



EUROPEAN COMMISSION  
Directorate-General for Information Society and Media

**Audiovisual, Media, Internet**

**EUROPEAN COMMUNITY-MEDIA PLUS PROGRAMME**  
established by Council Decision N°2000/821/EC ( OJ L13 of 17.01.2001)

***PROMOTION: SUPPORT FOR AUDIOVISUAL FESTIVALS***

**GRANT AGREEMENT FOR AN ACTION**

AGREEMENT NUMBER - xxxx-xxxx / xxxx PR01 xxxx XX

The European Community (“the Community”), represented by the Commission of the European Communities (“the Commission”), itself represented for the purposes of signature of this agreement by Mr Gregory PAULGER, Director of “Audiovisual, Media, Internet”, within Directorate-General for Information Society and Media  
of the one part,  
and

(full official name) .....

(full official form) *Delete if a Public Body*.....

(official registration number) *Delete if a Public Body* .....

(full registered address) .....

(VAT number).....

“the beneficiary” represented for the purpose of this Agreement by: (name, forename and function).....  
of the other part,

HAVE AGREED:

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

- |                  |   |
|------------------|---|
| <b>Annex I</b>   | Description of the action   |
| <b>Annex II</b>  | Estimated budget of the action  |
| <b>Annex III</b> | Documents comprising the Technical implementation reports and financial statements to be submitted which form an integral part of this agreement. |

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

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

## I – SPECIAL CONDITIONS

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

- I.1.1 The Commission 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 beneficiary hereby declares that he has taken note of and accepts, for the action entitled [...] (“the action”).
- I.1.2 The beneficiary accepts the grant and undertakes to do everything in his power to carry out the action as described in Annex I, acting on his own responsibility.

### **ARTICLE I.2 – DURATION**

- I.2.1 The agreement shall enter into force on the date on which it is signed by the last of the two parties.
- I.2.2 The action shall run for [...] days from [xxxxxxx] (“the starting date of the action”) and shall end on [date] (“the closing date of the action”).
- I.2.3 The period of eligibility of costs shall begin 10 months before the starting date of the action and 2 months after the closing date of the action.

### **ARTICLE I.3 – FINANCING THE ACTION**

- I.3.1 The total cost of the action is estimated at **EUR** [xxxxxxxxxx]
- I.3.2 The total eligible costs of the action for which the Commission grant is awarded are estimated at **EUR** [xxxxxxx,] as shown in the estimated budget in Annex II. Indirect costs are eligible up to a maximum rate of 7% of the total direct costs eligible, subject to the conditions laid down in Article II.14.3.
- I.3.3 The Commission shall contribute a maximum of EUR ....., equivalent to ... % of the estimated Total Eligible Costs indicated in paragraph 2. The final amount of the grant shall be determined as specified in Article II.17, without prejudice to Article II.19 and Article I.10.

The Community grant may not finance the entire costs of the action. The amounts and sources of co-financing other than from Community funds shall be set out in the estimated overall budget provided.

The Commission accepts that the external co financing referred to above should be partially made up of contributions in kind, provided that the conditions set out in Article II.14.5 are complied with. At least 25% of the total costs of the action must however be financed by sources other than contributions in kind and other than the Commission grant.

- I.3.4 By way of derogation from Article II.13, the 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 implementation of the action and the transfer between items does not exceed 15% of the amount of each item of eligible costs for which the transfer is intended, and without exceeding the total eligible costs indicated in paragraph 2. He shall inform the Commission in writing.

### **ARTICLE I.4 – PAYMENT ARRANGEMENTS**

- I.4.1 Pre-financing:

Within 45 days of the date when the last of the two parties signs the agreement, a pre-financing payment of EUR [XXXXXXX] shall be made to the beneficiary, representing 75% of the amount specified in Article I.3.3.

- I.4.2 Payment of the balance:

The request for payment of the balance shall be accompanied by the final technical implementation report and financial statement specified in Articles I.5 and II.15.2 (Comprehensive Activity Report and Financial Report) certified by the Beneficiary. The Financial Report must also be certified by an approved auditor. The Commission shall have 45 days to approve or reject the documents in question or to request additional supporting documents or information under the procedure laid down in Article II.15.2. In that case the beneficiary shall have 30 days to submit the additional information or a new report.

