



**Framework Partnership Agreement
concerning the European Topic Centre on Air pollution and climate change mitigation**

EEA/ACC/10/001

The **European Environment Agency** (the "*Agency*"), represented for the signature of this framework agreement by Prof Jacqueline McGlade, Executive Director

of the **one part**,

and

[...], established in [...], represented by [...], or his/her authorized representative, the *partner* acting as *coordinator* of the *consortium*, (the "*coordinator*") and the other *partners* identified in Article I.1.3 below,

of the **other part**

HAVE AGREED

to the **Preamble**, the **Special Conditions**, the **General Conditions** and **Annexes**, which form the current Framework Partnership Agreement ("the *framework agreement*").

The **Preamble** presents the context of the partnership to form the European Topic Centre on Air pollution and climate change mitigation.

The **Special Conditions** and the **General Conditions** define the scope and the duration of the framework agreement as well as the functioning of the partnership.

The following documents are annexed to the *framework agreement*:

- Annex I** - Actions planned under the partnership
- Annex II** - Model specific grant agreement
- Annex III** - Consortium and cost statement forms

The terms of the Special Conditions, of which the Preamble forms an integral part, shall take precedence over those in the other parts of the framework agreement. The terms of the General Conditions shall take precedence over those in the Annexes.

Through his signature, the *coordinator* accepts the terms of the *framework agreement* and their application to any specific grant agreements subsequently concluded between the parties.

PREAMBLE

Regulation (EEC) 401/2009 of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (codified version) describes in its Article 4(4)-(6) European Topic Centres as part of the *Agency's* network. Topic Centres are dealing, for instance, with the harmonisation of environmental information of the member countries, the processing of these in databases, the analysis of the information including the use of models to describe the present and foreseeable state of the environment, and the presentation of the information to support policy making.

In this specific context, the *Agency* has selected a *consortium* of partners, particularly active in the domain of [...] and plans to establish a durable co-operation aiming at fulfilling all tasks of a European Topic Centre.

The *Agency* and the *consortium* share common objectives in the above-mentioned domain which are laid down in Annex I and justify the setting up of a partnership.

I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT

- I.1.1. The *framework agreement* is concluded as part of an ongoing, formalised relationship of cooperation between the *Agency* and the *consortium* ("*the partnership*") on the basis of *Agency* objectives and an action plan set out in Annex I, in order to contribute to the objectives of the *Agency* policy referred to in the Preamble.
- I.1.2. The purpose of the *framework agreement* is to define the respective roles and responsibilities of the *Agency* and the *consortium* in implementing their *partnership*. The *specific grant agreements* that may be signed under the *framework agreement* shall relate to grants for the European Topic Centre's (annual) work programme or specific parts thereof ("*work programmes*").
- I.1.3. The *consortium* is composed of the *partner* acting as coordinator and the following legal entities, who shall accede to the *framework agreement* in accordance with the procedure referred to in Article I.2.1, as partners assuming the rights and obligations established by the *framework agreement* with effect from the date on which it enters into force:
- ..., established in ..., represented by ..., or his/her authorised representative ("*partner*"),
 - ..., established in ..., represented by ..., or his/her authorised representative ("*partner*"),
 - ..., established in ..., represented by ..., or his/her authorised representative ("*partner*"),

[...]

(hereinafter referred to as the "*partners*")

- I.1.4. The *consortium* shall carry out the work set out in Annex I to this *framework agreement* in accordance with the conditions set out in this *framework agreement*.
- I.1.5. The *partners* shall conclude a consortium agreement regarding the internal operation and management of the *consortium*. The consortium agreement shall include all aspects necessary for the management of the *consortium* and the implementation of the *framework agreement* and *specific agreements* as well as any necessary intellectual property provisions.

ARTICLE I.2 – CONSTITUTION OF THE CONSORTIUM

- I.2.1. The *coordinator* shall ensure that the legal entities identified in Article I.1.3 complete the formalities for them to accede to the contract. At the latest 60 calendar days after the entry into force of the contract, the *coordinator* shall send to the *Agency* one of the three duly completed and signed originals of Form A (set out in Annex III), which shall be obtained from each of the partners identified in Article I.1.3. The two remaining signed originals shall be kept by the *coordinator* and the *partner* concerned and be made available for consultation at the request of any other *partner*.
- I.2.2. Should any legal entity identified in Article I.1.3 fail or refuse to accede to the framework agreement within the deadline established in the previous paragraph, the *Agency* is no longer bound by its offer to contract with the said legal entities. The *Agency* may terminate the *framework agreement* in accordance with Article II.12, where any legal entity identified in Article I.1.3 does not accede to the *framework agreement* in accordance with the provisions established by the *Agency*.

