



EUROPEAN COMMISSION
Executive Agency for Small and Medium-sized Enterprises/Directorate General Environment
Unit B3 LIFE and CIP Eco-Innovation

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT/CLIMATE ACTION
Directorate D – Natural Capital/Directorate A International & Mainstreaming
ENV - D4 LIFE Programme./CLIMA – A2 Climate Finance, Mainstreaming, Montreal Protocol

- The footnotes in the special conditions, with the exception of footnotes 1, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 are internal instructions only and must be read and deleted before agreements are sent out. The footnotes in the general conditions contain references to legal acts and must be left unchanged.
- Options [in square brackets] not used are to be deleted.
- Names of options *in blue in italics* are to be deleted.
- Fields [in grey in square brackets] (even if they are part of an option as specified in the previous item) are to be deleted and/or replaced by appropriate data.

GRANT AGREEMENT¹

AGREEMENT NUMBER — [LIFEXX XXX/XX/XXXXXX - ACRONYM]

This Agreement ('the Agreement') is concluded between the following parties:

on the one part,

The European Union ('the Union'), represented by the European Commission/Executive Agency for Small and Medium-sized Enterprises (hereinafter referred to as "the Commission/Agency") [and acting under the powers delegated by the European Commission], represented for the purposes of signature of the Agreement by **Mr. Angelo SALSI/Mr. Jean-Claude/MERCIOL/Mr Philip OWEN**, Head of Unit,

and

on the other part,

1. 'the coordinating beneficiary'

[full official name] [ACRONYM]

[official legal status or form]²

¹ Within the framework of the Regulation (EC) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007, OJ L 347 of 20/12/2013, p.185 (hereinafter "the LIFE Regulation") and the Commission Implementing Decision of 19 March 2014 on the adoption of the LIFE multiannual work programme for 2014-17, OJ L116 of 17/04/2014, p. 1.

² To be deleted or filled out in accordance with the 'Legal Entity' form.

[official registration No]³

[official address in full]

[VAT number],

represented for the purposes of signature of the Agreement by [function, forename and surname]

and the following other associated beneficiaries:

2. [full official name] — established in [country]]

3. [full official name] — established in [country]]

[idem for each beneficiary]

duly represented for the signature of the Agreement by the coordinating beneficiary by virtue of the mandate/s/ included in Annex II form/s/ A4

Unless otherwise specified, references to ‘beneficiary’ and ‘beneficiaries’ include the coordinating beneficiary.

The parties referred to above

HAVE AGREED

to the Special Conditions (‘the Special Conditions’) and the following Annexes:

Annex I General Conditions ((hereinafter referred to as ‘the General Conditions’)

Annex II Description of the project

Annex III Estimated budget of the project: Forms R1, R2 and all F-Forms in Annex II

Annex IV Mandate[s] provided to the coordinating beneficiary by the other beneficiary[ies]
Form[s] A4 in Annex II

Annex V Model technical report: The applicable model technical reports are to be found on the website: <http://ec.europa.eu/environment/life/toolkit/pmtools/index.htm>

Annex VI Model financial statement: The applicable model financial reports are to be found on the website:
<http://ec.europa.eu/environment/life/toolkit/pmtools/index.htm>

³ To be deleted or filled out in accordance with the ‘Legal Entity’ form.

Annex VII Model terms of reference for the certificate on the financial statements *to be found on the website:*
<http://ec.europa.eu/environment/life/toolkit/pmtools/index.htm>

Annex VIII Model terms of reference for the certificate on the compliance of the cost accounting practices: **not applicable**

Annex IX Model terms of reference for the operational verification report: **not applicable**

Annex X Financial and Administrative guidelines
<http://ec.europa.eu/environment/life/toolkit/pmtools/index.htm>

Annex XI Guidelines for applicants
<http://ec.europa.eu/environment/life/toolkit/pmtools/index.htm>

which form an integral part of the Agreement.

The provisions in the Special Conditions of the Agreement take precedence over its Annexes.

The provisions in Annex I ‘General Conditions’ take precedence over the other Annexes.

SPECIAL CONDITIONS

TABLE OF CONTENTS

SPECIAL CONDITIONS.....	4
TABLE OF CONTENTS.....	4
Article I.1 — Subject matter of the agreement	6
Article I.2 — Entry into force and implementation period of the agreement	6
Article I.3 — Maximum amount and form of the grant.....	6
Article I.4 — Reporting — Requests for payment and supporting documents – Payments and payment arrangements	7
I.4.1 Reporting and reporting periods.....	7
I.4.2 Requests for further pre-financing payment[s] and supporting documents.....	7
I.4.3 Request[s] for interim payment[s] and supporting documents	8
I.4.4 Request for payment of the balance and supporting documents	8
I.4.5 Information on cumulative expenditure incurred.....	9
I.4.6 Currency for requests for payment and financial statements and conversion into euro	9
I.4.7 Language of requests for payments, technical reports and financial statements	10
I.4.8 Payments to be made.....	10
I.4.9 Pre-financing payment[s]	10
I.4.10 Interim payment[s]	11
I.4.11 Payment of the balance.....	11
I.4.12 Notification of amounts due	12
I.4.13 Interest on late payment	12
I.4.14 Currency for payments	13
I.4.15 Date of payment	13

I.4.16	Costs of payment transfers	13
I.4.17	Payments to the coordinating beneficiary	13
Article I.5	— Bank account for payments.....	13
Article I.6	— Data controller, communication details of the parties	13
I.6.1	Data controller.....	13
I.6.2	Communication details of the Agency/Commission.....	14
I.6.3	Communication details of the beneficiaries	14
I.6.4	Communication details of the beneficiaries after payment of the balance.....	15
I.7	— Entities affiliated to the beneficiaries	15
I.8	— Beneficiaries which are international organisations	15
I.8.1	Applicable law.....	15
I.8.2	Dispute settlement — Arbitration	16
I.8.3	Certificates on the financial statements.....	17
I.8.4	Checks and audits.....	17
I.8.5	Privileges and immunities.....	17
I.9	— Checks and audits	17
I.10	— Settlement of disputes with non-EU beneficiaries.....	18
I.11	— Special provisions on the financial responsibility for recoveries	18
I.12	— Obligation to conclude an internal cooperation agreement	18
I.13	— Eligibility of Durable Goods costs.....	18

ARTICLE I.1 — SUBJECT MATTER OF THE AGREEMENT

The Agency/Commission has decided to award a grant under the terms and conditions set out in the Special Conditions, the General Conditions and the other Annexes to the Agreement, for the *project* entitled **[insert title of the project in bold]**, as described in Annex II.

By signing the Agreement, the beneficiaries accept the grant and agree to implement the *project*, acting on their own responsibility.

ARTICLE I.2 — ENTRY INTO FORCE AND IMPLEMENTATION PERIOD OF THE AGREEMENT

I.2.1 The Agreement enters into force on the date on which the last party signs it.

I.2.2 The *project* runs from **[insert date in bold]** ('starting date') until **[insert date in bold]** ('end date')

ARTICLE I.3 — MAXIMUM AMOUNT AND FORM OF THE GRANT

I.3.1 The *maximum amount of the grant* is EUR **[insert amount]**.

I.3.2 The grant takes **the form** of:

- (a) the reimbursement of [...] % of the eligible costs of the *project* ('reimbursement of eligible costs'), which are estimated at EUR [...] and which are:
 - (i) actually incurred ('reimbursement of actual costs') for the following categories of costs for each of the beneficiaries and affiliated entities: personnel costs; travel and subsistence costs; costs for subcontracting (also referred to as "external assistance costs"); costs of durable goods : depreciation costs of infrastructure and equipment, prototype costs; costs for land purchase/long-term lease of land/one-off compensations for land use rights; costs of consumables; other costs (i.e. costs arising from the Agreement, duties, taxes and charges).
 - (ii) *reimbursement of unit costs: not applicable*
 - (iii) *reimbursement of lump sum costs: not applicable*
 - (iv) declared on the basis of a flat rate: overheads as specified in Annex III as a fixed percentage of the eligible direct costs excluding costs of land purchase/long term lease of land/one-off compensations for land use rights ('reimbursement of flat-rate costs') for each of the beneficiaries and affiliated entities;
 - (v) *reimbursement of costs declared on the basis of the beneficiary's usual cost accounting practices: not applicable*
- (b) *unit contribution: not applicable*
- (c) *lump sum contribution: not applicable*
- (d) *flat-rate contribution: not applicable*

ARTICLE I.4 — REPORTING — REQUESTS FOR PAYMENT AND SUPPORTING DOCUMENTS – PAYMENTS AND PAYMENT ARRANGEMENTS

I.4.1 Reporting and reporting periods

- (a) The project reporting schedule is specified in Annex II
- (b) The delay between consecutive reports shall not exceed 18 months.
- (c) All reports shall contain the necessary information for the Agency/Commission to evaluate the state of implementation of the project, the respect of the work plan, the financial status of the project and whether the project's objectives have been achieved or are still achievable.
- (d) The form and contents of the reports shall be in accordance with the guidelines issued by the Agency/Commission as specified on the website <http://ec.europa.eu/environment/life/toolkit/pmttools/index.htm>.
- (e) All reports shall be simultaneously submitted to the Agency/Commission and to the external monitoring team designated by the Agency/Commission.

The technical reports, including annexes, shall only be submitted, in electronic format,

The financial reports shall be submitted, in both paper and electronic formats.
- (f) Electronic tools, which include spatial data and are produced in the frame of a LIFE project, shall comply with the Commission Regulation (EU) No 1253/2013 of 21 October 2013 amending Regulation (EU) No 1089/2010 implementing Directive 2007/2/EC establishing an Infrastructure for Spatial Information in the European Union (INSPIRE).

I.4.2 Requests for further pre-financing payment[s] and supporting documents

The coordinating beneficiary must submit a request for further pre-financing payment in accordance with the mid-term report schedule specified in Annex II.

The request must be accompanied by the following documents:

- (a) a progress report on the implementation of the *project* ('technical report on progress');
- (b) a statement on the amount of the previous pre-financing instalment used to cover costs of the *project* ('statement on the use of the previous pre-financing instalment'). The statement must be drawn up in accordance with Annex VI[.]; and
- (c) a financial guarantee.]⁴

⁴ To select what is appropriate depending on the need of a guarantee

I.4.3 Request[s] for interim payment[s] and supporting documents

Not applicable

I.4.4 Request for payment of the balance and supporting documents

The coordinating beneficiary must submit a request for payment of the balance in accordance with the reporting schedule specified in Annex II, but no later than 90 calendar days following the *end date* of the project.

This request must be accompanied by the following documents:

- (a) a final report on implementation of the project ('final technical report'), drawn up in accordance with Annex V, containing:
 - (i) the information needed to justify the eligible costs declared or the contribution requested on the basis of unit costs and lump sums (where the grant takes the form of the reimbursement of unit or lump sum costs or of a unit or lump sum contribution, as provided for in Article I.3.2(a)(ii) and (iii), (b) or (c));
 - (ii) information on subcontracting as referred to in Article II.11.1(d);
- (b) a final financial statement ('final financial statement'). The final financial statement must include a consolidated statement and a breakdown of the amounts claimed by each beneficiary and its affiliated entities.

The final financial statement must be drawn up in accordance with the structure of the estimated budget set out in Annex III and in accordance with Annex VI;

- (c) a summary financial statement ('summary financial statement').

This statement must include a consolidated financial statement and a breakdown of the amounts declared or requested by each beneficiary and its affiliated entities, aggregating the financial statements already submitted previously and indicating the receipts referred to in Article II.25.3 for each beneficiary and its affiliated entities.

The summary financial statement must be drawn up in accordance with Annex VI;

- (d) a certificate on the financial statements and underlying accounts ('certificate on the financial statements') for each beneficiary and for each affiliated entity, if:
 - (i) the cumulative amount of payments the beneficiary requests as reimbursement of actual costs as referred to in Article I.3.2(a)(i) (and for which no certificate has yet been submitted) is EUR [325,000] [750,000]⁵ or more;
 - (ii) the maximum grant amount indicated for that beneficiary and its affiliated entities in the estimated budget as reimbursement of actual costs is EUR [325,000] [750,000]⁶ or more.

⁵ Please select the option that is valid for the specific strand

This certificate must be produced by an approved auditor or, in case of public bodies, by a competent and independent public officer and drawn up in accordance with Annex VII.

The certificate must certify that the costs declared in the final financial statement by the beneficiary concerned or its affiliated entities for the categories of costs reimbursed in accordance with Article I.3.2(a)(i) are real, accurately recorded and eligible in accordance with the Agreement.

In addition, the certificate must certify that all the receipts referred to in Article II.25.3 have been declared.

The coordinating beneficiary must certify that the information provided in the request for payment of the balance is full, reliable and true.

The coordinating beneficiary must also certify that the costs incurred can be considered eligible in accordance with the Agreement and that the request for payment is substantiated by adequate supporting documents that can be produced in the context of the checks or audits described in Article II.27.

In addition, the coordinating beneficiary must certify that all the receipts referred to in Article II.25.3 have been declared.]

I.4.5 Information on cumulative expenditure incurred

In case the maximum contribution referred to in Article I.3.1 is more than EUR 5,000,000 then :

In addition to the reporting requirements set out above, the coordinating beneficiary must inform the Agency/Commission by 30 November each year about the cumulative expenditure incurred by the beneficiaries from the *starting date*.

