amount of the pre-financing payments shall represent 60% of the maximum amount of the grant specified in Article I.4.3.

The request for payment of a second pre-financing shall be drawn up in accordance with the provisions of Article I.3.1 (g) and Article II.15.2 and shall be accompanied by the following documents:

- an interim technical implementation report on the action;
- interim financial statements of the eligible costs actually incurred, following the structure of the estimated budget, including a consolidated statement and a breakdown between each beneficiary;
- copies of bank statements showing the transfer to the co-beneficiaries of the first pre-financing paid by the Agency.

The amount of the second pre-financing shall be paid to the coordinator upon approval by the Agency of the interim technical implementation report and interim financial statement in accordance with the procedure laid down in Article II.15.2.

The Agency shall have 90 days to approve or reject the report and to pay the second pre-financing, or to request additional supporting documents or information under the procedure laid down in Article II.15.2. The coordinator shall have 20 (twenty) calendar days in which to submit additional information or a new report.

The payment of the amount of the second pre-financing may be suspended by the Agency in accordance with the procedure in Article II.16.2.

1.5.3. Payment of the balance

Upon completion of the action, a payment representing the balance of the grant determined in accordance with Article II.17 shall be made to the coordinator.

The request for payment of the balance shall be drawn up in accordance with the provisions of Article I.3.1 (g) and Article II.15.3 and shall be accompanied by the following documents:

- a final technical implementation report;
- a final financial statement of the eligible costs actually incurred following the structure of the estimated budget including a consolidated statement and a breakdown between each beneficiary;
- where required according to the provision below, a certificate on the financial statements and underlying accounts produced by an approved auditor. The certificate shall certify that the costs declared by the beneficiaries in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that receipts have been declared in accordance with the agreement;
- copies of bank statements showing the transfer to the co-beneficiaries of the second pre-financing paid by the Agency.

Each beneficiary for whom the amount of Union funding is equivalent to or exceeds EUR 225.000 (two hundred and twenty five thousand euros) shall provide, in addition, an external audit report on the action's accounts, except where the beneficiary concerned is a public body or an international organisation.

The amount of the final payment shall be determined on the basis of the eligible costs actually incurred, as shown in the final statement and validated by the Agency in accordance with article 1.4.3. [where appropriate the amount of any pre-financing previously paid to the beneficiary shall be deducted].

The balance of the grant shall be paid to the coordinator upon approval by the Agency of the final technical implementation report and final financial statements in accordance with the procedure laid down in Article II.15.3.

The Agency shall have 90 days to approve or reject the report and to pay the balance in accordance with Article II.17, or to request additional supporting documents or

information under the procedure laid down in Article II.15.3. The beneficiary shall have 20 (twenty) calendar days in which to submit additional information or a new report.

The payment of the balance of the grant may be suspended by the Agency in accordance with the procedure in Article II.16.2.

ARTICLE I.6 – SUBMISSION OF REPORTS AND OTHER DOCUMENTS

The technical implementation reports, financial statements and any other documents referred to in Article II.15 shall be submitted in accordance with the provisions of Annex III of the agreement and the following:

I.6.1. The beneficiaries shall submit, through the coordinator and in the format provided by the Agency, the following documents:

- (a) one (1) technical progress report;
- (b) an interim technical implementation report and interim financial statements;
- (c) a final technical implementation report and final financial statements.

All these documents shall be submitted in English, in 1 (one) original, 1 (one) copy, and 1 (one) electronic format. Any other deliverable shall be submitted in accordance with Annex I.

I.6.2. The technical progress report, covering the period from month 1 to month 9, shall be submitted within 30 (thirty) calendar days of the end of the reporting period in question.

I.6.3. The interim technical implementation report and interim financial statements, covering the period from month 1 to month 20 shall be submitted within 30 (thirty) calendar days of the end of the reporting period in question.

I.6.4. The final technical implementation report and financial statements, including a consolidated statement and a breakdown between each beneficiary, shall be submitted within 60 (sixty) calendar days following the closing date of the action specified in Article I.2.2 covering the whole duration of the action.