- I.2.3. However, the *consortium* may propose appropriate solutions to the *Agency* to ensure the implementation of the *partnership* including, where necessary, the accession to the *framework agreement* of legal entities other than those identified in Article I.1.3 in accordance with the provisions in Article I.3.
- I.2.4. In the case of termination, no costs incurred by the *consortium* under the *partnership* up to the date of termination of the *framework agreement* can be approved or accepted as eligible for reimbursement by the *Agency* financial contribution. Any pre-financing provided to the *consortium* and any interest generated by the pre-financing must be returned in full to the *Agency* within 30 calendar days of notification of termination.

ARTICLE I.3 – EVOLUTION OF THE CONSORTIUM

- I.3.1. The *consortium* may be enlarged to include other legal entities, which shall accede to the *framework agreement* by means of Form B (set out in Annex III). The *Agency* is deemed to have accepted this legal entity as a *partner* in the *consortium*, if it does not object within six weeks of receipt of Form B. Any new *partner* shall comply with any condition required by the Financial Regulation or other formalities that may be required by any other provision of this *framework agreement*.
- I.3.2. Acceding legal entities shall assume the rights and obligations of *partners* as established by the *framework agreement* with effect from the date of their accession to the *framework agreement*. *Partners* leaving the *consortium* shall be bound by the provisions of the *framework agreement* regarding the terms and conditions applicable to the termination of their participation.

ARTICLE I.4 – AWARD OF GRANTS

- I.4.1. The *Agency* shall decide on the content of *work programmes* that reflects the annual management plans of the *Agency*.
- I.4.2. The *Agency* may consult the *consortium* in order to obtain a proposal for *work programmes* in line with the action plan set out in Annex I. Such consultation shall take place on the basis of an invitation to submit proposals. The *Agency* shall to that end stipulate the technical and financial criteria that the *work programme* must satisfy if they are to qualify for an *Agency* grant. The *consortium* or *partners* shall be free to submit a proposal for *work programme* to the *Agency* in response to the consultation carried out. The *Agency* shall be free to accept or refuse the proposal submitted by the *consortium* and shall give the reasons for its decision.
- I.4.3. Where the *Agency* decides to accept a proposal for a *work programme*, it shall send the *consortium* a specific grant agreement ("*specific agreement*") in accordance with the model in Annex II. The *specific agreement* is governed by the terms of the *framework agreement* and must be signed by the authorised representatives of the parties under the same conditions as the *framework agreement*.
- I.4.4. By signing the *specific agreement*, the *consortium* undertakes to carry out the *work programme* under his own responsibility on the terms laid down in the *specific agreement* and the annexes thereto and in compliance with the undertakings entered into under the *framework agreement*.
- I.4.5. Signature of the *framework agreement* by the parties shall not give rise to any obligation on the *Agency* to award a grant.

ARTICLE I.5 – DURATION

- I.5.1. The *framework agreement* shall enter into force on the date when the last of the two parties signs.
- I.5.2. It shall be concluded for a period of **3 (three)** years starting from the date of its entry into force.
- I.5.3. *Specific agreements* must be signed before the date when the *framework agreement* expires. Where the *work programmes* are carried out after the above-mentioned date, the terms of the *framework agreement* shall continue to apply to the implementation of the corresponding *specific agreements*.

ARTICLE I.6 – FINANCING THE WORKPROGRAMMES

- I.6.1. Co-financing amounting to not less than 10% of the estimated total eligible cost of a *work programme* shall be required for each *work programme* for which an *Agency* grant is awarded.
- I.6.2. Prior to concluding a *specific agreement*, the *consortium* must submit proof of the amount of co-financing to be provided. The co-financing may be provided either from the *partners'* own resources or from other sources of external finance.
- I.6.3. Contributions involving real estate shall be excluded from the calculation of the amount of co-financing.
- I.6.4. The provisions relating to the submission of the reports and other documents relating to the *work programme* and the arrangements for payment of the grant are set out in the *specific agreement*.

ARTICLE I.7 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication in connection with *this framework agreement* or a *specific agreement* shall be in writing, indicating the number of the agreement, and shall be sent to the following addresses:

For the *Agency*:

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

European Environment Agency
[Name and function]
Kongens Nytorv 6
1050 Copenhagen K, Denmark
Tel: + 45 [...]
Fax: + 45 [...]
Email: [...]@eea.europa.eu

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

European Environment Agency
[Name and function]
Kongens Nytorv 6
1050 Copenhagen K, Denmark
Tel: + 45 [...]
Fax: + 45 [...]
Email: [...]@eea.europa.eu

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

For the *consortium*:

Name of partner coordinating the consortium

Name of ETC Manager

Address

Tel: + [...]