This information is required for the Agency/Commission's accounting purposes and may not be used for determining the final amount of the grant.

I.4.6 Currency for requests for payment and financial statements and conversion into euro

Requests for payment and financial statements must be drafted in euros.

Beneficiaries and affiliated entities with general accounts in a currency other than the euro must convert costs incurred in another currency into euros at the monthly accounting rate established by the Commission and published on its website (available at http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm) applicable on the day when the cost was incurred, or

⁶ Please select the option that is valid for the specific strand

at the monthly accounting rate established by the Commission and published on its website (available at http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm) applicable on the first working day of the month following the period covered by the financial statement concerned

Beneficiaries and affiliated entities with general accounts in euros must convert costs incurred in another currency into euros in accordance with their usual accounting practices.

I.4.7 Language of requests for payments, technical reports and financial statements

All requests for payments, technical reports and financial statements must be submitted in English, with the exception of the technical annexes and supporting documents, which may be provided in any official language of the Union.

I.4.8 Payments to be made

The Agency/Commission must make the following payments to the coordinating beneficiary:

- [one] [a first] pre-financing payment;
- [a] [further] pre-financing payment[s], on the basis of the request for further pre-financing payment[s] referred to in Article I.4.2;
- one payment of the balance, on the basis of the request for payment of the balance referred to in Article I.4.4.

I.4.9 Pre-financing payment[s]

The aim of the pre-financing is to provide the beneficiaries with a float. The pre-financing remains the property of the Union until it is cleared against interim payments or, if it is not cleared against interim payments, until the payment of the balance.

[Option if one pre-financing payment for projects with a duration of 24 months or less and where the Union contribution is less than or equal to EUR 300,000]: The Agency/Commission must make the pre-financing payment of EUR [insert amount] to the coordinating beneficiary within 30 calendar days from [the entry into force of the Agreement] [or from when the Agency/Commission receives the financial guarantee of EUR [insert amount], whichever is the latest], except if Article II.24.1 applies.]

[Option if several pre-financing payments]: The Agency/Commission must make a first pre-financing payment of EUR [insert amount] to the coordinating beneficiary within 30 calendar days from [the entry into force of the Agreement] [or from when the Agency/Commission receives the financial guarantee of EUR [insert amount], whichever is the latest], except if Article II.24.1 applies.]

The Agency/Commission must make a second pre-financing payment⁷ of EUR [insert amount] to the coordinating beneficiary within 60 calendar days from when the Agency/Commission receives the request for second pre-financing payment referred to in Article I.4.2, subject to having used at least 100% of the previous pre-financing instalment paid to cover costs of the project, [or from when it receives the financial guarantee of EUR [insert amount], whichever is the latest], except if Article II.24.1 or II.24.2 apply.

[The Agency/Commission must make a third pre-financing payment⁸ of EUR [insert amount] to the coordinating beneficiary within 60 calendar days from when the Agency/Commission receives the request for third pre-financing payment referred to in Article I.4.2, subject to having used at least 100% of the previous pre-financing instalment paid to cover costs of the project, [or from when it receives the financial guarantee of EUR [insert amount], whichever is the latest], except if Article II.24.1 or II.24.2 apply.]

[The financial guarantee must fulfil the following conditions:

- (a) it is provided by a bank or an approved financial institution or, if requested by the coordinating beneficiary and accepted by the Agency/Commission, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the Agency/Commission to first have recourse against the principal debtor (i.e. the beneficiary concerned); and
- (c) it explicitly remains in force until the pre-financing is cleared against interim payments or payment of the balance by the Agency/Commission. If payment of the balance takes the form of a recovery, the financial guarantee must remain in force until three months after the debit note is notified to a beneficiary. The Agency/Commission must release the guarantee within the following month.]

I.4.10 Interim payment[s]

[Not applicable]

I.4.11 Payment of the balance

The payment of the balance reimburses or covers the remaining part of the eligible costs incurred by the beneficiaries for the implementation of the *project*.

If the total amount of earlier payments is greater than the final amount of the grant determined in accordance with Article II.25, the payment of the balance takes the form of a recovery as provided for by Article II.26.

If the total amount of earlier payments is lower than the final amount of the grant determined in accordance with Article II.25, the Agency/Commission must pay the balance within 90 calendar days from when it receives the documents referred to in Article I.4.4, except if Article II.24.1 or II.24.2 apply.

⁷ For projects with a duration exceeding 24 months or where the Union contribution exceeds EUR 300,000

⁸ Upon request of the coordinating beneficiary and only in case of projects with a duration of 48 months and where the Union contribution exceeds EUR 4,000,000

Payment is subject to the approval of the request for payment of the balance and of the accompanying documents. Their approval does not imply recognition of the compliance, authenticity, completeness or correctness of their content.

The Agency/Commission determines the amount due as the balance by deducting the total amount of pre-financing and interim payments (if any) already made from the final amount of the grant determined in accordance with Article II.25.

The amount to be paid may, however, be offset, without the beneficiary's consent, against any other amount owed by the beneficiary to the **Agency, the Commission** or to an executive agency (under the EU or Euratom budget), up to the maximum contribution indicated for that beneficiary, in the estimated budget in Annex III.

I.4.12 Notification of amounts due

The Agency/Commission must send a *notification* to the coordinating beneficiary:

- (a) informing it of the amount due; and
- (b) specifying whether the notification concerns a further pre-financing payment, an interim payment or the payment of the balance.

For the payment of the balance, the Agency/Commission must also specify the final amount of the grant determined in accordance with Article II.25.

I.4.13 Interest on late payment

If the Agency/Commission does not pay within the time limits for payment, the beneficiaries are entitled to late-payment interest at the rate applied by the European Central Bank for its main refinancing operations in euros ('the reference rate'), plus three and a half points. The reference rate is the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the *Official Journal of the European Union*.

Late-payment interest is not due if all beneficiaries are Member States of the Union (including regional and local government authorities and other public bodies acting in the name of and on behalf of the Member State for the purpose of the Agreement).

If the Agency/Commission suspends the time limit for payment as provided for in Article II.24.2 or if it suspends an actual payments as provided for in Article II.24.1, these actions may not be considered as cases of late payment.

Late-payment interest covers the period running from the day following the due date for payment, up to and including the date of actual payment as established in Article I.4.15. The Agency/Commission does not consider payable interest when determining the final amount of grant within the meaning of Article II.25.

As an exception to the first subparagraph, if the calculated interest is lower than or equal to EUR 200, it must be paid to the coordinating beneficiary only if the coordinating beneficiary requests it within two months of receiving late payment.

I.4.14 Currency for payments

The Agency/Commission must make payments in euros.

I.4.15 Date of payment

Payments by the Agency/Commission are considered to have been carried out on the date when they are debited to its account.

I.4.16 Costs of payment transfers

Costs of the payment transfers are borne as follows:

- (a) the Agency/Commission bears the costs of transfer charged by its bank;
- (b) the beneficiary bears the costs of transfer charged by its bank;

I.4.17 Payments to the coordinating beneficiary

The Agency/Commission must make payments to the coordinating beneficiary.

Payments to the coordinating beneficiary discharge the Agency/Commission from its payment obligation.

ARTICLE I.5 — BANK ACCOUNT FOR PAYMENTS

All payments must be made to the coordinating beneficiary's bank account as indicated below:

Name of bank: [...]

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

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

[IBAN code: [...]]⁹

ARTICLE I.6 — DATA CONTROLLER, COMMUNICATION DETAILS OF THE PARTIES**I.6.1 Data controller**

The entity acting as a data controller as provided for in Article II.7 is: [insert unit Agency/Commission].

⁹ The BIC or SWIFT code should be used for countries which do not use the IBAN code.

I.6.2 Communication details of the Agency/Commission

Any communication addressed to the Agency/Commission shall bear the identification number and project title and must be sent to the following address:

Ordinary or registered mail by postal service :

*European Commission
EASME
Unit B.3 LIFE and CIP Eco-Innovation
B-1049 Brussels*

Express delivery service or hand-delivery against signature :

*European Commission
EASME
Unit B.3 LIFE and CIP Eco-Innovation
Mail Service
Avenue du Bourget 1
B-1140 Brussels*

E-mails:

E-mail address : [insert functional mailbox]

For projects managed directly by the Commission, any communication addressed to it shall bear the identification number and project title and must be sent to the following address :

Ordinary or registered mail by postal service :

*European Commission
DG Environment/DG Climate Action
ENV.D.4 - LIFE/CLIMA A2
B-1049 Brussels*

Express delivery service or hand-delivery against signature :

*European Commission
DG Environment/DG Climate Action
Unit D4 - LIFE/Unit A2
Mail Service
Avenue du Bourget 1
B-1140 Brussels*

E-mails:

E-mail address : [insert functional mailbox]

I.6.3 Communication details of the beneficiaries

Any communication from the Agency/Commission to the beneficiaries must be sent to the following address:

[Full name]

[Function]

[Name of the entity]

[Full official address]

Email address: [complete]]

I.6.4 Communication details of the beneficiaries after payment of the balance

After the payment of the balance, any communication addressed to the beneficiaries must be sent to their legal address.

I.7 — ENTITIES AFFILIATED TO THE BENEFICIARIES

[Not Applicable]

OR

The following entities are considered as affiliated entities for the purpose of the Agreement:

- [name of the entity], affiliated to [name or acronym of the beneficiary];
- [name of the entity], affiliated to [name or acronym of the beneficiary];

[idem for further affiliated entities]

I.8 — BENEFICIARIES WHICH ARE INTERNATIONAL ORGANISATIONS

[Not Applicable]

OR

[if the international organisation does not accept Article II.18.1:

I.8.1 Applicable law

[Option 1: if the international organisation accepts Union law as the applicable law but not Belgian law as subsidiary law:

As an exception to Article II.18.1, the Agreement is governed by the applicable Union law, complemented where necessary by [the law of (insert law of a Member State or an EFTA country)].

[Option 2: if the international organisation does not accept Union law as the applicable law:

Article II.18.1 does not apply to [insert name of IO(s)].]

[if an international organisation does not accept Article II.18.2:

I.8.2 Dispute settlement — Arbitration

[Option 1 — Permanent Court of Arbitration:

As an exception to Article II.18, if any dispute between the Agency/Commission and [insert name of IO(s)] relating to the Agreement cannot be settled amicably, it must be referred to arbitration.

In such cases, the Permanent Court of Arbitration Optional rules for arbitration involving international organisations and states in force at the date of entry into force of the Agreement apply.

The appointing authority is the Secretary General of the Permanent Court of Arbitration following a written request submitted by either party.

The arbitration proceedings must take place in Brussels and the language used in the arbitral proceedings must be English.

The arbitral award is binding upon the parties, which hereby expressly agree to renounce any form of appeal or revision.]

[Option 2 — Arbitration committee:

As an exception to Article II.18, if any dispute between the Agency/Commission and [insert name of IO(s)] relating to the Agreement cannot be settled amicably, it must be referred to an arbitration committee in accordance with the procedure specified below.

When a party intends to resort to arbitration, it must send a *formal notification* to the other party informing it of its intention and of its appointed arbitrator. The second party must appoint its arbitrator within one month of receipt of that *formal notification*. The two arbitrators must appoint, by joint agreement and within three months of the appointment of the second party's arbitrator, a third arbitrator who is the chair of the arbitration committee, unless both parties agreed to have a sole arbitrator.

Within one month of the appointment of the third arbitrator, the parties must agree on the terms of reference of the arbitration committee, including the procedure to be followed.

The arbitration proceedings must take place in Brussels.

The arbitration committee must apply the terms of the Agreement. The arbitration committee must set out in its arbitral award detailed grounds for its decision.

The arbitral award is final and binding upon the parties, which hereby expressly agree to renounce any form of appeal or revision.

The costs, including all reasonable fees incurred by the parties related to any arbitration, must be apportioned between the parties by the arbitration committee.]

[if an international organisation does not agree for the certificate to be drawn up by an external auditor:

I.8.3 Certificates on the financial statements

Certificates on the financial statements to be provided by the [insert name of IO(s)] in accordance with Article I.4.4 may be drawn up by [its][their] regular internal or external auditor, in accordance with [its][their] internal financial regulations and procedures.]

[if an international organisation does not accept Article II.27:

I.8.4 Checks and audits

The competent bodies of the Union must address any requests for checks or audits referred to in Article II.27 to the Director General of the [insert name of IO(s)].

[insert name of IO(s)] must make available to the competent bodies of the Union or other outside body authorised by it, upon request, all relevant financial information, including statements of accounts concerning the *project*, where [it][they] implement[s] the *project* or where [its][their] affiliated entities or a subcontractor takes part in the *project*.]

I.8.5 Privileges and immunities

Nothing in the Agreement may be interpreted as a waiver of any privileges or immunities which are accorded to the [insert name of IO(s)] by [its][their] constituent documents or international law.]

I.9 — CHECKS AND AUDITS

By derogation of Article II.27.3 of the general conditions, notwithstanding whether the checks, audits or evaluations are initiated before or after the payment of the balance, the coordinating beneficiary may be required to collect the information concerning the associated beneficiaries and to make them available to the Agency/Commission or other outside body authorised by it.

