

GRANT AGREEMENT

PLEASE CONSIDER THIS AS THE GENERAL TEMPLATE USED FOR GRANT AGREEMENTS. IT WILL VARY DEPENDING ON THE SPECIFIC CALL AND IF THE GRANT WILL BE AWARDED TO A CONSORTIUM

AGREEMENT NUMBER – EFSA/CONTAM/2010/01

Following the Call for proposals CFP/EFSA/CONTAM/2010/01 published on the **xxth February** 2010.

The European Food Safety Authority (hereinafter “EFSA”), established by [Regulation \(EC\) No 178/2002](#)¹ of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, as amended by Regulation (EC) No 1642/2003 of 22 July 2003², with offices on Largo N. Palli 5/A, I-43121 Parma (Italy), represented for this tasks by Ms Riitta Maijala duly authorized

of the one part,

and

Full name and address of the beneficiary

hereinafter called “the beneficiary”, represented for the purposes of signature of the agreement by **XXX (this is the legal representative indicated in the application form and not the contact person for the proposal)**

of the other part,

¹ OJ L 31 of 01.02.2002

² OJ L 245 of 29.9.2003

HAVE AGREED

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

- Annex I** Call for proposals (including the rules on eligibility of costs)
- Annex II** Description of the project as presented in the application form submitted and approved by EFSA
- Annex III** Approved estimated budget of the project
- Annex IV** Financial statements and supporting financial documents
- Annex V** Transfer information form
- Annex VI** Monthly timesheet template

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

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

The terms of the General Conditions shall take precedence over those in the Annexes.

I – SPECIAL CONDITIONS

ARTICLE I.1 – PURPOSE OF THE GRANT

- I.1.1 EFSA has decided to award a grant, under the terms and conditions set out in the Special Conditions, the General Conditions and the Annexes to the agreement, which the beneficiary hereby declares that he has taken note of and accept, for the project entitled “Survey on ergot alkaloids in cereals intended for human consumption and animal feeding” (hereinafter referred as "the project").
- I.1.2 The beneficiary accepts the grant and undertakes to do everything in his power to carry out the project as described in Annex II, acting on his own responsibility.

ARTICLE I.2 – DURATION

- I.2.1 The agreement shall enter into force on the date when the last party signs.
- I.2.2 The project shall run for twelve (12) months from the entry into force of the agreement.

ARTICLE I.3 – BREAKDOWN OF COSTS – FINANCING THE PROJECT

- I.3.1 The total cost of the project is estimated at EUR, as shown in the approved estimated budget in Annex III. The approved estimated budget gives a detailed breakdown of the costs that are eligible for EFSA funding, those that are ineligible, under the terms of Article II.14, of any other costs that the project may entail, and of all incomes, so that incomes and costs balance.

- I.3.2 The total eligible costs of the project for which EFSA grant is awarded are estimated at EUR as shown in the approved estimated budget in Annex III.

Indirect costs are eligible for flat-rate funding of 7% of the total direct eligible costs, subject to the conditions laid down in Article II.14.3.

- I.3.3 EFSA shall contribute a maximum of EUR, which is maximum ceiling of grant which can be obtained for this project from EFSA. The amount of EFSA grant is further limited to 80 % of the actually incurred eligible costs. The final amount of the grant shall be determined as specified in Article II.17, without prejudice to Article II.19.

For this project, EFSA does not finance the entire costs of it. The amounts and sources of co-financing other than from EFSA funds are set out in the approved estimated budget referred to in paragraph 1.

- I.3.4 By way of derogation from Article II.13, the beneficiary may, when carrying out the project, adjust the approved estimated budget by transfers between headings

of eligible costs, provided that this adjustment of expenditure does not affect implementation of the project and the transfer between headings does not exceed 10% of the amount of the heading of estimated eligible costs for which the transfer is intended, and without exceeding the total eligible costs indicated in paragraph 2. The beneficiary shall inform EFSA in writing using the form in Annex V of this agreement.

ARTICLE I.4 – PAYMENT ARRANGEMENTS

I.4.1 Pre-financing:

Within 45 days of the date when the last of the parties signs the agreement a pre-financing payment of EUR shall be made to the beneficiary representing 40% of the amount specified in Article I.3.3.

I.4.2 Interim payments: not applicable

I.4.3 Payment of the balance

In order for the request for final payment to be admissible, it shall be submitted together with the written final report and accompanied by the final financial statement of costs actually incurred and incomes, using the form in Annex IV to be certified by the most senior accounting officer of the beneficiary.