ARTICLE I.7 – BANK ACCOUNT

Payments shall be made to the coordinator's bank account or sub-account denominated in Euro, as indicated below:

Name of the bank: **THE ROYAL BANK OF SCOTLAND N.V.**

Address of the branch: **10 GUSTAV MAHLERLAAN 1082 PP AMSTERDAM**

Precise denomination of the account holder: **AGENTSCHAPNL MINISTERIE VAN ECONOMISCHE ZAKEN**

IBAN account code: **NL80RBOS0569994160**

This account or sub-account must identify the payments made by the Agency. Moreover, the funds paid to this account or sub-account shall yield interest or equivalent benefits under the law of the State on whose territory the account or sub-account is opened. Such interest or benefits shall, if they are generated by the share of pre-financing not transferred to the co-beneficiaries at the end of the delay set in Article I.3.1h, be deducted from the payment of the balance or recovered by the Agency as specified in Article II.16.4.

ARTICLE I.8 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication in connection with this agreement shall be in writing, in English, indicating the number of the agreement, the title and acronym of the action, and shall be sent to the following addresses:

For the Agency:

Executive Agency for Competitiveness and Innovation (EACI)
IEE Energy Efficiency Unit
Mr Vincent BERRUTTO, Head of Unit,
Place Rogier 16
COV2 10/112
1049 Bruxelles
Belgium

Ordinary mail shall be considered to have been received by the Agency on the date on which it is formally registered by the unit responsible at the Agency referred to above.

For the coordinator:

Ministerie Van Economische Zaken (AGENTSCHAPNL)
Ms Lucinda MacLagan, Senior Advisor,
Croeselaan 15, 3521 BJ Utrecht
The Netherlands

hereinafter referred to as "the coordinator", represented for the purposes of signature of this agreement by

Any communication from the Agency to the co-beneficiaries and vice-versa shall be made through the coordinator in accordance with Articles I.3.1 (b) and I.3.2 (c).

ARTICLE I.9 – LAW APPLICABLE AND COMPETENT COURT

The grant is governed by the terms of the agreement, the Union rules applicable and, on a subsidiary basis, by the law of Belgium relating to grants.

The beneficiaries may bring legal proceedings regarding decisions by the Agency concerning the application of the provisions of the agreement and the arrangements for implementing it before the General Court of the European Union and, in the case of appeal, the Court of Justice.

ARTICLE I.10 – DATA PROTECTION

All personal data contained in the agreement shall be processed in accordance with Regulation (EC) N° 45/2001² 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 in connection with the implementation and follow-up of the agreement by the unit mentioned in point I.8 without prejudice to the possibility of passing data to internal audit services, to the Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interest of the Union.

Beneficiaries may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. They should address any questions regarding the processing of their personal data to services of the Agency mentioned in Article I.8. The beneficiaries may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

OJ L 8 of 12 January 2001, p. 1.

ARTICLE I.11 – OTHER SPECIAL CONDITIONS

The following other special conditions apply to this agreement:

- I.11.1. In addition to the documents referred to in Article I.6.1, the beneficiaries must set up a project website at the latest 6 (six) months after the starting date of the action as specified in Article I.2.2 and it must be accessible until at least 2 (two) years after the end date of the action. This project website has to be set up in accordance with the provisions of Annex III to the agreement.
- I.11.2. The coordinator shall submit the payment requests in accordance with Article I.5, including the underlying financial statements, in euro. By way of derogation from Article II.16.1, any conversion of actual costs into euro shall be made by the beneficiary at the monthly accounting rate established by the Commission and published on its website³ applicable on the day when the cost was incurred, or at the monthly accounting rate established by the Commission and published on its website applicable on the first working day of the month following the period covered by the financial statement concerned.
- I.11.3. Without prejudice to the provisions of Article II.14.1, the costs relating to the final reports and audit certificates shall be eligible only when incurred by the beneficiaries within a maximum period of two months following the completion of the action as specified in Article I.2.2.
- I.11.4. Article II.18.1 is replaced by the following:
- "Where an amount is unduly paid by the Agency to the coordinator in his capacity of recipient of all payments, is to be recovered under the terms of the agreement, the coordinator undertakes to repay the Agency the sum in question, on whatever terms and by whatever date it may specify, even if he has not been the final recipient of the amount due. However, the Agency reserves the right, where appropriate, to recover the amount due directly from the final recipient.
- Where such an amount to be recovered under the terms of the agreement was directly paid by the Agency to a beneficiary, or if recovery is justified under Article II.12 of the agreement, the beneficiary concerned undertakes to repay the Agency the sum in question, on whatever terms and by whatever date it may specify."
- I.11.5. The coordinator shall ensure that the co-beneficiaries identified in the preamble to this agreement complete the formalities for them to accede to the agreement. At the latest 45 (forty-five) calendar days after the entry into force of the agreement, as specified in Article I.2.1, the coordinator shall send to the Agency an original duly completed and signed accession form from each of the co-beneficiaries identified in the preamble to this agreement.
- The accession forms shall be drawn up in accordance with the model to be provided by the Agency and shall be annexed to the agreement and form an integral part thereof.
- The accession forms can be signed later than the date of entry into force of the agreement. The accession forms are retroactive and shall apply from the date of entry into force of the grant agreement provided for in Article I.2.1.
- Should any co-beneficiary(ies) identified in the preamble to this agreement fail or refuse to accede to the agreement within the deadline specified in the first subparagraph of this article, the Agency is no longer bound by its offer to enter into an agreement with the co-beneficiary(ies) concerned.

³ <http://ec.europa.eu/budget/inforeuro/index.cfm?fuseaction=home&Language=en>

II – GENERAL CONDITIONS

PART A – LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 – LIABILITY

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

ARTICLE II.2 – CONFLICT OF INTERESTS

The beneficiaries undertake to take all the necessary measures to prevent any risk of conflicts of interests which could affect the impartial and objective performance of the agreement. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest.

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

ARTICLE II.3 – OWNERSHIP/USE OF THE RESULTS

- II.3.1 Unless stipulated otherwise in 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 beneficiaries.
- II.3.2 Without prejudice to Article II.3.1, the beneficiaries grant the Agency 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 II.4 – CONFIDENTIALITY

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

ARTICLE II.5 – PUBLICITY

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

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

- II.5.2 The beneficiaries authorise the Agency and/or the Commission to publish the following information in any form and medium, including via the Internet:
- the beneficiaries' names and addresses,
 - the subject and purpose of the grant,
 - the amount and rate of the Union financial contribution foreseen for the action and the amount and rate for each beneficiary foreseen in the estimated budget of the action in Annex II; after the final payment, the amount and rate of the Union financial contribution accepted by the Agency for the action and for each beneficiary.

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

ARTICLE II.6 – EVALUATION

Whenever the Commission carries out an interim or final evaluation of the action's impact measured against the objectives of the Union programme concerned, the co-ordinator with the support of the co-beneficiaries undertake to make available to the Commission 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.19.

ARTICLE II.7 – SUSPENSION

- II.7.1 The coordinator, in agreement with the co-beneficiaries, may suspend implementation of the action if exceptional circumstances make this impossible or excessively difficult, notably in the event of *force majeure*. The coordinator shall inform the Agency without delay, giving all the necessary reasons and details and the foreseeable date of resumption.
- II.7.2 If the Agency does not terminate the agreement under Article II.11.3, the beneficiaries shall resume implementation of the action as initially planned once circumstances allow and the coordinator shall inform the Agency accordingly. The duration of the action might be extended by a period equivalent to the length of the suspension. In accordance with Article II.13, a supplementary written agreement shall be concluded to extend the duration of the action and to make any amendments that may be necessary to adapt the action to the new implementing conditions.