Fax: + [...]

Email: [...]@ [...]

ARTICLE I.8 – LAW APPLICABLE AND COMPETENT COURT

I.8.1. Grants are governed by the terms of the *framework agreement* and *specific agreements*, the Community rules applicable and, on a secondary level, by the law of Denmark relating to grants.

I.8.2. The *consortium/a partner* may bring legal proceedings regarding decisions by the *Agency* concerning the application of the provisions of the above-mentioned agreements and the arrangements for implementing 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 and relating to the *framework agreement* and *specific agreements* 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 *framework agreement* and *specific agreements* by the *Agency*, without prejudice to the possibility of passing the data to the bodies responsible for inspection and audit in accordance with Community legislation.

Partners may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. *Partners* should address any questions regarding the processing of their personal data to the *Agency*. *Partners* may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

The *Agency* may use the personal data of the members of the *partnership* (i.e., name, functions, address, telephone and fax numbers, E-Mail address) for information and communication purposes.

II – GENERAL CONDITIONS

PART A: LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 – PERFORMANCE OBLIGATIONS

1. The *consortium* shall:

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

2. Each *partner* shall:

- (a) ensure that all information to be provided to the *Agency* is sent via the *coordinator*, except for those cases foreseen in the *framework agreement*;
- (b) make appropriate arrangements for the proper performance of its work identified in *work programmes*. To this end, the *partner* shall designate one or more persons who shall manage and monitor its work, ensure that the tasks assigned are correctly performed, and inform the *Agency* of the name and contact details of the person designated and of any changes to that information;
- (c) inform the *Agency* of any event which might affect the implementation of the *framework agreement* and the *specific agreements* and the rights of the *Agency*;
- (d) provide the *Agency* and Court of Auditors directly with information requested in the framework of controls and audits, as provided for in Article II.23;
- (e) ensure that any agreements or contracts entered into between the *partner* and any subcontractor, or other third party, contain provisions extending the *Agency* and the Court of Auditors' right to audit any work carried out under the *specific agreements* for which costs are claimed from the *Agency* financial contribution;
- (f) undertake to ensure that the conditions applicable to it under Articles II.9, II.10, II.11, II.12 are also applicable to any third party whose costs are claimed under the *specific agreements* by means of Article II.19;
- (g) take part in meetings concerning the supervision, monitoring and evaluation of the *framework agreement* and the *specific agreements* which are relevant to it;
- (h) take all necessary steps to avoid commitments that are incompatible with the obligations provided for in this *framework agreement* and inform the other *partners* and the *Agency* of any unavoidable obligations which may arise during the duration of the *framework agreement* which may have implications for any of its obligations under the *framework agreement* and the *specific agreements*;
- (i) carry out the *work programmes* in accordance with fundamental ethical principles;

- (j) endeavour to promote equal opportunities between men and women in the implementation of the *framework agreement* and the *specific agreements*;
- (k) ensure that the *Agency* is informed if and when any eligibility criteria established by the Financial Regulation cease(s) to be met during the duration of the *framework agreement* and the *specific agreements*;
- (l) take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the *framework agreement* and the *specific agreements* and shall inform the *Agency* without delay of any situation which could lead to such a conflict of interest.

3. The *coordinator* shall:

- (a) ensure that the tasks identified in Article I.2. regarding accession to the *framework agreement* and the *specific agreements* are carried out in a timely manner;
- (b) be the intermediary for communication between the *partners* and the *Agency*;
- (c) submit to the *Agency* the cost statements provided for in Article II.19;
- (d) receive all payments made by the *Agency* to the *consortium* and administer the *Agency* contribution regarding its allocation between *partners* and activities in accordance with the *framework agreement* and the *specific agreements* and the decisions taken by the *consortium*. The *coordinator* shall ensure that all the appropriate payments are made to *partners* without unjustified delay;
- (e) keep accounts making it possible to determine at any time what portion of the *Agency* funds has been paid to each *partner* for the purposes of the *work programmes*.
- (f) The *coordinator* shall inform the *Agency* of the distribution of the funds and the date of transfers to the *partners*.

4. The *Agency* shall:

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

ARTICLE II.2 – LIABILITY

II.2.1. The *consortium*/the *partners* shall have sole responsibility for complying with any legal obligations incumbent on them.

II.2.2. The *Agency* shall not, in any circumstances or on any grounds, be held liable in the event of a claim under a *specific agreement* relating to any damage caused during the *work programme*'s execution. Consequently, the *Agency* will not entertain any request for indemnity or reimbursement accompanying any such claim.