When requested by the Agency/Commission or other outside body authorised by it, the coordinating beneficiary shall provide without delay the information mentioned above, which includes that of the concerned associated beneficiaries. In this case, the coordinating beneficiary shall bear responsibility for obtaining and verifying this information before passing it on to the Agency/Commission, as foreseen in Article II.2.3(b)(ii).

In this case, the contradictory audit procedure foreseen in Article II.27.5 shall be conducted with the coordinating beneficiary, who will be requested to submit the observations of the associated beneficiaries concerned by the check, audit or evaluation.

This is without prejudice to the right of the Agency/Commission or other outside body authorised by it to perform audits either on one or several associated beneficiaries. In this case the associated beneficiaries shall provide the information directly.

I.10 — SETTLEMENT OF DISPUTES WITH NON-EU BENEFICIARIES¹⁰

[Not Applicable]

OR

This provision applies where a beneficiary is legally established in a country other than a Member State of the European Union (the ‘non-EU beneficiary’).

As an exception to Article II.18.2, any of the parties (the Agency/Commission or the non-EU beneficiary) may bring before the Belgian Courts any dispute between them concerning the interpretation, application or validity of the Agreement, if such dispute cannot be settled amicably.

Where one party has brought proceedings before the Belgian Courts, the other party may not bring a claim arising from the interpretation, application or validity of the Agreement in any other court than the Belgian Courts before which the proceedings have already been brought.

I.11 — SPECIAL PROVISIONS ON THE FINANCIAL RESPONSIBILITY FOR RECOVERIES

The financial responsibility of each beneficiary is limited to its own debt, including any amount unduly paid by the Agency/Commission as a contribution towards the costs incurred by its affiliated entities.

Point (c) of the third paragraph of Article II.26.3 does not apply.

I.12 — OBLIGATION TO CONCLUDE AN INTERNAL COOPERATION AGREEMENT

The beneficiaries must conclude an internal cooperation agreement including provisions on the management, operation and coordination of the beneficiaries and the implementation of the project.

I.13 — ELIGIBILITY OF DURABLE GOODS COSTS

As an exception to Article II.19.2(c), the full cost of purchase of equipment is eligible, subject to the following conditions:

- (a) For ***LIFE Nature and Biodiversity projects***, the purchase costs incurred for durable goods by ***public authorities or non-profit organisations*** (also referred to as non-governmental / non-commercial organisations), intrinsically connected with the implementation of the project and used to a significant degree within its duration shall be considered eligible in full. Such eligibility shall be subject to the coordinating beneficiary and associated beneficiaries undertaking to continue to assign these goods definitively and exclusively to nature conservation activities beyond the end of the project co-financed under LIFE Nature and Biodiversity.

¹⁰ This provision should be added where one or more beneficiaries are established outside the European Union.

(b) For **prototypes** 100% of the purchase costs of their components are eligible for co-funding. A **prototype** may not be used for commercial purposes during the period set out in Article I.2.2. Should the prototype or any of its components be used for commercial purposes (i.e. sold, leased, rented or used to produce goods or services) during the project, this shall be declared. The costs of creating the prototype shall then be depreciated in accordance with the rules applicable to the purchase of new or second-hand equipment and infrastructure. Any related income must be declared.

SIGNATURES

For the coordinating beneficiary

[function/forename/surname]

[signature]

Done at [place], [date]

In duplicate in English

For the Agency/Commission

[forename/surname]

[signature]

Done at [place], [date]

ANNEX I — GENERAL CONDITIONS

TABLE OF CONTENT

ANNEX I — GENERAL CONDITIONS.....	20
TABLE OF CONTENT	20
PART A — LEGAL AND ADMINISTRATIVE PROVISIONS.....	24
Article II.1 — Definitions	24
Article II.2 — General obligations and roles of the beneficiaries	25
II.2.1 General obligations and role of the beneficiaries	25
II.2.2 General obligations and role of each beneficiary	26
II.2.3 General obligations and role of the coordinating beneficiary	26
Article II.3 — Communication between the parties	27
II.3.1 Form and means of communication	27
II.3.2 Date of communications.....	28
Article II.4 — Liability for damages.....	28
Article II.5 — Conflict of interests	28
Article II.6 — Confidentiality	29
Article II.7 — Processing of personal data	29
II.7.1 Processing of personal data by the Agency/Commission	29
II.7.2 Processing of personal data by the beneficiaries.....	29
Article II.8 — Visibility of Union funding	30
II.8.1 Information on Union funding and use of the LIFE Programme and Natura 2000 logos.....	30
II.8.2 Disclaimers excluding Agency/Commission responsibility.....	31
Article II.9 — Pre-existing rights and ownership and use of the results (including intellectual and industrial property rights)	31
II.9.1 Ownership of the results by the beneficiaries	31

II.9.2	Pre-existing rights.....	32
II.9.3	Rights of use of the results and of pre-existing rights by the Union .	32
Article II.10	— Award of contracts necessary for the implementation of the project.....	33
Article II.11	— Subcontracting of tasks forming part of the project	34
Article II.12	— Financial support to third parties	35
Article II.13	— Amendments to the agreement	35
Article II.14	— Assignment of claims for payments to third parties.....	36
Article II.15	— <i>Force majeure</i>	36
Article II.16	— Suspension of the implementation of the project	36
II.16.1	Suspension of implementation by the beneficiaries	36
II.16.2	Suspension of implementation by the Agency/Commission.....	37
II.16.3	Effects of the suspension	38
Article II.17	— Termination of the ageement.....	38
II.17.1	Termination of the Agreement by the coordinating beneficiary	38
II.17.2	Termination of the participation of one or more beneficiaries by the coordinating beneficiary	39
II.17.3	Termination of the Agreement or the participation of one or more beneficiaries by the Agency/Commission.....	39
II.17.4	Effects of termination	41
Article II.18	— Applicable law, settlement of disputes and enforceable decisionS .	43
PART B	— FINANCIAL PROVISIONS.....	44
Article II.19	— Eligible costs	44
II.19.1	Conditions for the eligibility of costs	44
II.19.2	Eligible direct costs	44
II.19.4	Ineligible costs.....	48
Article II.20	— Identifiability and verifiability of the amounts declared	49

II.20.1 Declaring costs and contributions.....	49
II.20.2 Records and other documentation to support the costs and contributions declared	50
II.20.3 Conditions to determine the compliance of cost accounting practices	50
Not applicable	50
Article II.21 — Eligibility of costs of entities affiliated to the beneficiaries.....	50
Article II.22 — Budget transfers.....	50
Article II.23 — Non-compliance with reporting obligations.....	51
Article II.24 — Suspension of payments and time limit for payment	51
II.24.1 Suspension of payments	51
II.24.2 Suspension of the time limit for payments	53
Article II.25 — Calculation of the final amount of the grant.....	53
II.25.1 Step 1 — Application of the reimbursement rate to the eligible costs and addition of the unit, flat-rate and lump sum contributions	54
II.25.2 Step 2 — Limit to <i>maximum amount of the grant</i>	54
II.25.3 Step 3 — Reduction due to the no-profit rule	54
II.25.4 Step 4 — Reduction due to improper implementation or breach of other obligations	55
Article II.26 — Recovery.....	56
II.26.1 Recovery at the time of payment of the balance	56
II.26.2 Recovery after payment of the balance	56
II.26.3 Recovery procedure.....	56
II.26.4 Interest on late payment	57
II.26.5 Bank charges	57
Article II.27 — Checks, audits and evaluationS	57
II.27.1 Technical and financial checks, audits, interim and final evaluations.....	57
II.27.2 Duty to keep documents	58

II.27.3 Obligation to provide information	58
II.27.4 On-the-spot visits.....	58
II.27.5 Contradictory audit procedure.....	59
II.27.6 Effects of audit findings	59
II.27.7 Correction of systemic or recurrent errors, irregularities, fraud or breach of obligations	59
II.27.8 Checks and inspections by OLAF.....	61
II.27.9 Checks and audits by the European Court of Auditors	62

PART A — LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 — DEFINITIONS

The following definitions apply for the purpose of the Agreement:

‘Project’: the set of activities or the actions for which the grant is awarded, to be implemented by the beneficiaries as described in Annex II.

‘Confidential information or document’: any information or document (in any format) received by either party from the other or accessed by either party in the context of the implementation of the Agreement that any of the parties has identified in writing as confidential. It does not include information that is publicly available.

‘Conflict of interests’: a situation where the impartial and objective implementation of the Agreement by a beneficiary is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the Agency/Commission, or any third party related to the subject matter of the Agreement.

‘Direct costs’: those specific costs which are directly linked to the implementation of the project and can therefore be attributed directly to it. They may not include any indirect costs;

‘Force majeure’: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the Agreement, which is not attributable to error or negligence on their part or on the part of the subcontractors affiliated entities or third parties in receipt of financial support and which proves to be inevitable despite their exercising due diligence. The following cannot be invoked as *force majeure*: labour disputes, strikes, financial difficulties or any default of a service, defect in equipment or materials or delays in making them available, unless they stem directly from a relevant case of *force majeure*;

‘Formal notification’: form of communication between the parties made in writing by mail or electronic mail which provides the sender with compelling evidence that the message was delivered to the specified recipient;

‘Fraud’: any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents, to non-disclosure of information in violation of a specific obligation;

‘Implementation period’: the period of implementation of the activities forming part of the project, as specified in Article I.2.2;

‘Indirect costs’: those costs which are not specific costs directly linked to the implementation of the project and which therefore cannot be attributed directly to it. They may not include any costs identifiable or declared as eligible direct costs;

‘Irregularity’: any infringement of a provision of Union law resulting from an act or omission by a beneficiary, which has or would have the effect of prejudicing the Union’s budget;

‘Maximum amount of the grant’: the maximum EU contribution to the project, as defined in Article I.3.1;

‘Pre-existing material’: any materials, document, technology or know-how which exists prior to the beneficiary using it for the production of a result in the implementation of the project;

‘Pre-existing right’: any industrial and intellectual property right on pre-existing material; it may consist in a right of ownership, a licence right and/or a right of use belonging to the beneficiary or any other third parties;

‘Related person’: any person who has the power to represent the beneficiary or to take decisions on its behalf;

‘Starting date’: the date on which the implementation of the project starts as provided for in Article I.2.2;

‘Subcontract’: a procurement contract within the meaning of Article II.10, which covers the implementation by a third party of tasks forming part of the project as described in Annex II;

‘Substantial error’: any infringement of a provision of an agreement resulting from an act or omission, which causes or might cause a loss to the Union’s budget.

ARTICLE II.2 — GENERAL OBLIGATIONS AND ROLES OF THE BENEFICIARIES

II.2.1 General obligations and role of the beneficiaries

The beneficiaries:

- (a) are jointly and severally liable for carrying out the *project* in accordance with the Agreement. If a beneficiary fails to implement its part of the *project*, the other beneficiaries become responsible for implementing this part (but without increasing the *maximum amount of the grant*);
- (b) must comply jointly or individually with any legal obligations they are bound by under applicable EU, international and national law;
- (c) must make appropriate internal arrangements to implement the *project* properly. The arrangements must be consistent with the terms of the Agreement. If provided for in the Special Conditions, those arrangements must take the form of an internal cooperation agreement between the beneficiaries.
- (d) maintain up-to-date books of account, in accordance with the usual accounting conventions imposed on them by law and existing regulations;
- (e) ensure that all invoices include a clear reference to the project;
- (f) not act, in the context of the project, as sub-contractor or supplier to any other beneficiary;
- (g) contribute financially to the project;

II.2.2 General obligations and role of each beneficiary

Each associated beneficiary must:

- (a) inform the coordinating beneficiary immediately of any change likely to affect or delay the implementation of the project of which the beneficiary is aware, and, for LIFE Nature and Biodiversity projects, of any activity by third parties that is likely to have a significant negative impact on the sites/species targeted in the project, and if appropriate to take measures to persuade third parties to refrain from such activities;
- (b) inform the coordinating beneficiary immediately of any change in its legal, financial, technical, organisational or ownership situation or of its affiliated entities and of any change in its name, address or legal representative or of its affiliated entities;
- (c) submit in due time to the coordinating beneficiary:
 - (i) the data needed to draw up the reports, financial statements and other documents provided for in the Agreement;
 - (ii) all the necessary documents required for audits, checks or evaluations as provided for in Article II.27.
 - (iii) any other information to be provided to the Agency/Commission under the Agreement, except if the Agreement requires such information to be submitted directly by the beneficiary to the Agency/Commission.