ARTICLE II.8 – FORCE MAJEURE

- II.8.1 Force majeure shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents them from fulfilling any of their obligations under the agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to force majeure), labour disputes, strikes or financial difficulties cannot be invoked as force majeure by the defaulting party.
- II.8.2 A party faced with force majeure shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.
- II.8.3 The party faced with force majeure shall not be held in breach of his obligations under the agreement if he's prevented from fulfilling them by force majeure. The parties shall make every effort to minimise any damage due to force majeure.
- II.8.4 The action may be suspended in accordance with Article II.7.

ARTICLE II.9 – AWARD OF CONTRACTS

- II.9.1 If the beneficiaries have to conclude contracts in order to carry out the action and they constitute costs of the action under an item of eligible direct costs in the estimated

budget, they shall award the contract to the bid offering the best value for money; in doing so they shall take care to avoid any conflict of interests.

II.9.2 Contracts as referred to in Article II.9.1 may be awarded only in the following cases:

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

ARTICLE II.10 – ASSIGNMENT

Claims against the Agency may not be transferred.

In exceptional circumstances, where the situation warrants it, the Agency may authorise the assignment to a third party of the agreement and payments flowing from it following a written request to that effect, giving reasons, from the co-ordinator in agreement with the co-beneficiaries. If the Agency agrees, it must make its agreement known in writing to the co-ordinator 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.

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

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

II.11.1 Termination of the agreement by the coordinator

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

If no reasons are given or if the Agency does not accept the reasons, the agreement shall be deemed to have been terminated improperly, with the consequences set out in the fifth subparagraph of Article II.11.5.

II.11.2 Termination of the participation of a beneficiary

In duly justified cases, the coordinator may request to terminate the participation of a beneficiary by giving 60 (sixty) days written notice. The co-ordinator shall include with any such request to the Agency the remaining beneficiaries' proposal to reallocate the tasks of that beneficiary or where relevant to nominate a replacement, the reasons for the termination of the participation and the opinion of the beneficiary whose participation is requested to be terminated.

In duly justified cases, any beneficiary may decide to terminate his participation in the agreement. The request must be submitted to the Agency by the coordinator by giving 60 (sixty) days notice stating the reasons.

If no reasons are given or if the Agency does not accept the reasons, the participation shall be deemed to have been terminated improperly, with the consequences set out in the fifth subparagraph of Article II.11.5.

The termination of the participation of the beneficiary concerned shall take effect on the date of the Agency's approval. A written additional agreement shall be concluded to make any amendments necessary to adapt the action to the new implementing conditions resulting from partial termination.

II.11.3 Termination by the Agency

The Agency may decide to terminate the agreement or the participation of any one or several beneficiaries in the action 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 a beneficiary fails to fulfil a substantial obligation incumbent on him under the terms of the agreement and its annexes;
- (c) in the event of force majeure, notified in accordance with Article II.8, or if the action has been suspended as a result of exceptional circumstances, notified in accordance with Article II.7;
- (d) if the beneficiary is declared bankrupt, is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of any other similar proceedings concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (e) where the Agency has evidence or seriously suspects the beneficiary or any related entity or person, of professional misconduct;
- (f) if the beneficiary has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;
- (g) where the Agency has evidence or seriously suspects the beneficiary or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (h) where the Agency has evidence or seriously suspects the beneficiary or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the grant;
- (i) if the beneficiary has made false declarations or submits reports inconsistent with reality to obtain the grant provided for in the agreement.

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

II.11.4 Termination procedure

The procedure is initiated by registered letter with advice of delivery or equivalent. The co-ordinator shall ensure that all beneficiaries are duly informed.

In the cases referred to in points (a), (b), (d), (e), (g) and (h) of paragraph 3, the co-ordinator in consultation with the beneficiaries, shall have 30 days to submit his observations and take any measures necessary to ensure continued fulfilment of his obligations under the agreement. If the Agency fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the procedure shall continue to run.

