



Education, Audiovisual and Culture Executive Agency

MEDIA Programme Unit

EUROPEAN COMMUNITY –"MEDIA 2007" PROGRAMME

Established by Decision N° 1718/2006/EC of the European Parliament and of the Council of 15 November 2006
(ref. Official Journal N° L 327 of 24 November 2006, page 12)

SUPPORT TO DEVELOP AN ACTION OF INTERACTIVE PRODUCTION

Category

AGREEMENT N° 2008 - XXXX –0717DE05XXXXX

The Education, Audiovisual and Culture Executive Agency ("the Agency"), acting under powers delegated by the Commission of the European Communities ("the Commission"), and represented by Mr. Constantin Daskalakis, Head of the Unit MEDIA, of the Executive Agency

on the one part, and

Company,

Legal address,

Post code,

Country

VAT number:, official registration N°:,

("the Beneficiary"), represented for the purposes of signature of this Agreement by Mr X, title,

of the other part,

hereafter referred to as "the parties to the Agreement"

HAVE AGREED:

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

Annex I Description of the Action

Annex II Estimated budget of the Action

Annex III Technical implementation reports and financial statements to be submitted

which form an integral part of this Agreement ("the Agreement").

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

I - SPECIAL CONDITIONS

ARTICLE I.1 - PURPOSE OF THE GRANT

- I.1.1 The Agency has decided to award a grant, under the terms and conditions set out in the Special Conditions, the General Conditions and the Annexes to the Agreement, which the beneficiary hereby declares that it has taken note of and accepts, for the action entitled [...] ("the action").
- I.1.2 The beneficiary accepts the grant and undertakes to do everything in his power to carry out the action as described in Annex I, acting on his own responsibility.

ARTICLE I.2 - DURATION

- I.2.1 The Agreement shall enter into force on the date when the last of the two parties signs.
- I.2.2 The action and the period of eligibility of costs shall begin on [the date of submission] and shall end 24 months after the signature of the Agreement or the end of the development **whichever is the earliest** (the closing date of the action).

By derogation, the costs pertaining to the acquisition of the rights on the action (included as budget heading "1" in the estimated budget of the action annexed hereto) may be eligible if incurred at the earliest 12 months before the date of submission of the application.

Any request for an extension to the period of eligibility of costs shall be authorised by the Agency on the basis of a written justification from the beneficiary presented **at least one month** before the end of the eligibility period. A maximum extension of 6 additional months may be granted.

The above mentioned periods shall be determined on the basis of calendar days.

ARTICLE I.3 - FINANCING THE ACTION

- I.3.1 The total cost of the action is estimated at XXX Euro, as shown in the estimated budget in Annex II. The estimated budget shall give a detailed breakdown of the costs that are eligible for Community funding under the terms of Article II.14, and of all receipts, so that receipts and costs balance.
- I.3.2 The total eligible costs of the action for which the Community grant is awarded are estimated at XXX Euro, as shown in the estimated budget in Annex II. Indirect costs are eligible for flat-rate funding of a maximum of 7% of the total direct costs eligible, subject to the conditions laid down in Article II.14.3.
- I.3.3 The Agency shall contribute a maximum of XXX Euro equivalent to XX% of the estimated total eligible costs indicated in Article I.3.2.

The final amount of the grant shall be determined as specified in Article II.17, without prejudice to Article II.19.

The Community grant may not finance the entire costs of the action. The amounts and sources of co-financing other than from the Community funds shall be set out in the estimated budget referred to in Article I.3.1.

1.3.4 Variations between headings are allowed without amendment and prior request to the Agency and will be considered by the Agency at reception of the final report, as long as these variations at headings level do not exceed 10% of the total of the eligible estimated budget. All expenses beyond the fixed limit will be rejected.

However, should a variation exceeding the limit described above be anticipated, the beneficiary may request an adjustment of the eligible estimated budget by transfers between headings provided that the nature and the implementation of the action are not affected.