A payment representing the balance of the grant determined in accordance with Article II.17 and Article I.10 shall be made to the beneficiary within 45 days following approval by the Commission of the documents accompanying the request for payment of the balance. The Commission may suspend the period for payment in accordance with the procedure in Article II.16.2.

## **ARTICLE I.5 – SUBMISSION OF REPORTS AND OTHER DOCUMENTS**

- 1.5.1 The provisions relating to the submission of the technical implementation reports, financial statements and other documents referred to in Article I.4. are contained in Annex III.
- 1.5.2 The technical implementation reports, financial statements and other documents referred to in Article I.4 must be submitted in 2 copies in English or French within 5 months following the closing date of the action specified in Article I.2.2.
- 1.5.3 The Comprehensive Activity and Final Financial Report described above must include at least the following information:
- (a) Full details concerning the implementation of the action, including:
    - the number and percentage of EU programming and European dimension of the action; including details of EU non-national participants;
    - an assessment of the progression in terms of non-national EU programming;
    - an assessment of the impact in terms of audience and professional attendance;
    - an analysis of the impact in terms of promotion and distribution of European works;
    - an assessment of the impact in terms of promotion and follow-up of works by young creators;
    - a description of collaborations with other European audiovisual festivals;
    - an assessment of the impact in terms of promotion of works from countries of low capacity production;
    - the promotional material prepared for the event; in particular a copy of the official catalogue containing explicit reference to the films programmed at the Festival.
    - the visibility of the MEDIA Programme's contribution throughout the implementation of the action.
  - (b) An assessment of the overall impact of the action.
  - (c) The future development plan for the action and assessment of the potential impact of its development.
  - (d) Any additional data which the Commission shall prescribe.

### Financial reporting

The beneficiary shall submit the following documents:

- (a) A Final Financial Report completed using the models provided in Annex III. This report must set out total actual costs for the action, must comply with the rules set out in the budgetary and financial guide for this call for proposals and must be certified by an independent approved accountant
- (b) the Declaration regarding articles II-17 and II-19 (Annex III-iv);
- (c) the Financial Statement contained in Annex III-ii. This document must also be certified by an approved accountant, using the model in Annex III-iii;
- (d) an explanatory note explaining the transfers between headings as referred to in Article 1.3.4 (a), if applicable.

## **ARTICLE I.6 – BANK ACCOUNT**

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

Name of bank: [...]  
Address of branch: [...]  
Precise denomination of the account holder (company): [...]  
Full account number (including bank codes): [...]  
IBAN account code: [...]

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

## **ARTICLE I.7 –GENERAL ADMINISTRATIVE PROVISIONS**

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

To the Commission:

EUROPEAN COMMISSION  
Directorate-General for Information Society and Media  
For the attention of Mr Costantin DASKALAKIS,  
Acting Head of Unit of the MEDIA Programme  
Office: B-100, 04/27  
B-1049 Brussels  
Fax +32-2-299.92.14

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

To the beneficiary:

Mr/Ms (contact name) [...]  
[Function]  
[Full Official Name]  
[Full correspondence address]

## **ARTICLE I.8 – LAW APPLICABLE AND COMPETENT COURT**

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

The beneficiary may bring legal proceedings regarding decisions by the Commission concerning the application of the provisions of the agreement and the arrangements for implementing it, before the Court of First Instance of the European Communities and, in the event of appeal, the Court of Justice of the European Communities

## **ARTICLE I.9 – DATA PROTECTION**

All personal data contained in the agreement shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the 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 European Commission, without prejudice to the possibility of passing the data to the bodies responsible for inspection and audit in accordance with Community legislation.

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 the European Commission. Beneficiaries may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

## **ARTICLE I.10 - SPECIAL CONDITIONS**

I.10.1. In the event that, after the signature of this agreement, the beneficiary becomes ineligible with reference to the criteria set out in Council Decision 2000/821/CE and specified in Call for Proposals [...], whether as to matters of facts or law, the Commission reserves the right to terminate this agreement and request the reimbursement of the grant already paid out.

In particular, the beneficiary undertakes that at least 70% of the total festival programme will comprise European films originating from at least 10 States participating in the MEDIA Programme, as defined in the Guidelines for Call for Proposals [...]. Failure to comply with this obligation shall be considered as a fundamental breach of this Agreement by the Commission.