II.2.3. Except in cases of *force majeure*, the *consortium* shall make good any damage sustained by the *Agency* as a result of the execution or faulty execution of the *work programme*.

II.2.4. The *consortium*/the *partners* shall assume sole liability towards third parties, including for damage of any kind sustained by them while the *work programme* is being carried out.

ARTICLE II.3 – CONFLICT OF INTERESTS

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

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

ARTICLE II.4 – OWNERSHIP/USE OF THE RESULTS

II.4.1. Unless stipulated otherwise in this *framework agreement* or in a *specific 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 *partner* concerned.

II.4.2. Without prejudice to paragraph 1, the *partner* grants the *Agency* the right to make free use of the results of an action as it deems fit, provided it does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights.

ARTICLE II.5 – CONFIDENTIALITY

The *Agency* and the *consortium* undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the *framework agreement* and *specific agreements* 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 *framework agreement*.

ARTICLE II.6 – PUBLICITY

II.6.1. Unless the *Agency* requests otherwise, any communication or publication by the *consortium* about the *work programme*, including at a conference or seminar, shall indicate that the *work programme* has received funding from the *Agency*.

No communication or publication by the *consortium*, in any form and medium, shall be done without explicit authorisation of the *Agency*.

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

- the *partners'* names and the addresses,
- 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 a *partner*, the *Agency* may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the *partner's* security or prejudicing his commercial interests.

ARTICLE II.7 – EVALUATION OF WORK PROGRAMMES

Whenever the *Agency* carries out an interim or final evaluation of the *work programme's* impact measured against the objectives of the *Agency*, the *consortium* undertakes to make available to the *Agency* and/or persons authorised by it all such documents or information as will allow the evaluation to be successfully completed and to give them the rights of access specified in Article II.23.

ARTICLE II.8 – SUSPENSION OF WORK PROGRAMMES

II.8.1. The *consortium* may suspend implementation of a *work programme* if exceptional circumstances make this impossible or excessively difficult, notably in the event of *force majeure*. He shall inform the *Agency* without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

II.8.2. If the *Agency* does not terminate the agreement under Article II.12.2, the *consortium* shall resume implementation once circumstances allow and shall inform the *Agency* accordingly. The duration of the *work programme* shall be extended by a period equivalent to the length of the suspension. In accordance with Article II.14, a supplementary written agreement shall be concluded to extend the duration of the *work programme* and to make any amendments that may be necessary to adapt the *work programme* to the new implementing conditions.

ARTICLE II.9 – FORCE MAJEURE

II.9.1. *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the *framework agreement* and *specific agreements*, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to *force majeure*), labour disputes, strikes or financial difficulties cannot be invoked as *force majeure* by the defaulting party.

II.9.2. A party faced with *force majeure* shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.

II.9.3. Neither of the parties shall be held in breach of their obligations under the 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.9.4. The *work programme* may be suspended in accordance with Article II.8.

ARTICLE II.10 – AWARD OF CONTRACTS

II.10.1. If a *partner* has to conclude contracts in order to carry out a *work programme* and they constitute costs of the *work programme* under an item of eligible direct costs in the estimated budget of the *work programme* annexed to a *specific agreement*, he shall seek competitive tenders from potential contractors and award the contract to the bid offering best value for money; in doing so he shall observe the principles of transparency and equal treatment of potential contractors and shall take care to avoid any conflict of interests.

II.10.2. 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 *work programme*;
- (b) recourse to the award of contracts must be justified having regard to the nature of the

- (c) the tasks concerned must be set out in the Annex of a *specific agreement* and the corresponding estimated costs must be set out in detail in the budget in estimated budget of the *work programme*;
- (d) any recourse to the award of contracts while the *work programme* is under way, if not provided for in the initial grant application, shall be subject to prior written approval by the *Agency*;
- (e) the *partner* shall retain sole responsibility for carrying out the *work programme* and for compliance with the provisions of the agreement. The partner must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the *Agency* under the *framework agreement* and *specific agreements*;
- (f) the *partner* must undertake to ensure that the conditions applicable to him under Articles II.2, II.3, II.4, II.5, II.6, II.7, II.11, II.20 and II.23 of the *framework agreement* are also applicable to the contractor.

ARTICLE II.11 – ASSIGNMENT

Claims against the *Agency* may not be transferred.

In exceptional circumstances, where the situation warrants it, the *Agency* may authorise the assignment to a third party of the *framework agreement* and payments flowing from it following a written request to that effect, giving reasons, from the *consortium*. If the *Agency* agrees, it must make its agreement known in writing before the proposed assignment takes place. In the absence of the above authorisation, or in the event of failure to observe the terms thereof, the assignment shall not be enforceable against and shall have no effect on the *Agency*.