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

If notice is not given in the cases referred to in points (c), (f) and (i) of paragraph 3, termination shall take effect from the day following the date on which notification of the Agency's decision to terminate the agreement is received.

II.11.5 Effects of termination

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

The coordinator shall have 60 (sixty) days from the date when termination of the agreement takes effect to produce a request for final payment in accordance with Article II.15.3. If no request for final payment is received within this time limit, the Agency shall not reimburse the expenditures incurred by the beneficiaries up to the date of termination and it shall recover any amount if its use is not substantiated by the technical implementation reports and financial statements approved by the Agency.

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

By way of exception, at the end of the period of notice referred to in Article II.11.3, where the Agency is terminating the agreement on the grounds that the coordinator has failed to produce the final technical implementation report and/or the final financial statements within the deadline stipulated in Article I.7 and the coordinator have still not complied with this obligation within two months following the written reminder sent by the Agency by registered letter with advice of delivery or equivalent, the Agency shall not reimburse the expenditure incurred by the beneficiaries up to the date on which the action ended and it shall recover any amount if its use is not substantiated by the technical implementation reports and financial statements approved by the Agency.

By way of exception, in the event of improper termination of the agreement by the coordinator, or a beneficiary's participation in the action, or termination by the Agency on the grounds set out in points (a), (e), (g), (h) or (i) of Article II.11.3, the Agency may require the partial or total repayment of sums already paid under the agreement on the basis of technical implementation reports and financial statements approved by the Agency, in proportion to the gravity of the failings in question and after allowing the coordinator, and when relevant the beneficiaries, to submit their observations.

ARTICLE II.12 – FINANCIAL PENALTIES

By virtue of the Financial Regulation applicable to the general budget of the Union, any one or several of the beneficiaries declared to be in grave breach of their obligations under the agreement shall be liable to financial penalties of between 2% and 10% of the value of their share of the grant in question, with due regard for the principle of proportionality. This rate may be increased to between 4% and 20% in the event of a repeated breach in the 5 (five) years following the first. The beneficiary concerned shall be notified in writing of any decision by the Agency to apply such financial penalties.

ARTICLE II.13 – SUPPLEMENTARY AGREEMENTS

II.13.1 This agreement including its annexes may be modified only by a written supplementary agreement. No oral agreement may bind the parties to this effect.

- II.13.2 The supplementary agreement may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of applicants.
- II.13.3 Where the request for amendment is made by the coordinator, in agreement with the co-beneficiaries, he must send the request to the Agency in good time before it is due to take effect and at all events 30 (thirty) calendar days before the closing date of the action, except in cases duly substantiated by the coordinator and accepted by the Agency.

PART B – FINANCIAL PROVISIONS

ARTICLE II.14 – ELIGIBLE COSTS

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

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

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

- II.14.2 The eligible direct costs for the action are those costs which, with due regard for the conditions of eligibility set out in Article II.14.1, are identifiable as specific costs directly linked to performance of the action and which can therefore be booked to it direct.

In particular, the following direct costs are eligible provided that they satisfy the criteria set out in Article II.14.1:

- the cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration; The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken;
- travel and subsistence allowances for staff taking part in the action, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- costs entailed by other contracts awarded by the beneficiary for the purposes of carrying out the action, provided that the conditions laid down in Article II.9 are met.

- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the beneficiary and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account by the Agency, except where the nature and/or the context of its use justifies different treatment by the Agency;
- Other specific costs, these are costs arising directly from requirements imposed by the agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction, etc.), including the costs of any financial services (especially the cost of financial guarantees). Such costs may also include specific costs incurred by the coordinator for fulfilling his responsibilities in his capability of the body responsible for the overall management of the action and the co-ordination of the beneficiaries.

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

By way of derogation from Article II.14.1, the indirect costs incurred in carrying out the action are only eligible for flat-rate funding fixed at 60% of the beneficiaries total eligible direct staff costs. Indirect costs need not be supported by accounting documents.