I.10.2. Any communication or publication by the beneficiary about the action shall indicate that the action has received funding of the Community. Such acknowledgment shall be worded as follows: “with the support of the MEDIA Plus Programme of the European Community”. The beneficiary must use the logos, trademarks or items created by the Commission for these purposes; including the text provided by the Commission to be included in the catalogue for the action covered by this Agreement.

I.10.3. By way of derogation from point 4 of Article II.14.1, expenses are eligible if they have been generated during the period of eligible costs which starts 10 months before the start date of the project and ends 2 months after the end date specified in Article I.2.2.

I.10.4. By way of derogation from Article II.14.2 and Article II.14.3, only the categories of costs as defined in Article I.3.2 are considered as eligible.

I.10.5. With reference to Article II.16.1, for the purpose of the financial reports to be submitted to the Commission, any conversion of actual costs into euro shall be made at the monthly exchange rate established by the Commission and published on its website applicable on the month in which the financial report is drafted.

I.10.6. All the documents constituting the Final Report must be certified by the beneficiary. The Financial Statement must also be certified by an approved accountant, using the model in Annex III-iii.

I.10.7. Should the Actual Total Eligible Cost be lower than 50% of the amount set out in Article I.3.2, the Commission reserves the right to cancel the second instalment of the grant and/or ask for the immediate reimbursement of all sums already paid out under this Agreement.

I.10.8. The grant shall be used exclusively to cover part of the total eligible costs of the action approved by the Commission in the Final Financial statement mentioned in Article I.5. It can not be used to cover costs represented by contributions in kind or other ineligible costs.

- I.10.9. By way of derogation to Article II.17.3, the Commission shall provide a grant of a maximum of 50%<sup>1</sup> of the Actual Total Eligible costs as approved by the Commission or of the maximum amount mentioned in article I.3.3, whichever is the lower.
- I.10.10. Under the terms of this agreement Article II.15.3 shall not apply.
- I.10.11. By way of derogation from Article II.14.4, all financial costs connected with the action including interest paid for cash facilities or bank charges on bank transfers are considered as eligible costs within the meaning of Article II.14.1.

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<sup>1</sup> Projects which enhance European linguistic and cultural diversity (i.e. through a special focus upon works from countries with a low production capacity) may apply for a grant of 60% of the total costs. The final percentage of the financial contribution to be awarded will be determined by the European Commission in consideration of the nature of the project

## **II –GENERAL CONDITIONS**

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

#### **ARTICLE II.1 – LIABILITY**

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

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

The beneficiary undertakes to take all necessary measures to prevent any risk of conflicts of interest which could affect the impartial and objective performance of the agreement. Such conflicts of interest 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 Commission, in writing, without delay. The beneficiary shall undertake to take whatever steps are necessary to rectify this situation at once. The Commission reserves the right to check that the measures taken are appropriate and may demand that the beneficiary take additional measures, if necessary, within a certain time.

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

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

#### **ARTICLE II.4 – CONFIDENTIALITY**

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

## **ARTICLE II.5 – PUBLICITY**

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

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

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

- the beneficiary's name and the address,
- the subject and purpose of the grant,
- the amount granted and the proportion of the action's total cost covered by the funding.

Upon a reasoned and duly substantiated request by the beneficiary, the Commission may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the beneficiary's security or prejudicing his 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 Community programme concerned, the beneficiary undertakes 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 beneficiary may suspend implementation of the action if exceptional circumstances make this impossible or excessively difficult, notably in the event of *force majeure*. He shall inform the Commission without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

II.7.2 If the Commission does not terminate the agreement under Article II.11.2, the beneficiary shall resume implementation once circumstances allow and shall inform the Commission accordingly. The duration of the action shall be extended by a period equivalent to the length of the suspension. In accordance with Article II.13, a supplementary written agreement shall be concluded to extend the duration of the action and to make any amendments that may be necessary to adapt the action to the new implementing conditions.

## **ARTICLE II.8 – FORCE MAJEURE**

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

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

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

## **ARTICLE II.9 – PROCUREMENT**

II.9.1 If procurement has to be undertaken by the beneficiary in order to be able to carry out the action and such procurement constitutes costs of the action under an item of eligible direct costs in the estimated budget, the beneficiary is obliged to ensure that competition takes place among the potential suppliers and to award the contract to the economically most advantageous offer, that is to say, that which provides the best value for money; in doing so the beneficiary shall observe the principles of transparency and equal treatment of potential contractors and shall take care to avoid any conflict of interests.