In no circumstances shall such an assignment release the *contractor* from his obligations to the *Agency*.

ARTICLE II.12 – TERMINATION

II.12.1 Termination by the consortium or a partner

The *consortium* may terminate the *framework agreement* at any time by giving 90 (ninety) calendar days' written notice. Where he avails himself of that right, he must undertake to complete the implementation of any *specific agreements* which have entered into force before the date when termination of the *framework agreement* takes effect.

In duly justified cases, the *consortium* may withdraw his request for a grant and terminate the *specific agreement* at any time by giving 90 (ninety) calendar days' written notice stating the reasons, without being required to furnish any indemnity on this account. If no reasons are given or if the *Agency* does not accept the reasons, the *consortium* shall be deemed to have terminated this agreement improperly, with the consequences set out in Article II.12.4.

In duly justified cases, a *partner* may withdraw his request for a grant and terminate the *specific agreement* at any time by giving 90 (ninety) calendar days' written notice stating the reasons, without being required to furnish any indemnity on this account. If no reasons are given or if the *Agency* does not accept the reasons, the *partner* shall be deemed to have terminated this agreement improperly, with the consequences set out in Article II.12.4.

II.12.2 Termination by the Agency

The *Agency* may decide to terminate the *framework agreement* and/or the *specific agreements* or to terminate the participation of a *partner*, 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 *consortium's* situation that is liable to affect *framework agreement* and/or the *specific agreements* substantially or to call into question the decision to award the grant;
- (b) if the *consortium* fails to fulfil a substantial obligation incumbent on him under the terms of the *framework agreement* and/or the *specific agreements*, including its annexes;
- (c) in the event of *force majeure*, notified in accordance with Article II.9, or if a *work programme* has been suspended as a result of exceptional circumstances, notified in accordance with Article II.8;
- (d) if a partner is declared bankrupt, is being wound up or is the subject of any other similar proceedings;
- (e) if a partner 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 a partner is guilty of misrepresentation or submits reports inconsistent with reality to obtain the grant provided for in the *framework agreement* and/or the *specific agreements*;
- (g) if a partner has intentionally or by negligence committed a substantial irregularity in performing the *framework agreement* and/or the *specific agreements* or in the event of fraud, corruption or any other illegal activity on the part of the contractor 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 partner, which causes or might cause a loss to the Community budget.

II.12.3 Termination procedure

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

In the cases referred to in points (a), (b) and (d) of Article II.12.2., the *consortium* shall have 30 (thirty) calendar days to submit his observations and take any measures necessary to ensure continued fulfilment of his obligations under the *framework agreement* and/or the *specific agreements*. If the *Agency* fails to confirm acceptance of these observations by giving written approval within 30 (thirty) calendar days of receiving them, the procedure shall continue to run.

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

If notice is not given in the cases referred to in points (c), (e), (f) and (g) of Article II.12.2., termination shall take effect from the day following the date on which notification of the *Agency's* decision to terminate the agreement is received.

II.12.4 Effects of termination

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

The *consortium* shall have 90 (ninety) calendar days from the date when termination of the *specific agreement* takes effect, as notified by the *Agency*, to produce a request for final payment. If no request for final payment is received within this time limit, the *Agency* shall not reimburse the expenditure incurred by the *consortium* up to the date of termination and it shall recover any

amount if its use is not substantiated by the technical implementation reports and financial statements approved by the *Agency*.

By way of exception, in the event of improper termination by the *consortium* or termination by the *Agency* on the grounds set out in points (e), (f) or (g) of Article II.12.2., the *Agency* may require the partial or total repayment of sums already paid under the *specific agreement* on the basis of technical implementation reports and financial statements approved by the *Agency*, in proportion to the gravity of the failings in question and after allowing the *consortium* to submit his observations.

ARTICLE II.13 – FINANCIAL PENALTIES

By virtue of the Financial Regulation applicable to the *Agency*, any *partner* 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. 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 *consortium* shall be notified in writing of any decision by the *Agency* to apply such financial penalties.

ARTICLE II.14 – SUPPLEMENTARY AGREEMENTS

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

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

II.14.3. If the request for amendment is made by the *consortium*, he must send it to the *Agency* in good time before it is due to take effect and in the case of *specific agreements*, one month before the closing date of the *work programme*, except in cases duly substantiated by the *consortium* and accepted by the *Agency*.