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

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

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

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

Contributions involving buildings shall not be covered by this possibility.

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 beneficiaries shall undertake to obtain these contributions as provided for in the agreement.

II.14.6 By way of derogation from Article II.14.3, indirect costs shall not be eligible under a grant for an action awarded to a beneficiary who already receives an operating grant from the Union budget during the period in question.

ARTICLE II.15 – REQUESTS FOR PAYMENT

Payments shall be made in accordance with the provisions of Article I.5 of the Special Conditions and the following provisions:

II.15.1 – FIRST PRE-FINANCING

The first pre-financing is intended to provide the beneficiaries with a float.

Where required by the provisions of Article I.5.1 on pre-financing, the beneficiary concerned shall provide a financial guarantee from a bank or an approved financial institution established in one of the Member States of the Union.

The financial guarantee shall be drawn up in accordance with the model letter to be provided by the Agency and shall indicate that the guarantor stands as first call guarantor who shall not require the Agency to have recourse against the principal debtor (i.e. the beneficiary concerned).

The financial guarantee shall remain in force until final payments by the Agency match the proportion of the total grant accounted for by pre-financing. The Agency undertakes to release the guarantee within 60 (sixty) days following that date.

II.15.2 – SECOND PRE-FINANCING

By the appropriate deadline indicated in Article I.6.3, the coordinator shall submit a request for payment of the second pre-financing accompanied by the following documents:

- an interim technical implementation report of the action;
- interim financial statements of the eligible costs actually incurred, following the structure of the estimated budget, including a consolidated statement and a breakdown between each beneficiary;
- copies of bank statements showing the transfer to the co-beneficiaries of the first pre-financing paid by the Agency.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.6 and the annexes. The coordinator and the co-beneficiaries shall certify that the financial documents submitted to the Agency comply with the financial provisions of the agreement, that the costs declared are the actual costs and that all receipts have been declared.

The request for payment of the second pre-financing is deemed inadmissible if at least one of the above documents is missing. Where the request for payment is inadmissible, the Agency shall inform the coordinator in writing.

On receipt of the complete set of documents, the Agency shall have 90 (ninety) calendar days in order to:

- approve the interim technical implementation report of the action and the interim financial statements and pay the second pre-financing amount;
- ask the coordinator for supporting documents or any additional information it deems necessary to allow the approval of the interim technical implementation report and/or of the interim financial statements;
- reject the interim technical implementation report and/or the interim financial statements and ask for the submission of a new report and/or financial statements.

Failing a written reply from the Agency within the time limit indicated above, the interim technical implementation report shall be deemed to have been approved. Approval of the interim technical implementation report shall not imply recognition of its regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Requests for additional information, a new report or new financial statements shall be notified to the coordinator in writing. The coordinator shall have 20 (twenty) calendar days to submit the information or new documents requested.

If additional information is requested, the time limit for scrutiny and payment of the second pre-financing amount shall be extended by the time it takes to obtain this information.

Where the interim technical implementation report and the interim financial statements are rejected, and a new report and financial statements requested, the approval procedure described in this article shall apply.

In the event of renewed request for additional information or renewed rejection, the Agency reserves the right to terminate the agreement by invoking Article II.11.3 (b).

II.15.3 – PAYMENT OF THE BALANCE

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

By the appropriate deadline indicated in Article I.6.4, the coordinator shall submit a request for payment of the balance accompanied by the following documents:

- a final technical implementation report of the action;
- final financial statements of the eligible costs actually incurred, following the structure of the estimated budget, including a consolidated statement and a breakdown between each beneficiary;
- where required by the provisions of Article I.5 on payment of the balance, a certificate on the financial statements and underlying accounts produced by an approved auditor. The certificate shall certify that the costs declared by the beneficiaries in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the agreement;
- copies of bank statements showing the transfer to the co-beneficiaries of the second pre-financing paid by the Agency.