II.9.2 Recourse to procurement as referred to in II.9.1 is possible only in the following cases:

- (a) only the execution of a limited part of the action may be concerned;
- (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 procurement while the action is under way, if not provided for in the initial grant application, shall be subject to prior written authorisation by the Commission;
- (e) the beneficiary shall retain sole responsibility for carrying out the action and for compliance with the provisions of the agreement. The beneficiary must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Commission under the agreement;
- (f) the beneficiary must undertake to ensure that the conditions applicable to him 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 Commission may not be transferred

In exceptional circumstances, where the situation warrants it, the Commission 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 beneficiary. If the Commission 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 Commission. In no circumstances shall such an assignment release the beneficiary from his obligations to the Commission.

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

### **II.11.1 Termination by the beneficiary**

In duly justified cases, the beneficiary may withdraw his request for a grant and terminate the agreement at any time by giving 60 days' written notice stating the reasons, without being required to furnish any indemnity on this account. If no reasons are given or if the Commission does not accept the reasons, the beneficiary shall be deemed to have terminated this agreement improperly, with the consequences set out in the third subparagraph of paragraph 4.

### **II.11.2 Termination by the Commission**

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

- (a) in the event of a legal, financial, technical, organisational or auditing change in the beneficiary's situation that is liable to affect the agreement substantially or to call into question the decision to award the grant;
- (b) if the beneficiary fails to fulfil a substantial obligation incumbent on him under the terms of the agreement, including its annexes;
- (c) in the event of *force majeure*, notified in accordance with Article II.8; or if the action has been suspended as a result of exceptional circumstances, notified in accordance with Article II.7;
- (d) if the beneficiary is declared bankrupt, being wound up or is the subject of any other similar proceedings;
- (e) if the beneficiary is found guilty of an offence involving his professional conduct by a judgment having the force of *res judicata* or if he is guilty of grave professional misconduct proven by any justified means;
- (f) if the beneficiary is guilty of misrepresentation or submits reports inconsistent with reality to obtain the grant provided for in the agreement;
- (g) if the beneficiary has intentionally or by negligence committed a substantial irregularity in performing the agreement or in the event of fraud, corruption or any other illegal activity on the part of the beneficiary to the detriment of the European Communities' financial interests. A substantial irregularity consists of any infringement of a provision of an agreement or regulation resulting from an act or an omission on the part of the beneficiary which causes or might cause a loss to the Community budget.

### **II.11.3 Termination procedure**

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

In the cases referred to in points (a), (b) and (d) of paragraph 2, the beneficiary 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 Commission fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the termination procedure shall continue to run.

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

If notice is not given in the cases referred to in points (c), (e), (f) and (g) of paragraph 2, termination shall take effect from the day following the date when the letter of termination is received.

### **II.11.4 Effects of termination**

In the event of termination, payments by the Commission shall be limited to the eligible costs actually incurred by the beneficiary up to the date when termination takes effect in accordance with Article II.7. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

The beneficiary shall have 60 days from the date when termination takes effect, as notified by the Commission, to produce a request for final payment in accordance with Article II.15.2. If no request for final payment is received within this time limit, the Commission shall not reimburse the expenditure incurred by the beneficiary 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 Commission.

By way of exception, at the end of the period of notice referred to in paragraph 2, where the Commission is terminating the agreement on the grounds that the beneficiary has failed to produce the final technical implementation report and financial statement within the deadline stipulated in Article I.5 and the beneficiary has still not complied with this obligation within two months following the written reminder sent by the Commission by registered letter with advice of delivery or equivalent, the Commission shall not reimburse the expenditure incurred by the beneficiary 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 Commission.

By way of exception, in the event of improper termination by the beneficiary or termination by the Commission on the grounds set out in points (e), (f) or (g) of paragraph 2, the Commission 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 Commission, in proportion to the gravity of the failings in question and after allowing the beneficiary to submit his observations.

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

By virtue of the Financial Regulation applicable to the general budget of the European Communities, any beneficiary declared to be in grave breach of his 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. This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first. The beneficiary shall be notified in writing of any decision by the Commission to apply such financial penalties.

