



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate
Unit

GRANT AGREEMENT

AGREEMENT NUMBER - [...]

The European Union (hereinafter referred to as “the Union”), represented by the European Commission (hereinafter referred to as “the Commission”), itself represented for the purposes of signature of this agreement by [forename, name] , Director in the Directorate-General for Mobility and Transport], Directorate

of the one part,

and

[full official name]

[*official legal form*]

[*official registration No*]

[full official address]

[*VAT number*],

(“the beneficiary”), *represented for the purposes of signature of this agreement by [forename, surname and function]*

of the other part,

HAVE AGREED

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

Annex I Description of the action

Annex II Estimated budget of the action

Annex III Technical implementation reports and financial statements to be submitted

[Annex IV] Model letter of guarantee from the financial organisation to the European Community]

[Annex V] Methodology for audit certificates]

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.

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 under his own responsibility.

ARTICLE I.2 – DURATION

- I.2.1** The agreement shall enter into force on the date when the last of the two parties signs.
- I.2.2** The action shall run for 24 months from [the first day [of the month] following the date when the last of the two parties signs the agreement] [or insert date] ("the starting date of the action"). *[The above period shall be determined on the basis of calendar days]*

ARTICLE I.3 – FINANCING THE ACTION

- I.3.1** The total cost of the action is estimated at EUR, 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.
- I.3.2** The total eligible costs of the action for which the Commission grant is awarded are estimated at EUR [...], as shown in the estimated budget in Annex II.
- Indirect costs are eligible for flat-rate funding of 7%¹ of the total direct eligible costs, 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.
- The Union grant may not finance the entire costs of the action. The amounts and sources of co-financing other than from Union funds shall be set out in the estimated budget referred to in paragraph 1.
- 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 item of eligible costs, provided that this adjustment of expenditure does not affect the implementation of the action and that the transfer between items does not exceed 10% of the amount of each

¹ 7% is the maximum ceiling according to Article 181(3) of the Implementing Rules to the Financial Regulation that may be exceeded only by a reasoned Commission Decision. However, for specific actions it may be appropriate to set flat rate below 7% for the indirect costs, in particular if a substantial part of the action is subcontracted by the beneficiary by the way of derogation from Article II.9.2.

item of eligible costs receiving that transfer, and without exceeding the total eligible costs indicated in paragraph 2. He shall inform the Commission in writing.

ARTICLE I.4 –PAYMENT ARRANGEMENTS

Pre-financing + Interim payment + final payment

I.4.1 Pre-financing:

Within 45 days of [the latest of the following dates:]²
the date when the Commission receives the signed agreement [and the receipt of a [financial guarantee] amounting to[EUR [...]]
a pre-financing payment of EUR [...] shall be made to the beneficiary, representing [...] % of the amount specified in Article I.4.3.]

[The financial guarantee shall expire on return of the original document by the Commission. This must occur at the latest within 60 days after the final payment under the grant agreement has been made. Notwithstanding this, the guarantee will be partially released with each interim payment for an amount equal to the pre-financing cleared].

I.4.2 Interim payment:

Any request for interim payment shall be accompanied by the interim technical implementation report and financial statement specified in Article II.15.3 *and by [a certificate by an approved auditor] [or, in case of public bodies, a certificate produced by a competent and independent public officer] on the action's financial statements and underlying accounts* . The amount of the interim payment shall be determined on the basis of the eligible costs actually incurred, as shown in the interim statement and as validated by the Commission, to which shall be applied the percentage of the Union grant specified in Article I.3.3.

The total amount of pre-financing and interim payments shall not exceed **XX** % ³ of the maximum amount of the grant specified in Article I.3.3. If the Commission has paid a pre-financing, the proportional⁴ amount of pre-financing previously paid to the beneficiary shall be deducted.

The Commission shall have 90 days to approve or reject the report and to pay the interim payment, or to request additional supporting documents or information under the procedure laid down in Article II.15.3. The beneficiary shall have 30 days in which to submit additional information or a new report.

The Commission may suspend the period for payment in accordance with the

² Use this option if other documents than the signed grant agreement are required; in that case, select the appropriate options.

³ The percentage should be established between 75 and 90, depending on the number of reporting periods, ie 2/3 reporting periods -75%, 4/5 reporting periods , 90%)

⁴ Total amount of the contribution accepted for the interim period multiplied by the percentage of the EC contribution received as pre-financing .

procedure in Article II.16.2.

