

ANNEX II
General Conditions

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PART A: IMPLEMENTATION OF THE *PROJECT*

Article 1 - Definitions

“*Contracting parties*” means the Community and the *contractor(s)*.

“*Contractor*” means a legal entity, an international organisation or the Joint Research Centre (JRC), which has concluded this contract with the Community.

“*Coordinator*” means the *contractor* carrying out the tasks provided for in Article 2(1) of this Annex.

“*Member*” means a legal entity, an international organisation, or the JRC, other than a *contractor*, which has concluded a *membership agreement* signed with a *contractor* in agreement with the Community and in accordance with this contract and having, by virtue of that *membership agreement*, the same rights and obligations as the *contractor* unless the former stipulates otherwise¹.

“*Participant*” means the *contractors* and the *members*.

“*Membership agreement*” means the agreement concluded between the *participants* for the specific needs of the project in accordance with the conditions of this contract.

“*Subcontract*” means an agreement to provide services, supplies or goods concluded between a *participant* and one or more *subcontractors* for the specific needs of the *project*.

“*Subcontractor*” means a legal entity, an international organisation or the JRC, which has concluded a *subcontract*.

“*Project*” means all the work referred to in Annex I to this contract.

“*Project commencement date*” means the date referred to in Article 2(1) of this contract.

“*Duration of the project*” means the period of performance of the *project* as referred to in Article 2(1) of this contract.

“*Contract completion date*” means the date referred to in Article 2(2), subparagraph 2, of this contract.

“*Project deliverables*” means the reports and the financial statements referred to in Article 4 of this contract and Article 4 of this Annex as well as any element designated as such in Annex I to this contract.

“*Consortium*” means all the *contractors* and *members* participating in the *project* covered by this contract.

“*Consortium agreement*” means an agreement concluded between *contractors* in order to specify or supplement, between themselves, the provisions of this contract.

¹ As opposed to subcontractors, Members participate in the co-financing of the project. Eligible costs of Members exclude any profit margin in accordance with Article 13 of this Annex.

“*Associated State*” means a State which is party to an international agreement with the *Community*, under the terms or on the basis of which it makes a financial contribution to the eContent programme.

“*Third country*” means a country other than a Member State or an *Associated State*.

“*Change of control*” means any change in the control exercised over a *contractor*. Such control may result in particular from:

- direct or indirect holding of a majority of the share capital of the *contractor* or a majority of the voting rights of the latter's shareholders or associates,

or

- direct or indirect holding in fact or in law of decision-making powers in the *contractor*.

“*Force majeure*” shall mean any unforeseeable and exceptional situation or event beyond the control of the *Community* or the *participants* which prevents either of them from fulfilling any of their obligations under this contract, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence.

The “*interests of the Community*” are to be assessed in particular with regard to:

- the objective of strengthening the international competitiveness of Community industry,
- the objective of providing appropriate incentives for maintaining and creating jobs in the Community,
- the objective of promoting sustainable development and improving the quality of life in the Community,
- the needs of other Community policies in support of which indirect actions in the framework of the eContent programme are carried out,
- the existence of cooperation agreements between the Community and *third countries* or international organisations.

“*Knowledge*” means the results, including information, arising from a *project* as well as copyright or rights attaching to the results following applications for, or the issue or registration of, patents, designs and models, plant varieties, additional certificates or other similar forms of protection.

“*Pre-existing know-how*” means information, other than *knowledge*, held by the *participants* prior to the conclusion of the contract or the *membership agreement* or acquired in parallel with them and necessary for carrying out the *project*, as well as copyright or rights attaching to such information following applications for, or the issue or registration of, patents, designs and models, plant varieties, additional certificates or other similar forms of protection.

“*Complementary contract*” means a contract concluded with the Community in respect of work technically related to the *project*, including for *use* purposes, and recognised in writing by the *contractors* to each contract as being complementary.

“*Complementary contractor*” means a legal entity or an international organisation or the JRC, which has concluded a *complementary contract*.

“*Use*” means the direct or indirect use of *knowledge* for *exploitation* purposes.

“*Exploitation*” means the direct or indirect use of *knowledge* for creating and marketing a product or process or for creating and providing a service.

“*Dissemination*” means the disclosure of *knowledge* by any appropriate means other than the publication resulting from the formalities for protecting the *knowledge*, for the purposes of promoting technical progress.

“*Legitimate interest*” means any interest, in particular of a commercial nature, of a *participant* which may be invoked in the cases provided for in this Annex provided that he demonstrates that the damage to that interest is likely, given the circumstances, to cause a specific prejudice that is disproportionate, considering the objectives of the provision in respect of which it is invoked.

“*Eligible costs*” means the costs referred to in Articles 14 and 15 of this Annex, in compliance with the conditions set out in Articles 13(1) to (4) thereof.

“*Pre-financing*” means any part of the Community financial contribution which is paid in order to provide advance funds to permit the work on the *project* to begin, as specified in Article 3(1), point a) of this Annex.

“*Financial Regulation*” means the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the General Budget of the European Communities¹ and the Commission Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC) No 1605/2002 on the Financial Regulation applicable to the General Budget of the European Communities².

“*Receipts*” means financial transfers made available to a *contractor* by a third party to be used to carry out the *project*, and any income generated by the *project* itself, if generated during the life of the *project* or up to the time when the final financial statement is submitted to the Commission, whichever is later.

“*Irregularity*” means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a *contractor* or a *member* which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by it through unjustified expenditure.

Article 2 - Management of the *project* and role of the *coordinator*

1. Without prejudice to paragraph 2 of this Article, the *coordinator* shall be in charge of the technical, financial and administrative coordination of the *project*. In this respect,

¹ OJ L 248, 16.9.2002, p.1

² OJ L 357, 31.12.2002, p 1

- (a) he shall be the intermediary between the *contractors* and the Commission. In particular, he shall be responsible for transmitting to the Commission all documents and correspondence relating to the *project*;
- (b) he shall inform the Commission of the actual date of commencement of the work and of the person designated by each *contractor* in accordance with paragraph 2(b) of this Article;
- (c) he shall obtain and transmit to the Commission a copy of the *membership agreements* duly signed by the *participants* and shall verify that the *contractors* guarantee that those *agreements* are in conformity with this contract;
- (d) he shall submit to the Commission:
 - the financial statements provided for in Article 4 of this contract and Article 4 of this Annex,
 - the interim, final and supplementary reports provided for in Article 4 of this contract and Article 4 of this Annex after incorporating the content of the data provided by all the *participants* and verifying their consistency with the corresponding financial statements,
 - any other *project deliverable* except where Annex I to this contract provides otherwise;
- (e) in his capacity as representative of the *contractors* he shall receive, subject to the special conditions set out in Article 6 of this contract, all the payments made by the Commission to the account referred to in Article 3(4), first subparagraph, of this contract;
- (f) not being the beneficiary of payments intended for other *contractors* pursuant to this contract, he shall transfer to them within 30 days of receipt of the funds paid by the Commission the amount owing to them up to the maximum provided under Article 3(3) of this contract;

He shall inform the Commission of the distribution of the funds and of the date of transfer by means of the form in part E-3;

- (g) he shall inform the other *contracting parties* of any event liable to substantially affect the project of which he is aware, including any change in a person mentioned in paragraph 2(b) of this Article and any *change of control* with regard to a *participant*;
- (h) he shall inform the Commission of transfers of the estimated *eligible costs* set out in the 'Budget Table', between *contractors* and between categories, carried out in compliance with Article 13(5) of this Annex upon notification by those concerned.

Without prejudice to Article 7(3)(b) of this Annex, should the *coordinator* fail to meet his obligations, the Commission may, in agreement with the other *contractors*, designate another *coordinator* from among the *contractors*.

2. The *contractors* and *members* :
- (a) the *contractors* are the intermediaries between the *members* and the *coordinator* and, where appropriate, the Commission;
 - (b) the *participants* shall agree upon appropriate arrangements for the proper performance of the work incumbent upon them pursuant to Annex I to this contract. To this end, the *contractors* shall designate one or more persons who shall direct their work and ensure that the tasks assigned, including to the *members*, are correctly performed;
 - (c) the *contractors* shall conclude amongst themselves, if necessary, a *consortium agreement* in accordance with the provisions of this contract and the competition rules. Such agreement may, *inter alia*, specify the organisation of the work;
 - (d) the *contractors* shall inform the *coordinator* of any event liable substantially to affect the *project*, including any change of a person mentioned at point (b) of this paragraph and any *change of control* with regard to them;
 - (e) the *contractors* shall keep duly signed original copies of *subcontracts*, if any have been concluded;
 - (f) *contractors* shall forward to the *coordinator* the data needed to draw up the reports provided for in Article 4 of this contract and in Article 4 of this Annex and forward any corresponding financial statements. They shall do likewise in respect of any other *project deliverable*, except where Annex I provides otherwise;
 - (g) the *contractors* shall inform the *coordinator* of transfers of the estimated *eligible costs* set out in the 'Budget Table', between them and between categories, as soon as they have carried out such transfers in compliance with the conditions set out in Article 13(5) of this Annex;
 - (h) the *contractors* shall take part in meetings concerning the supervision, monitoring and evaluation of the *project* which are relevant to them;
 - (i) the *contractors* shall, including for their *members*, provide all detailed information requested by the Commission for the purposes of the proper administration of this contract; not being the beneficiaries of the payments intended for the *members* pursuant to this contract, the *contractors* shall transfer to them the amounts owing to them in accordance with the conditions of the *membership agreements* and Article 5 of this Annex.
3. The Commission may be assisted by independent experts in the framework of the meetings referred to under paragraph 2(h) of this Article.