The revised estimated budget, duly justified, has to be submitted by registered letter one month before the expenditure relating to the adjustment is incurred and an amendment must be signed.

Within one month of the request, the Agency reserves the right to accept or to refuse. Absence of a reply by the Agency for over one month is equivalent to acceptance of the request.

ARTICLE I.4- PAYMENT ARRANGEMENTS

I.4.1 Pre-financing:

Within 45 days of the date when the last of the two parties signs the Agreement, [Within 45 days of the receipt of a financial guarantee amounting to an amount equivalent of the pre-financing granted] a pre-financing payment of XXX Euro shall be made to the beneficiary representing 70% of the amount specified in Article I.3.3.

I.4.2 Further pre-financing payments:

Not applicable

I.4.3 Interim payment:

Not applicable

I.4.4 Payment of the balance:

The request for payment of the balance shall be accompanied by the final report specified in Article I.5.2 and II.15.4. The Agency shall have 45 days to approve or reject this final report or to request additional supporting documents or information under the procedure laid down in Article II.15.4. In that case the beneficiary shall have 30 days to submit the additional information or a new report.

A payment representing the balance of the grant determined in accordance with Article II.17 shall be made to the Beneficiary within 45 days following approval by the Agency of the final report detailed in Article I.5.2 accompanying the request for payment of the balance. The Agency may suspend the period for payment in accordance with the procedure in Article II.16.2.

ARTICLE I.5- SUBMISSION OF REPORTS AND OTHER DOCUMENTS

I.5.1 General rules

The provisions relating to the submission of the final report referred to in Article I.4 are contained in Annex III.

The Final Report and other documents referred to in Article I.4 must be submitted in one copy in one of the official languages of the European Community (preferably in English or in French) on the following dates:

- Final Report: within one month following the closing date of the action specified in Article I.2.2 or within one month after the end of the development whichever is the earliest.

Any extension to this deadline shall be requested by written demand, duly motivated and presented before the initial deadline by the beneficiary.

The Agency reserved its right to refuse any late request and to initiate the termination procedure mentioned in Article II.11.

Where accepted, the extension shall take the form of an exchange of letters between the beneficiary and the Agency.

I.5.2 Final report

The final report shall contain:

- a final financial statement of the costs incurred for the development of the action, following the structure of the estimated budget (Annex II). It shall be dated and certified as true by the Agreement signatory or other duly authorised representative and shall also be certified as true by an independent approved auditor. It shall be accompanied by

- a final technical report on the action's implementation containing:

- any further writer's agreements or option extensions;
- one final script [draft No. 1/2/3/4], storyboard, pilot or design document endorsed with the correct MEDIA Programme credit as defined in Article I.10.2;
- a co-financing plan and a financial and marketing plan;

ARTICLE I.6 - BANK ACCOUNT

Payments shall be made to the Bank Account, denominated in Euro, as indicated below:

Bank Name:
Branch address:
Precise denomination of the account holder:
Full Account Number:
IBAN N°:

This account must identify the payments made by the Agency.

If the total pre-financing payment exceeds 50 000 Euros and the funds paid to this account yield interest or equivalent benefits under the law of the State on whose territory the account is opened, such interest or benefits shall, if they are generated by pre-financing payments, be recovered by the Agency as specified in Article II.16.4

ARTICLE I.7 - GENERAL ADMINISTRATIVE PROVISIONS

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

For the Agency:
Mr. Constantin DASKALAKIS
Head of the MEDIA Unit
BOUR 3/30
Avenue du Bourget 1
B - 1140 Brussels
Belgium

Ordinary mail shall be considered to have been received by the Agency on the date on which it is formally registered by the Agency unit responsible referred to above. Email shall be considered received on the date it is received. However, if the beneficiary receives a reply asking to redirect the email, it shall not be considered received until the correctly redirected email is received.

For the beneficiary:
Contact Person
Position
Correspondence address

ARTICLE I.8 - LAW APPLICABLE AND COMPETENT COURT

I.8.1 The grant is governed by the terms of the agreement, the Community rules applicable and, on a subsidiary basis, by the law of Belgium relating to grants.

