

GRANT AGREEMENT FOR PARTNERS– CLEAN SKY JU

ANNEX VI - FORM D - Terms of reference for the certificate of financial statements

The Terms of Reference should be completed by the Beneficiary and be agreed with the Auditor

The Independent Report of Factual Findings should be provided by the Auditor

Terms of Reference for an Independent Report of Factual Findings on costs claimed under the JU Grant Agreement

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 a Financial Statement(s)¹ prepared by the Beneficiary and to report in connection with the JU financed grant agreement, concerning <title and number of the grant agreement> (the 'Grant Agreement'). Where in these ToR the 'JU' is mentioned this refers to its quality as signatory of the Grant Agreement with the Beneficiary. The JU 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 JU².

- The Beneficiary is responsible for preparing a Financial Statement for the Action financed by the Grant Agreement in compliance with such agreements and providing it to the Auditor, 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 reliable for the accuracy of the Financial Statement.
- The Beneficiary is responsible for the factual statements which will enable the Auditor to carry out the procedures specified, and will provide the Auditor with a written representation letter supporting these statements, clearly dated and stating the period covered by the statements.
- 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.

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

² Where special clause 5 for the Clean Sky Model Grant Agreement for Partners applies, this Form shall be filled in also by Third Parties linked to a Beneficiary. In that case, the wording "the Beneficiary" shall be read as "the Third Party".

- [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.
- The procedures to be performed are specified by the *JU* and the Auditor is not responsible for the suitability and appropriateness of these procedures.

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 *JU* a certificate on a Financial Statement in the form of an independent report of factual findings 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 *JU* requires this Report 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 *JU* 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 *JU* 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, an example of which is attached to this ToR, should describe the purpose and the agreed-upon procedures of the engagement in sufficient detail in order to enable the *Beneficiary* and the *JU* to understand the nature and extent of the procedures performed by the Auditor. Use of the reporting format attached as Annex VI of the Grant Agreement is compulsory. The Report should be written in the language indicated in Article 4 of the Grant Agreement. In accordance with Article II.22 of the Grant Agreement, the *JU*, 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 *JU*, 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, liability, applicable law, etc.*]

1.9 Scope of Work – Compulsory Report Format and Procedures to be Performed

Independent Report of Factual Findings on costs claimed under the *JU* Grant Agreement)

To be printed on letterhead paper of the Auditor

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

< *Beneficiary's* name>

<Address>

<dd Month yyyy>

In accordance with our contract dated <dd Month yyyy> with <name of the *Beneficiary*> “the *Beneficiary*” and the terms of reference attached thereto (appended to this Report), we provide our Independent Report of Factual Findings (“the Report”), as specified below.

Objective

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

Scope of Work

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

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

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

³ Financial Statement in this context refers solely to Form C - Annex V by which the *Beneficiary* claims costs under the Grant Agreement.

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 found:

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

Exceptions

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

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

Use of this Report

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

This Report is prepared solely for the confidential use of the *Beneficiary* and the *JU* and solely for the purpose of submission to the *JU* 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 *JU* for any other purpose, nor may it be distributed to any other parties. The *JU* may only disclose this Report to others who have regulatory rights of access to it, in particular the European Commission, the European Anti Fraud Office and the European Court of Auditors.

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

No conflict of interest⁴ 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.

⁴ A conflict of interest arises when the auditor's objectivity to establish the certificate is compromised in fact or in appearance when the auditor for instance:

- was involved in the preparation of the Financial Statements (Forms C);
- stands to benefit directly should the certificate be accepted;
- has a close relationship with any person representing the *Beneficiary*;
- is a director, trustee or partner of the *Beneficiary*;
- is in any other situation that compromises his or her independence or ability to establish the certificate impartially.

[legal name of the audit firm]

[[name and function of an authorised representative]

<dd Month yyyy>, <Signature of the Auditor>

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 or any others deemed necessary in carrying out these procedures.