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

The request for payment of the balance is deemed inadmissible if at least one of the above documents is missing. Where the request for payment is inadmissible, the Agency shall inform the coordinator in writing.

On receipt of the complete set of documents, the Agency shall have 90 (ninety) calendar days in order to:

- approve the final technical implementation report of the action and the final financial statements and pay the balance of the grant;
- ask the coordinator for supporting documents or any additional information it deems necessary to allow the approval of the final technical implementation report and/or of the final financial statements;
- reject the final technical implementation report and/or the final financial statements and ask for the submission of a new report and/or financial statements.

Failing a written reply from the Agency within the time limit for scrutiny indicated above, the final technical implementation report shall be deemed to have been approved. Approval of the final technical implementation report shall not imply recognition of its regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Requests for additional information, a new report or new financial statements shall be notified to the coordinator in writing. The time limit for scrutiny shall be extended by the time it takes to obtain this information. The coordinator shall be informed of that request and the extension of the

delay for scrutiny by means of a formal document The coordinator shall have 20 (twenty) calendar days to submit the information or new documents requested.

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

Where the final technical implementation report and the final financial statements are rejected, and a new report and financial statements requested, the approval procedure described in this article shall apply.

In the event of renewed request for additional information or renewed rejection, the Agency reserves the right to terminate the agreement by invoking Article II.11.3 (b).

ARTICLE II.16 – GENERAL PROVISIONS ON PAYMENTS

- II.16.1 Payments shall be made by the Agency in Euros. Any conversion of actual costs into Euro shall be made at the monthly accounting rate established by the Commission and published on its website applicable on the day when the payment order is issued by the Agency, unless the Special Conditions of the agreement lay down specific provisions.

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

- II.16.2 The Agency may suspend the period for payment laid down in Article II.15 at any time by notifying the coordinator that his request for payment cannot be met, either because it does not comply with the provisions of the agreement, or because the appropriate supporting documents have not been produced or because there is a suspicion that some of the expenses in the financial statements are not eligible and additional checks are being conducted.

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

The Agency shall inform the coordinator of any such suspension by registered letter with advice of delivery or equivalent, setting out the reasons for suspension.

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

- II.16.3 On expiry of the period for payment specified in Article I.5 and II.15, and without prejudice to Article II.16.2, the beneficiaries are entitled to interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euros, plus 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 of the Member States of the 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 II.16.1, inclusive. The interest shall not be treated as a receipt for the action for the purposes of determining the final grant within the meaning of Article II.17.4. The suspension of payment by the Agency may not be considered as late payment.

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

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

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

Where the interest yielded exceeds the balance of the amount due to the beneficiary as indicated in Article II.15.3, or is generated by pre-financing referred to in the previous subparagraph, the Agency shall recover it in accordance with Article II.18.

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

- II.16.5 The coordinator shall have 2 (two) months from the date of notification by the Agency of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article II.17, or failing that 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. After this time such requests will no longer be considered. The Agency undertakes to reply in writing within 2 (two) months following the date on which the request for information is received, giving reasons for its reply. This procedure is without prejudice to the beneficiaries' right to appeal against the Agency's decision pursuant to Article I.9. Under the terms of Union legislation in this matter, such appeals must be lodged within 2 (two) months following the notification of the decision to the applicant or, failing that, following the date on which the applicant learned of the decision.

ARTICLE II.17 – DETERMINING THE FINAL GRANT

- II.17.1 Without prejudice to information obtained subsequently pursuant to Article II.19, the Agency shall adopt the amount of the final payment to be granted to the beneficiaries on the basis of the documents referred to in Article II.15.3 which it has approved.
- II.17.2 The total amount paid by the Agency may not in any circumstances exceed the maximum amount of the grant laid down in Article I.4.3, even if the total actual costs eligible exceed the estimated total eligible costs specified in Article I.4.2.
- II.17.3 If the actual eligible costs when the action ends are lower than the estimated total eligible costs, the Agency's contribution shall be limited to the amount obtained by applying the Union grant percentage specified in Article I.4.3 to the actual eligible costs approved by the Agency.
- II.17.4 The beneficiaries hereby agree that the grant shall be limited to the amount necessary to balance the action's receipts and expenditures and that it may not in any circumstances produce a profit for them.