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

I 8.2 For beneficiaries who do not have their registered office within the European Union, the Grant is governed by the terms of the Agreement, and, on a subsidiary basis, by the law of Belgium relating to grants. The Courts of Brussels shall have exclusive jurisdiction for any dispute between parties with regards to its validity, its interpretation or its application

ARTICLE I.9 - DATA PROTECTION

All personal data contained in the Agreement shall be processed in accordance with Regulation (EC) N° 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely in connection with the implementation and follow up of the Agreement by the Agency's services, without prejudice to the possibility of passing the data to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community.

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

ARTICLE I.10 - OTHER SPECIAL CONDITIONS

I.10.1 Conditions of Call for Proposals

In the event that, after the signature of this Agreement, the beneficiary becomes ineligible with reference to the criteria set out in Decision N° 1718/2006/EC of the European Parliament and of the Council and specified in Call for Proposals N° 17/07, whether as to matters of facts or law, the Agency reserves the right to terminate this Agreement and ask the reimbursement of the grant already paid out.

The beneficiary confirms that it is fully aware of the conditions attached to the award of funding under Decision N° 1718/2006/EC of the European Parliament and of the Council and specified in the Call for Proposals N° 17/07 and that it accepts these conditions unreservedly.

The beneficiary warrants to the Agency and undertakes:

- a) that it is an Independent Production Company as defined in the Guidelines to the Call for Proposals N°17/07;
- b) that it is a company owned, whether directly or via majority control, by nationals of the Member States of the European Community or countries participating in the MEDIA 2007 Programme in accordance with the conditions laid down by Article 5 of the Decision N° 1718/2006/EC of the European Parliament and of the Council and is registered in one of those countries;
- c) that it has the full power and authority to enter into this Agreement and the person signing this Agreement is authorised to do so;
- d) that it possesses the requisite author's rights to produce the work concerned by the action;
- e) that the action is not produced in breach of any national regulations relating to exhibition as regards violence, racism or pornography;
- f) that it has fulfilled all prior contractual obligations with the Agency or the Commission and/or any of the action lines operating within the framework of MEDIA II (1996-2000) MEDIA Plus (2001-2006) and MEDIA 2007 (2007-2013) Programmes.
- g) That the development costs of the action have not been already co-financed by the European Commission or the Agency within the framework of the MEDIA Programme

I.10.2 Visibility of the Community support

Any communication or publication by the beneficiary about the action, including its website, shall indicate that the action has received funding from the European Community. Such acknowledgment shall be worded as follows: "with the support of the MEDIA Programme of the European Union" and be accompanied by the MEDIA logo and the European flag. The beneficiary shall use the logos, trademarks or items created by the Commission for these purposes and include the text provided by the Agency in the publications/catalogue of the action covered by this Agreement.

The beneficiary undertakes to supply to the Agency two copies of the interactive works resulting from the development of the action on the appropriate platform, together with a selection of stills, posters, photographs of the work, copies of major advertising leaflets and brochures from which the Agency may take and use extracts exclusively for non-commercial use for the promotion of the MEDIA Programme.

I.10.3 Amendments

By way of derogation from Article II.13.3, any request for amendment shall be authorised by the Agency on the basis of a written justification from the beneficiary presented at the latest one month before the end of the eligibility period.

I.10.4 Exchange rate applicable for the conversion of currencies into Euros

The beneficiary shall submit the payment requests in accordance with article I.4, including the underlying financial statements, in Euros. By way of derogation from Article II.16.1, any conversion of actual costs into Euros shall be made by the beneficiary at the monthly accounting rate established by the Commission and published on its website applicable on the month when the final financial statement is drafted.

I.10.5 Eligibility of financial costs

For sake of clarity, all financial costs directly connected with the action including interest paid for cash facilities or bank charges on bank transfers are considered as eligible costs within the meaning of Article II.14.1.

I.10.6 Prior authorisation for subcontracting

Within the framework of the present Agreement, article II.9.2.d shall not apply.