II.2.3 General obligations and role of the coordinating beneficiary

The coordinating beneficiary:

- (a) must monitor the implementation of the *project* in order to make sure that is implemented in accordance with the terms of the Agreement;
- (b) is the intermediary for all communications between the beneficiaries and the Agency/Commission, except if provided otherwise in the Agreement. In particular, the coordinating beneficiary:
 - (i) must immediately inform the Agency/Commission:
 - of any change in the name, address, legal representative of any of the beneficiaries or of their affiliated entities;
 - of any change in the legal, financial, technical, organisational or ownership situation of any of the beneficiaries or of their affiliated entities;
 - of any events or circumstances of which the coordinating beneficiary is aware, that are likely to affect or delay the implementation of the *project*.
 - for LIFE Nature and Biodiversity projects, of any activity by third parties that is likely to have a significant negative impact on the sites/species targeted in the project, and if appropriate to take measures to persuade third parties to refrain from

such activities;

- (ii) is responsible for supplying the Agency/Commission with all documents and information required under the Agreement, except if provided otherwise in the Agreement itself. If information is required from the other beneficiaries, the coordinating beneficiary is responsible for obtaining and verifying this information before passing it on to the Agency/Commission;
- (c) must make the appropriate arrangements for providing any financial guarantees required under the Agreement;
- (d) must draw up the requests for payment in accordance with the Agreement;
- (e) if it is designated as the sole recipient of payments on behalf of all of the beneficiaries, it must ensure that all the appropriate payments are made within 30 days of the receipt of the funds paid by the Agency/Commission unless there is a justified delay. The coordinating beneficiary shall inform the Agency/Commission of the distribution of the Union contribution;
- (f) bear responsibility for providing all the necessary documents in the event of checks and audits initiated before the payment of the balance, and in the event of evaluation in accordance with Article II.27 as well as for retaining copies of all supporting documents of all the associated beneficiaries for at least five years after the balance payment.

The coordinating beneficiary may not subcontract any part of its tasks described in points (a) to (f) to the other beneficiaries or to any other party.

II.2.4 The role of the external monitoring team

To follow up the project, the Agency/Commission selected an external monitoring team (hereinafter “*the external monitoring team*”) to assist it by following and assessing the projects progress and their coherence with the actual costs incurred.

The external monitoring team shall not be authorised to take any decision on behalf of the Agency/Commission. A recommendation or a statement provided by the external monitoring team to the beneficiaries cannot be interpreted as representing a position of the Agency/Commission.

ARTICLE II.3 — COMMUNICATION BETWEEN THE PARTIES

II.3.1 Form and means of communication

Any communication relating to the Agreement or to its implementation must:

- (a) be made in writing (in paper or electronic form);
- (b) bear the number of the Agreement and the acronym; and
- (c) be made using the communication details identified in Article I.6.

If a party requests written confirmation of an electronic communication within a reasonable time, the sender must provide an original signed paper version of the communication as soon as possible.

Before communicating directly with the Agency/Commission, the coordinating beneficiary shall consult *the external monitoring team*. Any correspondence relating to the Agreement or to its implementation sent by the coordinating beneficiary to the Agency/Commission shall be sent in parallel to *the external monitoring team*.

Formal notifications shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

II.3.2 Date of communications

Any communication is considered to have been made when the receiving party receives it, unless the Agreement states that communication is considered to have been made on the date when the communication was sent.

Email is considered to have been received by the receiving party on the day of successful dispatch of that email, provided that it is sent to the email address indicated in Article I.6. The sending party must be able to prove the date of dispatch. If the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the Agency/Commission using the postal or courier services is considered to have been received by the Agency/Commission on the date on which it is registered by the unit identified in Article I.6.2 or on the date on which it is received by the *external monitoring team*, whichever of these dates is later.

Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

ARTICLE II.4 — LIABILITY FOR DAMAGES

II.4.1 The Agency/Commission may not be held liable for any damage caused or sustained by any of the beneficiaries, including any damage caused to third parties as a consequence of or during the implementation of the *project*.

II.4.2 Except in cases of *force majeure*, the beneficiaries must compensate the Agency/Commission for any damage it sustains as a result of the implementation of the *project* or because the *project* was not implemented in full compliance with the Agreement.

ARTICLE II.5 — CONFLICT OF INTERESTS

II.5.1 The beneficiaries must take all necessary measures to prevent any situation of *conflict of interests*.

II.5.2 The beneficiaries must inform the Agency/Commission without delay of any situation constituting or likely to lead to a *conflict of interests*. They must take immediately all the necessary steps to rectify this situation.

The Agency/Commission may verify that the measures taken are appropriate and may require additional measures to be taken by a specified deadline.

ARTICLE II.6 — CONFIDENTIALITY

II.6.1 During implementation of the *project* and for five years after the payment of the balance, the parties must treat with confidentiality any *confidential information and documents*.

II.6.2 The parties may only use *confidential information and documents* for a reason other than to fulfil their obligations under the Agreement if they have first obtained the prior written agreement of the other party.

II.6.3 The confidentiality obligations do not apply if:

- (a) the disclosing party agrees to release the other party from those obligations;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligations;
- (c) the disclosure of the *confidential information or documents* is required by law
- (d) confidential information or documents are transferred between the Agency and the Commission.

II.6.4 *The external monitoring team* shall act under the same confidentiality rules as those stipulated for the beneficiaries and the Agency/Commission.

ARTICLE II.7 — PROCESSING OF PERSONAL DATA

II.7.1 Processing of personal data by the Agency/Commission

Any personal data included in the Agreement must be processed by the Agency/Commission in accordance with Regulation (EC) No 45/2001.¹¹

Such data must be processed by the data controller identified in Article I.6.1 solely for implementing, managing and monitoring the Agreement or to protect the financial interests of the EU, including checks, audits and investigations in accordance with Article II.27.

The beneficiaries have the right to access and correct their own personal data. For this purpose, they must send any queries about the processing of their personal data to the data controller identified in Article I.6.1.

The beneficiaries may have recourse at any time to the European Data Protection Supervisor.

II.7.2 Processing of personal data by the beneficiaries

¹¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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.

The beneficiaries must process personal data under the Agreement in compliance with applicable EU and national law on data protection (including authorisations or notification requirements).

The beneficiaries may grant their personnel access only to data that is strictly necessary for implementing, managing and monitoring the Agreement.

The beneficiaries must 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. This is in order to:

- (a) prevent any unauthorised person from gaining 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 use of 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 processed on behalf of third parties can be processed only in the manner prescribed by the Agency/Commission;
- (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 their organisational structure in such a way that it meets data protection requirements.

ARTICLE II.8 — VISIBILITY OF UNION FUNDING

II.8.1 Information on Union funding and use of the LIFE Programme and Natura 2000 logos

- a) Unless the Agency/Commission requests or agrees otherwise, any communication or publication made by the beneficiaries jointly or individually that relates to the project, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, in electronic form, etc.), must:
 - i. indicate that the project has received funding from the Union; and
 - ii. display the *LIFE Programme logo* (Annex II to the LIFE Regulation, <http://ec.europa.eu/environment/life/toolkit/comtools/resources/logos.htm>). For audio-visual material, the credits at the beginning and/or at the end shall include an explicit audible and readable mention to the LIFE financial support (e.g. “With the contribution of the LIFE Programme of the European Union”).

All durable goods acquired in the frame of the project shall bear the LIFE logo unless otherwise specified by the Agency/Commission

When displayed in association with another logo, the *LIFE Programme logo* must have appropriate prominence.

The obligation to display the *LIFE Programme logo* does not confer on the beneficiaries a right of exclusive use. The beneficiaries may not appropriate the *LIFE Programme logo* or any similar trademark or logo, either by registration or by any other means.

For the purposes of the first, second and third subparagraphs and under the conditions specified therein, the beneficiaries may use the *LIFE Programme logo* without first obtaining permission from the Agency/Commission.

For projects in Natura 2000 sites or contributing to the integrity of the Natura 2000 network, the obligations regarding the LIFE Programme logo also apply for the Natura 2000 logo (<http://ec.europa.eu/environment/life/toolkit/comtools/resources/logos.htm>). The project's importance in terms of establishing the Natura 2000 network must be described in the notice boards and on the websites.

- b) The coordinating beneficiary shall create a *project website* or use an existing website in at least one official language of the European Union for the dissemination of project activities, progress and results. The web address where the main results of the project are available to the public shall be indicated in the reports. This website shall be online at the latest six months after the starting date as specified in Article I.2.2, shall be regularly updated and shall be kept for at least five years after the end of the project. A summary of the project in English language, including name and contact information of the coordinating beneficiary, will be placed on the LIFE website and made available to the general public.
- c) The beneficiaries shall erect and maintain *notice boards* describing the project at the locations where it is implemented, at strategic places accessible and visible to the public.

II.8.2 Disclaimers excluding Agency/Commission responsibility

Any communication or publication that relates to the project, made by the beneficiaries jointly or individually in any form and using any means, must indicate:

- (a) that it reflects only the author's view; and
- (b) that the Agency/Commission is not responsible for any use that may be made of the information it contains.

ARTICLE II.9 — PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)

II.9.1 Ownership of the results by the beneficiaries

The beneficiaries retain ownership of the results of the project, including industrial and intellectual property rights, and of the reports and other documents relating to it, unless stipulated otherwise in the Agreement.

With a view to promoting the use of techniques or models favourable to the environment, the beneficiaries are encouraged to make available throughout the Union all documents, patents

and know-how directly resulting from the project implementation , on non-discriminatory and reasonable commercial conditions.

II.9.2 Pre-existing rights

If the Agency/Commission sends the beneficiaries a written request specifying which of the results it intends to use, the beneficiaries must:

- (a) establish a list specifying all *pre-existing rights* included in those results; and
- (b) provide this list to the Agency/Commission at the latest with the request for payment of the balance.

The beneficiaries must ensure that they or their affiliated entities have all the rights to use any *pre-existing rights* during the implementation of the Agreement.

II.9.3 Rights of use of the results and of pre-existing rights by the Union

The beneficiaries grant the Union and the Agency/Commission the following rights to use the results of the project:

- (a) for its own purposes and in particular to make available to persons working for the Agency/Commission, other Union institutions, agencies and bodies and to Member States' institutions, as well as to copy and reproduce in whole or in part and in an unlimited number of copies;
- (b) reproduction: the right to authorise direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (c) communication to the public: the right to authorise any display performance or communication to the public, by wire or wireless means, including making the results available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes communication and broadcasting by cable or by satellite;
- (d) distribution: the right to authorise any form of distribution of results or copies of the results to the public;
- (e) adaptation: the right to modify the results;
- (f) translation;
- (g) the right to store and archive the results in line with the document management rules applicable to the Agency/Commission, including digitisation or converting the format for preservation or new use purposes;
- (h) where the results are documents, the right to authorise the reuse of the documents in conformity with Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents if that Decision is applicable and if the documents fall within its scope and are not excluded by any of its provisions. For the sake of this provision, the

terms ‘reuse’ and ‘document’ have the meanings given to them by Decision 2011/833/EU.

- (i) inclusion in widely accessible databases or indexes, such as via ‘open access’ or ‘open data’ portals, or similar repositories, whether freely accessible or accessible only upon subscription of the LIFE Key Project Indicators collected by the beneficiaries in relation to the project.

The above rights of use may be further specified in the Special Conditions.

Additional rights of use for the Union may be provided for in the Special Conditions.

The beneficiaries must ensure that the Union has the right to use any *pre-existing rights* included in the results of the project. The *pre-existing rights* must be used for the same purposes and under the same conditions as applicable to the rights of use of the results of the project, unless specified otherwise in the Special Conditions.

Information about the copyright owner must be inserted in cases where the result is divulged by the Union. The copyright information must read: ‘© — year — name of the copyright owner. All rights reserved. Licenced to the European Union under conditions.’.

If the beneficiaries grant rights of use to the Agency/Commission, this does not affect its confidentiality obligations under Article II.6 or the beneficiaries’ obligations under Article II.2.1.

ARTICLE II.10 — AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE PROJECT

II.10.1 If the implementation of the *project* requires the beneficiaries to procure goods, works or services, they must award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price. In doing so, they must avoid any *conflict of interests*. Tendering procedures shall comply with the principles of transparency and equal treatment of potential contractors. The beneficiaries must maintain a written record of the procedure used to ensure that these conditions are fulfilled in the tendering procedure in accordance with their usual procurement policy and/or practise.

The beneficiaries must ensure that the Agency/Commission, the European Court of Auditors and the European Anti-Fraud Office (OLAF) can exercise their rights under Article II.27 also towards the beneficiaries' contractors.

Where the value of a contract exceeds EUR 135,000, all beneficiaries shall use an open tendering procedure, including a publication of the call for tender(s) in the relevant media. To establish the relevant threshold, the beneficiary shall consider together the value of all linked items.

Below the threshold of EUR 135,000 or the threshold set out in the applicable public national procurement rules, the beneficiary shall award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests and maintain written evidence of how

the criterion of best value for money was met in accordance with the usual procurement policy and/or practise of the beneficiary.

II.10.2 Beneficiaries that are ‘contracting authorities’ within the meaning of Directive 2014/24/EU¹² or ‘contracting entities’ within the meaning of Directive 2014/25/EU¹³ must comply with the applicable national public procurement rules.

The beneficiaries must ensure that the conditions applicable to them under Articles II.4, II.5, II.6 and II.9 are also applicable to the contractors.

II.10.3 The beneficiaries remain solely responsible for carrying out the *project* and for compliance with the Agreement.

II.10.4 If the beneficiaries breach their obligations under Article II.10.1 the costs related to the contract concerned are considered ineligible in accordance with Article II.19.2 (c), (d) and (e).

If the beneficiaries breach their obligations under Article II.10.2 the grant may be reduced in accordance with Article II.25.4.