I.4.3 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 Article II.15.4 and by *[a certificate by an approved auditor] [or, in case of public bodies, a certificate produced by a competent and independent public officer]* on the action's financial statements and underlying accounts.

The Commission shall have 90 days to approve or reject the reports and certificates 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.15.4. The beneficiary shall have 30 days in which to submit additional information or new reports or certificates.

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

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.

The technical implementation reports, financial statements and other documents referred to in Article I.4 must be submitted in [...] copies in [language] on the following dates:

- the [first] interim technical implementation report⁵ [and financial statement and certificates on expenditure]: within [...] months following [insert date/completion of target] [or before [insert date]], covering the period [insert dates/targets];
- the [second] interim technical implementation report [and financial statement, including a consolidated statement and certificates on expenditure]: within [...] months following [insert date/completion of target] [or before [insert date]], covering the period [insert dates/targets];

..... (to add more if there are more interim payments)

**(To be deleted if there is no interim financial report - option 1 of the payment arrangements)*

- final technical implementation report and financial statement: within 3 months following the closing date of the action specified in Article I.2.2.

ARTICLE I.6 – BANK ACCOUNT

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

⁵ Whenever appropriate, intermediate targets should be established, upon which the report becomes due.

Name of bank: [...]

Address of branch: [...]

Precise denomination of the account holder: [...]

Full account number (including bank codes): [...]

IBAN account code: [...] [BIC code for countries where the IBAN code does not apply]

This account or sub-account must identify the payments made by the Commission. [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 pre-financing, be deducted from the payment of the balance or recovered by the Commission as specified in Article II.16.4.⁶]

ARTICLE I. 7 –GENERAL ADMINISTRATIVE PROVISIONS

I.7.1 Any communication addressed to the Commission in connection with this agreement shall be in writing, indicating the number of the agreement, and shall be sent to the following addresses:

Requests for payment and other financial information must be addressed to:

European Commission

Directorate-General for Mobility and Transport

Directorate-General for Energy

Directorate [...]

Unit [...]

B - 1049 Brussels

E-mail address: [...]@ec.europa.eu

The technical reports and all other correspondence must be sent to:

European Commission

Directorate-General for Mobility and Transport

Directorate-General Energy

Directorate [...]

Unit [...]

B - 1049 Brussels

E-mail address: [...]@ec.europa.eu

I.7.2 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. E-mail shall be considered as received on the date it is received. However, if

⁶ This provision applies to all grant beneficiaries receiving pre-financing payment(s), apart from the exceptions allowed under Article 5a of the Financial Regulation and Article 3 of its Implementing Rules.

the beneficiary receives a reply asking him to re-direct the e-mail, it shall not be considered as received until the correctly re-directed e-mail is received.

I.7.3 Any communication addressed to the beneficiary in connection with this agreement shall be in writing, indicating the number of the agreement, and shall be sent to the following address:

Mr/Ms [...]

[Function]

[Official denomination]

[Full official address]

[E-mail address]

I.7.4 Any change of address by the beneficiary shall be communicated in writing to the Commission

ARTICLE I.8 – LAW APPLICABLE AND COMPETENT COURT

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

The General Court of the European Union and, in the case of appeal, the Court of Justice shall have sole jurisdiction to hear any disputes between the Union, on the one hand, and the beneficiaries, on the other hand, as regards the validity, the application or any interpretation of the provisions of the present agreement.

ARTICLE I.9 – DATA PROTECTION⁷

1. Any personal data included in the agreement shall be processed pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the agreement by the Director of the Shared Resource Directorate MOVE/ENER, acting as data controller, without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.
2. The beneficiary shall have the right of access to his/her personal data and the right to rectify any such data. Should the beneficiary have any queries concerning the processing of his/her personal data, he/she shall address them to the entity acting as data controller.
3. The beneficiary shall have the right of recourse at any time to the European Data Protection Supervisor.

⁷ Any questions on the application of Regulation (EC) No 45/2001 should be referred to the Data Protection Coordinator of your DG or to the Data Protection Officer of the Commission (www.ec.europa.eu/dataprotectionofficer/).