I.10.7 Eligible costs

The following direct costs are eligible provided that they satisfy the criteria set out in Article II.14:

Artistic Rights and Artistic Expenses:

- Pre-existing rights (acquisition of rights)
- Rights pertaining to the original work (author's rights)
- Rights pertaining to the adaptation of the work (author's rights)
- Rights pertaining to the dialogues (author's rights)
- Expenses pertaining to the script-writing consultant
- Author's rights (director)
- Expenses pertaining to specialised consultants
- Other rights (archives, pictures, archive documentation, sound documents, specific software)
- Expenses pertaining to translators

- Expenses pertaining to agents

Personnel and Social Security (the cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration):

- Production
- Direction
- Production Staff
- Other Personnel

Travel and Subsistence (travel and subsistence allowances for staff taking part in the actions, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission):

- Authors
- Head of Development and/or other personnel

Equipment:

- Location Scouting
- Production of pilots

Miscellaneous:

- Insurance
- Legal Services (consultant, registration)
- Approved Auditor
- Bank Charges
- Action's Presentation and Marketing

Overheads:

- General overheads (up to a maximum of 7% of the total eligible direct costs)

I.10.8 Abandonment of the action

The beneficiary shall at any time notify the Agency of its decision to abandon the action stating its reasons in writing. It shall provide within one month from this notification all documents as stated in Article I.5.2. Such reasons and documents must be approved by the Agency.

I.10.9 Transfer of Rights

a) Where the beneficiary transfers the majority of its rights, title and interest of the action or enters into Agreements whereby the effective control of the action is transferred to a third party without the Agency's consent, the Agency reserves the right to require the full reimbursement of the grant.

b) Should the beneficiary wish to assign by way of security the majority of the rights and/or interests on the action to a public institution or a related agency as a guarantee to their funding, it should seek the prior written approval of the Agency. The Agency reserves

the right to approve the assignment by way of security if the beneficiary proves in writing that such assignment constitutes a "conditio sine qua non" in order to access public funding.

II-GENERAL CONDITIONS

PART A: LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 - LIABILITY

II.1.1 The beneficiary shall have sole responsibility for complying with any legal obligations incumbent on it.

II.1.2 The Agency shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the agreement relating to any damage caused during the action's execution. Consequently, the Agency will not entertain any request for indemnity or reimbursement accompanying any such claim.

II.1.3 Except in cases of *force majeure*, the beneficiary shall make good any damage sustained by the Agency as a result of the execution or faulty execution of the action.

II.1.4 The beneficiary shall bear sole liability vis-à-vis third parties, including for damage of any kind sustained by them while the action is being carried out.

ARTICLE II.2 - CONFLICT OF INTERESTS

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

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

ARTICLE II.3 - OWNERSHIP/USE OF THE RESULTS

II.3.1 Unless stipulated otherwise in this agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the beneficiary.

II.3.2 Without prejudice to paragraph 1, the beneficiary grants the Agency/Commission the right to make free use of the results of the action as it deems fit, provided it does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights.

ARTICLE II.4 - CONFIDENTIALITY

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

ARTICLE II.5 - PUBLICITY

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

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

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

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

Upon a reasoned and duly substantiated request by the beneficiary, the Agency may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the beneficiary's security or prejudicing his commercial interests.

ARTICLE II.6 - EVALUATION

Whenever the Agency/Commission carries out an interim or final evaluation of the action's impact measured against the objectives of the Community programme concerned, the beneficiary undertakes to make available to the Agency/Commission and/or persons authorised by it all such documents or information as will allow the evaluation to be successfully completed and to give them the rights of access specified in Article II.19.

ARTICLE II.7 - SUSPENSION

II.7.1 The beneficiary may suspend implementation of the action if exceptional circumstances make this impossible or excessively difficult, notably in the event of *force majeure*. It shall inform the Agency without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

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

ARTICLE II.8 - FORCE MAJEURE

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

II.8.2 A party faced with *force majeure* shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.