ARTICLE II.11 — SUBCONTRACTING OF TASKS FORMING PART OF THE PROJECT

II.11.1 Beneficiaries may subcontract tasks forming part of the *project*. If they do so, they must ensure that, in addition to the conditions specified in Article II.10, the following conditions are also complied with:

- (a) subcontracting does not cover core tasks of the *project*;
- (b) recourse to subcontracting is justified because of the nature of the *project* and what is necessary for its implementation;
- (c) the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex III;

any recourse to subcontracting, if not provided for in Annex II and III, is communicated by the coordinating beneficiary and approved by the Agency/Commission. The Agency/Commission may grant approval after recourse to subcontracting if the subcontracting:

- is specifically justified in the mid term or final technical report referred to in Articles I.4.3 and I.4.4; and

¹² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

¹³ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

- does not entail changes to the Agreement which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants;

- (d) the beneficiaries ensure that
- i. the conditions applicable to them under Article II.8 are also applicable to the subcontractors.
 - ii. all invoices issued by subcontractors bear a clear reference to the LIFE project (i.e. number and title or short title) and to the order/subcontract issued by the beneficiaries;
 - iii. all invoices issued by subcontractors are sufficiently detailed as to allow identification of single items covered by the service delivered (i.e. clear description and cost of each item).

II.11.2 If the beneficiaries breach their obligations under Article II.11.1 (a), (b), (c) or (d), the costs related to the contract concerned are considered ineligible in accordance with Article II.19.2 (f).

If the beneficiaries breach their obligation under Article II.11.1 (e) the grant may be reduced in accordance with Article II.25.4.

ARTICLE II.12 — FINANCIAL SUPPORT TO THIRD PARTIES

Not applicable

ARTICLE II.13 — AMENDMENTS TO THE AGREEMENT

II.13.1 Any amendment to the Agreement must be made in writing.

II.13.2 An amendment may not have the purpose or the effect of making changes to the Agreement which would call into question the decision awarding the grant or be contrary to the equal treatment of applicants.

Only substantial changes require a formal amendment of the Agreement and will only be accepted in duly justified cases.

II.13.3 Any request for amendment must:

- (a) be duly justified;
- (b) be accompanied by appropriate supporting documents; and
- (c) be sent to the other party in due time before it is due to take effect, and in any case one month before the end of the *implementation period*.

Point (c) does not apply in cases duly substantiated by the party requesting the amendment if the other party agrees.

II.13.4 A request for amendment on behalf of the beneficiaries must be submitted by the coordinating beneficiary. If a change of coordinating beneficiary is requested without its agreement, the request must be submitted by all other beneficiaries and must be

accompanied by the opinion of the coordinating beneficiary or proof that this opinion has been requested in writing.

II.13.5 Amendments enter into force on the date on which the last party signs or on the date of approval of the request for amendment.

Amendments take effect on a date agreed by the parties or, in the absence of such an agreed date, on the date on which the amendment enters into force.

ARTICLE II.14 — ASSIGNMENT OF CLAIMS FOR PAYMENTS TO THIRD PARTIES

II.14.1 The beneficiaries may not assign any of their claims for payment against the Agency/Commission to any third party, except if approved by the Agency/Commission on the basis of a reasoned, written request by the coordinating beneficiary made on behalf of the beneficiaries.

If the Agency/Commission does not accept the assignment or the terms of it are not complied with, the assignment has no effect on it.

II.14.2 In no circumstances may an assignment release the beneficiaries from their obligations towards the Agency/Commission.

ARTICLE II.15 — *FORCE MAJEURE*

II.15.1 A party faced with *force majeure* must send a *formal notification* to the other party without delay, stating the nature of the situation or of the event, its likely duration and foreseeable effects.

II.15.2 The parties must take the necessary measures to limit any damage due to *force majeure*. They must do their best to resume the implementation of the *project* as soon as possible.

II.15.3 The party faced with *force majeure* may not be considered in breach of its obligations under the Agreement if it has been prevented from fulfilling them by *force majeure*.

ARTICLE II.16 — SUSPENSION OF THE IMPLEMENTATION OF THE PROJECT

II.16.1 Suspension of implementation by the beneficiaries

The coordinating beneficiary, on behalf of the beneficiaries, may suspend the implementation of the *project* or any part of it, if exceptional circumstances make such implementation impossible or excessively difficult, in particular in the event of *force majeure*.

The coordinating beneficiary must immediately inform the Agency/Commission, stating:

- (a) the reasons for suspension, including details about the date or period when the exceptional circumstances occurred; and
- (b) the expected date of resumption.

Once the circumstances allow the beneficiaries to resume implementing the *project*, the coordinating beneficiary must inform the Agency/Commission immediately and present a request for amendment of the Agreement as provided for in Article II.16.3. This obligation does not apply if the Agreement or the participation of a beneficiary is terminated in accordance with Articles II.17.1, II.17.2 or points (c) or (d) of Article II.17.3.1.

II.16.2 Suspension of implementation by the Agency/Commission

II.16.2.1 Grounds for suspension

The Agency/Commission may suspend the implementation of the *project* or any part thereof:

- (a) if the Agency/Commission has evidence that a beneficiary has committed *substantial errors, irregularities* or *fraud* in the award procedure or while implementing the Agreement or if a beneficiary fails to comply with its obligations under the Agreement;
- (b) if the Agency/Commission has evidence that a beneficiary has committed systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations in other grants funded by the Union or the European Atomic Energy Community ('Euratom') awarded to the beneficiary under similar conditions and the errors, *irregularities, fraud* or breach have a material impact on this grant; or
- (c) if the Agency/Commission suspects *substantial errors, irregularities, fraud* or breach of obligations committed by a beneficiary in the award procedure or while implementing the Agreement and needs to verify whether they have actually occurred.

II.16.2.2 Procedure for suspension

Step 1 — Before suspending implementation of the *project*, the Agency/Commission must send a *formal notification* to the coordinating beneficiary:

- (a) informing it of:
 - (i) its intention to suspend the implementation;
 - (ii) the reasons for suspension;
 - (iii) the necessary conditions for resuming the implementation in the cases referred to in points (a) and (b) of Article II.16.2.1; and
- (b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

Step 2 — If the Agency/Commission does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a *formal notification* to the coordinating beneficiary informing it of:

- (a) the suspension of the implementation;
- (b) the reasons for suspension; and
- (c) the final conditions for resuming the implementation in the cases referred to in points (a) and (b) of Article II.16.2.1; or
- (d) the indicative date of completion of the necessary verification in the case referred to in point (c) of Article II.16.2.1.

The coordinating beneficiary must immediately inform the other beneficiaries of the suspension. The suspension takes effect five calendar days after the *formal notification* is received by the coordinating beneficiary or on a later date specified in the *formal notification*.

Otherwise, the Agency/Commission must send a *formal notification* to the coordinating beneficiary informing it that it is not continuing the suspension procedure.

II.16.2.3 Resuming implementation

In order to resume the implementation, the beneficiaries must meet the notified conditions as soon as possible and must inform the Agency/Commission of any progress made.

If the conditions for resuming the implementation are met or the necessary verifications are carried out, the Agency/Commission must send a *formal notification* to the coordinating beneficiary:

- (a) informing it that the conditions for lifting the suspension are met; and
- (b) requiring it to present a request for amendment of the Agreement as provided for in Article II.16.3. This obligation does not apply if the Agreement or the participation of a beneficiary is terminated in accordance with Articles II.17.1, II.17.2 or points (c), (g) or (h) of Article II.17.3.1.

II.16.3 Effects of the suspension

If the implementation of the *project* can be resumed and the Agreement has not been terminated, an amendment to the Agreement must be made in accordance with Article II.13 in order to:

- (a) set the date on which the *project* is to be resumed;
- (b) extend the duration of the *project*; and
- (c) make other changes necessary to adapt the *project* to the new situation.

The suspension is lifted with effect from the resumption date set out in the amendment. This date may be before the date on which the amendment enters into force.

Costs incurred during the period of suspension that relate to the implementation of the suspended *project* or the suspended part of it may not be reimbursed or covered by the grant.

Suspending implementation of the *project* does not affect the Agency/Commission's right to terminate the Agreement or to terminate the participation of a beneficiary in accordance with Article II.17.3, reduce the grant or recover amounts unduly paid in accordance with Articles II.25.4 and II.26.

Neither party may claim damages due to suspension by the other party.

ARTICLE II.17 — TERMINATION OF THE AGREEMENT

II.17.1 Termination of the Agreement by the coordinating beneficiary

The beneficiaries may terminate the Agreement.

The coordinating beneficiary must send a *formal notification* of termination to the Agency/Commission, stating:

- (a) the reasons for termination; and
- (b) the date on which the termination takes effect. This date must be set after the *formal notification*.

If the coordinating beneficiary does not state the reasons for the termination or if the Agency/Commission considers that the reasons do not justify termination, the Agreement is considered to have been terminated improperly.

The termination takes effect on the day specified in the *formal notification*.

II.17.2 Termination of the participation of one or more beneficiaries by the coordinating beneficiary

The participation of one or more beneficiaries may be terminated by the coordinating beneficiary at the request of the associated beneficiary concerned or on behalf of the other associated beneficiaries.

The coordinating beneficiary must send a *formal notification* of termination to the Agency/Commission and inform the beneficiary concerned by termination.

If the coordinating beneficiary's participation is terminated without its agreement, the *formal notification* must be submitted by another associated beneficiary (acting on behalf of the other associated beneficiaries).

The *formal notification* must include:

- (a) the reasons for termination;
- (b) the opinion of the beneficiary concerned by termination (or proof that this opinion has been requested in writing);
- (c) the date on which the termination takes effect. This date must be set after the *formal notification*; and
- (d) a request for amendment as provided for in Article II.17.4.2(a).

If the coordinating beneficiary or beneficiary does not state the reasons for the termination or if the Agency/Commission considers that the reasons do not justify termination, the participation will be considered to have been terminated improperly.

The termination takes effect on the day specified in the *formal notification*.

II.17.3 Termination of the Agreement or the participation of one or more beneficiaries by the Agency/Commission

II.17.3.1 Grounds for termination

The Agency/Commission may terminate the Agreement or the participation of any one or several beneficiaries, if:

- (a) a change to the beneficiary's legal, financial, technical, organisational or ownership situation is likely to affect the implementation of the Agreement substantially or calls into question the decision to award the grant;
- (b) following the termination of the participation of any one or several beneficiaries, the necessary modifications to the Agreement would call into question the decision awarding the grant or would result in unequal treatment of applicants;
- (c) the beneficiaries do not implement the *project* as described in Annex II or a beneficiary fails to comply with another substantial obligation incumbent on it under the Agreement;
- (d) the implementation of the *project* is prevented or suspended due to *force majeure* or exceptional circumstances and either:
 - (i) resumption is impossible; or
 - (ii) the necessary changes to the Agreement would call into question the decision awarding the grant or be contrary to the equal treatment of applicants;
- (e) a beneficiary or any person that assumes unlimited liability for the debts of that beneficiary comes under any of the situations provided for in points (a) or (b) of Article 106 (1) of the Financial Regulation;¹⁴
- (f) a beneficiary or any *related person* comes under any of the situations provided for in points (c), (d), (e) or (f) of Article 106 (1) or comes under Article 106 (2) of the Financial Regulation;
- (g) the Agency/Commission has evidence that a beneficiary or any *related person* has committed *substantial errors, irregularities* or *fraud* in the award procedure or while implementing the Agreement, including if that beneficiary or *related person* has submitted false information or failed to provide required information;
- (h) the Agency/Commission has evidence that a beneficiary has committed systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations in other Union or Euratom grants awarded to it under similar conditions and such errors, *irregularities, fraud* or breach have a material impact on this grant; or
- (i) the Agency/Commission has sent a beneficiary, through the coordinating beneficiary, a *formal notification* asking it to end the participation of its affiliated entity because that entity is in a situation provided for in points (f), (g) or (h) and that beneficiary has failed to request an amendment ending the participation of the entity and reallocating its tasks.

II.17.3.2 Procedure for termination

Step 1- Before terminating the Agreement or participation of one or more beneficiaries, the Agency/Commission must send a *formal notification* to the coordinating beneficiary:

¹⁴ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union.

- (a) informing it of:
 - (i) its intention to terminate;
 - (ii) the reasons for termination; and
- (b) requiring it, within 45 calendar days of receiving the formal notification,:
 - (i) to submit observations on behalf of all beneficiaries; and
 - (ii) in the case of point (c) of Article II.17.3.1, to inform the Agency/Commission of the measures to ensure compliance with the obligations under the Agreement.

Step 2 — If the Agency/Commission does not receive observations or decides to pursue the procedure despite the observations it has received, it will send a *formal notification* to the coordinating beneficiary informing it of the termination and the date on which it takes effect. The coordinating beneficiary must immediately inform the other beneficiaries of the termination.

Otherwise, the Agency/Commission must send a *formal notification* to the coordinating beneficiary informing it that the termination procedure is not continued.

The termination takes effect:

- (a) for terminations under points (a), (b), (c) and (e) of Article II.17.3.1: on the day specified in the *formal notification* of termination referred to in the second subparagraph (i.e. in Step 2 above);
- (b) for terminations under points (d), (f), (g), (h) and (i) of Article II.17.3.1: on the day after the coordinating beneficiary receives the *formal notification* of termination referred to in the second subparagraph (i.e. in Step 2 above).

II.17.4 Effects of termination

II.17.4.1 Effects of terminating the Agreement:

Within 60 calendar days from the day on which the termination takes effect, the coordinating beneficiary must submit a request for payment of the balance as provided for in Article I.4.4.