ARTICLE II.15 – TECHNICAL COLLECTIVE RESPONSIBILITY

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

ARTICLE II.16 – FINANCIAL COLLECTIVE RESPONSIBILITY

II.16.1. Should a *specific agreement* be terminated or the participation of a *partner* be terminated in accordance with Article II.12, and a *partner* does not honour the reimbursement of the amount due by that *partner*, the *consortium* will reimburse the amount due to the *Agency*.

II.16.2. The amount due to the *Agency* may not exceed the value of the contribution due to the *consortium* in accordance with Article 3 of the *specific agreement*.

The amount to be recovered shall be allocated between the remaining *partners* other than those referred to in Article II.16.3 in accordance with their pro rata share in the overall *specific agreement*.

This allocation shall be based on the relative weight of all those *partners* not excluded by Article II.16.3, taking into account their share of the provisional costs as indicated in the *specific agreement* when pre-financing is to be recovered and their share of accepted certified costs when payment is to be recovered.

Any amount claimed from a *partner* shall not exceed the contribution it is entitled to receive according to applicable reimbursement rates. The amount a *partner* is entitled to receive is based on its provisional costs as indicated in the *specific agreement* when pre-financing is to be recovered and is based on its certified costs accepted by the *Agency* when a settled payment is to be recovered.

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

II.16.4. The *consortium* is not collectively responsible for:

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

PART B: FINANCIAL MANAGEMENT

ARTICLE II.17 – ELIGIBLE COSTS – GENERAL PRINCIPLES

Eligible costs are those actual costs which are necessary for a *work programme*, can be substantiated, and are incurred during the period specified in Article 2 of a *specific agreement*. Eligible costs after this period shall be limited to those relating to the reporting, review or evaluation requirements of this *framework agreement*.

II.17.1. Costs shall exclude any profit, be recorded in the accounts of the *partner* that incurred them, and be determined in accordance with accounting principles relating to historic costs. The accounting procedures used in the recording of costs and *receipts* shall respect the accounting rules of the State in which the *partner* is established as well as permit the direct reconciliation between the costs and receipts incurred for the implementation of the *work programme* and the overall statement of accounts relating to the overall business activity of the *partner*.

II.17.2. No *partner* shall incur unnecessarily high or extravagant cost on a *work programme*. No costs may be charged in respect of marketing, sales, distribution costs for products and services, interest, return on capital employed, provisions for future losses or liabilities, and any costs related to other projects.

Partners shall be authorised to transfer between themselves the budget set out in the table of the indicative breakdown of estimated *eligible costs*, provided that: the amounts transferred do not exceed 10% of the amount allocated to the beneficiary in the table of the indicative breakdown of estimated *eligible costs*. Any other properly substantiated transfer approved by *partners* directly concerned shall require prior written approval by the *Agency*.

Each *partner* shall be authorised to transfer the budget set out in the table of the indicative breakdown of estimated *eligible costs* between categories of costs, in compliance with the first and second subparagraphs. However, he shall not be required to obtain the agreement of the other *partners*.

II.17.3. Personnel

Personnel costs shall comprise the actual costs (gross remuneration and related charges). Only the costs of the actual hours worked by the persons directly carrying out the work under the *work programme* may be charged to the contract. Such persons must:

- be directly employed by the *partner* in accordance with his national legislation,
- be under the sole technical supervision of the latter,
- be remunerated in accordance with the normal practices of the *partner*, provided that these are regarded as acceptable by the *Agency*.

All the working time charged to the project must be recorded throughout the duration of a *work programme*, or, in the case of the *coordinator*, no later than two months after the end of the duration of a *work programme*, and be certified at least once a month by the designated project manager, or an authorised senior employee of the *partner*.

II.17.4. Durable equipment

Costs relating to the purchase or leasing with option to buy of durable equipment may be charged as direct cost.

The *eligible costs* for durable equipment leased with option to buy shall not exceed the

costs that would have been incurred if the equipment had been purchased, taking account of the formula below.

The costs to be charged to the project shall be calculated according to the following formula:

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

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

B = the depreciation period for the durable equipment: 36 months for computer equipment costing less than EUR 25 000 or 60 months for other equipment,

C = the actual cost of the durable equipment,

D = the percentage of usage of the durable equipment for the *project*.

The durable equipment may have been purchased or leased with option to buy:

- within the six months preceding the *work programme commencement date*,
- for a previous agreement concluded with the *Agency*, provided that the depreciation period has not been exceeded. Only the costs relating to the unexpired depreciation period may be charged.

Hire costs shall be charged to the project pursuant to Article II.17.8.

II.17.5. Subcontracts

Partners may conclude *subcontracts* subject to the terms and conditions specified in Article II.10.

The *partner* shall ensure that *subcontracts* include an obligation for the subcontractors to submit invoices making reference to the *work programme* and providing a detailed description of the tasks or supply concerned.

II.17.6. Travel and subsistence

Travel and related subsistence costs for the *partner's* personnel may be charged to the project. The prior approval of the *Agency* shall be required for any destination outside the territory of the *Agency's* Member Countries, unless such a destination is provided for in Annex II of a *specific agreement*.

Travel and subsistence costs shall be established on the basis of the normal rules of the *partner*, provided that these are regarded as acceptable by the *Agency*.

II.17.7. Meeting costs

Costs related to the arrangements of meetings for the purpose of the project may be charged. These may include travel and subsistence costs of participants that are not employed by the *consortium* organisations established on the basis of the rules of the *Agency*.

The prior written approval of the *Agency* shall be required for any meeting not provided for in Annex II of the *specific agreement*.

II.17.8. Other specific project costs

Other specific project costs may be charged subject to prior written approval of the *Agency* unless provided for in Annex II of the specific agreement.

II.17.9. Overhead costs

Partners may charge overheads calculated as a flat-rate amount of 20% of all direct costs referred to in Article II.17.3, II.17.4, II.17.6, II.17.7, II.17.8, which is deemed to cover any indirect costs incurred by the *partner* under a *work programme*. A *partner* may request a lower percentage when this is required, for instance, by his internal rules.

ARTICLE II.18 – JUSTIFICATION OF COSTS

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

ARTICLE II.19 – COST STATEMENTS

II.19.1. The *partners* shall submit cost statements expressed in national currency and in Euro in the format specified in Annex III. Any conversion of actual costs into Euros 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:

<http://ec.europa.eu/budget/inforeuro/index.cfm?fuseaction=home&SearchField=&Period=2006-5&Delim=,&Language=en>

applicable on the day when the payment order is issued by the *Agency*, unless specific provisions are laid down for the purpose in the Special Conditions in a *specific agreement*.

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

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

Partners shall submit their cost statements to the *Agency* through the *coordinator*.

In addition, the *coordinator* shall submit the corresponding integrated cost statements in Euros in the format specified in Annex III.

Cost statements, including the integrated cost statement, shall be submitted to the *Agency* within two months of the end of the period covered by the cost statement.

The final cost statement, including the integrated cost statement, shall be submitted to the *Agency* within two months of the end of the duration of the *work programme*.

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

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

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

- II.19.3. On expiry of the period for payment specified in Article 4 of the *specific agreement* or the equivalent article in the *framework agreement*, and without prejudice to paragraph 2 of this Article, the *consortium* 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 recipients of a grant which are public authorities.

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 purposes of determining the final grant. The suspension of payment by the *Agency* may not be considered as late payment.

- II.19.4. The *consortium* shall have two months from the date of notification by the *Agency* of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article II.22, 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 shall no longer be considered. The *Agency* 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 *consortium's* right to appeal against the *Agency's* decision pursuant to the Article I.8 on Law applicable and competent court. 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.20 – THE AGENCY FINANCIAL CONTRIBUTION

- II.20.1. The *Agency* shall make its contribution to the *consortium* under the following cumulative conditions:
- (a) the contribution is based on the reimbursement of eligible costs claimed by *partners* through the *coordinator*, and
 - (b) on the basis of financial statements provided by each *partner*.
- II.20.2. At the time of the submission of the last financial statement the final amount of the *Agency* financial contribution will be established taking into account all amounts which the *consortium* has already received. The *Agency* financial contribution cannot give rise to any profit for the *partners*.