II.8.3 Neither of the parties shall be held in breach of their obligations under the agreement if they are prevented from fulfilling them by *force majeure*. The parties shall make every effort to minimise any damage due to *force majeure*.

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

ARTICLE II.9 - AWARD OF CONTRACTS

II.9.1 If the beneficiary has to conclude contracts in order to carry out the action and they constitute costs of the action under an item of eligible direct costs in the estimated budget, it shall award the contract to the bid offering best value for money; in doing so it shall take care to avoid any conflict of interests.

II.9.2 Contracts as referred to in paragraph 1 may be awarded only in the following cases:

- (a) they may only cover the execution of a limited part of the action;
- (b) recourse to the award of contracts must be justified having regard to the nature of the action and what is necessary for its implementation;
- (c) the tasks concerned must be set out in Annex I and the corresponding estimated costs must be set out in detail in the budget in Annex II;
- (d) any recourse to the award of contracts while the action is under way, if not provided for in the initial grant application, shall be subject to prior written authorisation by the Agency;
- (e) the beneficiary shall retain sole responsibility for carrying out the action and for compliance with the provisions of the agreement. The beneficiary must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Agency under the agreement;
- (f) the beneficiary must undertake to ensure that the conditions applicable to it under Articles II.1, II.2, II.3, II.4, II.5, II.6, II.10 and II.19 of the agreement are also applicable to the contractor.

ARTICLE II.10 - ASSIGNMENT

Claims against the Agency may not be transferred.

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

In no circumstances shall such an assignment release the beneficiary from its obligations to the Agency.

ARTICLE II.11 – TERMINATION OF THE AGREEMENT

II.11.1 Termination by the beneficiary

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

II.11.2 Termination by the Agency

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

- (a) in the event of a change to the beneficiary's legal, financial, technical, organisational or ownership situation that is liable to affect the agreement substantially or to call into question the decision to award the grant;
- (b) if the beneficiary fails to fulfil a substantial obligation incumbent on it under the terms of the agreement, including its annexes;
- (c) in the event of force majeure, notified in accordance with Article II.8, or if the action has been suspended as a result of exceptional circumstances, notified in accordance with Article II.7;
- (d) if the beneficiary is declared bankrupt, is being wound up or is the subject of any other similar proceedings;
- (e) if a director or employee of the beneficiary is found guilty of an offence involving their professional conduct by a judgment having the force of *res judicata* or if they are guilty of grave professional misconduct proven by any justified means;
- (f) if the beneficiary is guilty of misrepresentation or submits reports inconsistent with reality to obtain the grant provided for in the agreement;

- (g) if the beneficiary has intentionally or by negligence committed a substantial irregularity in performing the agreement or in the event of fraud, corruption or any other illegal activity on the part of the beneficiary to the detriment of the European Communities' financial interests. A substantial irregularity consists of any infringement of a provision of an agreement or regulation resulting from an act or an omission on the part of the beneficiary which causes or might cause a loss to the Community budget.

II.11.3 Termination procedure

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

In the cases referred to in points (a), (b) and (d) of paragraph 2, the beneficiary shall have 30 days to submit its observations and take any measures necessary to ensure continued fulfilment of its obligations under the agreement. If the Agency fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the procedure shall continue to run.

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

If notice is not given in the cases referred to in points (c), (e), (f) and (g) of paragraph 2, termination shall take effect from the day following the date on which notification of the Agency's decision to terminate the agreement is received.

II.11.4 Effects of termination

In the event of termination, payments by the Agency shall be limited to the eligible costs actually incurred by the beneficiary up to the date when termination takes effect, in accordance with Article II.17. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

The beneficiary shall have 60 days from the date when termination takes effect, as notified by the Agency, to produce a request for final payment in accordance with Article II.15.4. If no request for final payment is received within this time limit, the Agency shall not reimburse the expenditure incurred by the beneficiary up to the date of termination and it shall recover any amount if its use is not substantiated by the technical implementation reports and financial statements approved by the Agency.