If the Agency/Commission does not receive the request for payment of the balance by the above deadline, only costs which are included in an approved technical report and, where relevant, in an approved financial statement, are reimbursed or covered by the grant.

If the Agreement is terminated by the Agency/Commission because the coordinating beneficiary has breached its obligation to submit the request for payment, the coordinating beneficiary may not submit any request for payment after termination. In that case the second subparagraph applies.

The Agency/Commission calculates the final grant amount as referred to in Article II.25 and the balance as referred to in Article I.4.11 on the basis of the reports submitted. Only costs incurred before termination takes effect are reimbursed or covered by the grant. Costs relating to contracts due for execution only after termination are not taken into account are not reimbursed or covered by the grant.

The Agency/Commission may reduce the grant in accordance with Article II.25.4 in case of:

- (a) improper termination of the Agreement by the coordinating beneficiary within the meaning of Article II.17.1; or
- (b) termination of the Agreement by the Agency/Commission on any of the grounds set out in points (c), (f), (g), (h) and (i) of Article II.17.3.1.

Neither party may claim damages on the grounds that the other party terminated the Agreement.

After termination, the beneficiaries' obligations continue to apply, in particular those under Articles I.4, II.6, II.8, II.9, II.14, II.27 and any additional provisions on the use of the results, as set out in the Special Conditions.

II.17.4.2 Effects of terminating the participation of one or more beneficiaries:

- a) The coordinating beneficiary must submit a request for amendment including:
 - (i) a proposal to reallocate the tasks of the beneficiary or beneficiaries concerned by the termination; and
 - (ii) if necessary, the addition of one or more new beneficiaries to succeed the beneficiary or beneficiaries concerned in all their rights and obligations under the Agreement.

If the Agency/Commission terminates the participation of a beneficiary, the coordinating beneficiary must submit the request for amendment within 60 calendar days from the day on which the termination takes effect.

If the coordinating beneficiary terminates the participation of a beneficiary, the request for amendment must be included in the *formal notification* of termination referred to in Article II.17.2.

If termination takes effect after the end of the *implementation period*, no request for amendment must be provided unless the beneficiary concerned is the coordinating beneficiary. In this case, the request for amendment must propose a new coordinating beneficiary.

If the request for amendment is rejected by the Agency/Commission, the Agreement may be terminated in accordance with Article II.17.3.1 (b). The request for amendment may be rejected if it calls into question the decision awarding the grant or is contrary to the equal treatment of applicants.

- b) The beneficiary concerned by termination must submit to the coordinating beneficiary:
 - (i) a technical report; and
 - (ii) a financial statement covering the period from the end of the last reporting period to the date when termination takes effect.

The coordinating beneficiary must include this information in the payment request for the next reporting period.

Only costs incurred by the beneficiary concerned before termination takes effect are reimbursed or covered by the grant. Costs relating to contracts due for execution only after termination are not reimbursed or covered by the grant.

The Agency/Commission may reduce the grant in accordance with Article II.25.4. in case of:

- (a) improper termination of the participation of a beneficiary by the coordinating beneficiary within the meaning of Article II.17.2 or
- (b) termination of the participation of a beneficiary by the Agency/Commission on any of the grounds set out in points (c), (f), (g), (h) or (i) of Article II.17.3.1.

Neither party may claim damages on the grounds that the other party terminated the participation of a beneficiary.

After termination, the concerned beneficiary's obligations continue to apply, in particular those under Articles I.4, II.6, II.8, II.9, II.14, II.27 and any additional provisions on the use of the results, as set out in the Special Conditions.

ARTICLE II.18 — APPLICABLE LAW, SETTLEMENT OF DISPUTES AND ENFORCEABLE DECISIONS

II.18.1 The Agreement is governed by the applicable Union law, complemented, where necessary, by the law of Belgium.

II.18.2 In accordance with Article 272 TFEU, the General Court or, on appeal, the Court of Justice of the European Union, has sole jurisdiction to hear any dispute between the Union and any beneficiary concerning the interpretation, application or validity of the Agreement, if such dispute cannot be settled amicably.

II.18.3 In accordance with Article 299 TFEU, for the purposes of recovery within the meaning of Article II.26, the Agency/Commission may adopt an enforceable decision to impose pecuniary obligations on persons other than States.

An *action* may be brought against such decision before the General Court of the European Union in accordance with Article 263 TFEU.

PART B — FINANCIAL PROVISIONS

ARTICLE II.19 — ELIGIBLE COSTS

II.19.1 Conditions for the eligibility of costs

Eligible costs of the *project* are costs actually incurred by the beneficiary and which meet the following criteria:

- (a) they are incurred within the *implementation period*, with the exception of costs relating to the request for payment of the balance and the corresponding supporting documents referred to in Article I.4.4;

A cost shall be considered as incurred in the *implementation period* when the legal obligation to pay was contracted after the starting date and before the end date of the project, or after the signature of the grant agreement by the Agency/Commission in case this signature takes place before the project starting date;

- (b) they are indicated in the estimated budget of the *project*. The estimated budget is set out in Annex III;
- (c) they are incurred in connection with the *project* as described in Annex II and are necessary for its implementation;
- (d) they are identifiable and verifiable, in particular they are recorded in the beneficiary's accounting records and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the beneficiary's usual cost accounting practices;
- (e) they comply with the requirements of applicable tax and social legislation; and
- (f) they are reasonable, justified and comply with the principle of sound financial management, in particular regarding economy and efficiency.

II.19.2 Eligible direct costs

To be eligible, the *direct cost* of the *project* must comply with the eligibility conditions set out in Article II.19.1.

In particular, the following categories of costs are eligible *direct costs*, provided that they satisfy the eligibility conditions set out in Article II.19.1 as well as the following conditions:

- (a) the **costs of personnel** working under an employment contract with the beneficiary or an equivalent appointing act and assigned to the *project*, provided that these costs are in line with the beneficiary's usual policy on remuneration.

Those costs include actual salaries plus social security contributions and other statutory costs included in the remuneration.

The costs of natural persons working under a contract with the beneficiary other than an employment contract or who are seconded to the beneficiary by a third party against payment may also be included under such personnel costs, provided that the following conditions are fulfilled:

- (i) the person works under conditions similar to those of an employee (in particular regarding the way the work is organised, the tasks that are performed and the premises where they are performed);
- (ii) the result of the work belongs to the beneficiary (unless exceptionally agreed otherwise); and
- (iii) the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the beneficiary;

The sum of the public contributions as beneficiaries to the project budget must exceed by at least 2 % the sum of the salary costs charged to the project described in Annex III for public body employees who are not considered 'additional'.

'Additional' personnel includes all employees – permanent or temporary – of public bodies whose contracts or contract renewals:

- start on or after the start date of the project or on or after the date of signature of the grant agreement by the Agency/Commission in case this date takes place before the project start date, and
- specifically second/assign them to the project.

- (b) **costs of travel and related subsistence allowances**, provided that these costs are in line with the beneficiary's usual practices on travel;
- (c) ***Depreciation costs and prototypes***

(i) the **depreciation costs of durable goods** or other assets (new or second-hand equipment or infrastructure) as recorded in the beneficiary's accounting statements (i.e. placed on its inventory or other type of registry of durable goods/other assets or treated as capital expenditure in accordance with the applicable tax and accounting rules), provided that the asset:

- (i) is written off in accordance with the international accounting standards and the beneficiary's usual accounting practices; and
- (ii) has been purchased in accordance with Article II.10.1 if the purchase occurred within the *implementation period*;

The costs of renting or leasing equipment or other assets are also eligible, provided that these costs do not exceed the depreciation costs of similar equipment or assets and are exclusive of any finance fee;

Only the portion of the equipment's depreciation, rental or lease costs corresponding to the *implementation period* and the rate of actual use for the purposes of the *project* may be taken into account when determining the eligible costs. By way of exception, the full cost of purchase of equipment may be eligible under the Special Conditions, if this is justified by the nature of the *project* and the context of the use of the equipment or assets;

The calculation basis for the eligible depreciation costs may not exceed the following ceilings:

- Equipment costs: 50% of the total purchase cost,
- Infrastructure costs: 25% of the total purchase cost;

Costs incurred for the purchase of durable goods, including notice boards, can only be eligible if they bear the LIFE logo (and the Natura 2000 logo, when applicable);

In **LIFE Technical Assistance projects**, depreciation cost and the costs of rental or lease of infrastructure are not eligible.

A **prototype** is equipment or infrastructure specifically created for the implementation of the project and that has never been commercialised and/or is not available as a serial product. The prototype must play a crucial role in the demonstration activities of the project.

- (d) costs of consumables and supplies with the exception of general office consumables and supplies, provided that they:
 - (i) are purchased in accordance with Article II.10.1; and
 - (ii) are directly assigned to the *project*;
- (e) costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the *project*, audits, translations, reproduction), including the costs of requested financial guarantees, provided that the corresponding services are purchased in accordance with Article II.10.1.;
- (f) costs entailed by *subcontracts* (also referred to as external assistance costs) within the meaning of Article II.11, provided that the conditions laid down in Article II.11.1 (a), (b), (c) and (d) are met;
- (g) costs of financial support to third parties : Not Applicable
- (h) duties, taxes and charges paid by the beneficiary, notably value added tax (VAT), provided that they are included in eligible *direct costs*, and unless specified otherwise in the Agreement.

Non-deductible VAT is eligible as expenditure, save for those activities matching the concept of sovereign powers exercised by Member States;

- (i) Costs incurred for **land purchase or long-term lease of land or one-off compensations for land use rights** regarding a plot of land which is intrinsically connected with implementation of the project and explicitly envisaged therein, shall be considered eligible in full provided that:
 - (aa) in and beyond the project the purchase will contribute to improving, maintaining and restoring the integrity of the Natura 2000 network, including through improving connectivity by the creation of corridors, stepping stones, or other elements of green infrastructure;

- (bb) the land or land use rights acquired are owned by an entity or natural person who is not a project beneficiary or staff thereof and in relation to whom a conflict of interest can be excluded;
- (cc) land purchase is the only or most cost-effective way of achieving the desired conservation outcome and the purchase price is based on market terms;
- (dd) the land purchased is reserved in the long term for uses consistent with the objectives set out in Articles 11, 14 or 15 of the LIFE Regulation; and
- (ee) the Member State concerned shall, by way of transfer or otherwise, ensure the long-term assignment of such land to nature conservation purposes.
- (ff) the land/rights seller is not a public authority, with the exception of short-term leases by local authorities;
- (gg) for land purchased as provided for in the project, the coordinating beneficiary shall ensure the entry in the land register includes a guarantee that the land will be assigned definitively to nature conservation. If in a given Member State the land register does not exist or it does not provide a sufficient legal guarantee, the coordinating beneficiary shall have a clause for the definitive assignment of the land to nature conservation included in the land sale contract. For countries where it would be illegal to include such a guarantee both in the land register and in the sale contract, the Agency/Commission may accept an equivalent guarantee in this connection, provided it offers the same legal level of protection in the long term and complies with the requirement contained in Article 20(3) of Regulation No 1293/2013;
- (hh) in addition, for land purchased by private organisations, the entry in the land register (or the sales contract if accepted in lieu thereof if accepted as per the previous paragraph) includes a guarantee that the land property will be transferred to a legal body primarily active in the field of nature protection, in case of dissolution of the private organisation or its incapacity to manage the land according to nature conservation requirements. For countries where it would be illegal to include such a guarantee in the land register or sales contract, the Agency/Commission may accept an equivalent guarantee in this connection, provided it offers the same legal level of protection in the long term and complies with the requirement contained in Article 20(3) of Regulation No 1293/2013;
- (ii) for the purchase of rights, the entry in the land register must be duly amended;
- (jj) in case of land purchased to be exchanged at a later date for another parcel on which project projects will be undertaken, the exchange is carried out before the end of the project at the latest and the provisions of the present Article shall apply to the lands received through the exchange. The land purchased to be exchanged shall be exempt, at the stage of the mid-term reporting, from the guarantee that the land will be assigned definitively to nature conservation.

The duration of a *land lease* shall either be restricted to the duration of the project (short term lease), in which case it is considered subcontracting, or be at least of 20 years (long-term lease) and shall be compatible with the needs of habitat and species protection. In the case of long-term lease of land, the lease contract shall clearly include all the provisions and commitments that will permit the achievement of its objectives in terms of habitat and species protection.

The LIFE Land Purchase Database (LPD) stores electronic data of land parcels financed by LIFE. The coordinating beneficiary is responsible for entering and validating the land purchase data (both descriptive and spatial) in the LPD at the stage of the final report submission. The data format will have to be adapted to the GIS standards used in the LPD. The coordinating beneficiary will be provided access to the LPD six months before the project end date as specified in Article I.2.2.

Costs incurred for payment of compensation for foregone income shall be eligible provided that the expense was necessary for reaching the objectives of a LIFE Nature and Biodiversity, LIFE Climate Change Mitigation or LIFE Climate Change Adaptation project, and that the payment of compensation:

- corresponds to market prices;
 - is formalised through a legal document; and
 - compensation is not paid to a public authority, with the exception of compensation to a local authority if explicitly authorised by the Agency/Commission as being essential to achieving the goals of the project.
- (j) Costs incurred for the production of communication material, including websites, can only be eligible if they are bearing the LIFE logo (and the Natura 2000 logo, when applicable).