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

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

## **PART B - FINANCIAL PROVISIONS**

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

II.14.1 To be considered as eligible direct costs of the action, costs must satisfy the following general criteria:

- they must be connected with the subject of the agreement and they must be provided for in the estimated budget annexed to it;
- they must be necessary for performance of the action covered by the agreement;
- they must be reasonable and justified and they must accord with the principles of sound financial management, in particular in terms of value for money and cost-effectiveness;
- they must be generated during the lifetime of the action as specified in Article I.2.2 of the agreement;
- they must be actually incurred by the beneficiary, be recorded in his accounts in accordance with the applicable accounting principles, and be declared in accordance with the requirements of the applicable tax and social legislation;
- they must be identifiable and verifiable.

The beneficiary's internal accounting and 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 the previous paragraph:

- the cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration;
- travel and subsistence allowances for staff taking part in the action, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the beneficiary and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account by the Commission, except where the nature and/or the context of its use justifies different treatment by the Commission;
- costs of consumables and supplies, provided that they are identifiable and assigned to the action;
- 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;
- 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);

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 beneficiary 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.

By way of derogation from Article II.14.1, the indirect costs incurred in carrying out the action may be eligible for flat-rate funding fixed at not more than 7% of the total eligible direct costs. If provision is made in Article I.3.2 for flat-rate funding in respect of indirect costs, they need not be supported by accounting documents.

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

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

II.14.5 Contributions in kind shall not constitute eligible costs. However, the Commission can accept, in duly substantiated exceptional cases, that co-financing of the action referred to in Article I.3.3 should be made up entirely or in part of contributions in kind. In this case, the value for such costs 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 beneficiary shall undertake to obtain these contributions as provided for in the agreement.

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

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

Payments shall be made in accordance with Article I.4 of the Special Conditions.

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

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

Where required by the provisions of Article I.4 on pre-financing, the beneficiary shall furnish a financial guarantee from a bank or an approved financial institution established in one of the Member States of the European Union. In exceptional cases, the guarantee may be replaced by a joint and several guarantee provided by a third party

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

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

### **II.15.2 Payment of the balance**

Payment of the balance, which may not be repeated, is made after the end of the action on the basis of the costs actually incurred by the beneficiary 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 and without prejudice to Article I.10

By the appropriate deadline indicated in Article I.5, the beneficiary shall submit a request for payment of the balance accompanied by the following documents:

- a final report on the implementation of the action;
- a final financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- a full summary statement of the receipts and expenditure of the action;
- where required by the provisions of Article I.4 on payment of the balance, an external audit report on the action's accounts. The external audit shall be carried out by an independent body or expert officially authorised to carry out audits of accounts. The purpose of the audit is to certify that the financial documents submitted to the Commission by the beneficiary comply with the financial provisions of the agreement, that the costs declared are the actual costs, and that all receipts have been declared.

The documents accompanying the request for payment shall be drawn up in accordance with the provisions of Article I.5 and the annexes. If an external audit of the action's accounts is not required, the beneficiary himself shall certify that the financial documents submitted to the Commission comply with the financial provisions of the agreement, that the costs declared are the actual costs, and that all receipts have been declared.

On receipt of these documents, the Commission shall have the period specified in Article I.4 in order to:

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

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

Requests for additional information or a new report shall be notified to the beneficiary in writing. The beneficiary shall have the period laid down in Article I.4 to submit the information or new documents requested.

If additional documents are requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information.

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

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

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

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

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

- II.16.2 The Commission may suspend the period for payment laid down in Article I.4 at any time by notifying the beneficiary that his request for payment cannot be met, either because it does not comply with the provisions of the agreement, or because the appropriate supporting documents have not been produced, or because there is a suspicion that some of the expenses in the Financial Statement are not eligible and additional checks are being conducted.

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

The Commission shall inform the beneficiary of any such suspension by registered letter with advice of delivery or equivalent.

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

- II.16.3 On expiry of the period for payment specified in Article I.4, and without prejudice to paragraph 2 of this Article, the beneficiary may, within two months following the date of receipt of a late payment, request payment of interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euros, plus three and a half points; the reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union. This provision shall not apply to public authorities of the Member States of the European Union.

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

- II.16.4 The beneficiary shall inform the Commission of the amount of any interest or equivalent benefits yielded by the pre-financing it has received from the Commission. Notification must be made annually if the interest in question represents a significant amount, and in any event when the request for interim payment and the request for payment of the balance of the grant is made. The interest shall not be treated as a receipt for the action within the meaning of Article II.17.4. The Commission shall issue a recovery order in respect of it in accordance with Article II.18.