By way of exception, at the end of the period of notice referred to in paragraph 3, where the Agency is terminating the agreement on the grounds that the beneficiary has failed to produce the final technical implementation report and financial statement within the deadline stipulated in Article I.5 and the beneficiary has still not complied with this obligation within two months following the written reminder sent by the Agency by registered letter with advice of delivery or equivalent, the Agency shall not reimburse the expenditure incurred by the beneficiary up to the date on which the action ended and it shall recover any amount if its use is not substantiated by the technical implementation reports and financial statements approved by the Agency.

By way of exception, in the event of improper termination by the beneficiary or termination by the Agency on the grounds set out in points (e), (f) or (g) of paragraph 2, the Agency may require the partial or total repayment of sums already paid under the agreement on the basis of technical implementation reports and financial statements approved by the Agency, in proportion to the gravity of the failings in question and after allowing the beneficiary to submit his observations.

ARTICLE II.12 - FINANCIAL PENALTIES

By virtue of the Financial Regulation applicable to the general budget of the European Communities, any beneficiary declared to be in grave breach of its obligations shall be liable to financial penalties of between 2% and 10% of the value of the grant in question, with due regard for the principle of proportionality. This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first. The beneficiary shall be notified in writing of any decision by the Agency to apply such financial penalties.

ARTICLE II.13 - SUPPLEMENTARY AGREEMENTS

II.13.1 Any amendment to the grant conditions must be the subject of a written supplementary agreement. No oral agreement may bind the parties to this effect.

II.13.2 The supplementary agreement may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of applicants.

II.13.3 If the request for amendment is made by the beneficiary, he must send it to the Agency in good time before it is due to take effect and at all events one month before the closing date of the action, except in cases duly substantiated by the beneficiary and accepted by the Agency.

PART B - FINANCIAL PROVISIONS

ARTICLE II.14 - ELIGIBLE COSTS

II.14.1 Eligible costs of the action are costs actually incurred by the beneficiary, which meet the following criteria:

- they are incurred during the duration of the action as specified in Article I.2.2 of the agreement, with the exception of costs relating to final reports and certificates on the action's financial statements and underlying accounts;
- they are connected with the subject of the agreement and they are indicated in the estimated overall budget of the action;
- they are necessary for the implementation of the action which is the subject of the grant;
- they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost-accounting practices of the beneficiary;
- they comply with the requirements of applicable tax and social legislation;
- they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The beneficiary's internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents.

II.14.2 The eligible direct costs for the action are those costs which, with due regard for the conditions of eligibility set out in Article II.14.1, are identifiable as specific costs directly linked to performance of the action and which can therefore be booked to it direct. In particular, the following direct costs are eligible provided that they satisfy the criteria set out in the previous paragraph:

- the cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration.

The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the action concerned were not undertaken;

- travel and subsistence allowances for staff taking part in the action, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission;

- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the beneficiary and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account by the Agency, except where the nature and/or the context of its use justifies different treatment by the Agency;
- costs of consumables and supplies, provided that they are identifiable and assigned to the action;
- costs entailed by other contracts awarded by the beneficiary for the purposes of carrying out the action, provided that the conditions laid down in Article II.9 are met;
- costs arising directly from requirements imposed by the agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction, etc.), including the costs of any financial services (especially the cost of financial guarantees);

II.14.3 The eligible indirect costs for the action are those costs which, with due regard for the conditions of eligibility described in Article II.14.1, are not identifiable as specific costs directly linked to performance of the action which can be booked to it direct, but which can be identified and justified by the beneficiary using its accounting system as having been incurred in connection with the eligible direct costs for the action. They may not include any eligible direct costs.

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

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

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

II.14.5 Contributions in kind shall not constitute eligible costs. However, the Agency can accept, if considered necessary and appropriate, that the co-financing of the action referred to in Article I.3.3 should be made up entirely or in part of contributions in kind. In this case, the value calculated for such contributions must not exceed:

- the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the beneficiary free of charge but bear the corresponding costs;
- the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne.