Profit shall mean any surplus of total actual receipts attributable to the action over the total actual costs of the action. The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the coordinator for financing other than the Union grant, to which shall be added the amount of the grant determined by applying the principles laid down in Articles II.17.2 and II.17.3. For the purposes of this article, only actual costs falling within the categories set out in the estimated budget referred to in Article I.4.1 and contained in Annex II shall be taken into account; non-eligible costs shall always be covered by non-Union resources.

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

- II.17.5 Without prejudice to the right to terminate the agreement under Article II.11, and without prejudice to the right of the Agency to apply the penalties referred to in Article II.12, if the action is not implemented or is implemented poorly, partially or late, the Agency may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in the agreement.
- II.17.6 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the agreement,

the Agency shall set the amount of the payment of the balance as being the amount still owing to the beneficiaries. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Agency shall issue a recovery order for the surplus.

ARTICLE II.18 – RECOVERY

- II.18.1 Where an amount, paid by the Agency to the coordinator in his capacity of recipient of all payments, is to be recovered under the terms of the agreement, the coordinator undertakes to repay the Agency the sum in question, on whatever terms and by whatever date it may specify, even if he has not been the final recipient of the amount due. In the latter case, if payment has not been made by the due date, the Agency reserves the right to recover directly the amount due from the final recipient.

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

- II.18.2 If the obligation to repay the amount due is not honoured by the date set by the Agency, the amount due shall bear interest at the rate indicated in Article II.16.3. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the 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.18.3 If payment has not been made by the due date, sums owed to the Agency may be recovered by offsetting them against any sums owed to the concerned beneficiary after informing him accordingly by registered letter with advice of delivery or equivalent, or, calling in the financial guarantee provided in accordance with Article II.15.1. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Agency may recover by offsetting before the due date of the payment. The beneficiaries' prior consent shall not be required.

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

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

ARTICLE II.19 – CHECKS AND AUDITS

- II.19.1 The coordinator undertakes to provide any detailed information requested by the Agency or by any other outside body authorised by the Agency and/or the Commission to check that the action and the provisions of the agreement are being properly implemented. Where the Agency and/or the Commission so wish, they may request such information to be provided directly by a co-beneficiary.
- II.19.2 The beneficiaries shall keep at the Commission's and/or Agency's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the agreement, stored on any appropriate medium that ensures their integrity in accordance with the applicable national legislation, for a period of 5 (five) years from the date of payment of the balance specified in Article I.5.3.
- II.19.3 The beneficiaries agree that the Commission and/or the Agency 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 5 (five) years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Agency and/or the Commission.

- II. 19.4 The beneficiaries undertake to allow Agency staff and outside personnel authorised by the Agency and/or the Commission the appropriate right of access to sites and premises where the action is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.
- II. 19.5 By virtue of Council Regulation (Euratom, EC) N° 2185/96 and Regulation (EC) N° 1073/1999⁴ of the European Parliament and the Council, the European Anti-Fraud Office (OLAF) may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Agency and/or the Commission.
- II. 19.6 The Court of Auditors shall have the same rights as the Agency and the Commission, notably right of access, as regards checks and audits.

SIGNATURES

For the Agency,

Patrick LAMBERT, Director,

Date

20.5.11.

Signature

[Handwritten signature]



Done in Brussels, in duplicate, in English

For the coordinator,

and on behalf of the co-beneficiaries identified in the preamble of this agreement, who shall accede to the agreement in accordance with the procedure referred to in Article I.11.5,

Rob BOEREE, Director Energy and Climate Change,

Date 31.05.2011

Signature *[Handwritten signature]*

Done in Utrecht, in duplicate, in English

⁴ OJ L 136 of 31 May 1999, p. 1.