- II.16.5 The beneficiary shall have two months from the date of notification by the Commission of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article II.17, or failing that of the date on which the payment of the balance was received, to request information in writing on the determination of the final grant, giving reasons for any disagreement. After this time such requests will no longer be considered. The Commission undertakes to reply in writing within two months following the date on which the request for information is received, giving reasons for its reply. This procedure is without prejudice to the beneficiary's right to appeal against the Commission's decision pursuant to Article I.8. Under the terms of Community legislation in this matter, such appeals must be lodged within two months following the notification of the decision to the applicant or, failing that, following the date on which the applicant learned of the decision.

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

- II.17.1 Without prejudice to information obtained subsequently pursuant to Article II.19, the Commission shall adopt the amount of the final payment to be made to the beneficiary on the basis of the documents referred to in Article II.15.2 which it has approved.

- II.17.2 The total amount paid to the beneficiary by the Commission may not in any circumstances exceed the maximum amount of the grant laid down in Article I.3.3, even if the total actual costs eligible exceed the estimated total eligible costs specified in Article I.3.2.

- II.17.3 If the actual eligible costs when the action ends are lower than the estimated total eligible costs, the Commission's contribution shall be limited to the amount obtained by applying the Community grant percentage specified in Article I.3.3 to the actual eligible costs approved by the Commission.
- II.17.4 The beneficiary hereby agrees that the grant shall be limited to the amount necessary to balance the action's receipts and expenditure and that it may not in any circumstances produce a profit for him.

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 beneficiary for financing other than the Community grant, to which shall be added the amount of the grant determined by applying the principles laid down in paragraphs 2 and 3 of this article. For the purposes of this article, only actual costs falling within the categories set out in the estimated budget referred to in Article I.3.1 and contained in Annex II shall be taken into account; non-eligible costs shall always be covered by non-Community 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 or the right of the Commission to apply the penalties referred to in Article II.12, if the action is not implemented or is implemented poorly, partially or late, the Commission may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in this agreement.
- II.17.6 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the agreement, the Commission shall set the amount of the payment of the balance as being the amount still owing to the beneficiary. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Commission shall issue a recovery order for the surplus.

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

- II.18.1 If any amount is unduly paid to the beneficiary or if recovery is justified under the terms of the agreement, the beneficiary undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.
- II.18.2 If the beneficiary fails to pay by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article II.16.3. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive. This provision shall not apply to recipients of a grant which are public authorities of the Member States of the European Union.

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 Commission may be recovered by offsetting them against any sums owed to the beneficiary, after informing him accordingly by registered letter with advice of delivery or equivalent, or by calling in the financial guarantee provided in accordance with Article II.15.1. The beneficiary's prior consent shall not be required.
- II.18.4 Bank charges occasioned by the recovery of the sums owed to the Commission shall be borne solely by the beneficiary.
- II.18.5 The beneficiary understands that under Article 256 of the Treaty establishing the European Community, 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 Court of First Instance of the European Communities.



**ARTICLE II.19 – CHECKS AND AUDITS**

- II.19.1 The beneficiary undertakes to provide any detailed information requested by the Commission or by any other qualified outside body chosen by the Commission for the purposes of checking that the action and the provisions of this agreement are being properly implemented.
- II.19.2 The beneficiary shall keep at the Commission’s disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the agreement for a period of five years from the date of payment of the balance specified in Article I.4.
- II.19.3 The beneficiary agrees that the Commission may have an audit of the use made of the grant carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the agreement until the balance is paid and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Commission.
- II.19.4 The beneficiary undertakes to allow Commission staff and outside personnel authorised by the Commission the appropriate right of access to sites and premises where the action is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.
- II.19.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and the Council, the European Anti-Fraud Office (OLAF) may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Community law for the protection of the financial interests of the European Communities against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Commission.
- II.19.6 The European Court of Auditors and the European Anti-Fraud Office (OLAF) shall enjoy the same rights, especially of access, as the Commission for the purposes of checks and audits.

**SIGNATURES**

For the beneficiary

Legal Representative forename, name, function

Legal Representative, position

signature

Done at .....[place],

.....[date],

For the Commission

Gregory PAULGER

Director

signature

Done at .....[place],

.....[date],

In duplicate in English