Contributions involving buildings shall not be covered by this possibility.

In the case of co-financing in kind, a financial value shall be placed on the contributions and the same amount will be included in the costs of the action as ineligible costs and in receipts from the action as co-financing in kind. The beneficiary shall undertake to obtain these contributions as provided for in the agreement.

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

ARTICLE II.15 - REQUESTS FOR PAYMENT

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

II.15.1 Pre-financing

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

Where required by the provisions of Article I.4 on pre-financing, the beneficiary shall furnish a financial guarantee from a bank or an approved financial institution established in one of the Member States of the European Union.

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

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

II.15.2 Further pre-financing payments

Where pre-financing is divided into several instalments, the beneficiary may request a further pre-financing payment once it has used up the percentage of the previous payment specified in the provisions of Article I.4 on further pre-financing. The request shall be accompanied by the following documents:

- a detailed statement of the eligible costs actually incurred;
- where required by the above-mentioned provisions of Article I.4, a financial guarantee in accordance with paragraph 1;
- where required by the above-mentioned provisions of Article I.4, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer;

- any other documents in support of his request that may be required in support of the request for further pre-financing payments.

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

II.15.3 Interim payments

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

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

- an interim report on implementation of the action;
- an interim financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- where required by the provisions of Article I.4 on interim payment, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Agency, that the costs declared by the beneficiary in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the agreement.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.5 and the annexes. The beneficiary shall certify that the information provided in its request for payment is full, reliable and true. It shall also certify that the costs incurred can be considered eligible in accordance with the agreement, that all receipts have been declared, and that its request for payment is substantiated by adequate supporting documents that can be checked.

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

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

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

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The beneficiary shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The

beneficiary shall have the period laid down in Article I.4 to submit the information or new documents requested.

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

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

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

II.15.4 Payment of the balance

Payment of the balance, which may not be repeated, is made after the end of the action on the basis of the costs actually incurred by the beneficiary in carrying out the action. It may take the form of a recovery order where the total amount of earlier payments is greater than the amount of the final grant determined in accordance with Article II.17.

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

- a final report on the implementation of the action;
- a final financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- a full summary statement of the receipts and expenditure of the action;
- where required by the provisions of Article I.4 on payment of the balance, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor, or in case of public bodies by a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Agency, that the costs declared by the beneficiary in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the agreement.

The documents accompanying the request for payment shall be drawn up in accordance with the provisions of Article I.5 and the annexes. The beneficiary shall certify that the information provided in his request for payment is full, reliable and true. It shall also certify that the costs incurred can be considered eligible in accordance with the agreement, that all receipts have been declared, and that its request for payment is substantiated by adequate supporting documents that can be checked.

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

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

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

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

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

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

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

ARTICLE II.16 -GENERAL PROVISIONS ON PAYMENTS

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

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

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

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

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

Suspension shall take effect on the date when notice is sent by the Agency. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents

requested are received, or at the end of the suspension period as notified by the Agency.

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

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

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

II.16.4 The Agency shall deduct the interest yielded by pre-financing which exceeds EUR 50 000 as provided for in Article I.4 from the payment of the balance of the amount due to the beneficiary. The interest shall not be treated as a receipt for the action within the meaning of Article II.17.4.

Where the pre-financing payments exceed EUR 750 000 per agreement at the end of each financial year, the interest shall be recovered for each reporting period. Taking account of the risks associated with the management environment and the nature of actions financed, the Agency may recover the interest generated by pre-financing lower than EUR 750 000 at least once a year.

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

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

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

months following the notification of the decision to the applicant or, failing that, following the date on which the applicant learned of the decision.

ARTICLE II.17 - DETERMINING THE FINAL GRANT

II.17.1 Without prejudice to information obtained subsequently pursuant to Article II.19, the Agency shall adopt the amount of the final payment to be granted to the beneficiary on the basis of the documents referred to in Article II.15.4 which it has approved.