4. Where the agreement requires the processing of personal data by the beneficiary, the beneficiary may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.
5. The beneficiary shall limit access to the data to the staff strictly necessary for the implementation, management and monitoring of the agreement.
6. The beneficiary undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
 - a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - i) unauthorised reading, copying, alteration or removal of storage media;
 - ii) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - iii) unauthorised persons from using data-processing systems by means of data transmission facilities;
 - b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
 - c) record which personal data have been communicated, when and to whom;
 - d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
 - e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
 - f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE I.10 - OTHER SPECIAL CONDITIONS

The following additional special conditions apply to this agreement:

I.10.1 Exchange rate applicable for the conversion of currencies into Euro

The beneficiary shall submit the payment requests in accordance with article I.4, 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 on the basis of either the conversion rate that would have applied on the date that actual costs were incurred or the applicable rate on the first day of the month following the end of the reporting period. The choice of one basis must be applied for the whole duration of the project. The exchange rates are fixed by the European Central Bank and may be obtained at the following internet address:

<http://www.ecb.int/stats/exchange/eurofxref/html/index.en.html> .

I.10.2 Implementation of contracts

Where the value of the procurement contract awarded in accordance with the provisions of Article II.9 of the General Conditions exceeds EUR 60,000, the beneficiary shall, in addition to the provisions laid down in Article II.9, apply a competitive procedure and observe the principle of transparency.

I.10.3 Financial support to third parties⁸

Where implementation of the action requires financial support to be given to third parties, the beneficiary may give such financial support in accordance with the description of the action in Annex I, [subject to the [following] provisions [laid down in Annex [.]].]

The cost of the financial support, which may not in any event exceed EUR 10,000 per each third party and a total of EUR 100,000, [is shown in the estimated budget in Annex II][amounts to a maximum of EUR [.]].

The financial support takes the form of [reimbursement of a specified proportion of the eligible costs actually incurred by the third party][[a] lump sum[s]][flat-rate financing].

[By way of derogation from Article II.14.1 of the General Conditions, costs incurred by third parties, recorded in their accounts in accordance with the applicable accounting principles and their usual cost accounting practices, shall be considered eligible subject to the provisions of Article II.14 and sub-paragraphs 1 and 2 above. The actual eligible costs shall be reimbursed in accordance with [the Union contribution percentage established in Article I.3.3][the contribution percentage as established in Annex I].]

[The final amount eligible for Union funding of the financial support provided to each third party in the form of [lump sum[s]][flat-rate financing] is subject to sub-paragraphs 1 and 2 above and the following conditions being fulfilled:

- ...]

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 third parties.]

⁸ Article 120 of the revised Financial Regulation (FR) and Article 184a of its Implementing Rules (IR) provide the possibility to give financial support to third parties within the limits of the amounts stipulated, on the condition that the financial support is not the primary aid of the action and that the terms for the giving of such support are strictly defined in the grant agreement, with no margin for discretion. The text proposed offers a basic template to be completed so as to ensure that such a margin of discretion is excluded. Such aid should be provided according to the principles of Title VI (Grants) of the FR and its IR.

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

- II.2.1** The beneficiary undertakes to take all the necessary measures to prevent any risk of conflict 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. **II.2.2** Any situation constituting or likely to lead to a conflict of interests during the performance of the agreement must be brought to the attention of the Commission, in writing, without delay. The beneficiary shall undertake to take whatever steps are necessary to rectify this situation at once.
- II.2.3** 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 Union.

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 Union programme concerned, the beneficiary undertakes to make available to the Commission and/or persons authorised by it all such documents or information, including information in electronic format, 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 acknowledgement of receipt 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 - AWARD OF CONTRACTS

II.9.1 If the beneficiary has 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, he shall award the contract to the bid offering best value for money; in doing so he shall take care to avoid any conflict of interests.

II.9.2 Contracts as referred to in paragraph 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 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

II.10.1 Claims against the Commission may not be transferred.

II.10.2 In exceptional circumstances, where the situation warrants it, the Commission may authorise the assignment of the agreement, or part thereof, and payments flowing from it to a third party, 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.

II.10.3 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 decide to terminate the agreement, without any indemnity on its part, in the following circumstances:

- (a) in the event of a change to the beneficiary's legal, financial, technical, organisational or ownership situation that is liable to affect the agreement substantially or to call into question the decision to award the grant;
- (b) if the beneficiary fails to fulfil a substantial obligation incumbent on him 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, 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 Commission 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 Commission 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 Commission 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.11.3 Termination procedure

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

In the cases referred to in points (a), (b), (d), (e), (g) and (h) above, the beneficiary shall have 30 days to submit his 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), (f) and (i) above, termination shall take effect from the day following the date on which notification of the Commission's decision to terminate the agreement 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.17. 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.15.4. 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 3, 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 acknowledgement of receipt 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 (a), (e), (g), (h) or (i) 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

II.12.1 By virtue of the Financial Regulation applicable to the General Budget of the European Communities, any beneficiary declared to be in grave breach of his obligations shall be liable to financial penalties of between 2% and 10% of the value of the grant in question, with due regard for the principle of proportionality.