II.19.3 Eligible indirect costs

To be eligible, *indirect costs* of the *project* (also referred to as 'overheads') must represent a fair apportionment of the overall overheads of the beneficiary and must comply with the conditions of eligibility set out in Article II.19.1.

Eligible indirect costs shall be declared on the basis of a flat rate as specified in Annex III in accordance with Article I.3.2 (a) (iv) and shall not exceed 7% of the eligible direct costs of the beneficiary, excluding costs of land purchase/long-term lease of land/one-off compensations for land use rights.

II.19.4 Ineligible costs

In addition to any other costs which do not fulfil the conditions set out in Article II.19.1, the following costs may not be considered eligible:

- (a) return on capital and dividends paid by a beneficiary;
- (b) debt and debt service charges;
- (c) provisions for losses or debts;
- (d) interest owed;
- (e) doubtful debts;
- (f) exchange losses;
- (g) costs of transfers from the Agency/Commission charged by the bank of a beneficiary;
- (h) costs declared by the beneficiary under another project receiving a grant financed from the Union budget. Such grants include grants awarded by a Member State and

financed from the Union budget and grants awarded by bodies other than the Agency/Commission for the purpose of implementing the Union budget. In particular, beneficiaries receiving an operating grant financed by the EU or Euratom budget cannot declare indirect costs for the period(s) covered by the operating grant, unless they can demonstrate that the operating grant does not cover any costs of the project.

- (i) contributions in kind from third parties, including voluntary work;
- (j) excessive or reckless expenditure;
- (k) deductible VAT.
- (l) any costs related to actions that may be considered as compensatory or mitigation measures for damages¹⁵ caused to nature or biodiversity by permitted plans or projects;
- (m) unless explicitly foreseen in the project description in Annex II, any costs related to management plans, action plans and similar plans¹⁶, drafted or modified in the context of a LIFE project, if the related plan is not adopted and operational before the project end date. This includes the completion, before the project end date, of all procedural/legal steps in Member States where such procedures are foreseen;
- (n) costs for major infrastructure or fundamental scientific research unless explicitly foreseen in the project description in Annex II;

ARTICLE II.20 — IDENTIFIABILITY AND VERIFIABILITY OF THE AMOUNTS DECLARED

II.20.1 Declaring costs and contributions

Each beneficiary must declare as eligible costs or as a requested contribution:

- (a) for actual costs: the costs it actually incurred for the *project*;
- (b) for unit costs or unit contributions: Not applicable;
- (c) for lump sum costs or lump sum contributions: Not applicable;
- (d) for flat-rate costs or flat-rate contributions: the amount obtained by applying the flat rate specified in Article I.3.2(a)(iv) or (d);
- (e) for unit costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;
- (f) for lump sum costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;
- (g) for flat-rate costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;

¹⁵ Unless such damages would be caused by the objectives of the LIFE project itself.

¹⁶ Obligatory "After-LIFE plans" are not included in this category.

II.20.2 Records and other documentation to support the costs and contributions declared

Each beneficiary must provide the following if requested to do so in the context of the checks or audits described in Article II.27:

- (a) for actual costs: adequate supporting documents to prove the costs declared, such as contracts, invoices and accounting records.

In addition, the beneficiary's usual accounting and internal control procedures must permit direct reconciliation of the amounts declared with the amounts recorded in its accounting statements and with the amounts indicated in the supporting documents;

- (b) for unit costs or unit contributions: Not applicable;
- (c) for lump sum costs or lump sum contributions: Not applicable;
- (d) for flat-rate costs or flat-rate contributions: adequate supporting documents to prove the eligible costs or requested contribution to which the flat rate applies.
The beneficiary does not need to identify the actual eligible costs covered or to provide supporting documents, such as accounting statements, for the flat rate applied;
- (e) for unit costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;
- (f) for lump sum costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;
- (g) for flat-rate costs declared on the basis of the beneficiary's usual cost accounting practices: Not applicable;

II.20.3 Conditions to determine the compliance of cost accounting practices

Not applicable

ARTICLE II.21 — ELIGIBILITY OF COSTS OF ENTITIES AFFILIATED TO THE BENEFICIARIES

If the Special Conditions contain a provision on entities affiliated to the beneficiaries, costs incurred by such an entity are eligible, if:

- (a) they satisfy the same conditions under Articles II.19 and II.20 as apply to the beneficiary; and
- (b) the beneficiary to which the entity is affiliated ensures that the conditions applicable to the beneficiary under Articles II.4, II.5, II.6, II.8, II.10, II.11 and II.27 are also applicable to the entity.

ARTICLE II.22 — BUDGET TRANSFERS

Beneficiaries are allowed to adjust the estimated budget set out in Annex III by transfers between themselves, and up to a limit of 20% of the overall eligible costs between the different budget categories, if the *project* is implemented as described in Annex II. This adjustment does not require an amendment of the Agreement as provided for in Article II.13.

However, the beneficiaries may not add costs relating to *subcontracts* not provided for in Annex I, unless such additional *subcontracts* are approved by the Agency/Commission in accordance with Article II.11.1(d).

As an exception to the first subparagraph, if beneficiaries want to change the value of the contribution to which each of them is entitled, as referred to in point (c) of the third subparagraph of II.26.3, the coordinating beneficiary must request an amendment as provided for in Article II.13.

ARTICLE II.23 — NON-COMPLIANCE WITH REPORTING OBLIGATIONS

The Agency/Commission may terminate the Agreement as provided for in Article II.17.3.1(c) and may reduce the grant as provided for in Article II.25.4 if the coordinating beneficiary:

- (a) did not submit a request for interim payment or payment of the balance accompanied by the documents referred to in Articles I.4.3 or I.4.4 within 90 calendar days following the end of the corresponding reporting period; and
- (b) still fails to submit such a request within further 60 calendar days following a written reminder sent by the Agency/Commission.]

ARTICLE II.24 — SUSPENSION OF PAYMENTS AND TIME LIMIT FOR PAYMENT

II.24.1 Suspension of payments

II.24.1.1 Grounds for suspension

The Agency/Commission may at any moment suspend, in whole or in part, the pre-financing payment and interim payments for one or more beneficiaries or the payment of the balance for all beneficiaries:

- (a) if the Agency/Commission has evidence that a beneficiary has committed *substantial errors, irregularities* or *fraud* in the award procedure or while implementing the Agreement or if a beneficiary fails to comply with its obligations under the Agreement;
- (b) if the Agency/Commission has evidence that a beneficiary has committed systemic or recurrent errors, *irregularities, fraud* or serious breach of obligations in other grants funded by the Union or the European Atomic Energy Community ('Euratom') awarded to the beneficiary under similar conditions and such errors, *irregularities, fraud* or breach have a material impact on this grant; or
- (c) if the Agency/Commission suspects *substantial errors, irregularities, fraud* or breach of obligations committed by a beneficiary in the award procedure or while implementing the Agreement and needs to verify whether they have actually occurred.

II.24.1.2 Procedure for suspension

Step 1 — Before suspending payments, the Agency/Commission must send a *formal notification* to the coordinating beneficiary:

- (a) informing it of:

- (i) its intention to suspend payments;
- (ii) the reasons for suspension;
- (iii) in the cases referred to in points (a) and (b) of Article II.24.1.1, the conditions that need to be met for payments to resume; and

(b) inviting it to submit observations within 30 calendar days of receiving the *formal notification*.

Step 2 — If the Agency/Commission does not receive observations or decides to pursue the procedure despite the observations it has received, it must send a *formal notification* to the coordinating beneficiary informing it of:

- (a) the suspension of payments;
- (b) the reasons for suspension;
- (c) the final conditions under which payments may resume in the cases referred to in points (a) and (b) of Article II.24.1.1;
- (d) the indicative date of completion of the necessary verification in the case referred to in point (c) of Article II.24.1.1.

The coordinating beneficiary must immediately inform the other beneficiaries of the suspension. The suspension takes effect on the day the Agency/Commission sends *formal notification* of suspension (Step 2).

Otherwise, the Agency/Commission must send a *formal notification* to the coordinating beneficiary informing it that it is not continuing with the suspension procedure.

II.24.1.3 Effects of suspension

During the period of suspension of payments the coordinating beneficiary is not entitled to submit:

- (a) any requests for payments and supporting documents referred to in Articles I.4.2, I.4.3 and I.4.4; or
- (b) where the suspension concerns the pre-financing payments or interim payments for one or several beneficiaries only, any requests for payments and supporting documents relating to the participation of the concerned beneficiary or beneficiaries in the *project*.

The corresponding requests for payments and supporting documents may be submitted as soon as possible after resumption of payments or may be included in the first request for payment due following resumption of payments in accordance with the schedule laid down in Article I.4.1.

The suspension of payments does not affect the right of the coordinating beneficiary to suspend the implementation of the *project* as provided for in Article II.16.1 or to terminate the Agreement or the participation of a beneficiary as provided for in Articles II.17.1 and II.17.2.

II.24.1.4 Resuming payments

In order for the Agency/Commission to resume payments, the beneficiaries must meet the notified conditions as soon as possible and must inform the Agency/Commission of any progress made.

If the conditions for resuming payments are met, the suspension will be lifted. The Agency/Commission will send a *formal notification* to the coordinating beneficiary informing it of this.

II.24.2 Suspension of the time limit for payments

II.24.2.1 The Agency/Commission may at any moment suspend the time limit for payment specified in Articles I.4.9, I.4.10 and I.4.11 if a request for payment cannot be approved because:

- (a) it does not comply with the Agreement;
- (b) the appropriate supporting documents have not been produced; or
- (c) there is a doubt about the eligibility of the costs declared in the financial statements and additional checks, reviews, audits or investigations are necessary.

II.24.2.2 The Agency/Commission must send a *notification* to the coordinating beneficiary informing it of:

- (a) the suspension; and
- (b) the reasons for the suspension.

The suspension takes effect on the day the Agency/Commission sends the *notification*.

II.24.2.3 If the conditions for suspending the payment deadline are no longer met, the suspension will be lifted and the remaining period will resume.

If the suspension exceeds two months, the coordinating beneficiary may request the Agency/Commission if the suspension will continue.

If the payment deadline has been suspended because the technical reports or financial statements do not comply with the Agreement and the revised report or statement is not submitted or was submitted but is also rejected, the Agency/Commission may terminate the Agreement or the participation of the beneficiary as provided for in Article II.17.3.1(c) and reduce the grant as provided for in Article II.25.4.

ARTICLE II.25 — CALCULATION OF THE FINAL AMOUNT OF THE GRANT

The final amount of the grant depends on the extent to which the *project* has been implemented in accordance with the terms of the Agreement.

The final amount of the grant is calculated by the Agency/Commission at the time of the payment of the balance. The calculation involves the following steps:

Step 1 — Application of the reimbursement rate to the eligible costs and addition of the unit, flat-rate and lump sum contributions

Step 2 — Limit to the *maximum amount of the grant*

Step 3 — Reduction due to the no-profit rule

Step 4 — Reduction due to improper implementation or breach of other obligations.

II.25.1 Step 1 — Application of the reimbursement rate to the eligible costs and addition of the unit, flat-rate and lump sum contributions

This step is applied as follows:

- (a) If, as provided for in Article I.3.2(a), the grant takes the form of the reimbursement of eligible costs, the reimbursement rate specified in that Article is applied to the eligible costs of the *project* approved by the Agency/Commission for the corresponding categories of costs, beneficiaries and affiliated entities;
- (b) If, as provided for in Article I.3.2(b), the grant takes the form of a unit contribution, the unit contribution specified in that Article is multiplied by the actual number of units approved by the Agency/Commission for the beneficiary and its affiliated entities;
- (c) If, as provided for in Article I.3.2(c), the grant takes the form of a lump sum contribution, the Agency/Commission applies the lump sum specified in that Article for the beneficiary and its affiliated entities if it finds that the corresponding tasks or part of the *action* were implemented properly in accordance with Annex I;
- (d) If, as provided for in Article I.3.2(d), the grant takes the form of a flat-rate contribution, the flat rate referred to in that Article is applied to the eligible costs or to the contribution approved by the Agency/Commission for the beneficiary and its affiliated entities.

II.25.2 Step 2 — Limit to *maximum amount of the grant*

The total amount paid to the beneficiaries by the Agency/Commission may in no circumstances exceed the *maximum amount of the grant*.

If the amount obtained following Step 1 is higher than this maximum amount, the final amount of the grant is limited to the latter.

II.25.3 Step 3 — Reduction due to the no-profit rule

The grant may not produce a profit for the beneficiaries, unless specified otherwise in the Special Conditions.

‘Profit’ means the surplus of the amount obtained following Steps 1 and 2 plus the total receipts of the *project*, over the total eligible costs of the *project*.

The total eligible costs of the *project* are the consolidated total eligible costs approved by the Agency/Commission for the categories of costs reimbursed in accordance with Article I.3.2(a).

The total receipts of the *project* are the consolidated total receipts established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the coordinating beneficiary.

The following are considered receipts:

- (a) income generated by the *project*;
- (b) financial contributions given by third parties to a beneficiary or to an affiliated entity, if they are specifically assigned by the third parties to the financing of the eligible

costs of the *project* reimbursed by the Agency/Commission in accordance with Article I.3.2(a)(i).