The *JU* 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 *JU* reserves the right to vary the procedures by written notification to the *Beneficiary*. The procedures to be performed are listed as follows:

| Procedures | Standard factual finding and basis for exception reporting |
|--|---|
| Personnel Costs | |
| <p>1. Recalculate hourly personnel and overhead rates for personnel (full coverage if less than 20 employees, otherwise a sample of minimum 20, or 20% of employees, whichever is the greater), indicate the number of productive hours used and hourly rates. Where sampling is used, selection should be random with a view to producing a representative sample. 'Productive hours' represent the (average) number of hours made available by the employee in a year after the deduction of holiday, sick leave and other entitlements. This calculation should be provided by the <i>Beneficiary</i>. [if average costs are used, a separate independent report is required on the methodology]</p> | <p>For each employee in the sample of ____, the Auditor obtained the personnel costs (salary and employer's costs) from the payroll system together with the productive hours from the time records of each employee.</p> <p>For each employee selected, the Auditor recomputed the hourly rate by dividing the actual personnel costs by the actual productive hours, which was then compared to the hourly rate charged by the <i>Beneficiary</i>.</p> <p>No exceptions were noted.</p> <p>The average number of productive hours for the employees selected was _____.</p> <p>If the productive hours or costs of personnel cannot be identified, they should be listed (together with the amounts) as exceptions in the main report.</p> |
| <p>2. For the same selection examine and describe time recording of employees (paper/ computer, daily/weekly/monthly, signed, authorised).</p> | <p>Employees record their time on a daily/ weekly/ monthly basis using a paper/computer-based system. The time-records selected were authorised by the project manager or other superior.</p> <p>If no time records are available which fit the above description, this should be listed as an exception in the main report.</p> |
| <p>3. Employment status and employment conditions of personnel. The Auditor should obtain the employment contracts of the employees selected and compare with the standard employment contract used by the <i>Beneficiary</i>. Differences which are not foreseen by the Grant Agreement should be noted as exceptions.</p> | <p>For the employees selected, the Auditor inspected their employment contracts and found that they were:</p> <ul style="list-style-type: none"> – directly hired by the <i>Beneficiary</i> 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 <i>Beneficiary</i>. <p>Personnel who do not meet all three conditions should be listed (together with the amounts) as exceptions in the main report.</p> |
| <p>4. Use of average personnel costs</p> | <p>The Auditor found that the personnel costs charged to the financial statement :</p> |

| Procedures | Standard factual finding and basis for exception reporting |
|--|---|
| | <p>- are calculated using average costs in accordance with the methodology as specified in the Report on the methodology dated XXX.</p> <p>- have been calculated using amounts derived from the relevant period which can be reconciled to the accounting records of the relevant period.</p> <p>The Auditor obtained confirmation from the <i>Beneficiary</i> that the rates used were not budgeted or estimated amounts.</p> <p>If amounts cannot be reconciled, or if estimated or budgeted amounts were used, this should be reported as an exception in the main report.</p> |
| Subcontracting | |
| <p>5. Obtain a written description from the <i>Beneficiary</i> regarding 3rd party resources used and compare with Annex I to the Grant Agreement.</p> | <p>The Auditor compared the description of the 3rd party resources provided by the <i>Beneficiary</i> to the specification in Annex 1 to the Grant Agreement, and found them to be the same</p> <p>If the descriptions do not clearly match, this should be reported as an exception in the main report.</p> |
| <p>6. Inspect documents and obtain confirmations that subcontracts are awarded according to a procedure including an analysis of best value for money (best price-quality ratio), transparency and equal treatment.</p> <p>Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.</p> | <p>The Auditor obtained tendering documents for each subcontract entered into and found that the tendering process was followed and that a written analysis of value-for-money had been prepared by the <i>Beneficiary</i> 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.</p> <p>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.</p> |
| Other Direct Costs | |
| <p>7. Allocation of equipment subject to depreciation is correctly identified and allocated to the project.</p> <p>Full coverage if less than 20 items, otherwise a sample of minimum 20, or 20% of the items, whichever is the greater.</p> | <p>The Auditor traced the equipment charged to the project to the accounting records and the underlying invoices. The <i>Beneficiary</i> 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 compared to the <i>Beneficiary's</i> normal accounting policy and found to be the same.</p> <p>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.</p> |
| <p>8. Travel costs correctly</p> | <p>The Auditor inspected the sample and found that the</p> |

| Procedures | Standard factual finding and basis for exception reporting |
|---|--|
| <p>identified and allocated to the project (and in line with <i>Beneficiary's</i> normal policy for non-JU/<i>Union</i> 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 <i>Beneficiary</i> 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.</p> | <p><i>Beneficiary</i> had allocated travel costs to the project by marking of invoices and purchase orders with the project reference, resulting in traceable allocation in the project accounts. The costs charged were compared to the invoices and found to be the same. No VAT or other identifiable indirect taxes were charged. The use of first class travel was in line with the written policy provided by the <i>Beneficiary</i>. 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.</p> |
| <p>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.</p> | <p>The Auditor inspected the sample and found that the <i>Beneficiary</i> had allocated consumable costs to the project by marking of invoices and purchase orders with the project reference, resulting in traceable allocation in the project accounts. The costs charged were compared to the invoices and found to be the same. No VAT 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.</p> |
| Indirect costs | |
| <p>10. Obtain and review a detailed breakdown of Indirect costs (reconciled to the accounting records) 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 | <p>The Auditor obtained the total overhead amount which was allocated and reconciled this to the accounting records for the period in question. The Auditor recalculated the ratio of indirect costs [as a percentage of personnel costs/ as a fixed personnel hourly rate / as another cost driver specified by the <i>Beneficiary</i>] and agreed it to the rate used in the Financial Statement(s). The Auditor obtained a detailed breakdown from the accounting system of the indirect costs which have been charged to the contract, and reconciled the individual amounts to the general ledger of the <i>Beneficiary</i>. The Auditor found that costs for the non-research activities of the <i>Beneficiary</i>, such as manufacturing,</p> |

⁵ Excessive or reckless expenditure as defined in guidance notes issued by the Commission.

| Procedures | Standard factual finding and basis for exception reporting |
|---|--|
| <p>reimbursed in respect of another <i>JU/Union</i> or Euratom project,</p> <p>g) debt and debt service charges, excessive or reckless expenditure⁵.</p> | <p>education, marketing of products or services, etc., had not been included in the calculation.</p> <p>For each element of the breakdown, the Auditor obtained the <i>Beneficiary's</i> confirmation that it contained none 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 <i>JU's</i> guidance should be considered, the Auditor is not required to exercise professional judgement or provide assurance in this matter. 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 <i>Beneficiary</i> 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 accounting records of the period in question. Thus the rate (but not the methodology) should be updated for each accounting period.</p> | <p>The <i>Beneficiary's</i> accounting system does not permit indirect costs to be separately identified for the individual departments. [and/ or]</p> <p>The <i>Beneficiary's</i> 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 together with the source of the relevant accounting entries.</p> <p>The <i>Beneficiary</i> 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 and which cannot be compared to underlying data should be listed (together with the amounts) as exceptions in the main report.</p> |
| <p>12. Inspect and compare exchange rates into Euros.</p> | <p>The Auditor compared the exchange rates used for conversion with the applicable official exchange rates established by the European Union and the <i>Beneficiary</i> used [choose 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 |

| Procedures | Standard factual finding and basis for exception reporting |
|---|---|
| | Where rates cannot be agreed, an exception should be noted, (together with the amount) in the main report. |
| 13. Identification of receipts. The <i>Beneficiary</i> is obliged to declare in its claim any receipts related to the project (income from events, rebates from suppliers, etc.) | The Auditor examined the relevant project accounts and obtained representations from the <i>Beneficiary</i> that the amounts listed represent a complete record of the sources of income connected with the project. The amount included in the claim regarding receipts is the same as the amount recorded in the project accounting. Any discrepancies in the receipts noted in the accounts and those reported by the Beneficiary should be noted (together with the amount) as exceptions in the main report. |
| 14. Identification of interest yielded on pre-financing. The <i>Beneficiary</i> , when it is the coordinator of the project, is obliged to declare interest yielded on pre-financing | The Auditor compared the relevant project accounts with the interest shown in the bank statements and found them to be the same. Any discrepancies in the interest noted in the accounts and those reported by the Beneficiary should be noted (together with the amount) as exceptions in the main report. |