

ANNEX VII - FORM D - TERMS OF REFERENCE FOR THE CERTIFICATE OF FINANCIAL STATEMENTS

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Terms of Reference for an Independent Report of Factual Findings on costs claimed under a Grant Agreement financed under the Seventh Research Framework Programme (FP7)

The following are the terms of reference ('ToR') on which *<name of the Beneficiary>* 'the Beneficiary' agrees to engage *< name of the audit firm>* 'the Auditor' to provide an Independent Report of Factual Findings on costs claimed and to report in connection with a European Community/European Atomic Energy Community financed grant agreement concerning the Seventh Research Framework Programme (FP7), concerning *< title and number of the grant agreement>* (the 'Grant Agreement'). Where in these ToR the 'European Commission' is mentioned this refers to its quality as signatory of the Grant Agreement with the Beneficiary. The European Community is not a party to this engagement.

1.1 Responsibilities of the Parties to the Engagement

'**The Beneficiary**' refers to the legal entity that is receiving the grant and that has signed the Grant Agreement with the European Commission.

- The Beneficiary is responsible for providing a Financial Statement¹ for the Action financed by the Grant Agreement and for ensuring that this Financial Statement can be properly reconciled to the Beneficiary's accounting and bookkeeping system and to the underlying accounts and records. Notwithstanding the procedures to be carried out, the Beneficiary remains at all times responsible and liable for the accuracy of the Financial Statement
- The Beneficiary accepts that the ability of the Auditor to perform the procedures required by this engagement effectively depends upon the Beneficiary, providing full and free access to the Beneficiary's staff and its accounting and other relevant records.

'**The Auditor**' refers to the Auditor who is responsible for performing the agreed-upon procedures as specified in these ToR, and for submitting an independent report of factual findings to the Beneficiary.

The Auditor must be independent from the Beneficiary.

- [*Option 1: delete if not applicable*] The Auditor is qualified to carry out statutory audits of accounting documents in accordance with the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC or similar national regulations.
- [*Option 2: delete if not applicable*] The Auditor is a Competent Public Officer for which the relevant national authorities have established the legal capacity to audit the Beneficiary and has not been involved in the preparation of the financial statements.

1.2 Subject of the Engagement

The subject of this engagement is the *<interim or final; delete what is not applicable>* Financial Statement in connection with the Grant Agreement for the period covering *<dd Month yyyy to dd Month yyyy>*.

1.3 Reason for the Engagement

The Beneficiary is required to submit to the European Commission a certificate on financial statements produced by an external auditor in support of the payment requested by the Beneficiary under Article II.4 of the Grant Agreement. The Authorising Officer of the Commission requires this

¹ Financial Statement in this context refers solely to Form C - Annex VI by which the Beneficiary claims costs under the Grant Agreement.

certificate as he makes the payment of costs requested by the Beneficiary conditional on the factual findings of this report.

1.4 Engagement Type and Objective

This constitutes an engagement to perform specific agreed-upon procedures regarding an Independent Report of Factual Findings on costs claimed under the Grant Agreement.

As this engagement is not an assurance engagement the Auditor does not provide an audit opinion and expresses no assurance. The European Commission derives its assurance by drawing its own conclusions from the factual findings reported by the Auditor on the Financial Statement and the payment request of the Beneficiary relating thereto.

The Auditor shall include in its report that no conflict of interest exists between it and the Beneficiary in establishing this report, as well as the fee paid to the Auditor for providing the report.

1.5 Scope of Work

1.5.1 The Auditor shall undertake this engagement in accordance with these ToR and:

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

1.5.2 Planning, procedures, documentation and evidence

The Auditor should plan the work so that the procedures can be effectively performed. For this purpose he performs the procedures specified in 1.9 of these Terms of Reference ('Scope of Work – Compulsory Report Format and Procedures to be Performed') and uses the evidence obtained from these procedures as the basis for the report of factual findings.