It shall take appropriate steps to ensure that such experts treat confidentially the data that are communicated to them. Prior to such meetings, it shall communicate to the *contractors* the identity of the experts who are intended to assist it. It shall take account of any objection on the part of *participants* based on *legitimate interests*.

Article 3 - The Community financial contribution

1. The Community financial contribution shall be paid to the *coordinator* in accordance with the following principles:

- (a) A pre-financing shall be paid to the *coordinator* within a maximum period of 45 days running from the date of the last signature of the *contracting parties*. The period of 45 days may be suspended until the date of receipt by the Commission of all the *membership agreements* duly signed by the *participants*. The *coordinator* shall allocate the pre-financing in accordance with the table following the signatures to this contract.

If the *project* has not effectively commenced within three months of the payment of the pre-financing, the Commission may terminate the contract pursuant to Article 7(3)(a) of this Annex.

In accordance with the provisions of the *Financial Regulation*³, pre-financing granted to the *coordinator* on behalf of the *consortium* remains the property of the Communities.

The *coordinator* shall inform the Commission of the amount of any interest or equivalent benefits yielded by the pre-financing of the project he has received from the Commission. Notification must be made annually if the interest in question represents a significant amount, and in any event when the request for interim payment and the request for payment of the balance of the Community financial contribution are made. The interest is not to be considered as a receipt within the meaning of Article 1 of this Annex. It will be recovered by the Commission in accordance with Article 19 of this Annex.

- (b) Any interim payment shall be made within a maximum period of 45 days from the date on which the interim reports and any corresponding financial statements or other *project deliverables* have been approved by the Commission in accordance with the conditions laid down in Article 4(3), fourth subparagraph, of this Annex. The amounts of the interim payments shall be calculated on the basis of the *eligible costs* approved by the Commission.
- (c) The final payment of the Community financial contribution shall be made within a maximum period of 45 days from the date on which the last *project deliverable* has been approved by the Commission in accordance with the conditions laid down in Article 4(3), fourth subparagraph, of this Annex.

The final payment shall correspond to the difference between the costs owed by the Commission on the basis of the total amount of *eligible costs* which it has approved and the amount of the pre-financing and any interim payments.

However, the total amount paid to the *consortium* by the Commission may not in any circumstances exceed the maximum amount of the Community financial contribution laid down in Article 3(3) to the contract, even if the total

³ Article 5.4 of the Financial Regulation, OJ L 248, 16.9.2002, p.1 and articles 3 and 4 of the Commission Regulation laying down detailed rules for its implementation OJ L 357, 31.12.2002, p.1

actual *eligible costs* exceed the estimated total *eligible costs* specified in Article 3(2) to the contract. If the actual *eligible costs* when the *project* ends are lower than the estimated total *eligible costs*, the Community financial contribution shall be limited to the amount obtained by applying the Community financial contribution percentage, as specified in Article 3(3) to the contract, to the actual *eligible costs* approved by the Commission.

Without prejudice to the right to terminate the contract under Article 7 of this Annex, if the action is not implemented or is implemented poorly, partially or late, the Commission may reduce the grant initially provided for in line with the actual implementation of the work set out in Annex I.

The payments referred to at points (a) to (c) of the first subparagraph of this paragraph shall be regarded as having been effected on the date on which the Commission's account is debited.

The Commission may suspend the period of 45 days referred to under (b) and (c) of the first subparagraph of this paragraph at any time by notifying the *contractors* concerned that it considers that additional checks should be carried out. The period shall continue to run once the Commission has completed the additional checks.

Where no comments, changes or substantial corrections to any of the *project deliverables* are required or where the Commission approves the *project deliverables* more than 45 days after receipt, the Commission shall make the appropriate payment within 90 days of receipt of the *project deliverables*.

Where substantial comments, changes, further information or adjustments are requested by the Commission within this period, the delay is suspended upon notification by the Commission. The remainder of the 90 day payment period begins only after submission by the *coordinator* of the required information.

The payment of the Community financial contribution to the *coordinator* discharges the *Commission* from its obligation to make this payment to *contractors* and their *members*.

The *participants* hereby agree that the maximum Community financial contribution for each *participant* shall be limited to the amount necessary to balance their *receipts* and expenditure and that it may not in any circumstances produce a profit for them.

Any surplus of *receipts* shall result in a corresponding reduction in the amount of the Community financial contribution.

For the purposes of this Article, only actual costs falling within the categories set out in the indicative breakdown of the estimated *eligible costs* indicated in the 'Budget Table' shall be taken into account; non-*eligible costs* shall always be covered by non-Community resources.

In the event of late payment the *contractors* may claim interest, within two months of receipt of the payment. Interest shall be calculated at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C

series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date falls, plus three and a half percentage points.

Interest shall be payable for the time elapsed between expiry of the payment deadline and the date on which the payment has been made by the Commission. Date of payment is the date upon which the Commission's account is debited. Any such interest payment is not considered as part of the financial contribution of the Community established by the provisions of Article 3(3) of the contract. The suspension of payment by the Commission may not be considered as late payment.

2. Where the Commission suspects fraud or serious financial *irregularity* on the part of a *participant*, it may suspend payments or instruct the *coordinator* not to make any payment to the *contractor* concerned or involved with regard to one of his *members*. The *participant* shall remain bound by their contractual obligations pursuant to this contract.
3. Subject to Article 17 of this Annex, all payments shall be considered as final only after the last *project deliverable* is approved.
4. Where the total financial contribution due from the Community, taking into account any adjustments, including as a result of a financial audit as referred to in Article 17 of this Annex, is less than the total amount of the payments referred to in paragraph 1, first subparagraph, of this Article, the *contractors* and *members* concerned shall reimburse the difference in euro, within the time-limit set by the Commission in its request sent by registered letter with acknowledgement of receipt, in accordance with the provisions of Article 19 of this Annex.

Bank charges resulting from any reimbursement of sums due to the Community shall be borne exclusively by the *participant* concerned.

5. After the final implementation date, the termination of the contract or of the participation of a *contractor* or a *member*, the Commission may or shall, as appropriate, request from the *contractor* concerned, or from the *contractor* involved with regard to one of his *members*, reimbursement of the entire Community's financial contribution paid to it where fraud or serious financial *irregularities* are discovered in the course of an audit carried out in accordance with Article 17 of this Annex. Interest at the rate applied by the European Central Bank for its principal refinancing operations on the first calendar day of the month during which the *participant* concerned received the funds plus three and a half percentage points shall be added to the amount to be repaid. The interest shall cover the period between the receipt of the funds and their repayment.

Article 4 - Submission of *project deliverables* and of summary statements of amounts transferred by the *coordinator*

1. As regards reports:
 - (a) The following reports shall be submitted for approval by the Commission:
 - (i) interim reports containing information about the progress of work, resources employed, departures from the work schedule, and results,

- (ii) supplementary reports containing information required by Annex I to this contract,
 - (iii) a final report covering all the work, objectives, results and conclusions, including a summary of all the latter,
 - (iv) where the reports referred to in points (i), (ii) and (iii) cannot be published in full, they shall, in addition, be presented in a suitable form for publication by the *contracting parties*. The final report suitable for publication shall include sufficient information on new developments to enable third parties established in the Member States or in *Associated States* to be informed of opportunities to request licences in respect of *knowledge*.
- (b) The layout of the reports shall conform to the rules communicated by the Commission. The reports for publication should be of a suitable quality to enable direct reproduction.

2. As regards financial statements:

- (a) Costs incurred in currencies other than the euro shall be reported in euro on the basis of the conversion rate published in the Official Journal of the European Union applicable on the first day of the month following the end of the reporting period.
- (b) The *coordinator* and the *contractors* shall send two financial statements to the Commission through the *coordinator*: a statement of their own *eligible costs* in the format specified in part E-1 and an integrated financial statement in euro covering all the costs incurred by all their *members* in the format specified in part E-2/B.

In addition, the *coordinator* shall submit the corresponding integrated financial statements in euro in the format specified in part E-2/A. The conversion rate, as indicated in previous point (a), shall be indicated in the format specified in part E-1 and in the format specified in part E-2/B.

Each *contractor* or *member* receiving for this project a total Community financial contribution equivalent to EUR 150.000 or more shall request an external auditor to certify all of their final financial statements when submitting the final report. Interim financial statements shall also be accompanied by an audit certificate in all cases where the Community contribution claimed by the *participant* is equivalent to EUR 150.000 or more.

Each *contractor* or *member* is free to choose any external auditor, including their habitual external auditor, provided that they meet the cumulative following professional requirements:

- (i) the external auditor must be independent from the *contractor* or *member*
- (ii) the external auditor must be qualified to carry out statutory audits of accounting documents in accordance with the 8th Council Directive 84/253/EEC of 10 April 1984 or similar national regulations.

Where a *contractor* or *member* is a public body, they may opt for a competent public officer provided that the relevant national authorities have established his legal capacity to certify such document.

Certification by external auditors does not affect the liability of *contractors* or *members* according to this contract nor the rights of the Community arising out of Article 17 of this Annex.

- (c) Each *member* shall submit a financial statement to the *contractor* concerned in the format specified in part E-1.

Each *contractor* shall keep a copy of their *members'* financial statements for the purposes of auditing in accordance with Article 17 of this Annex.

Participants that do not benefit from a financial contribution from the Community are required to submit only a description of the efforts deployed and the resources used in order to carry out the *project*.

3. Each interim report and the corresponding financial statements, including the integrated financial statements, as well as, where appropriate, each supplementary report shall be submitted to the Commission within two months of the end of the period covered by the report.

The final report(s) and the financial statements for the final period, including the integrated financial statement, shall be submitted to the Commission within two months of the end of the *duration of the project*.

The other *project deliverables* shall be submitted by the deadlines specified in Annex I to this contract.

The Commission undertakes to evaluate the *project deliverables* within 45 days of receipt thereof. Where no comments, changes or substantial corrections to any of the *project deliverables* are required, the latter are deemed to be approved within 90 days of receipt.

4. The Commission reserves the right to withhold part or, exceptionally, all of the payment of the Community financial contribution until the period covered by the next financial statement in case of failure to submit, within the time-limit set out in paragraph 3 of this Article or in Annex I as relevant, a financial statement or a interim report or other *project deliverable*.

The Commission may decide not to make the payment corresponding to the costs incurred during the final period in case of failure to submit, within the time limit set out in paragraph 3 of this Article:

- the financial statements for the final period,
- the final report(s) or other *project deliverable(s)*

subject to one month's written notice of non-receipt of that document.

5. The *coordinator* shall attach to the financial statements the summary statements referred to in Article 2(1) point (f), second sentence, of this Annex. However, where they concern the transfer of the final payment of the Community financial contribution, the *coordinator* shall submit them immediately following such transfer.

Article 5 - Membership agreements and subcontracts

1. The *contractors* shall conclude a *membership agreement* with each of their *members*. No *member* may enjoy the benefits of this contract until his *membership agreement* has entered into force.

(a) When concluding *membership agreements*, the *contractor* shall ensure that:

(i) the *membership agreements* are in conformity with this contract,

(ii) that his *members*:

- perform the tasks assigned to them in accordance with Annex I to this contract,
- acquire identical rights to those of the *contractors* pursuant to this contract,
- receive their share of the Community financial contribution in accordance with the conditions of the *membership agreements* concluded in accordance with this Article after receipt of the funds paid by the Commission.

(b) The *membership agreement* shall be drawn up on the basis of the model in part F of this Annex.

A copy of the *membership agreements* duly signed by the authorised representatives of the *contractors* and of the *members* shall immediately be sent to the *coordinator*.

(c) The *contractors* must submit, with each interim report and with the final report, a list of all *their members*, specifying the date of entry into force or the date of termination of each *membership agreement*.

(d) The *contractor* shall include in the *membership agreement* appropriate provisions to enable the Commission or its authorised representatives as well as, where appropriate, the Court of Auditors, to carry out the financial audits and technical verifications in accordance with Articles 17 and 20 of this Annex.

2. In accordance with the procedure described in Article 14(3), second indent, of this Annex, *participants* may conclude *subcontracts* where this proves necessary for the performance of their work. They shall seek competitive tenders from potential contractors and award the contract to the bid offering best value for money; in doing so, they shall observe the principles of transparency and equal treatment of potential contractors and shall take care to avoid any conflict of interest.

Where a *subcontract* is concluded for the performance of coordination tasks, the related expenses may not be charged as direct costs.

Unless Annex I to this contract contains sufficient detailed data, the Commission's prior written approval is required:

(a) where the cumulative amount of the *subcontracts* of a *participant* exceeds:

- 20% of his estimated *eligible costs*,
- EUR 100 000,

whichever amount is the lower;

(b) where the subcontractor is established in a *third country*.

In the absence of observations within one month of receipt of the request made by the *coordinator*, the Commission's approval shall be deemed to be granted.

3. The *participant* shall ensure that *subcontracts* include an obligation for the *subcontractors*:
 - to submit invoices making reference to the *project* and giving details of the service or supply concerned,
 - to submit to the audits provided for in Articles 17 and 20 of this Annex.

The *participant* shall retain sole responsibility for carrying out the work set out in Annex 1 and for compliance with the provisions of the contract. They must undertake to make the necessary arrangements to ensure that the winner of the subcontract waives all rights in respect of the Commission under the contract.

Article 6 - Liability

1. The liability of the *contracting parties* amongst themselves with regard to any losses, *damages* or injuries suffered in the context of the performance of this contract shall be governed by the law indicated in Article 5(1) of the contract.
2. The *contractors* shall take all necessary and reasonable measures to carry out the work incumbent on a defaulting *contractor*. However, they shall not be required to reimburse amounts owed by a *contractor* unless they have contributed to the latter's defaulting.

The measures to be taken in the event of *force majeure* shall be agreed between the *contracting parties*. Any default of a product or service or delays in making them available (unless due to *force majeure*) for the purpose of performing this contract and affecting such performance including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties does not constitute *force majeure*.

3. The Community cannot be held liable for acts or omissions of the *participants* in the performance of this contract. It shall not be liable for any defects in respect of any products or services created on the basis of *knowledge* resulting from the *project*.

The participants shall bear sole responsibility for assessing that the use of acronyms within the framework of this contract, including but not limited to the acronyms of the *project*, does not infringe existing trademarks, registered patents and other similar rights.

The *participants* shall fully guarantee the Community, and shall undertake to indemnify it in the event of any action, complaint or proceeding brought by a third party against it as a result of damage caused either by an act or omission of the *participants* in the performance of this contract or on account of any products or services created on the basis of *knowledge* resulting from the *project*, only to the extent that the *participants* have contributed to or are responsible for the loss or damage concerned.

In the event of any action brought by a third party against the Community in connection with the performance of this contract, *contractors* which may bear responsibility shall be required to assist the Community.

4. In the event of any action brought by a third party against a *contractor* in connection with the performance of this contract, the Commission may, without prejudice to paragraph 1 of this Article, assist the latter upon written request. The costs incurred by the Commission in this connection shall be borne by the *contractor* concerned.

Article 7 - Termination of the contract or of the participation of a *contractor* or *member*

1. The Commission may terminate the contract or the participation of a *contractor*:
 - (a) for major technical or economic reasons substantially affecting the *project* (including where the resumption of the performance of the contract following its suspension on account of *force majeure* proves impossible),
 - (b) if the *use* potential of the results of the *project* considerably diminishes.

The Commission shall determine the notice period in a registered letter with acknowledgement of receipt, which period shall not exceed one month from the date of receipt of such letter.

2. The Commission shall not object
 - (a) to the termination of the contract, at the written request of the *coordinator* in agreement with all the other *contractors*, on the grounds mentioned in paragraph 1 of this Article,
 - (b) to the withdrawal of a *contractor* from the *project* where all the other *contractors* have given their prior agreement in writing, unless this withdrawal substantially affects the carrying out of the *project*.

The termination of the contract or the withdrawal of the *contractor* shall be effective:

- on the date of the letter of acceptance by the Commission notified by registered letter with acknowledgement of receipt,

- at the latest one month following receipt of notification by the interested part(y)(ies) in the absence of written observations by the Commission within that time-limit.
- 3. The Commission may immediately terminate this contract or the participation of a *contractor* or request the *contractor* involved to terminate the participation of one of his *members* from the date of receipt of the registered letter with acknowledgement of receipt sent by the Commission or, in the case of a *member*, by the *contractor* concerned in accordance with paragraph 6, third subparagraph, of this Article:
 - (a) where the *project* has not effectively commenced within three months of the payment of the pre-financing and the new date proposed is considered unacceptable by the Commission,
 - (b) where the *participant* directly concerned has not fully performed his contractual obligations despite a written request from the Commission, or the *coordinator* in agreement with the other *contractors*, or, in the case of a *member*, the *contractor* involved, to remedy a failure to comply with such obligations within a period not exceeding one month,
 - (c) where a *change of control* over a *contractor* is likely substantially to affect the *project* or the *interests of the Community*,
 - (d) in the event of bankruptcy, of winding up, of cessation of trading, of winding up by court order or composition, suspension of activities of a *participant* or any similar proceeding provided for by national laws or regulations and leading to a similar result,
 - (e) in the event of a serious financial *irregularity*.
- 4. The Commission shall immediately terminate this contract or the participation of a *contractor* or shall request a *contractor* concerned to terminate the participation of a *member* from the date of receipt of the registered letter with acknowledgement of receipt sent by the Commission or, in the case of a *member*, by the *contractor* concerned in accordance with paragraph 6, third subparagraph, of this Article where a *participant* has made false declarations for which he may be held responsible or has deliberately withheld information in order to obtain the Community's financial contribution or any other advantage provided for in the contract.
- 5. Any letter of the Commission to terminate the participation of a *contractor* (including in the case of the withdrawal of a *contractor*) or a *member*, to terminate the contract shall be addressed in the first case to the *contractor* concerned or involved with regard to one of his *members* and in the second case to the *coordinator* in accordance with the procedures set out in paragraphs 1 to 4 of this Article. A copy of the letter shall be sent in the first case to the *coordinator* and in the second case to the other *contractors*.
- 6. *Contractors* shall take appropriate action to cancel or reduce their commitments, upon receipt of the letter from the Commission notifying them of the termination of the contract or of their participation or upon the dispatch of their termination or withdrawal request, as the case may be.

The same obligation shall apply to *members* from the date of receipt of the letter from the *contractor* involved notifying them of the termination of the contract or of their participation in accordance with the third subparagraph of this paragraph.

In the case of a request from the Commission to a *contractor* to terminate the participation of a *member*, the *contractor* concerned shall have a period of 15 days to send to the *member* the Commission's request to terminate the participation of that *member*.

The Commission will not reimburse a *member's* costs if they are due to the fact that the *contractor* concerned omitted to send the termination notice referred to in paragraph 3, points (b), (c), (d) and (e) or paragraph 4 of this Article within the time-limit specified in paragraph 6, third subparagraph, of this Article.

In the event of termination of the contract or of the participation of a *contractor* pursuant to paragraph 1 or paragraph 2, first subparagraph, point (a) of this Article, the Community's financial contribution shall cover *eligible costs* relating to *project deliverables* accepted by the Commission and also *eligible costs* subsequently incurred in good faith before the date mentioned in the first subparagraph of this paragraph.

In the event of termination of the contract or of the participation of a *contractor* or *member*:

- (a) pursuant to paragraph 2, first subparagraph, point (b), paragraph 3(b) or (d) of this Article, the Commission may require repayment of all or part of the Community's financial contribution, taking into account the nature and results of the work carried out and its usefulness to the Community in the context of the eContent programme,
- (b) pursuant to paragraph 3(c) of this Article, the Commission shall only reimburse the *eligible costs* relating to accepted *project deliverables* and incurred before the event which caused the termination of the contract or of the participation of a *contractor* or *member*, and also *eligible costs* subsequently incurred in good faith before the date mentioned in the first subparagraph of this paragraph in the case of a *contractor* or in the second subparagraph of this paragraph in the case of a *member*,
- (c) pursuant to paragraph 3(a) or (e) or paragraph 4 of this Article, the Commission may require repayment of all or part of the Community's financial contribution. Interest at the rate applied by the European Central Bank for its principal refinancing operations on the first calendar day of the month during which the *participant* concerned received the funds plus three and a half percentage points shall be added to the amount to be repaid. The interest shall cover the period between the receipt of the funds and their repayment.

7. The termination of the participation of a *contractor* or a *member* shall not prejudice the user rights in respect of intellectual or industrial property that have been granted in so far as necessary for the carrying out of the *project* to a *participant* before such

date. He shall grant such rights in so far as necessary for the carrying out of the *project* to any *participant* taking over all or part of the work incumbent on him.

8. Notwithstanding the termination of the contract or of the participation of a *contractor* or a *member*, the following provisions shall continue to apply after that date subject to the limits specified therein, as the case may be:

- Articles 5, 6 and 8 of this contract,
- Article 2(1), first subparagraph, points (a), (e), (f) and (g), Article 2(2), (d), (e) and (i), Article 3(4) and (5), Article 4(5), Article 6, Articles 9 to 12, and Articles 16 and 17 of this Annex.

The *participants* shall submit the *project deliverables* relating to the work performed until the date of termination of the contract or the date when their participation ends.

PART B: RULES RELATING TO INTELLECTUAL AND INDUSTRIAL PROPERTY, PUBLICITY AND CONFIDENTIALITY

Article 8 - Ownership of *knowledge*

1. *Knowledge* resulting from the *project* shall be the property of the *participants* carrying out the work leading to that *knowledge*.
2. Where several *participants* have carried out the work generating the *knowledge*, they shall agree among themselves on the allocation and the terms of exercising the ownership of the *knowledge* in accordance with this contract.
3. If persons hired by a *participant* may claim rights to *knowledge* resulting from the *project*, the *participant* shall take steps or reach appropriate agreements to ensure that these rights are exercised in a manner compatible with his obligations under this contract.
4. On request and without prejudice to paragraph 5, each *participant* shall grant the Commission an irrevocable right, on a royalty-free basis, to translate, reproduce, use, publish and distribute any document, on whatever medium, drawn up in the framework of the *project*.
5. The *participants* shall indicate to the Commission the *pre-existing know-how*, in particular the copyrights, relating to any document, on whatever medium, drawn up in the framework of the *project*.

Where a *participant* may not freely dispose of such *pre-existing know-how*, he shall beforehand take the necessary steps to obtain the authorisation to dispose thereof in compliance with his obligations under this contract and shall confirm this to the Commission.

The *participant* shall bear any reasonable cost in connection with obtaining such authorisation or for which he may be held liable.

Article 9 - Protection of *knowledge*

1. *Participants* who own *knowledge* resulting from the *project* shall provide adequate and effective protection for such *knowledge*, in particular in the case of joint ownership, for an appropriate duration, in accordance with any applicable regulation or convention.
2. A *participant* participating in the *project* may publish, or allow the publication of, data, on whatever medium, concerning *knowledge* which he owns provided that this does not affect the protection of that *knowledge*.

The *contracting parties* shall be given, in good time, prior notice of any planned publication and the scheduled date thereof. A copy of the medium containing these data shall be communicated to them if they so request within 30 days after receipt of such notice. They may object to such publication provided that due reasons for the objections are given within a new period of 30 days after receipt of such data where, from their point of view, it would adversely affect the protection of the *knowledge* referred to in paragraph 1 of this Article.

The *consortium agreement* may specify the details of such a right to object and the measures necessary to ensure a speedy publication without prejudicing the protection.

Article 10 - Use of knowledge

1. The *participants* shall use or cause to be used the *knowledge* which they own, within a reasonable time-limit in accordance with the *interests of the Community* and in compliance with international agreements concluded with the Community.
2. If the *knowledge* is not used in accordance with the terms and time-limit referred to in paragraph 1 of this Article, the *participants* shall disseminate it, in accordance with:
 - the need to safeguard intellectual and industrial property rights,
 - confidentiality,

and taking into account the benefits of swift *dissemination* and their *legitimate interests*.

Should the *participants* fail to do so, the Commission shall disseminate the *knowledge* itself under the same conditions.

Article 11 - Publicity and communication of data in particular for standardisation purposes

1. The Commission may publish, by any appropriate means and for as long as necessary, general data relating in particular to the objectives, the estimated total cost, the duration and the state of progress of the *project*, to the Community's financial contribution and to the *knowledge* described in the final report. The legal designation of *participants* and the names of the laboratories carrying out the work shall also be published unless they object to this in advance on the basis of essential *legitimate interests*.

Where the measures referred to in the first subparagraph presuppose access by the Commission or its duly authorised representatives to the premises of *participants*, the latter may refuse such access on the basis of *legitimate interests*.

2. Any communication or publication, whatever the form or medium (including the Internet), concerning the state of progress with the *project* or concerning the *knowledge*:
 - shall mention the relevant programme and the support provided by the Community,and
 - shall, where it is made by a *participant*, state that the author is solely responsible for it and that it does not represent the opinion of the Community and that the Community is not responsible for any use that might be made of data appearing therein.

Where use of the European emblem is envisaged, prior approval shall be required from the Commission. Standards, in particular with regard to graphics, in force within the Commission must be complied with.

3. Without prejudice to the provisions regarding the protection and/or use of *knowledge* and confidentiality, the *participants* must without delay inform the Commission and the standardisation bodies of *knowledge* resulting from the *project* which may contribute to the preparation of European or, where appropriate, international standards, or to an industrial consensus on technical issues. To this end, they shall communicate appropriate data on such *knowledge* to the Commission and to the standardisation bodies concerned during the entire duration of the contract and the two years following the *contract completion date*.

The provisions of this contract shall be without prejudice to the rules applicable, within the standardisation bodies, to data submitted to them.

Article 12 - Confidentiality

1. Without prejudice to Articles 10 and 11 of this Annex and any other obligation contained in this contract, the *contracting parties* and the *members* shall be required to keep confidential any data, *knowledge*, documents and *pre-existing know-how* communicated to them on a confidential basis or the disclosure of which may be prejudicial to one of them.

This obligation shall no longer apply :

- where the content of these data, *knowledge*, documents and *pre-existing know-how* becomes publicly available through work or actions lawfully performed outside this contract and not based on activities under it,
 - where these data, *knowledge*, documents and *pre-existing know-how* have been communicated without any confidentiality restrictions or where the disclosing party subsequently waives their confidentiality.
2. Where this contract provides for the communication of any data, knowledge, pre-existing know-how or document referred to in paragraph 1 of this Article, the contracting parties and the members shall first satisfy themselves that the recipient will keep it confidential and use it only for the purpose for which it is communicated.

Part C: Reimbursement of costs

Article 13 - Eligible costs - general principles

1. *Eligible costs* are the costs defined in Articles 14 and 15 of this Annex. They shall fulfil the following conditions:
 - be necessary for the *project*,
 - be incurred during the *duration of the project*,
 - be determined in accordance with the accounting principle based on historic costs and the usual internal rules of the *participant*, provided that they are regarded as being acceptable by the Commission,
 - be recorded in the accounts no later than the *contract completion date* or in the tax documents,

and

- exclude any profit margin.

Without prejudice to the provisions of the first subparagraph,

- the costs for drawing up the final report shall be eligible when incurred by the *coordinator* within a maximum period of two months as of the end of the *duration of the project*,
- *eligible costs* incurred after the *duration of the project* will be limited to those concerning reports, dissemination of knowledge, monitoring and evaluations required by this contract, the time-limits for which are specified in Annex I.

A member may not commit himself to costs before the date of entry into force of his *membership agreement*.

2. In the case of *participants* covered by the additional costs system (those without an accounting system that allows the share of their direct and, without prejudice to Article 15(1)(b) of this Annex, indirect costs relating to the *project* to be distinguished), the *eligible costs* shall be as follows:
 - the direct costs specified in Article 14 of this Annex which are additional to their recurring costs,and
 - the indirect costs specified in Article 15(2) of this Annex.
3. Non-*eligible costs* are in particular the following:
 - costs related to capital employed,
 - provisions for possible future losses or charges,

- interest owed,
 - provisions for doubtful debts,
 - resources made available to a *participant* free of charge,
 - value of contributions in kind,
 - unnecessary or ill-considered expenses,
 - marketing, sales and distribution costs for products and services,
 - indirect taxes and duties, including VAT (unless the *participant* can show that he is unable to recover it),
 - entertainment or hospitality expenses, except such reasonable expenses accepted by the Commission as being absolutely necessary for carrying out the contract,
 - any cost incurred or reimbursed, in particular in respect of another Community, international or national project, subject to the provisions of Article 14(2), fifth subparagraph, second indent.
4. No cost may be charged to more than one of the *eligible cost* categories referred to in Article 14 and 15 of this Annex.
5. *Contractors* shall be authorised to transfer between themselves the budget set out in the indicated breakdown of the estimated *eligible costs* contained in the ‘Budget Table’, provided that:
- they inform the Commission of such transfer confirming that the scope of the *project* is not fundamentally altered,
- and
- the amounts transferred do not exceed 20% of total estimated *eligible costs* of the beneficiary in the ‘Budget Table’.
 - Any other properly substantiated transfer approved by all the *contractors* shall require prior written approval by the Commission.
 - In the absence of observations within one month of receipt of the request made by the *coordinator*, the approval of the Commission shall be deemed to be given.
 - Each *contractor* shall be authorised to transfer the budget set out in the ‘Budget Table’ between categories of *eligible costs* provided that the transferred amount does not exceed 20% of its total estimated *eligible costs* for the *project* and that the scope of the *project* is not fundamentally altered. However, he shall not be required to obtain the agreement of the other *contractors*.

- The budget for the costs for the protection of *knowledge* may not be the subject of a transfer to other categories of *eligible costs*.

Article 14 - Direct costs

1. Personnel

With regard to personnel costs,

- (a) Only the costs of the actual hours worked by the persons directly carrying out the managerial and technical work under the *project* may be charged to the contract.

Such persons must:

- be directly hired by the participant in accordance with his national legislation,
- be under the sole technical supervision of the latter,

and

- be remunerated in accordance with the normal practices of the *participant*, provided that these are regarded as acceptable by the Commission.

All the working time charged to the contract must be recorded throughout the *duration of the project*, or, in the case of the *coordinator*, within a maximum period of two months from the end of *the duration of the project*, and be certified at least once a month by the person in charge of the work designated by the *participant* in accordance with Article 2(2)(b) of this Annex or by the duly authorised financial officer of the *participant*.

- (b) For *participants* using the full costs system, personnel costs shall comprise:
 - the actual costs (gross remuneration and related charges),
 - average employment costs, where these correspond to the normal practices of the *participant* concerned, provided that such costs do not differ significantly from the actual costs and that such practices are regarded as acceptable by the Commission.
- (c) For *participants* using the additional costs system, costs shall be limited to the actual costs of the personnel employed on the *project* (gross remuneration and related charges) where the latter has concluded :
 - a temporary contract for Community projects (permanent personnel paid for working full-time for the *participant* is excluded from this cost-charging system),
 - a temporary contract for completing a doctorate,

- contract which depends upon external funding additional to the normal recurring funding of the *participant*. In that case, the costs charged to this contract must exclude any costs borne using such recurring funding.

2. Durable equipment

Costs relating to the purchase or leasing with option to buy of durable equipment shall be charged to the contract pursuant to this paragraph.

Hire costs shall be charged to the contract pursuant to paragraph 3 of this Article.

The *eligible costs* for durable equipment leased with option to buy shall not exceed the costs that would have been incurred in case of purchase of equipment, taking account of the formula below.

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

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

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

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

C = the actual cost of the durable equipment,

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

3. Subcontracting

With the exception of costs charged to the contract pursuant to paragraph 1 of this Article, the actual costs of *subcontracts* may be charged to the contract if :

- they are incurred in compliance with the conditions set out in Article 5 of this Annex,
- they are in accordance with market prices,

and

- the copies, certified by the participants concerned, of relevant invoices are attached to the corresponding financial statements.

4. Travel and subsistence

Actual travel and related subsistence costs for personnel working on the *project* may be charged to the contract.

The prior agreement of the Commission shall be required for any destination outside the territory of the Member States, the *Associated States* or a *third country* where a *participant* is established, unless such a destination is provided for in Annex I.

In the absence of observations within one month of receipt of the request made by the *coordinator*, the approval of the Commission shall be deemed to be given.

Travel and subsistence costs shall be established on the basis of the usual rules of the *participant*.

5. Consumables

The actual costs relating to consumables, including particularly software licences, that are specifically acquired for the *project* and whose purpose so justifies may be charged to the contract.

However, *participants* using the full costs system and charging actual overheads shall include these costs in the indirect costs where this is reasonably practical and in accordance with their normal accounting conventions.

6. Computing

Computing costs, including the costs resulting from the use of Internet, computer services and media at the disposal of *participants*, may be charged to the contract. They must be substantiated in accordance with the rules applicable to the *participants*.

However, *participants* using the full costs system and charging actual overheads shall include these costs in the indirect costs where this is reasonably practical and in accordance with their normal accounting conventions.

7. Protection of *knowledge*

The costs of the protection of *knowledge* generated in the framework of the *project* shall comprise the actual costs necessary for adequate and effective protection for such *knowledge*, taking into account the *interests of the Community*. They shall be eligible only in so far as the Commission has given its prior written approval to the *participants* and competition rules, in particular those concerning the Community framework for State aid to research and development, are complied with.

In the absence of observations within one month of receipt of the request made by the *coordinator*, the approval of the Commission shall be deemed to be given.

They comprise:

- the costs of documentary research preliminary to the filing of an application for the granting of an industrial property right,
- the fees paid to the competent authorities that are necessary with a view to the granting of an industrial property right or its territorial extension, provided that prior documentary research, as referred to in the first indent, has been carried out,

and

- the fees paid to the competent authorities to extend the duration of the industrial property right.

Fees paid to advisers with a view to the protection of such *knowledge* shall be reimbursable provided that an application for the granting of an industrial property right has been subsequently filed. Personnel costs incurred in this connection shall be reimbursable, provided that:

- (i) the conditions of paragraph 1(a) and (b) or (c) of this Article shall apply *mutatis mutandis*,

and

- (ii) the time actually worked on the *project* shall be recorded and certified in accordance with paragraph 1(a), third sentence of this Article.

The Community's financial contribution in respect of the third subparagraph of this paragraph may not exceed EUR 4,000 per industrial property right.

The costs of protection of such *knowledge* shall exclude, in particular, translation costs.

The costs of protection of the *knowledge* and of measures to demonstrate the potential for *exploitation* of the *knowledge* shall also exclude the costs of creating and marketing a product and process and the costs of creating and providing a service.

8. Other specific costs

Other specific actual costs shall not come into any of the categories of *eligible costs* set out in paragraphs 1 to 7 and 9 of this Article and in Article 15 of this Annex. They may include, in particular, the costs of prototypes or equipment fabricated, the costs of using large testing equipment and simulators, the cost of certification of financial statements or the direct costs incurred in the setting-up of financial guarantees requested by the Commission.

Cost belonging to this category shall only be eligible subject to written approval of the Commission unless they are already provided for in Annex I to this contract.

In the absence of observations within one month of receipt of the request made by the *coordinator*, the approval of the Commission shall be deemed to be given.

9. Administrative and financial coordination

Only the coordinator can charge to the contract the following administrative and financial coordination costs:

- the costs of administrative personnel in charge of the administrative and financial coordination of the project not included in the indirect costs referred to in Article 15 of this Annex. In this case,

- (i) the conditions of paragraph 1 (a) and (b) or (c) of this Article shall apply *mutatis mutandis* to that personnel,

- (ii) the time actually worked on the *project* shall be recorded and certified in accordance with paragraph 1(a), third sentence, of this Article,

and

- costs indicated in paragraphs 2 and 4 to 8 of this Article, provided that the conditions thereof are also complied with.

The costs incurred for administrative and financial coordination do not give rise to overheads.

Article 15 - Indirect costs

1. *Participants* using the full costs system may charge overheads calculated :
 - a) on the basis of actual costs, insofar as allowed by their accounting system. Such overheads may include in particular the costs of administration and management, depreciation of buildings and equipment, water, electricity, telecommunications and postal charges, office supplies, and administrative personnel costs not charged to the contract pursuant to Article 14(9) of this Annex.

They shall be calculated in accordance with the normal accounting conventions and principles applicable to the *participants*, provided that they are regarded as acceptable by the Commission.
 - b) on a flat rate basis. In this case, they shall charge to this contract a flat rate amount of 7% of the total *eligible costs* referred to in Article 14 of this Annex. A *participant* may request a lower percentage when this is required, for instance, by internal rules.
2. *Participants* using the additional costs system shall, as such, charge to this contract a flat-rate amount of 20% of the direct costs, excluding the costs of subcontracting. A *participant* may request a lower percentage when this is required, for instance, by his internal rules.

Article 16 - Justification of costs

Eligible costs shall be reimbursed where they are justified by the *participant*.

To this end, the *participant* shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which he is established, the accounts for the *project* and appropriate documentation to support and justify in particular the costs and time reported in his financial statements.

This documentation must be precise, complete and effective.

PART D: AUDITING

Article 17 - Financial audit

1. The Commission, or any representative authorised by it, may initiate an audit in respect of a *participant* at any time during the contract and up to five years after each payment of the Community contribution, as referred to in Article 3(1) of this Annex.

The audit procedure in respect of a *contractor* shall be deemed to be initiated on the date of receipt by him of the relevant registered letter with acknowledgement of receipt sent by the Commission.

In the case of an auditing procedure in respect of a *member*, the *contractor* concerned shall have a period of 15 days from the date of receipt to send to the *member* concerned the registered letter with acknowledgement of receipt from the Commission.

The audit procedure in respect of a *member* shall be deemed to start on the date of receipt by the *member* of a letter sent by the *contractor* concerned.

The audit procedure shall be carried out on a confidential basis.

2. The Commission or any authorised representative may have access, at any reasonable time, in particular to the personnel of the *participants* connected with the *project*, the documentation referred to in Article 16 of this Annex, computer records and equipment that it considers relevant. In this connection, it may request that data be handed over to it in an appropriate form in order, for instance, to ascertain the eligibility of the costs.

The Commission shall take appropriate steps to ensure that its authorised representatives treat confidentially the data to which they have access or which have been provided to them.

3. On the basis of the findings made during the financial audit in respect of a *contractor*, a provisional report shall be drawn up. It shall be sent by the Commission to the *contractor* concerned. He may make observations thereon within one month of receiving it.

The final report shall be sent to the *contractor* concerned. The latter may communicate his observations to the Commission within a month of receiving it.

Where findings are established during a financial audit in respect of a *member*, the *contractor* concerned shall have a maximum period of 15 days to send the *member* concerned the provisional report drawn up by the Commission.

The *member* shall have a maximum period of one month from the date of receipt thereof to transmit observations to the *contractor* concerned.

The *contractor* concerned shall then have a maximum period of 15 days to transmit to the Commission the observations of the *member* concerned.

The procedure and time-limits indicated in paragraph 3, third, fourth and fifth subparagraphs, of this Article shall apply *mutatis mutandis* to the final report from the Commission in the case of a financial audit in respect of a *member*. The Commission may decide not to take into account observations conveyed after the deadlines.

4. On the basis of the conclusions of the audit, the Commission shall take all appropriate measures which it considers necessary, including the issuing of a recovery order regarding all or part of the payments made by it. The recovery order shall be addressed to the *contractor* concerned or involved in the case of financial audit in respect of one of his *members*.

5. The European anti-fraud office and the Court of Auditors may verify the use made of the Community's financial contribution in the framework of this contract, on the basis of their own rules.

Article 18 – Financial penalties

As established by the *Financial Regulation*, any *contractor* declared to be in grave breach of its contractual obligations shall be liable to financial penalties of between 2% and 10% of the value of the *Community* financial contribution received by that *contractor*. The rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first breach

Article 19 - Reimbursement to the Commission and Recovery Orders

1. If any amount is unduly paid to the *participant* or if recovery is justified under the terms of the agreement, the *contractor* undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.
2. If the *contractor* fails to pay by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article 3(1) to this Annex. 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.

3. Sums owed to the Commission may be recovered by offsetting them against any sums owed to the *contractor* or *member* after informing accordingly the *contractor* concerned or involved in respect of his *members*, or by calling in any financial guarantee. The *participant's* prior consent shall not be required.
4. Bank charges occasioned by the recovery of the sums owed to the Commission shall be borne solely by the *participant*.
5. The *contractor* 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.

Article 20 - Technical verification of the project

1. The Commission, or any representative authorised by it, may initiate a technical verification in respect of a *participant* up to the *contract completion date* in order to verify that the *project* is being or has been carried out in accordance with the conditions indicated by the *contractor* including for his *members*.

The verification procedure in respect of a *contractor* shall be deemed to be initiated on the date of receipt of the relevant registered letter with acknowledgement of receipt sent by the Commission.

In the case of a technical verification procedure in respect of a *member*, the *contractor* concerned shall have a period of 15 days from the date of receipt to

transmit to the *member* concerned the letter with acknowledgement of receipt from the Commission.

The technical verification procedure in respect of the *member* shall be deemed to start on the date of receipt of the letter relating to it from the *contractor* concerned.

The technical verification procedure shall be carried out on a confidential basis.

2. The Commission or any authorised representative may have access to the locations and premises where the work is being carried out, and to any document concerning the work, and may request the submission of documents under the same identical conditions as those set out in Article 17(2) of this Annex.

Prior to the carrying out of the technical verification, the Commission shall communicate to the *participants* the identity of the authorised representatives who are intended to perform the verification. It shall take account of any objection on the part of *participants* based on *legitimate interests*.

3. *Participants* shall provide appropriate assistance to the Commission or its authorised representatives.
4. A report on the technical verification of the *project* shall be sent to the *contractor* concerned. The latter may communicate his observations to the Commission within a month of receiving it.

In the case of a technical verification procedure in respect of a *member*, the *contractor* concerned shall have a period of 15 days to transmit to the *member* concerned the report on the technical verification of the *project* from the Commission. The *member* may, through the *contractor* concerned, communicate his observations to the Commission within one month of receipt of the report.

The Commission may decide not to take into account the observations conveyed after that deadline.

Part E-1

BRIEF SUMMARY OF ALLOWABLE COSTS (euro/currency used in the accounts)

For the period from [] to [] period covered by report N° [] Cost basis¹: []
 Title of project: [] Overheads percentage: []
 Contract No: [] (for AC costs model only)
 Name of contractor/member²: []
 Currency (euro/currency) of the account³: [] Exchange/conversion rate³: []

Contact person for this cost statement ⁴ : []	Telephone: []
E-mail address: []	Fax: []

Categories of allowable costs	Amount for the period ⁵	
	Euro ³	currency ³
Direct costs		
1. Personnel	0.00	0.00
2. Durable equipment	0.00	0.00
3. Subcontracting	0.00	0.00
4. Travel and subsistence expenses	0.00	0.00
5. Consumables	0.00	0.00
6. Computing	0.00	0.00
7. Protection of knowledge	0.00	0.00
8. Other specific costs	0.00	0.00
Sub-total	0.00	0.00
Indirect costs		
9. Overheads	0.00	0.00
Coordination costs		
Total coordination	0.00	0.00
Adjustments		
10. Adjustments to previous costs ⁶	0.00	0.00
Total eligible costs	0.00	0.00
% Community contribution⁷ :	0.00	0.00

	euro	currency
Interest yielded by pre-financing⁸	0.00	0.00

Statement by the contractor/member⁹

We certify that

- the above costs correspond to the resources employed for the work under this contract and that those resources were necessary for the performance of the work,
- the costs were incurred and fall within the definition of allowable costs,
- where necessary, authorisations have been obtained from the Commission, and
- all the documents supporting the allowable costs reported above, including the time records referred to in Article 14(1)(a)(3) of Annex II to the contract, are available for the purposes of audit by the Commission and its authorised representatives or the Court of Auditors and reflect the costs actually incurred.

We certify that any necessary adjustments, for any reason, to previous cost statements have been incorporated in this statement.⁶

Date: []

Date: []

Name of the person in charge of the work:
[]

Name of duly authorised financial officer:
[]

Signature of the person in charge of the work:
[]

Signature of duly authorised financial officer:
[]

1. Insert as appropriate : FC (Full costs);FF (FF Full costs flat rate oveheads); AC (Additional costs)
 2. Delete as necessary.
 3. The cost statement must be drawn up in euros and in the currency used in the accounts of the contractor/member.
 The exchange conversion rate must correspond to that indicated in Article 4(2)(a) of Annex II to this contract except in the case of special conditions. See the site <http://europa.eu.int/comm/budget/inforeuro/files.htm>
 4. One of the persons whose signature must appear on this form.
 5. Net amounts only. Do not include indirect taxes and duties or customs duties. Further details are required for some of the categories on the following pages.
 6. Not applicable for the first cost statement. Any necessary adjustment, for example to reflect actual costs rather than budgeted costs, must be made in subsequent statements. All details and reasons for any adjustment must be provided.
 7. Insert the percentage Community financial contribution. See Article 3(2) of this contract.
 8. Only to be declared by the coordinator
 9. The person in charge of the work (see Article 2(2)(b) of Annex II to this contract) and the duly authorised financial officer of the contractor/member must sign the statement,

5) CONSUMABLES

Coo ³	Description	Amount ¹⁰
	Total	0.00

6) COMPUTING

Coo ³	Description	Amount ¹⁰
	Total	0.00

7) PROTECTION OF KNOWLEDGE

Coo ³	Description	Amount ¹⁰
	Documentary research & industrial property right registration	
	Total	0.00

8) OTHER SPECIFIC COSTS¹⁶

Coo ³	Description and name of supplier where applicable	Amount ¹⁰
	Total	0.00

10) ADJUSTMENTS TO PREVIOUS COSTS

Coo ³	Category	Period of reference ¹⁷	Justification	Amount ¹⁰
			Total	0.00

1. Insert as appropriate : FC (Full costs);FF (FF Full costs flate rate overheads); AC (Additional costs)
2. Delete as necessary.
3. Insert "Coo" for the costs of coordination. This column is exclusively reserved for the *project coordinator* - see Article 2(1) of Annex II of this contract.
4. Full identity of persons working on the *project*, the costs of which are reported.
5. Clearly identifiable (e.g. engineer, technician, administrator, administrative personnel, cost centre, department, etc.) [in the personnel records of the *participant*].
6. Insert "P" for permanent employees, "T" for temporary employees and "I" for in-house consultants [clearly identifiable in the personnel records of the *participant*].
7. Indicate the person's type of employment by inserting "FT" for full time and "PT" for part-time [clearly identifiable in the personnel records of the *participant*].
8. The time reported must be reflected in the records of the *participant* [and in their personnel records].
9. The wage rate comprises the elements specified in Article 14(1) of Annex II of this contract. It must correspond to the units appearing in column A.
10. Net amounts only. Do not include indirect taxes and duties or customs duties.
11. For the calculation of allowable costs, see Article 14(2) of Annex II to this contract, except in the case of special conditions.
12. For purchased durable equipment, insert "P", for leased durable equipment insert "L". In the case of leasing the cost must not exceed the costs of purchasing the same article (depreciated value) - see the fourth subparagraph of Article 14(2)(4) of Annex II to this contract.
13. Net amounts (excluding indirect duties and taxes and customs duties) for purchased durable equipment. For leased equipment insert the value of the equipment
14. Percentage usage of durable equipment for the *project*.
15. Attach a certified copy of invoices containing a reference to the *subcontract* and details of the service or supply concerned, in order to certify the reported costs.
16. See Article 14(8) of Annex II to this contract. These costs shall be subject to prior approval of the Commission unless they are already provided in Annex I to this contract
17. Indicate the period when you incurred these expenses

COSTS OF COORDINATION (to be completed by the *coordinator*¹⁾

Only where administrative and financial coordination costs are provided for as direct costs

Period from: _____ to: _____ Period Report N° _____ Cost basis² : _____
 Title of *project* : _____
 Contract No: _____
 Name of *coordinator* : _____
 Currency (euro/currency) of the account³: _____ Exchange/conversion rate³: _____

Contact person for this cost statement :	Telephone:
E-mail address :	Fax:

Categories of costs	Amount for the period ⁴	
	euro ³	currency ³
Direct costs		
1. Personnel ⁵	0.00	0.00
2. Durable equipment	0.00	0.00
4. Travel and subsistence expenses	0.00	0.00
5. Consumables	0.00	0.00
6. Computing	0.00	0.00
7. Protection of knowledge	0.00	0.00
8. Other specific costs	0.00	0.00
Total	0.00	0.00
% Community financial contribution ⁶ :	0.00	

Statement by the coordinator

We certify that :

- the above costs correspond to the resources employed for the work under this contract and that those resources were necessary for the performance of the work,
- the costs were incurred and fall within the definition of allowable costs,
- where necessary, authorisations have been obtained from the Commission, and
- all the documents supporting the allowable costs reported above, including the time records referred to in Article 14(1)(a)(3) of Annex II to the contract, are available for the purposes of audit by the Commission and its authorised representatives or the Court of Auditors and reflect the costs actually incurred.

We certify that any necessary adjustments, for any reason, to previous cost statements have been incorporated in this statement.⁶

Date:

Date:

Name of the person in charge of the work:

Name of duly authorised financial officer:

Signature of the person in charge of the work:

Signature of duly authorised financial officer:

-
1. The administrative and financial *coordinator* where coordination is separated.
 2. Insert as appropriate : FC (Full costs); FF (Full costs flat rate overheads); AC (Additional costs)
 3. The cost statement must be drawn up in euros and in the currency used in the *coordinator's* accounts.
 The exchange/conversion rate must correspond to that indicated in Article 4(2)(a) of Annex II to this contract, except in the case of special conditions. See the site : <http://europa.eu.int/comm/budget/inforeuro/en/index.htm>.
 4. Net amounts only. Do not include indirect taxes and duties or customs duties. Further details are required for some categories on the following pages.
 5. Only the *coordinator's* personnel in charge of administrative and financial coordination of the *project*.
 6. Insert the percentage Community financial contribution. See Article 3(2) of this contract.

PART E-2/A - INTEGRATED COST STATEMENT IN EUROS TO BE SUBMITTED BY THE COORDINATOR FOR THE CONTRACTORS¹

For the period from
Name of coordinator

to :

Costs													
<i>Contractors</i>	Costs	Personnel	Durable equipment	Sub-contracting	Travel and subsistence expenses	Consumables	Computing	Protection of knowledge	Other specific costs	Overheads	Adm. & financ. coordination costs	Adjustments	TOTAL
<i>Coordinator⁴</i> (name)	Claimed ⁵												0
	Budget ⁶												0
<i>Contractor</i> (name)	Claimed												0
	Budget												0
<i>Contractor</i> (name)	Claimed												0
	Budget												0
<i>Contractor</i> (name)	Claimed												0
	Budget												0
<i>Contractor</i> (name)	Claimed												0
	Budget												0
<i>Contractor</i> (name)	Claimed												0
	Budget												0
<i>Contractor</i> (name)	Claimed												0
	Budget												0
<i>Contractor</i> (name)	Claimed												0
	Budget												0
<i>Contractor</i> (name)	Claimed												0
	Budget												0
<i>Contractor</i> (name)	Claimed												0
	Budget												0
<i>Contractor</i> (name)	Claimed												0
	Budget												0

1 To be completed by the *coordinator or the financial coordinator* (in case of split between financial and technical coordination) as from the second period.

2 Insert the *project commencement date*.

3 Insert the end of the last period concerned by the integrated cost statement.

4 The administrative and financial *coordinator* where administrative and financial coordination is separate from technical coordination.

5 Costs reported for the period subject to acceptance by the Commission and for earlier periods.

6 Budgeted costs as stated in the "Indicative breakdown of costs and financing plan" table update by the notified/approved budget transfers.

PART E-2/B - INTEGRATED COST STATEMENT IN EUROS TO BE SUBMITTED BY EACH CONTRACTOR FOR HIS MEMBERS¹

For the period from _____ to :
 Name of coordinator _____

Contractors	Costs													TOTAL
	Costs	Personnel	Durable equipment	Sub-contracting	Travel and subsistence expenses	Consumables	Computing	Protection of knowledge	Other specific costs	Overheads	Adm.& financ. coordination costs	Adjustments		
<i>Contractor</i> (name)	Claimed ⁴													0
	Budget ⁵													0
<i>Member</i> (name)	Claimed													0
	Budget													0
<i>Member</i> (name)	Claimed													0
	Budget													0
<i>Member</i> (name)	Claimed													0
	Budget													0
<i>Member</i> (name)	Claimed													0
	Budget													0
<i>Member</i> (name)	Claimed													0
	Budget													0
<i>Member</i> (name)	Claimed													0
	Budget													0
<i>Member</i> (name)	Claimed													0
	Budget													0
<i>Member</i> (name)	Claimed													0
	Budget													0

- 1 To be completed by each *contractor*, including *coordinator*, for all his members as from the second period.
- 2 Insert the *project commencement date*.
- 3 Insert the end of the last period concerned by the integrated cost statement.
- 4 Costs reported for the period subject to acceptance by the Commission and for earlier periods.
- 5 Budgeted costs as stated in the "Indicative breakdown of costs and financing plan" table update by the notified/approved budget transfers.

PART E-3 - SUMMARY STATEMENT OF AMOUNTS TRANSFERRED TO THE CONTRACTORS BY THE COORDINATOR (euros)¹

Title of project:

Contract N°:

Name of contractor	Pre-Financing ² :		Period ² :		Period ² :		Period ² :		Final period ² :		Other ³		Total	Comments
	Amount	Date	Amount	Date	Amount	Date	Amount	Date	Amount	Date	Amount	Date		
Total														

Amounts paid by the Commission

-
1. To be completed by the coordinator or the financial coordinator (in case of split between financial and technical coordination).
 2. See Article 2.1(f) of Annex II to this contract.
 3. Any other amount transferred to a contractor during the duration of the project.

PART F : MODEL MEMBERSHIP AGREEMENT (SEVERAL MEMBERS)

MEMBERSHIP AGREEMENT [insert number]

(No of basic contract)

A membership agreement is hereby concluded between:

of the one part,

[Name of contractor] [acronym] (“the contractor “), established in [name of State] ,

and

[Name of member] [acronym], established in [name of State],

[Name of member] [acronym], established in [name of State],

[Name of member] [acronym], established in [name of State],

(collectively “the members”)

of the other part,

(collectively “the parties”) represented by their legal/statutory/authorised representatives.

In the framework of the eContent programme the *contractor* concluded contract No [insert the number of the contract] on [date] to carry out the project entitled [name of the project], (“the basic contract”).

The basic contract is incorporated in this membership agreement as Annex A.

IN THE LIGHT OF THE FOREGOING, THE PARTIES HAVE AGREED AS FOLLOWS:

Article 1 - Subject matter of the membership agreement

The purpose of this membership agreement is to enable members to contribute, together with the *contractor*, to the implementation of the provisions of the basic contract in accordance with the conditions provided for in this agreement.

Article 2 - Conditions

The parties to the membership agreement shall be bound *mutatis mutandis* by the conditions of the basic contract and its Annexes which are an integral part of the agreement (Annex A), with the exception of those provisions of the basic contract which concern only the *contractor*.

Article 3 - Scope

1. The members shall perform their share of the work pursuant to this membership agreement in compliance with the requirements of Annex I to the basic contract.

The members shall cooperate with the *contractor* in order to ensure the efficient management of the project. They shall, in particular, provide the *contractor* with the information that the project manager requires in order to carry out his duties.

2. The work carried out by the project member may be the subject of a technical audit in accordance with Article 20 of Annex II to the basic contract.

Article 4 - Payments

1. The Community's financial contribution shall be paid to the members by the *contractor* after receipt of the Community's financial contribution, in accordance with Article 3 and 4(2) point b) of Annex II to the basic contract and the related conditions.
2. Costs shall be charged by the project member in accordance with Articles 13-16 of Annex II to the basic contract and the indications in the indicative tables setting out the maximum rate of the Community contribution to the *eligible costs* by categories of costs which follows the signatures to the basic contract and this membership agreement. Those costs may be the subject of a financial audit by the Commission, the European anti-fraud office or the Court of Auditors in accordance with Article 17 of Annex II to the basic contract.

Article 5 - Entry into force of the membership agreement

Subject to signature of the membership agreement on behalf of all the parties within three months of the date of commencement of the basic contract, the agreement shall enter into force retroactively from the date of commencement of the basic contract. If the membership agreement is signed on behalf of all the parties three months after the date of commencement of the basic contract, the agreement shall enter into force from the date of the last signature.

Article 6 – Completion, expiry or termination of the agreement

1. The work to be performed under the membership agreement shall be deemed to be completed on the date of approval by the Commission of the tasks to be performed by the members under the Annex I to the basic contract.
2. The membership agreement shall automatically terminate on the date of completion or termination of the basic contract.
3. The *contractor* may, with the written agreement of the Commission, or shall, at the written request of the Commission, immediately terminate the participation of a member if he fails to meet in full his contractual obligations pursuant to the basic contract or this membership agreement. The *contractor* shall determine, in a letter sent to the member, the period of notice, which shall not exceed one month from the date of receipt of that letter.
4. Each party may terminate this agreement subject to two months' written notice.

Article 7 - Applicable law and jurisdiction

The law of [*name of the country indicated in the basic contract*] shall govern this membership agreement.

Jurisdiction [*to be completed by the parties*].

Article 8 - Amendments

The membership agreement may be amended, with the prior written authorisation of the Commission, only by written agreement between the authorised representatives of the parties.

Article 9 - Final provisions

1. The following Annexes are an integral part of this agreement:

Annex A : basic contract

[.....to be inserted....]

2. The agreement shall be signed by the parties in [*insert number*] copies in [*insert language*] and only that language version shall be authentic.

	For the parties	Signature and title	Date
1.	<i>Name of the contractor (written out in full)</i>
2.	<i>Name of member (written out in full)</i>
3.	<i>Name of member (written out in full)</i>
4.	<i>Name of member (written out in full)</i>

PART F : MODEL MEMBERSHIP AGREEMENT (ONE MEMBER)

MEMBERSHIP AGREEMENT *[insert number]*

(No of basic contract)

A membership agreement is hereby concluded between:

of the one part,

1. *[Name of contractor] [acronym]* (“the contractor”), established in *[name of State]* ,

and

2. *[Name of member] [acronym]*, established in *[name of State]*,

(“the member”)

of the other part,

(collectively “the parties”) represented by their legal/statutory/authorised representatives.

In the framework of the eContent programme the *contractor* concluded contract No *[insert the number of the contract]* on *[date]* to carry out the project entitled *[name of the project]*, (“the basic contract”).

The basic contract is incorporated in this membership agreement as Annex A.

IN THE LIGHT OF THE FOREGOING, THE PARTIES HAVE AGREED AS FOLLOWS:

Article 1 - Subject matter of the membership agreement

The purpose of this membership agreement is to enable the member to contribute, together with the *contractor*, to the implementation of the provisions of the basic contract in accordance with the conditions provided for in this agreement.

Article 2 - Conditions

The parties to the membership agreement shall be bound *mutatis mutandis* by the conditions of the basic contract and its Annexes which are an integral part of the agreement (Annex A), with the exception of those provisions of the basic contract which concern only the *contractor*.

Article 3 - Scope

1. The member shall perform his share of the work pursuant to this membership agreement in compliance with the requirements of Annex I to the basic contract. The member shall cooperate with the *contractor* in order to ensure the efficient management of the project. He shall, in particular, provide the *contractor* with the information that the project manager requires in order to carry out his duties.
2. The work carried out by the project member may be the subject of a technical audit in accordance with Article 20 of Annex II to the basic contract.

Article 4 - Payments

1. The Community's financial contribution shall be paid to the member by the *contractor* after receipt of the Community's financial contribution, in accordance with Article 3 and 4(2) point b) of the basic contract and the related conditions.
2. Costs shall be charged by the project member in accordance with Articles 13 to 16 of Annex II to the basic contract and the indications in the indicative table of estimated *eligible costs* which follows the signatures to the basic contract and this membership agreement. Those costs may be the subject of a financial audit by the Commission the European anti-fraud office or the Court of Auditors in accordance with Article 17 of Annex II to the basic contract.

Article 5 - Entry into force of the membership agreement

Subject to signature of the membership agreement on behalf of all the parties within three months of the date of commencement of the basic contract, the agreement shall enter into force retroactively from the date of commencement of the basic contract. If the membership agreement is signed on behalf of all the parties later than three months after the date of commencement of the basic contract, the agreement shall enter into force from the date of the last signature.

Article 6 – Completion, expiry or termination of the agreement

1. The work to be performed under the membership agreement shall be deemed to be completed on the date of approval by the Commission of the tasks to be performed by the member under Annex I to the basic contract.
2. The membership agreement shall automatically terminate on the date of completion or termination of the basic contract.
3. The *contractor* may, with the written agreement of the Commission, or shall, at the written request of the Commission, immediately terminate the participation of the member if he fails to meet in full his contractual obligations pursuant to the basic contract or this membership agreement. The *contractor* shall determine, in a letter sent to the member, the period of notice, which shall not exceed one month from the date of receipt of that letter.
4. Each party may terminate this agreement subject to two months' written notice.

Article 7 - Applicable law and jurisdiction

The law of [*name of the country indicated in the basic contract*] shall govern this membership agreement.

Jurisdiction [*to be completed by the parties*].

Article 8 - Amendments

The membership agreement may be amended, with the prior written authorisation of the Commission, only by written agreement between the authorised representatives of the parties.

Article 9 - Final provisions

1. The following annexes are an integral part of this agreement:

Annex A : basic contract

[.....to be inserted.....]

2. The agreement shall be signed by the parties in [*insert number*] copies in [*insert language*] and only that language version shall be authentic.

For the parties	Signature and title	Date
1. <i>Name of contractor</i> (written out in full)
2. <i>Name of member</i> (written out in full)