II.12.2 This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the establishment of the first.

II.12.3 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 grant conditions must be the subject of 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** 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 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's 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 the 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 beneficiary's 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 the 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;
- 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;

- 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 according to the applicable national legislation. VAT paid by public bodies is not an eligible cost;
- costs declared by the 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 Commission can accept, if considered necessary or appropriate, that the 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 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 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 provide a financial guarantee from a bank or an approved financial institution established in one of the Member States of the Union.

The guarantor shall stand as first call guarantor and shall not require the Commission to have recourse against the principal 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 Further pre-financing payments

Not applicable.

II.15.3 Interim payments

Interim payments are intended to reimburse the beneficiary for expenditure on the basis of a detailed statement of the costs incurred, once the action has reached a certain level of completion. It may clear all or part of any pre-financing.

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

- an interim report on implementation of the action;
- an interim financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- where required by the provisions of Article I.4 on interim payment, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Commission, that the costs declared by the beneficiary 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.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.5 and the annexes. The beneficiary 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.

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

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

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

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The beneficiary shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The beneficiary shall have the period laid down in Article I.4 to submit the information or new documents requested.

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

Where a report is rejected and a new report requested, the approval procedure described in 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).

II.15.4 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.

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, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor, or in case of public bodies by a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Commission, that the costs declared by the beneficiary 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.

The documents accompanying the request for payment shall be drawn up in accordance with the provisions of Article I.5 and the annexes. The beneficiary 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.

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

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

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

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

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The beneficiary shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The beneficiary shall have the period laid down in Article I.4 to submit the information or new documents requested.

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

Where a report is rejected and a new report requested, the approval procedure described in

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 for the purposes of additional checks 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.

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 may also suspend its payments:

- if there is a suspicion of irregularity committed by the beneficiary in the implementation of the grant agreement;
- if there is a suspected or established irregularity committed by the beneficiary in the implementation of another grant agreement or grant decision funded by the General Budget of the Union or by any other budget managed by it. In such cases, suspension of the payments will only proceed where the suspected or established irregularity can affect the implementation of the current grant agreement.

The Commission shall inform the beneficiary as soon as possible of any such suspension by registered letter with acknowledgement of receipt or equivalent, setting out the reasons for suspension.

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 is entitled to 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 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 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.

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

II.16.4 The Commission shall deduct the interest yielded by pre-financing which exceeds EUR 50 000⁹, as provided for in Article I.4, 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 Commission may recover the interest generated by pre-financing lower than EUR 750 000 at least once a year.

Where the interest yielded exceeds the balance of the amount due to the beneficiary as indicated in Article II.15.4, or is generated by pre-financing referred to in the previous subparagraph, the Commission shall recover it in accordance with Article II.18.

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

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 Union law 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.

⁹ For external actions, the corresponding ceiling is set at EUR 250 000. For crisis management and humanitarian aid operations, the interest shall be recovered if the pre-financing exceeds per agreement EUR 750 000 at the end of each financial year and is for a duration of more than 12 months.

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 granted to the beneficiary on the basis of the documents referred to in Article II.15.4 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 eligible costs 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 Union 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 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 beneficiary 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 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- 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 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. 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 acknowledgement of receipt or equivalent, or by 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 Commission may recover by offsetting before the due date of the payment. 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 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 beneficiary undertakes to provide any detailed information, including information in electronic format, requested by the Commission or by any other outside body authorised by the Commission to check that the action and the provisions of the 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 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 Commission.

II.19.6 The Court of Auditors shall have the same rights as the Commission, notably right of access, as regards checks and audits.

SIGNATURES

For the beneficiary

name / forename / function

For the Commission

name /forename

signature

Done at [place], [date]

In duplicate in English

signature

Done at Brussels/Luxembourg, [date]

Annex IV

MODEL LETTER FOR PRE-FINANCING FIRST DEMAND GUARANTEE*

Financial institution/Bank (Letterhead)
[Place/Date]

European Union
Represented by the European Commission
Directorate-General for [Mobility and Transport][Energy] – SRD.3
Rue de la Loi 200
B – 1049 Belgium

Reference: [Grant agreement] N° and exact title: [...]