EFSA shall have a single time limit of 90 days for the approval of the written final report and payment of the admissible payment request or to request additional supporting documents or information in which case the single time limit shall be suspended. This suspension takes an end at the date of submission of all additionally requested supporting documents or information. The beneficiary shall have 45 days in which to submit all the additionally requested supporting documents and information or a new written final report.

ARTICLE I.5 – SUBMISSION OF REPORTS AND OTHER DOCUMENTS

I.5.1 The provisions relating to the submission of the written reports referred to in Article I.4 are contained in Annex I.

I.5.2 The requests for payment shall be submitted within 60 days starting from the time limit for submitting the related technical report.

ARTICLE I.6 – BANK ACCOUNT

I.6.1 All payments shall be made to the beneficiary's bank account denominated in euros, as indicated below:

Name of bank: XXX
Address of branch: XXX
Precise denomination of the account holder: XXX
Full account number (including bank codes): XXX
IBAN account code: XXXX

SWIFT CODE: **xxxx**

I.6.2. This account must identify the payments made by EFSA. If the funds paid to this account yield interest or equivalent benefits under the law of the State on whose territory the account is opened, such interest or benefits shall, if they are generated by pre-financing payments, be recovered by EFSA as specified in Article II.16.4.

ARTICLE I.7 – GENERAL ADMINISTRATIVE PROVISIONS

I.7.1. Any communication in connection with the agreement shall be in writing, indicating the reference number of the agreement, and shall be sent to the following addresses:

For EFSA:

European Food Safety Authority - EFSA
Contam Unit
To the attention of Marc Vandebroek
Largo Natale Palli 5/a
I – 43121 Parma

Ordinary mail shall be considered to have been received by EFSA on the date on which it is formally registered by EFSA unit responsible referred to above.

For the beneficiary:

Xxxxxx (full name of the contact person and address)

ARTICLE I.8 – LAW APPLICABLE AND COMPETENT COURT

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

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

ARTICLE I.9 – DATA PROTECTION

Any personal data included in or relating to the Agreement, including its execution, shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Agreement by the controller/Authorizing officer without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. The Beneficiary shall have the right of access to his personal data and the right to rectify any

such data that is inaccurate or incomplete. Should the Beneficiary have any queries concerning the processing of his personal data, he shall address them to controller/Authorizing officer. The Beneficiary shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.10 – OTHER SPECIAL CONDITIONS

I.10.1. The beneficiary shall submit the payment request, submitted in accordance with Article I.4, in euro.

By way of derogation from Article II.16.1, the exchange rate to be used by the beneficiary for conversion into EURO is the average of the monthly rates established by the Commission and published on its website (<http://ec.europa.eu/budget/inforeuro/index.cfm?fuseaction=home&Language=en>) for the months covered by the declared reporting period for which the financial statements of costs actually incurred is being submitted.

I.10.2. In addition to the obligations stipulated in other provisions of this agreement as regards the eligibility of cost, the beneficiary shall use the monthly timesheet, of which the template is attached as Annex VI to this agreement. This is template must be used to record the type and amount of activities performed under the project and will serve as supporting document when verifying the eligibility of the staff costs. Non compliance with the obligation to fill out this timesheet shall be basis to consider the staff costs as ineligible.

II – GENERAL CONDITIONS

PART A – LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 – LIABILITY

II.1.1 The beneficiary shall be responsible for complying with any legal obligations incumbent on him.

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

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

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

ARTICLE II.2 – CONFLICT OF INTERESTS

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

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

ARTICLE II.3 – OWNERSHIP/USE OF THE RESULTS

- II.3.1 Ownership of the results of the project, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the beneficiary.
- II.3.2 Without prejudice to paragraph 1, the beneficiary grants EFSA the right to make exclusive use of the results of the project, including the reports submitted by the beneficiary, for a period of three years.
- II 3.3 In compliance with paragraph 2 the beneficiary can not make any use of the results of the project for the period of three years foreseen in paragraph 2 including the prohibition to divulge or disclose the results of the project.

ARTICLE II.4 – CONFIDENTIALITY

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

ARTICLE II.5 – PUBLICITY

- II.5.1 Any communication or publication by the beneficiary about the project, the outcome or the results (including partial or preliminary), including at a conference or seminar, shall be explicitly authorized beforehand in writing by EFSA.

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

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

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

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

ARTICLE II.6 – EVALUATION

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

ARTICLE II.7 – SUSPENSION

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

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

ARTICLE II.8 – FORCE MAJEURE

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

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

II.8.3 The party faced with force majeure shall not be held in breach of his obligations under the agreement if he's prevented from fulfilling them by force majeure. The parties shall make every effort to minimise any damage due to force majeure.

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

ARTICLE II.9 – AWARD OF CONTRACTS

II.9.1 If the beneficiary has to conclude contracts, the authorization of which has been requested in writing and given beforehand by EFSA, in order to carry out the project and they constitute costs of the project under an item of eligible direct costs in the approved estimated budget, he shall seek competitive tenders from potential contractors and award the contract to the bid offering best value for money; in doing so he shall observe the principles of transparency and equal treatment of potential contractors and shall take care to avoid any conflict of interests.

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

- a) the tasks concerned must be set out in Annex II and the corresponding estimated costs must be set out in detail in the approved estimated budget in Annex III;
- b) The beneficiary must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of EFSA under the agreement;
- c) Recourse to the award of contracts must be justified with regard to the nature of the project and what is necessary for its implementation;
- d) Project management or organisation cannot be outsourced using subcontracting under any circumstances;
- e) Subcontracting may only be used to subcontract ancillary and assistance related tasks. In no case may core tasks of the project be subcontracted;
- f) The tasks intended to be subcontracted and the corresponding estimated costs must be set out in the Estimated budget;
- g) Any recourse to the award of contracts while the project is in progress, if not envisaged from the outset in the proposal, is subject to prior authorisation in writing by EFSA;
- h) The beneficiary retains sole responsibility for implementing the project and complying with the provision of the Grant agreement;
- i) The beneficiary undertakes to ensure that the conditions applicable to him as regards responsibility, conflict of interests, ownership and use of results, confidentiality, publicity, transfer of claims, and controls and audits also apply to the subcontractor.

ARTICLE II.10 – ASSIGNMENT

Requests for payments to be made by EFSA may not be transferred.

In exceptional circumstances, where the situation warrants it, EFSA may authorise the assignment to a third party of the agreement and payments flowing from it, following a written request to that effect, giving reasons, from the beneficiary. If EFSA agrees, it

must make its agreement known in writing to the beneficiary before the proposed assignment takes place. In the absence of the above authorisation, or in the event of failure to observe the terms thereof, the assignment shall not be enforceable against and shall have no effect on EFSA.

In no circumstances shall such an assignment release the beneficiary from his obligations to EFSA.

ARTICLE II.11 – TERMINATION OF THE AGREEMENT

II.11.1 Termination by the beneficiary

In duly justified cases, the beneficiary may withdraw his request for a grant and terminate the agreement at any time by giving 60 days' written notice stating the reasons, without being required to furnish any indemnity on this account.

If no reasons are given or if EFSA does not accept the reasons, the agreement shall be deemed to have been terminated improperly, with the consequences set out in the forth subparagraph of paragraph II.11.4.

II.11.2 Termination by EFSA

EFSA may decide to terminate the agreement or the participation of any one or several beneficiary participating in the project without any indemnity on its part, in the following circumstances:

- a) in the event of a change to the beneficiary's legal, financial, technical, organisational or ownership situation that is liable to affect the agreement substantially or to call into question the decision to award the grant;
- b) if the beneficiary fails to fulfil a substantial obligation incumbent on him under the terms of the agreement, including its annexes;
- c) in the event of force majeure, notified in accordance with Article II.8, or if the project has been suspended as a result of exceptional circumstances, notified in accordance with Article II.7;
- d) if the beneficiary is declared bankrupt, is being wound up or is the subject of any other similar proceedings;
- e) if the beneficiary is found guilty of an offence involving his professional conduct by a judgment having the force of res judicata or if he is guilty of grave professional misconduct proven by any justified means;
- f) if the beneficiary is guilty of misrepresentation or submits information or reports inconsistent with reality to obtain the grant provided for in the agreement;
- g) if the beneficiary has intentionally or by negligence committed a substantial irregularity in performing the agreement or in the event of fraud, corruption or any other illegal activity on the part of a beneficiary to the detriment of the European Communities' financial interests. A substantial irregularity consists of any infringement of a provision of an agreement or regulation resulting

from an act or an omission on the part of a beneficiary which causes or might cause a loss to the Community budget.

II.11.3 Termination procedure

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

In the cases referred to in points (a), (b) and (d) of paragraph II.11.2, the beneficiary shall have 30 days to submit observations and take any measures necessary to ensure continued fulfilment of his obligations under the agreement. If EFSA fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the procedure shall continue to run.

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

Where notice is not given in the cases referred to in points (c), (e), (f) and (g) of paragraph II.11.2, termination shall take effect from the day following the date on which notification of EFSA's decision to terminate the agreement is received.

II.11.4 Effects of termination

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

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

By way of exception, at the end of the period of notice referred to in paragraph II.11.3, where EFSA is terminating the agreement on the grounds that the beneficiary has failed to produce the final technical implementation report and financial statement within the deadline stipulated in Article I.5 and the beneficiary has still not complied with this obligation within two months following the written reminder sent by EFSA by registered letter with advice of delivery or equivalent, EFSA shall not reimburse the expenditure incurred by the beneficiary up to the date on which the project ended and it shall recover any amount if its use is not substantiated by the technical implementation reports and financial statements approved by EFSA.

By way of exception, in the event of improper termination of the agreement by the beneficiary or termination by EFSA on the grounds set out in points (e), (f) or (g) of paragraph II.11.2, EFSA may require the partial or total repayment of sums already paid under the agreement on the basis of technical implementation reports and financial statements approved by EFSA, in proportion to the gravity of the failings in question and after allowing the beneficiary to submit his observations.

ARTICLE II.12 – FINANCIAL PENALTIES

By virtue of the Financial Regulation applicable to the general budget of the European Communities, any beneficiary declared to be in grave breach of his obligations under the agreement shall be liable to financial penalties of between 2% and 10% of the value of the grant in question, with due regard for the principle of proportionality.

This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first. The beneficiary shall be notified in writing of any decision by EFSA to apply such financial penalties.

ARTICLE II.13 – SUPPLEMENTARY AGREEMENTS

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

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

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

PART B – FINANCIAL PROVISIONS

ARTICLE II.14 – ELIGIBLE COSTS

II.14.1 To be considered as eligible costs of the project, costs must satisfy the following general criteria:

- they must be connected with the subject of the agreement and they must be provided for in the approved estimated budget annexed to it;
- they must be necessary for performance of the project covered by the agreement;
- they must be reasonable and justified and they must accord with the principles of sound financial management, in particular in terms of value for money and cost-effectiveness;
- they must be generated during the lifetime of the project as specified in Article I.2.2 of the agreement, except for costs relating to final reports and audits;

- they must be actually incurred by the beneficiary, be recorded in his accounts in accordance with the applicable accounting principles, and be declared in accordance with the requirements of the applicable tax and social legislation;
- they must be identifiable and verifiable.

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

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

- the cost of staff assigned to the project, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration;
- travel and subsistence allowances for staff taking part in the project, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- the purchase cost of equipment (new or second-hand), provided that it is written off linearly in accordance with the tax and accounting rules applicable to the beneficiary and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the duration of the project and the rate of actual use for the purposes of the project may be taken into account by EFSA, except where the nature and/or the context of its use justifies different treatment by EFSA;
- costs of consumables and supplies, provided that they are identifiable and assigned to the project;
- costs entailed by other contracts awarded by the beneficiary for the purposes of carrying out the project, provided that the conditions laid down in Article II.9 are met;
- costs arising directly from requirements imposed by the agreement (dissemination of information, specific evaluation of the project, audits, translations, reproduction, etc.), including the costs of any financial services (especially the cost of financial guarantees).

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

By way of derogation from Article II.14.1, the indirect costs incurred in carrying out the project may be eligible for flat-rate funding fixed at not more than 7% of

the total eligible direct costs. If provision is made in Article I.3.2 for flat-rate funding in respect of indirect costs, they don't need to be supported by accounting documents.

II.14.4 The following costs shall not be considered eligible (the list is not exhaustive):

- return on capital;
- debt and debt service charges;
- provisions for losses or potential future liabilities;
- interest owed;
- doubtful debts;
- exchange losses;
- VAT;
- costs declared by a beneficiary and covered by another project or work programme receiving a Community grant;
- excessive or reckless expenditure.

II.14.5 Contributions in kind shall not constitute eligible costs.

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

ARTICLE II.15 – REQUESTS FOR PAYMENT

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

II.15.1 – PRE-FINANCING

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

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

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

The financial guarantee shall remain in force until final payments by EFSA match the proportion of the total grant accounted for by pre-financing. EFSA undertakes to release the guarantee within 60 days following that date.

II.15.2 – FURTHER PRE-FINANCING PAYMENTS

Where pre-financing is divided into several instalments, the beneficiary may request a further pre-financing payment once he has used up the percentage of the previous

payment specified in the provisions of Article I.4 on further pre-financing. The request shall be accompanied by the following documents:

- a detailed statement of the eligible costs actually incurred;
- where required by the above-mentioned provisions of Article I.4, a financial guarantee in accordance with paragraph 1;
- where required by the above-mentioned provisions of Article I.4, a certificate on the project's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer;
- any other documents in support of his request that may be required in support of the request for further pre-financing payments.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.4 and I.5 and the annexes.

II.15.3 – INTERIM PAYMENTS

Interim payments are intended to reimburse the beneficiary for expenditure on the basis of a detailed statement of the costs incurred and incomes (using the form in Annex IV), once the project has reached a certain level of completion. It may clear all or part of any pre-financing.

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

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

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article I.4 and I.5 and the annexes. If an external audit of the project's account is not required, the beneficiary shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the agreement, that all receipts have been declared, and that the request for payment is substantiated by adequate supporting documents that can be checked.

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

- approve the interim report on implementation of the project;

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

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

Requests for additional information or a new report shall be notified to the beneficiary in writing. The beneficiary shall have the period laid down in Article I.4 to submit the information or new documents requested.

If additional information is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information.

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

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

II.15.4 – PAYMENT OF THE BALANCE

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

By the appropriate deadline indicated in Article I.4 and I.5, the beneficiary shall submit a request for payment of the balance accompanied by the following documents:

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

The documents accompanying the request for payment shall be drawn up in accordance with the provisions of Article I.4, I.5 and the annexes. If an external audit of the project's account is not required, the beneficiary shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the agreement, that all receipts have been

declared, and that the request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, EFSA shall have the period specified in Article I.4 and I.5 in order to:

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

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

Requests for additional information or a new report shall be notified to the beneficiary in writing. The beneficiary shall have the period laid down in Article I.4 to submit the information or new documents requested.

If additional information is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information.

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

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

ARTICLE II.16 – GENERAL PROVISIONS ON PAYMENTS

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

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

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

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

EFSA shall inform the beneficiary of any such suspension by registered letter with advice of delivery or equivalent.

Suspension shall take effect on the date when notice is sent by EFSA. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by EFSA.

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

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

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

- II.16.4 The beneficiary shall inform EFSA of the amount of any interest or equivalent benefits yielded by the pre-financing received from EFSA. Notification must be made annually if the interest in question represents a significant amount, and in any event when the request is made for interim payment or for payment of the balance that clears the pre-financing.

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

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

Where the interest yielded exceeds the balance of the amount due to the beneficiary as indicated in Article II.15.4, or is generated by pre-financing

referred to in the previous subparagraph, EFSA shall recover it in accordance with Article II.18.

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

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

ARTICLE II.17 – DETERMINING THE FINAL GRANT

- II.17.1 Without prejudice to information obtained subsequently pursuant to Article II.19, EFSA shall adopt the amount of the final payment to be granted to the beneficiary on the basis of the documents referred to in Article II.15.4 which it has approved.
- II.17.2 The total amount paid by EFSA may not in any circumstances exceed the maximum amount of the grant laid down in Article I.3.3, even if the total actual costs eligible exceed the estimated total eligible costs specified in Article I.3.2.
- II.17.3 If the actual eligible costs when the project ends are lower than the estimated total eligible costs, EFSA's contribution shall be limited to the amount obtained by applying the Community grant percentage specified in Article I.3.3 to the actual eligible costs approved by EFSA.
- II.17.4 The beneficiary hereby agrees that the grant shall be limited to the amount necessary to balance the project's incomes and expenditure and that it may not in any circumstances produce a profit for them.

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

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

- II.17.5 Without prejudice to the right to terminate the agreement under Article II.11, and without prejudice to the right of EFSA to apply the penalties referred to in Article II.12, if the project is not implemented or is implemented poorly, partially or late, EFSA may reduce the grant initially provided for in line with the actual implementation of the project on the terms laid down in this agreement.
- II.17.6 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the agreement, EFSA shall set the amount of the payment of the balance as being the amount still owing to the beneficiary. Where the aggregate amount of the payments already made exceeds the amount of the final grant, EFSA shall issue a recovery order for the surplus.

ARTICLE II.18 – RECOVERY

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

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

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

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

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

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

ARTICLE II.19 – CHECKS AND AUDITS

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

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

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

II.19.4 The beneficiary undertakes to allow EFSA staff and outside personnel authorised by EFSA the appropriate right of access to sites and premises where the action is carried out and to all the information, including information in electronic format,

needed in order to conduct such audits.

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

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

SIGNATURES

For the beneficiary
[name/forename/function]

For EFSA
Maijala Riitta

[signature]
Done at [place], [date]

[signature]
Done at Parma, [date]

In triplicate in English