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

II.17.3 If the actual eligible costs when the action ends are lower than the estimated total eligible costs, the Agency's contribution shall be limited to the amount obtained by applying the Community grant percentage specified in Article I.3.3 to the actual eligible costs approved by the Agency.

II.17.4 The beneficiary hereby agrees that the grant shall be limited to the amount necessary to balance the action's receipts and expenditure and that it may not in any circumstances produce a profit for him.

Profit shall mean any surplus of total actual receipts attributable to the action over the total actual costs of the action. The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the beneficiary for financing other than the Community grant, to which shall be added the amount of the grant determined by applying the principles laid down in paragraphs 2 and 3 of this article. For the purposes of this article, only actual costs falling within the categories set out in the estimated budget referred to in Article I.3.1 and contained in Annex II shall be taken into account; non-eligible costs shall always be covered by non-Community resources.

Any surplus determined in this way shall result in a corresponding reduction in the amount of the grant.

II.17.5 Without prejudice to the right to terminate the agreement under Article II.11, and without prejudice to the right of the Agency to apply the penalties referred to in Article II.12, if the action is not implemented or is implemented poorly, partially or late, the Agency may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in this agreement.

II.17.6 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the agreement, the Agency shall set the amount of the payment of the balance as being the amount still owing to the beneficiary. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Agency shall issue a recovery order for the surplus.

ARTICLE II.18 - RECOVERY

II.18.1 If any amount is unduly paid to the beneficiary or if recovery is justified under the terms of the agreement, the beneficiary undertakes to repay the Agency the sum in question on whatever terms and by whatever date it may specify.

II.18.2 If the beneficiary fails to pay by the date set by the Agency, the sum due shall bear interest at the rate indicated in Article II.16.3. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

II.18.3 If payment has not been made by the due date, sums owed to the Agency may be recovered by offsetting them against any sums owed to the beneficiary, after informing him accordingly by registered letter with advice of delivery or equivalent, or by calling in the financial guarantee provided in accordance with Article II.15.1. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Communities, the Agency may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required.

II.18.4 Bank charges occasioned by the recovery of the sums owed to the Agency shall be borne solely by the beneficiary.

II.18.5 The beneficiary understands that under Article 256 of the Treaty establishing the European Community, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States. An action may be brought against such decision before the Court of First Instance of the European Communities.

ARTICLE II.19 - CHECKS AND AUDITS

II.19.1 The beneficiary undertakes to provide any detailed information requested by the Agency/Commission or by any other outside body authorised by it to check that the action and the provisions of the agreement are being properly implemented.

II.19.2 The beneficiary shall keep at the Agency's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the agreement for a period of five years from the date of payment of the balance specified in Article I.4.

II.19.3 The beneficiary agrees that the Agency or the Commission may have an audit of the use made of the grant carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the agreement until the balance is paid and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Agency.

II.19.4 The beneficiary undertakes to allow Agency or Commission staff and outside personnel authorised by the Agency/Commission the appropriate right of access to sites and premises where the action is carried out and to all the information, including

information in electronic format, needed in order to conduct such audits.

II.19.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and the Council, the European Anti-Fraud Office (OLAF) may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Community law for the protection of the financial interests of the European Communities against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Agency.

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

SIGNATURES

For the beneficiary
[name/forename/*function*]

For the Agency
[name/forename]

[signature]

[signature]

Done at [place], [date]

Done at Brussels, [date]

In duplicate in English.

DETAILED DESCRIPTION OF THE ACTION

I. Description of the Action

All operations prior to the preproduction of an interactive work (development), including : the acquisition of rights; writing and storyboarding; creation of programme content; definition of the initial visual concepts (personalities, backgrounds...) and sounds; realisation of a demo or the realisation of a playable prototype game for a console and computer before the signing of any production contract with a publisher; archive; the production budget; development of a financing plan; research and identification of industry partners, co-producers and financiers; production scheduling and planning up until delivery; initial marketing and sales plans.

II. Interactive work to be developed

Working title :

Source material Title and Author (if it is an adaptation)

Authors :

Category: Interactive

Production company :

Country of origin :