ARTICLE 1 – DECLARATION ON GUARANTEE, AMOUNT AND PURPOSE

We, the undersigned [name and address of the financial institution or bank]¹⁰ (hereinafter referred to as "the Guarantor") hereby confirm that we give the European Union, represented by the European Commission (hereinafter referred to as "the Commission"), an unconditional, irrevocable and independent first-demand guarantee consisting in the undertaking to pay to the Commission a sum equivalent to the amount of:

EUR [in figures: ...] (in words: ... EUR)

upon simple demand, for guarantee of the pre-financing(s) stipulated in the [grant agreement] (N°/exact title, hereinafter referred to as the "agreement") concluded between the Commission and [name and address], (hereinafter referred to as "the Beneficiary")¹¹.

ARTICLE 2 – EXECUTION OF GUARANTEE

If the Commission gives notice that the Beneficiary has for any reason failed to reimburse pre-financings paid by the Commission, we, acting by order and for account of the Beneficiary, shall undertake to immediately pay up to the above amount, in EUR, without exception or objection, into a bank account designated by the Commission, on receipt of the first written request from the Commission sent by registered letter or by courier with acknowledgement of receipt. We shall inform the Commission in writing as soon as the payment has been made.

¹⁰ The guarantee has to be provided by an approved bank or financial institution established in one of the Member States of the European Union (Article 182 Implementing Rules of the Financial Regulation). Where the beneficiary is established in a third country, the authorising officer responsible may accept that a bank or financial institution established in that third country may provide the guarantee, if he considers that the bank or financial institution offers equivalent security and characteristics as those offered by a bank or financial institution established in a Member State.

¹¹ Replace "Beneficiary" with "Co-ordinator" in case of multi-beneficiary grant agreement where the co-ordinator is the only co-beneficiary receiving funds from the European Union. "Co-ordinator" means the legal entity that has signed the grant agreement with the Commission (or with the Agency) and ensures that the co-beneficiaries implement the action in accordance with the agreement.

If the Co-ordinator provides the guarantee for several or all co-beneficiaries, all co-beneficiaries have to be mentioned in Article 1 and in the following Articles the word "Beneficiary" should be replaced by the "Co-ordinator or a co-beneficiary".

ARTICLE 3 – OBLIGATIONS OF THE GUARANTOR

1. We waive the right to require exhaustion of remedies against the Beneficiary, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Beneficiary may have against the Commission under the grant agreement or in connection with it or on any other grounds.
2. Our obligations under this guarantee shall not be affected by any arrangements or agreements made by the Commission with the Beneficiary which may concern his obligations under the grant agreement.

ARTICLE 4 – DATE OF ENTRY INTO FORCE

This guarantee shall come into force upon its signature. If, on the date of its signature, the pre-financing has not been paid to the Beneficiary, this guarantee shall enter into force on the date on which the Beneficiary receives the pre-financing.

ARTICLE 5 – END DATE

1. This guarantee shall expire on return of this original document by the Commission to our offices by registered letter or by courier with acknowledgement of receipt.
2. This must occur at the latest within 60 days after the final payment under the grant agreement has been made.

ARTICLE 6 - CONDITIONS OF RELEASE

1. We may be released from this guarantee only with the Commission's written consent and do not have the right of deposit without its consent.
2. This guarantee will be partially released with each interim payment for an amount equal to the pre-financing cleared. This must occur at the latest within 60days after each interim payment is made.
3. After expiry, this guarantee shall become automatically null and void and no claim relating thereto shall be receivable for any reason whatsoever.

ARTICLE 7 – APPLICABLE LAW AND COMPETENT JURISDICTION

1. This guarantee shall be governed by and construed in accordance with the law applicable to the grant agreement.
2. The courts having jurisdiction for matters relating to the grant agreement shall be those of the country of the applicable national law.

ARTICLE 8 - ASSIGNMENT

The rights arising from this guarantee may not be assigned without our written consent.

Done at [insert place], on [insert date]

[Signature/Function]

[Signature/Function]

ANNEX V – METHODOLOGY FOR AUDIT CERTIFICATES

1. AUDITORS ELIGIBLE TO DELIVER THE CERTIFICATE ON THE FINANCIAL STATEMENTS

Each beneficiary is free to choose a qualified external auditor, including its statutory external auditor, provided that the following cumulative requirements are met:

- the external auditor must be **independent** from the beneficiary;
- the external auditor must be **qualified** to carry out statutory audits of accounting documents in accordance with national legislation implementing the Directive on statutory audits of annual accounts and consolidated accounts⁴ or any Community legislation replacing this Directive. Beneficiaries established in third countries must comply with equivalent national regulations in the same field and the certificate on the financial statement provided will consist of an independent report of factual findings based on procedures specified by the Community.

Public bodies have the choice between an external auditor and a competent public officer. Where a public body opts to use a competent public officer, the auditor's independence is usually defined as independence from the beneficiary "in fact and/or in appearance". A preliminary condition is that this competent public officer was not involved in any way in drawing up the Financial Statements and that she/he is not hierarchically dependent from the officer responsible for the Financial Statements.

2. SCOPE AND CONTENT OF CERTIFICATES ON THE FINANCIAL STATEMENTS

The beneficiary is required to submit to the European Commission, in addition to the Financial Statement, a Certificate which includes notably an independent report of factual findings produced by an auditor in support of the payment requested by the beneficiary under Article I.4 of the Grant Agreement.

Certificates on the Financial Statements shall state that the costs claimed and the receipts declared during the period for which they are provided, as well as the declaration of the interest yielded by the pre-financing meet the conditions required by the Grant Agreement.

The auditor undertakes this engagement:

- in accordance with the International Standard on Related Services ('ISRS') 4400 Engagements to perform Agreed-upon Procedures regarding Financial Information as promulgated by the IFAC;
- in compliance with the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA) of IFAC. Although ISRS 4400 provides that independence is not a requirement for agreed-upon procedures engagements, the European Commission requires that the Auditor also complies with the independence requirements of the Code of Ethics for Professional Accountants.

The auditor performs the procedures specified in point 3 below and uses the evidence obtained from these procedures as the basis for the Certificate.

3. PROCEDURES FOR CERTIFICATE ON THE FINANCIAL STATEMENTS

3.1 Procedures to be carried out by the auditor regarding the Financial Statement

The procedures listed on the left hand side of the table are to be carried out **unaltered** by the auditor. The Commission has designed these procedures in order to obtain standardised and comparable reports from all auditors, who are expected to carry out the procedures without adaptation for the particular circumstances of the beneficiary.

When performing these procedures the Auditor may apply techniques such as inquiry and analysis, (re)computation, comparison, other clerical accuracy checks, observation, inspection of records and documents, inspection of assets and obtaining confirmations or any others deemed necessary in carrying out these procedures.

In particular the minimal sample sizes should always be respected, and all procedures should be carried out in full.

Procedures	Standard factual finding and basis for exception reporting
Personnel Costs	
<p>1. Recalculate hourly personnel and overhead rates for personnel (full coverage if less than 20 employees, otherwise a sample of minimum 20, or 20% of employees, whichever is the greater), indicate the number of productive hours used and hourly rates. Where sampling is used, selection should be random with a view to producing a representative sample. 'Productive hours' represent the (average) number of hours made available by the employee in a year after the deduction of holiday, sick leave and other entitlements. This calculation should be provided by the Beneficiary.</p>	<p>For each employee in the sample of ____, the Auditor obtained the personnel costs (salary and employer's costs) from the payroll system together with the productive hours from the time records of each employee. For each employee selected, the Auditor recomputed the hourly rate by dividing the actual personnel costs by the actual productive hours, which was then compared to the hourly rate charged by the Beneficiary. If the productive hours or costs of personnel cannot be identified, they should be listed (together with the amounts) as exceptions in the main report.</p>
<p>2. For the same selection examine and describe time recording of employees (paper/ computer, daily/weekly/monthly, signed, authorised).</p>	<p>Employees record their time on a daily/ weekly/ monthly basis using a paper/computer-based system. The time-records selected were authorised by the project manager or other superior. If no time records are available which fit the above description, this should be listed as an exception in the main report.</p>
<p>3. Employment status and employment conditions of personnel. The Auditor should obtain the employment contracts of the employees selected and compare with the standard employment contract used by the Beneficiary.</p>	<p>For the employees selected, the Auditor inspected their employment contracts and found that they were: – directly hired by the Beneficiary in accordance with its national legislation, – under the sole technical supervision and responsibility of the latter, and – remunerated in accordance with the normal practices of the Beneficiary. Personnel who do not meet all three conditions should be listed (together with the amounts) as exceptions in the main report.</p>

Subcontracting	
4. Obtain a written description from the Beneficiary regarding 3 rd party resources used and compare with Annex 1 to the Grant Agreement.	The Auditor compared the description of the 3 rd party resources provided by the Beneficiary to the specification in Annex 1 to the Grant Agreement, and found them to be the same If the descriptions do not clearly match, this should be reported as an exception in the main report.
5. Inspect documents and obtain confirmations that subcontracts are awarded according to a procedure including an analysis of best value for money (best price-quality ratio), transparency and equal treatment. Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.	The Auditor obtained tendering documents for each subcontract entered into and found that the tendering process was followed and that a written analysis of value-for-money had been prepared by the Beneficiary in support of the final choice of subcontractor, or that the contract had been awarded as part of an existing framework contract entered into prior to the beginning of the project. If the Auditor is not provided with evidence of either of the above situations, the amount of the subcontract should be listed as an exception in the main report.
Equipment	
6. Allocation of equipment subject to depreciation is correctly identified and allocated to the project. Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.	The Auditor traced the equipment charged to the project to the accounting records and the underlying invoices. The Beneficiary has documented the link with the project on the invoice and purchase documentation, and, where relevant, the project accounting. The asset value was agreed to the invoice and no VAT or other identifiable indirect taxes were charged, unless the Beneficiary can show that he is unable to recover it according to the applicable national legislation. The depreciation method used to charge the equipment to the project was compared to the Beneficiary's normal accounting policy and found to be the same. If assets have been charged which do not comply with the above, they should be listed (together with the amounts) as exceptions in the main report.
Travel Costs	
7. Travel costs correctly identified and allocated to the project (and in line with Beneficiary's normal policy for non-EC work regarding first-class travel, etc.) Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater. The Beneficiary should provide written evidence of its normal policy for travel costs (e.g. use of first class tickets) to enable the Auditor to compare the travel charged with this policy.	The Auditor inspected the sample and found that the Beneficiary had allocated travel costs to the project by marking of invoices and purchase orders with the project reference, resulting in traceable allocation in the project accounts. The costs charged were compared to the invoices and found to be the same. No VAT (unless non-recoverable under national legislation) was charged. The use of first class travel was in line with the written policy provided by the Beneficiary. Costs which are not allocated to project accounts and do not have a clear attribution (normally by writing the project number on the original invoice) should be listed (together with the amounts) as exceptions in the main report.
Consumables	
8. Consumables correctly identified and allocated to the project. Full coverage if less than 20 items,	The Auditor inspected the sample and found that the Beneficiary had allocated consumable costs to the

otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.	project by marking of invoices and purchase orders with the project reference, resulting in traceable allocation in the project accounts. The costs charged were compared to the invoices and found to be the same. No VAT (unless non-recoverable under national legislation) was charged. Costs which are not allocated to project accounts and do not have a clear attribution (normally by writing the project number on the original invoice) should be listed (together with the amounts) as exceptions in the main report.
Exchange Rates	
9. Inspect and compare exchange rates into Euros	The Auditor compared the exchange rates used for conversion with the applicable official exchange rates established by the European Communities and the Beneficiary used [choose one]: <input type="checkbox"/> the conversion rate of the date where the actual costs were incurred <input type="checkbox"/> the rate applicable on the first day of the month following the end of reporting period Where rates cannot be agreed, an exception should be noted, (together with the amount) in the main report.
Identification of Receipts	
10. The Beneficiary is obliged to declare in its claim any receipts related to the project (income from events, rebates from suppliers, etc.)	The Auditor examined the relevant project accounts and obtained representations from the Beneficiary that the amounts listed represent a complete record of the sources of income connected with the project. The amount included in the claim regarding receipts is the same as the amount recorded in the project accounting. Any discrepancies in the receipts noted in the accounts and those reported by the Beneficiary should be noted (together with the amount) as exceptions in the main report.
Identification of interest yielded on pre-financing.	
11. The Beneficiary is obliged to declare interest yielded on pre-financing	The Auditor compared the relevant project accounts with the interest shown in the bank statements and found them to be the same. Any discrepancies in the interest noted in the accounts and those reported by the Beneficiary should be noted (together with the amount) as exceptions in the main report.

3.2 When can the auditor change the model answer and when should he report an exception?

Where the auditor's factual findings are not consistent with the "Standard factual finding" given on the right hand side of the Table, then an exception should be noted. For each standard finding, non-exhaustive examples where the Commission expects exceptions to be noted is indicated in bold under the corresponding factual findings. In general, if the auditor is not able to establish whether the information provided by the beneficiary matches the standard finding defined by the Commission, this should be reported as an exception.

3.3 Will all exceptions result in a rejection of costs by the Commission?

The Commission will consider each exception in the context of the report as a whole and

other evidence at its disposal. It will therefore make eligibility decisions on a case by case basis using the evidence provided. The more detail the auditor provides regarding exceptions, the easier it will be to assess the situation and come to a reasoned decision on the claim under consideration. The auditor should report the findings as fully as possible, to facilitate this process.

4. FORM OF CERTIFICATES ON THE FINANCIAL STATEMENTS -

The use by the external auditor or competent public officer of the reporting format attached is compulsory.

The Certificate on the Financial Statements has to be transmitted by the beneficiary to the Commission with the Financial Statements.

Certificate Model

To be printed on letterhead paper of the Auditor

<Name of contact person(s)>, < Position>

< Beneficiary's name>

<Address>

<dd Month yyyy>

We [*legal name of the audit firm*], established in [*full address/city/state/province/country*] represented for signature of this Report by [*name and function of an authorised representative*] have performed an audit regarding the cost declared in the Financial Statement(s)³ of [*name of beneficiary*] hereinafter referred to as the Beneficiary and which is to be presented to the European Commission under grant agreement [*EC grant agreement reference: title, acronym, number*] for the following period(s) [*insert period(s) covered by the Financial Statement(s)*]. This engagement involved performing certain specified procedures, according to Annex VI of the Grant Agreement, the results of which the European Commission uses to draw conclusions as to the eligibility of the costs claimed.

Our engagement was carried out in accordance with :

- International Standard on Related Services ('ISRS') 4400 *Engagements to perform Agreed-upon Procedures regarding Financial Information* as promulgated by the International Federation of Accountants ('IFAC);
- the *Code of Ethics for Professional Accountants* issued by the IFAC. Although ISRS 4400 provides that independence is not a requirement for agreed-upon procedures engagements, the European Commission requires that the Auditor also complies with the independence requirements of the *Code of Ethics for Professional Accountants*;

As requested, we have only performed the procedures set out in Annex VI of the Grant Agreement and we have reported our factual findings on those procedures.

The scope of these agreed upon procedures has been determined solely by the European Commission and the procedures were performed solely to assist the European Commission in evaluating whether the costs claimed by the Beneficiary in the accompanying Financial Statement has been claimed in accordance with the Grant Agreement. The Auditor is not responsible for the suitability and appropriateness of these procedures.

Because the procedures performed by us did not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance on the Financial Statements.

Had we performed additional procedures or had we performed an audit or review of the Financial Statements of the Beneficiary in accordance with International Standards on Auditing, other matters

might have come to our attention that would have been reported to you.

Sources of Information

The Report sets out information provided to us by the management of the Beneficiary in response to specific questions or as obtained and extracted from the Beneficiary’s information and accounting systems.

Factual Findings

The above mentioned Financial Statement(s) per Activity was (were) examined and all procedures specified in Annex VI of the Grant Agreement were carried out. On the basis of the results of these procedures, we found that:

[Choose option]

[Option 1] The eligible costs declared by the Beneficiary in the Financial Statement are real, accurately recorded and eligible and all receipts have been declared, in accordance with the Grant Agreement.

[Option 2] The eligible costs declared by the Beneficiary in the Financial Statement are real, accurately recorded and eligible and all receipts have been declared, in accordance with the Grant Agreement with the following exceptions:

.....
.....
.....

All documentation and accounting information to enable us to carry out these procedures has been provided to us by the Beneficiary. Except as indicated below, no exceptions were noted.

Exceptions

In some cases, the Auditor was not able to successfully complete the procedures specified. These exceptions are as follows:

exceptions such as inability to reconcile key information, unavailability of data which prevented the Auditor from carrying out the procedures, etc. should be listed here. The Commission will use this information to decide the amounts which will be reimbursed.

Use of this Report

This Report is solely for the purpose set forth in the above objective.

This Report is prepared solely for the confidential use of the Beneficiary and the European Commission and solely for the purpose of submission to the European Commission in connection with the requirements as set out in Article I.4 of the Grant Agreement. This Report may not be relied upon by the Beneficiary or by the European Commission for any other purpose, nor may it be distributed to any other parties. The European Commission may only disclose this Report to others who have regulatory rights of access to it, in particular the European Anti Fraud Office and the European Court of Auditors.

This Report relates only to the Financial Statement(s) specified above and does not extend to any other financial statements of the Beneficiary.

No conflict of interest exists between the Auditor and the Beneficiary in establishing this Report.

We look forward to discussing our Report with you and would be pleased to provide any further information or assistance which may be required.

[legal name of the audit firm]
[[name and function of an authorised representative]
<dd Month yyyy>, <Signature of the Auditor>