1.6 Reporting

The Report of Factual Findings should describe the purpose and the agreed-upon procedures of the engagement in sufficient detail in order to enable the Beneficiary and the European Commission to understand the nature and extent of the procedures performed by the Auditor. Use of the reporting format attached as Annex VII of the Grant Agreement is compulsory. The report should be written in the language indicated in Article II.4 of the Grant Agreement. In accordance with Article II.22 of the Grant Agreement, the European Commission and the Court of Auditors have the right to audit any work carried out under the project for which costs are claimed from the Community, including the work related to this engagement.

1.7 Timing

The report should be provided by [DATE].

1.8 Other Terms

[The Beneficiary and the Auditor can use this section to agree other specific terms such as Auditor's fees, out of pocket expenses, etc.]

1.9 Scope of Work – Compulsory Report Format and Procedures to be Performed**Model Independent Report of Factual Findings****Addressed to**

[full name and the address of the beneficiary concerned]

We *[legal name of the audit firm]*, established in *[full address/city/state/province/country]* represented for signature of this report by *[name and function of an authorised representative]*, hereby state that:

Objective

We have performed agreed-upon procedures regarding the cost declared in the Financial Statement(s) of *[name of beneficiary]* hereinafter referred to as the Beneficiary, to which this report is attached, and which is to be presented to the Commission of the European Communities under grant agreement *[EC grant agreement reference: title, acronym, number]* for the following period(s) *[insert period(s) covered by the Financial Statement(s) per Activity]*.

Scope of Work

This engagement involved performing certain specified procedures, the results of which the European Commission uses to draw conclusions as to the eligibility of the costs claimed.

We confirm that our engagement was carried out in accordance with :

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

As requested, we have only performed the procedures set out in the terms of reference for this engagement and we have reported our factual findings on those procedures in the table appended to this Report.

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

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

Had we performed additional procedures or had we performed an audit or review of the financial statements of the Beneficiary in accordance with International Standards on Auditing, other matters might have come to our attention that would have been reported to you.

Sources of Information

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

Factual Findings

The above mentioned Financial Statement(s) per Activity was (were) examined and all procedures specified in the appended table for our engagement were carried out. On the basis of the results of these procedures, we can confirm:

- That all documentation and accounting information to enable us to carry out these procedures has been provided to us by the Beneficiary;
- In some cases, the Auditor was not able to successfully complete the procedures specified. These exceptions are as follows:

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

- For the other procedures the factual findings did not give rise to any exceptions.

Use of this Report

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

This report is prepared solely for the confidential use of the Beneficiary and the European Commission and solely for the purpose of submission to the European Commission in connection with the requirements as set out in Article II.4.4 of the Grant Agreement. This report may not be relied upon by the Beneficiary or by the European Commission for any other purpose, nor may it be distributed to any other parties. The European Commission may only disclose this Report to others who have regulatory rights of access to it, in particular the European Anti Fraud Office and the European Court of Auditors.

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

No conflict of interest exists between the Auditor and the Beneficiary in establishing this report. The fee paid to the Auditor for providing the report was €_____.

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

[legal name of the audit firm]

[[name and function of an authorised representative]

Procedures performed by the Auditor

The Auditor designs and carries out his work in accordance with the objective and scope of this engagement and the procedures to be performed as specified below. When performing these procedures the Auditor may apply techniques such as inquiry and analysis, (re)computation, comparison, other clerical accuracy checks, observation, inspection of records and documents, inspection of assets and obtaining confirmations.

The European Commission reserves the right to issue guidance together with example definitions and findings to guide the Auditor in the nature and presentation of the facts to be ascertained. The European Commission reserves the right to vary the procedures by written notification to the Beneficiary. The procedures to be performed are listed as follows:

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

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

Procedures	Required factual finding
Indirect costs	
<p>10. Obtain and review a detailed breakdown of overheads (reconciled to the financial accounts) and confirm that the following costs are not present:</p> <ul style="list-style-type: none"> a) identifiable indirect taxes including value added tax, b) duties, c) interest owed, d) provisions for possible future losses or charges, e) exchange losses, cost related to return on capital, f) costs declared or incurred, or reimbursed in respect of another Community project, g) debt and debt service charges, excessive or reckless expenditure². 	<p><u>Definition:</u></p> <p>The Auditor obtained the total overhead amount which was allocated and reconciled this to the accounting records for the period in question.</p> <p>The Auditor recalculated the ratio of overheads [<i>choose one</i>: as a percentage of personnel costs/ as an hourly rate] and agreed it to the rate used in the financial statement.</p> <p>The Auditor obtained a detailed breakdown from the accounting system of the overheads which have been charged to the contract, and reconciled the individual amounts to the general ledger of the Beneficiary.</p> <p>The Auditor observed that costs for the non-research activities of the Beneficiary, such as manufacturing, education, marketing of products or services, etc., had not been included in the calculation.</p> <p>For each element of the breakdown, the Auditor inquired with the Beneficiary as to whether it contained one of the ineligible costs specified (typical examples are leasing costs, loan charges, provisions for doubtful debt (but not normal accruals), local business and property taxes, customs duties, exchange losses from billing in a foreign currency).</p> <p>Only the types of excessive and reckless expenditure listed in the Commission's guidance should be considered, the Auditor is not required to exercise professional judgement or provide assurance in this matter.</p> <p>Amounts which do not meet the above criteria or where the Auditor is not provided with sufficient information in order to inspect and compare the types of cost should be listed (together with the amounts) as exceptions in the main report.</p>
<p>11. Assess use of a simplified method of calculation of overheads at the level of the legal entity.</p> <p>The Beneficiary may use a simplified method of calculation (either due to the lack of analytical accounting or legal requirement to use a form of cash-based accounting). This does not permit the use of a generalised estimate, or the use of a 'standard' rate that is not derived from the financial accounts of the period in question. Thus the rate (but not the methodology) should be updated for each accounting period.</p>	<p>The Beneficiary's accounting system does not permit overheads to be separately identified for the individual departments. [or]</p> <p>The Beneficiary's accounting system is cash-based and year-end adjustments are made using accounting estimates in order to charge certain accrued costs.</p> <p>The Auditor obtained the breakdown of overhead costs and the adjusting entries which are made together with the source of the relevant accounting entries.</p> <p>The Beneficiary provided the Auditor with underlying calculations showing the basis for additional accounting entries. The Auditor agreed these calculations to the relevant sources of management information.</p> <p>Any elements of a simplified calculation which represent percentage estimates which are cannot be compared to underlying data should be listed (together with the amounts) as exceptions in the main report.</p>

² Excessive or reckless expenditure as defined in guidance note to be issued by the Commission in 2007.

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Procedures	Required factual finding
12. Inspect and compare exchange rates into Euros	<p>The Auditor compared the exchange rates used for conversion with the applicable official exchange rates established by the European Communities, and the Beneficiary used [chose one]:</p> <ul style="list-style-type: none"> • the conversion rate of the date where the actual costs were incurred • the rate applicable on the first day of the month following the end of reporting period <p>Where rates cannot be agreed, an exception should be noted, (together with the amount) in the main report.</p>
<p>13. Identification of receipts</p> <p>The Beneficiary is obliged to deduct from its claim any receipts related to the project (income from events, rebates from suppliers, etc.)</p>	<p>The Auditor examined the relevant project accounts and obtained representations from the Beneficiary concerning possible sources of income connected with the project. On the basis of this examination and the representations for the Beneficiary the amounts included in the claim regarding receipts correctly reflect the position in the project accounting.</p> <p>Any discrepancies in the receipts noted in the accounts and those reported by the Beneficiary should be noted (together with the amount) as exceptions in the main report.</p>
<p>14. Identification of interest yielded on pre-financing</p> <p>The Beneficiary, when it the coordinator of the project, it is obliged to declare interest yielded on pre-financing</p>	<p>The Auditor examined the relevant project accounts with the interest shown in the bank statements.</p> <p>Any discrepancies in the interest noted in the accounts and those reported by the Beneficiary should be noted (together with the amount) as exceptions in the main report.</p>