- II.20.3. *Partners* subject to the provisions of the state aid framework on cumulating public funding must ensure that they comply with its provisions.
- II.20.4. The *Agency* financial contribution shall be offset by any interest or equivalent benefits yielded by the pre-financing of the project, as referred to in Article II.21.
- II.20.5. Where a *work programme* has not effectively commenced within three months of the payment of the pre-financing, the *Agency* may:
- determine to add interest on the pre-financing from its payment until the effective *Commencement Date* at the rate applied by the European Central Bank for its main refinancing operations in Euros, or
 - require the reimbursement of the pre-financing together with such interest.
- II.20.6. All payments shall be treated as pre-financing until acceptance of the appropriate deliverables, or, if none are specified, until acceptance of the final report.
- II.20.7. If the actual eligible costs at the end of the *work programme* are lower than the estimated total eligible costs, the *Agency* financial contribution shall be limited to the amount obtained by applying the reimbursement rate agreed in the *specific agreement* to the actual eligible costs approved by the *Agency*.
- II.20.8. Without prejudice to the right to terminate a *specific agreement*, if the *work programme* is not implemented or is implemented poorly, partially or late, the *Agency* may reduce the grant initially provided for in line with the actual implementation of the project on the terms laid down in this *framework agreement*.
- II.20.9. The total amount paid to the *consortium* by the *Agency* may not in any circumstances exceed the maximum amount of the grant laid down in Article 3 in the *specific agreement* even if the total actual eligible costs exceed the estimated total eligible costs specified in Article 3 in the *specific agreement*.
- II.20.10. The *Agency* undertakes to pay sums due pursuant to a *specific agreement* within the period for payment laid down in Article 4 of a *specific agreement* from the date on which the *Agency* approved or should have approved the report or reports and/or other deliverables ("the date of approval") to the date on which the *Agency* account is debited.
- This payment period may be suspended by the *Agency* if it informs the partners concerned, at any time within the period for payment laid down in Article 4 of a *specific agreement* counting from the date of approval, that their payment request (or requests) is (or are) not admissible either because the amount is not due or because the necessary supporting documents have not been produced, or if the *Agency* sees the need for further checks. The payment period shall continue to run from the date on which the properly established payment request (or requests) is (or are) first registered.
- Upon expiry of the time limit set in the first paragraph and without prejudice to the second paragraph, the *consortium* may, within two months of receiving the late payment, claim interest at the rate applied by the European Central Bank to its operations in Euros plus one and a half percentage points.
- II.20.11. In the event of late payment the *consortium* may claim interest, within two months of receipt of the payment. Interest shall be calculated at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Communities, in force on the first calendar day of the month in which the due date falls, plus three and a half percentage points. Interest shall be payable for the time elapsed between expiry of the payment deadline and the date of payment. Date of payment is the date upon which the *Agency* account is debited. Any

such interest payment is not considered as part of the financial contribution of the *Agency* established by the provisions of Article 3 of the *specific agreement*.

ARTICLE II.21 – INTEREST YIELDED BY PRE-FINANCING PROVIDED BY THE AGENCY

- II.21.1. In accordance with the provisions of the Financial Regulation, pre-financing granted to the *coordinator* on behalf of the *consortium* remains the property of the *Agency*.
- II.21.2. The *coordinator* shall inform the *Agency* of the amount of any interest or equivalent benefits yielded by the *pre-financing* it has received from the *Agency*. Notification must be made annually if the interest in question represents a significant amount, and in any event when the request for interim payments and the request for payment of the balance of the grant are made.

ARTICLE II.22 – REIMBURSEMENT TO THE AGENCY AND RECOVERY ORDERS

- II.22.1. If any amount is unduly paid to the *consortium* or if recovery is justified under the terms of the agreement, the *consortium* undertakes to repay the *Agency* the sum in question on whatever terms and by whatever date it may specify.
- II.22.2. If the *consortium* fails to pay by the date set by the *Agency*, the sum due shall bear interest at the rate indicated in Article II.20.11. Interest on late payment shall cover the period between the date set for payment and the date when the *Agency* receives full payment of the amount owed.
- Any partial payment shall first be entered against charges and interest on late payment and then against the principal.
- II.22.3. Sums owed to the *Agency* may be recovered by offsetting them against any sums owed to the *consortium*, after informing the latter accordingly, or by calling in any financial guarantee. The *consortium's* prior consent shall not be required.
- II.22.4. Bank charges occasioned by the recovery of the sums owed to the *Agency* shall be borne solely by the *consortium*.
- II.22.5. The *consortium* understands that under Article 256 of the Treaty establishing the European Community, the *Agency* may adopt an enforceable decision formally establishing an amount as receivable from persons other than States.

ARTICLE II.23 – AUDITING

The *Agency*, or any representative authorised by it, may initiate an audit at any time during the agreement and up to five years after each payment of the *Agency* contribution.

The *Agency* or any authorised representative may have access, at any reasonable time, in particular to the personnel of the contractors connected with the project, the documentation, computer records and equipment that it considers relevant. In this connection, it may request that data be handed over to it in an appropriate form in order, for instance, to ascertain the eligibility of the costs.

The European Court of Auditors and the European Anti-Fraud Office (OLAF) may proceed to examine the use made of the financial contribution from the *Agency* pursuant to this *framework agreement*.

SIGNATURES

For the Consortium,
Name and function

For the Agency,
Prof. Jacqueline McGlade
Executive Director

Signature: _____

Signature: _____

Done at ... on ...

Done at Copenhagen on

In duplicate in English.

ANNEX I – ACTIONS PLANNED UNDER THE PARTNERSHIP