The following are not considered receipts:

- (a) financial contributions by third parties, if they may be used to cover costs other than the eligible costs under the Agreement;
- (b) financial contributions by third parties with no obligation to repay any amount unused at the end of the *implementation period*.

If there is a profit, it will be deducted in proportion to the final rate of reimbursement of the actual eligible costs of the *project* approved by the Agency/Commission for the categories of costs referred to in Article I.3.2(a)(i). The deduction will be applied on the amount calculated following Steps 1 and 2.

II.25.4 Step 4 — Reduction due to improper implementation or breach of other obligations

The Agency/Commission may reduce the *maximum amount of the grant* if the *project* has not been implemented properly as described in Annex II (i.e. if it has not been implemented or has been implemented poorly, partially or late), or if another obligation under the Agreement has been breached.

The amount of the reduction will be proportionate to the degree to which the *project* has been implemented improperly or to the seriousness of the breach.

Before the Agency/Commission reduces the grant and except when the reduction is due to the non-respect of the 2% rule in Article II.19.2(a)(iii), it must send a *formal notification* to the coordinating beneficiary:

- (a) informing it of:
 - (i) its intention to reduce the *maximum amount of the grant*;
 - (ii) the amount by which it intends to reduce the grant;
 - (iii) the reasons for reduction;
- (b) inviting it to submit observations within 30 calendar days of receiving the formal notification.

If the Agency/Commission does not receive any observations or decides to pursue reduction despite the observations it has received, it will send a *formal notification* informing the coordinating beneficiary of its decision.

If the grant is reduced, the Agency/Commission must calculate the reduced grant amount by deducting the amount of the reduction (calculated in proportion to the improper implementation of the *project* or to the seriousness of the breach of obligations) from the *maximum amount of the grant*.

The final amount of the grant will be the lower of the following two:

- (a) the amount obtained following Steps 1 to 3; or
- (b) the reduced grant amount following Step 4.

ARTICLE II.26 — RECOVERY

II.26.1 Recovery at the time of payment of the balance

Where the payment of the balance takes the form of a recovery, the coordinating beneficiary must repay the Agency/Commission the amount in question, even if it was not the final recipient of the amount due. However, the Agency/Commission reserves the right, where appropriate, to recover the amount due directly from the final recipient.

II.26.2 Recovery after payment of the balance

Where an amount is to be recovered as provided for in Articles II.27.6, II.27.7 and II.27.8, the beneficiary concerned by the audit or OLAF findings must repay the Agency/Commission the amount in question. Where the audit findings do not concern a specific beneficiary (or its affiliated entities), the coordinating beneficiary must repay the Agency/Commission the amount in question, even if it was not the final recipient of the amount due.

Each beneficiary is responsible for the repayment of any amount unduly paid by the Agency/Commission as a contribution towards the costs incurred by its affiliated entities.

II.26.3 Recovery procedure

Before recovery, the Agency/Commission must send a *formal notification* to the beneficiary concerned:

- (a) informing it of its intention to recover the amount unduly paid;
- (b) specifying the amount due and the reasons for recovery; and
- (c) inviting the beneficiary to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the Agency/Commission decides to pursue the recovery procedure, the Agency/Commission may confirm recovery by sending a *formal notification* to the beneficiary consisting of a debit note, specifying the terms and the date for payment.

If payment has not been made by the date specified in the debit note, the Agency/Commission will recover the amount due:

- (a) by offsetting it, without the beneficiary's prior consent, against any amounts owed to the beneficiary by the Agency, the Commission or an executive agency (from the Union or the European Atomic Energy Community (Euratom) budget) ('offsetting');

In exceptional circumstances, to safeguard the financial interests of the Union, the Agency/Commission may offset before the due date.

An action may be brought against such offsetting before the General Court of the European Union in accordance with Article 263 TFEU;

- (b) by drawing on the financial guarantee where provided for in accordance with Article I.4.9 ('drawing on the financial guarantee');
- (c) by holding the beneficiaries jointly and severally liable up to the maximum EU contribution indicated, for each beneficiary, in the estimated budget (Annex III as last amended);
- (d) by taking legal action as provided for in Article II.18.2 or in the Special Conditions or by adopting an enforceable decision as provided for in Article II.18.3.

II.26.4 Interest on late payment

If payment is not made by the date in the debit note, the amount to be recovered will be increased by late-payment interest at the rate set out in Article I.4.13 from the day following the date for payment in the debit note up to and including the date the Agency/Commission receives full payment of the amount.

Partial payments must first be credited against charges and late-payment interest and then against the principal.

II.26.5 Bank charges

Bank charges incurred in the recovery process must be borne by the beneficiary concerned, unless Directive 2007/64/EC¹⁷ applies.

ARTICLE II.27 — CHECKS, AUDITS AND EVALUATIONS

II.27.1 Technical and financial checks, audits, interim and final evaluations

The Agency/Commission may, during the implementation of the *project* or afterwards, carry out technical and financial checks and audits to determine that the beneficiaries are implementing the *project* properly and are complying with the obligations under the Agreement. It may also check the beneficiaries' statutory records for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

Information and documents provided as part of checks or audits must be treated on a confidential basis.

In addition, the Agency/Commission may carry out an interim or final evaluation of the impact of the *project*, measured against the objective of the Union programme concerned.

Agency/Commission checks, audits or evaluations may be carried out either directly by the Agency/Commission's own staff or by any other outside body authorised to do so on its behalf.

¹⁷ Directive 2007/64/EC¹⁷ of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

The Agency/Commission may initiate such checks, audits or evaluations during the implementation of the Agreement and during a period of five years starting from the date of payment of the balance. This period is limited to three years if the *maximum amount of the grant* is not more than EUR 60,000.

The check, audit or evaluation procedures are considered to be initiated on the date of receipt of the letter of the Agency/Commission announcing it.

If the audit is carried out on an affiliated entity, the beneficiary concerned must inform that affiliated entity.

II.27.2 Duty to keep documents

The beneficiaries must keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when they are authorised by their respective national law and under the conditions laid down therein, during a period of five years starting from the date of payment of the balance.

The period during which documents must be kept is limited to three years if the *maximum amount of the grant* is not more than EUR 60,000.

The periods set out in the first and second subparagraphs are longer if there are ongoing audits, appeals, litigation or pursuit of claims concerning the grant, including in the cases referred to in Article II.27.7. In such cases, the beneficiaries must keep the documents until such audits, appeals, litigation or pursuit of claims have been closed.

II.27.3 Obligation to provide information

Where a check, audit or evaluation is initiated before the payment of the balance, the coordinating beneficiary must provide any information, including information in electronic format, requested by the Agency/Commission or by any other outside body authorised by the Agency/Commission. Where appropriate, the Agency/Commission may request that a beneficiary provides such information directly.

Where a check or audit is initiated after payment of the balance, the information referred to in the previous subparagraph must be provided by the beneficiary concerned.

If the beneficiary concerned does not comply with the obligations set out in the first and second subparagraphs, the Agency/Commission may consider:

- (a) any cost insufficiently substantiated by information provided by the beneficiary as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the beneficiary as undue.

II.27.4 On-the-spot visits

During an on-the-spot visit, the beneficiaries must allow Agency/Commission staff and outside personnel authorised by the Agency/Commission to have access to the sites and premises where the *project* is or was carried out, and to all the necessary information, including information in electronic format.

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

If the beneficiary concerned refuses to provide access to the sites, premises and information as required in the first and second subparagraphs, the Agency/Commission may consider:

- (a) any cost insufficiently substantiated by information provided by the beneficiary as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the beneficiary as undue.

II.27.5 Contradictory audit procedure

On the basis of the findings made during the audit, a provisional report ('draft audit report') must be drawn up. It must be sent by the Agency/Commission or its authorised representative to the beneficiary concerned, which must have 30 calendar days from the date of receipt to submit observations. The final report ('final audit report') must be sent to the beneficiary concerned within 60 calendar days of expiry of the time limit for submission of observations.

II.27.6 Effects of audit findings

On the basis of the final audit findings, the Agency/Commission may take the measures it considers necessary, including recovery at the time of payment of the balance or after payment of the balance of all or part of the payments made by it, as provided for in Article II.26.

In the case of final audit findings after the payment of the balance, the amount to be recovered corresponds to the difference between the revised final amount of the grant, determined in accordance with Article II.25, and the total amount paid to the beneficiaries under the Agreement for the implementation of the *project*.

II.27.7 Correction of systemic or recurrent errors, irregularities, fraud or breach of obligations

II.27.7.1 The Agency/Commission may extend audit findings from other grants to this grant if:

- (a) the beneficiary concerned is found to have committed systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations in other EU or Euratom grants awarded under similar conditions and such errors, *irregularities*, *fraud* or breach have a material impact on this grant; and
- (b) the final audit findings are sent to the beneficiary concerned through a *formal notification*, together with the list of grants affected by the findings within the period referred to in Article II.27.1

The extension of findings may lead to:

- (a) the rejection of costs as ineligible;
- (b) reduction of the grant as provided for in Article II.25.4;
- (c) recovery of undue amounts as provided for in Article II.26;

- (d) suspension of payments as provided for in Article II.24.1;
- (e) suspension of the *project* implementation as provided for in Article II.16.2;
- (f) termination as provided for in Article II.17.3.

II.27.7.2 The Agency/Commission must send a *formal notification* to the beneficiary concerned informing it of the systemic or recurrent errors and of its intention to extend the audit findings, together with the list of grants affected.

- (a) If the findings concern eligibility of costs the procedure is as follows:

Step 1 — The *formal notification* must include:

- (i) an invitation to submit observations on the list of grants affected by the findings;
- (ii) a request to submit revised financial statements for all grants affected;
- (iii) where possible, the correction rate for extrapolation established by the Agency/Commission to calculate the amounts to be rejected on the basis of the systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations, if the beneficiary concerned:
 - considers that the submission of revised financial statements is not possible or practicable; or
 - will not submit revised financial statements.

Step 2 — The beneficiary concerned has 60 calendar days from when it receives the *formal notification* to submit observations and revised financial statements or to propose a duly substantiated alternative correction method. This period may be extended by the Agency/Commission in justified cases.

Step 3 — If the beneficiary concerned submits revised financial statements that take account of the findings the Agency/Commission will determine the amount to be corrected on the basis of those revised statements.

If the beneficiary proposes an alternative correction method and the Agency/Commission accepts it, the Agency/Commission must send a *formal notification* to the beneficiary concerned informing it:

- (i) that it accepts the alternative method;
- (ii) of the revised eligible costs determined by applying this method.

Otherwise the Agency/Commission must send a *formal notification* to the beneficiary concerned informing it:

- (i) that it does not accept the observations or the alternative method proposed;
- (ii) of the revised eligible costs determined by applying the extrapolation method initially notified to the beneficiary.

If the systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations are found after the payment of the balance, the amount to be recovered corresponds to the difference between:

- (i) the revised final amount of the grant, determined in accordance with Article II.25 on the basis of the revised eligible costs declared by the beneficiary and approved by the Agency/Commission or on the basis of the revised eligible costs after extrapolation; and
- (ii) the total amount paid to the beneficiaries under the Agreement for the implementation of the *project*;

(b) If the findings concern improper implementation or a breach of another obligation the procedure is as follows:

Step 1 — The *formal notification* must include:

- (i) an invitation to the beneficiary to submit observations on the list of grants affected by the findings and
- (ii) the correction flat rate the Agency/Commission intends to apply to the *maximum amount of the grant* or to part of it, according to the principle of proportionality.

Step 2 — The beneficiary concerned has 60 calendar days from receiving the *formal notification* to submit observations or to propose a duly substantiated alternative flat-rate.

Step 3 — If the Agency/Commission accepts the alternative flat rate proposed by the beneficiary, it must send a *formal notification* to the beneficiary concerned informing it:

- (i) that it accepts the alternative flat-rate;
- (ii) of the corrected grant amount by applying this flat rate.

Otherwise the Agency/Commission must send a *formal notification* to the beneficiary concerned informing it:

- (i) that it does not accept the observations or the alternative flat rate proposed;
- (ii) of the corrected grant amount by applying the flat rate initially notified to the beneficiary.

If the systemic or recurrent errors, *irregularities*, *fraud* or breach of obligations are found after the payment of the balance, the amount to be recovered corresponds to the difference between:

- (i) the revised final amount of the grant after flat-rate correction; and
- (ii) the total amount paid to the beneficiaries under the Agreement for the implementation of the *project*.

II.27.8 Checks and inspections by OLAF

The European Anti-Fraud Office (OLAF) has the same rights as the Agency/Commission, particularly the right of access, for the purpose of checks and investigations.

Under Council Regulation (Euratom, EC) No 2185/96¹⁸ and Regulation (EU, Euratom) No 883/2013¹⁹ OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against *fraud* and other *irregularities*.

Where appropriate, OLAF findings may lead to the Agency/Commission recovering amounts from beneficiaries.

Moreover, findings arising from an OLAF investigation may lead to criminal prosecutions under national law.

II.27.9 Checks and audits by the European Court of Auditors

The European Court of Auditors has the same rights as the Agency/Commission, particularly the right of access, for the purpose of checks and audits.

¹⁸ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

¹⁹ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF).