

FCH JOINT UNDERTAKING GRANT AGREEMENT

ANNEX VI - FORM E - TERMS OF REFERENCE FOR THE CERTIFICATE ON THE METHODOLOGY

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

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Terms of Reference for an Independent Report of factual findings on the methodology concerning a FCH Joint Undertaking (FCH JU) Grant Agreement financed under the Seventh Research Framework Programme (FP7)

The following are the terms of reference ('ToR') on which <name of the Beneficiary> 'the Beneficiary' agrees to engage < name of the audit firm> 'the Auditor' to provide an Independent Report of Factual Findings in connection with FCH JU financed grant agreements under the Seventh Research Framework Programme (FP7), < title and number of the grant agreements> (the 'Grant Agreements'), concerning the Beneficiary's methodology for calculating personnel costs [and overhead costs (indirect costs)] Where in these ToR the 'FCH JU' is mentioned this refers to its quality as signatory of the Grant Agreements with the Beneficiary. The FCH JU is not a party to this engagement.

1.1 Responsibilities of the Parties to the Engagement

'**The Beneficiary**' refers to the legal entity that is receiving the grant funding and that has signed the Grant Agreements with the FCH JU.¹

- The Beneficiary is responsible for preparing a Financial Statement² for the Action financed by the Grant Agreements in compliance with such agreements and providing it to the Auditor, and for ensuring that this Financial Statement can be properly reconciled to the Beneficiary's accounting and bookkeeping system and to the underlying accounts and records. This Financial Statement will be used as a basis for the procedures which the Auditor will carry out in the framework of this engagement. Notwithstanding the procedures to be carried out, the Beneficiary remains at all times responsible and liable for the methodology in place and the accuracy of the Financial Statement.
- The Beneficiary is responsible for the factual statements which will enable the Auditor to carry out the procedures specified, and will provide the Auditor with a written representation letter supporting these statements, clearly dated and stating the period covered by the statements.
- The Beneficiary accepts that the ability of the Auditor to perform the procedures required by this engagement effectively depends upon the Beneficiary providing full and free access to the Beneficiary's staff and its accounting and other relevant records.

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

The Auditor must be independent from the Beneficiary.

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

¹ Where special clause "Third party linked to a beneficiary" for the FCH Model Grant Agreement applies, this Form shall be filled in also by such Third Parties linked to a beneficiary. In that case, the wording "the Beneficiary" shall be read as "the Third Party".

² Financial Statement in this context refers solely to Form C - Annex V by which the Beneficiary claims costs under the Grant Agreement

for the suitability and appropriateness of these procedures.

1.2 Subject of the Engagement

The subject of this engagement is the methodology implemented and applied by *the Beneficiary* for claiming personnel costs and overhead rates (indirect costs).

1.3 Reason for the Engagement

The Beneficiary submits to the FCH JU a certificate on the methodology in the form of an independent report of factual findings on the methodology produced by an external auditor in accordance with Article II.4 of the Grant Agreements. The Authorizing Officer of the FCH JU requires this Report as he makes the payments of costs requested by the Beneficiary conditional on the factual findings of this Report.

1.4 Engagement Type and Objective

This constitutes an engagement to perform specific agreed-upon procedures regarding an independent report of factual findings on methodology concerning the Grant Agreements. The objective of this Report is for the Auditor to present factual findings on methodology used by the Beneficiary to calculate costs in its Financial Statements for the actions financed by the Grant Agreements. The procedures to be carried out will enable the FCH JU to conclude on the existence of the Beneficiary's methodology and its suitability to ensure that costs claimed will be in compliance with the terms of the Grant Agreements.

As this engagement is not an assurance engagement the Auditor does not provide an audit opinion and expresses no assurance. The FCH JU derives its assurance by drawing its own conclusions from the factual findings reported by the Auditor on the methodology of the Beneficiary.

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

1.5 Scope of Work

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

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

1.5.2 Planning, procedures, documentation and evidence

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

1.6 Reporting

The Report of factual findings on the methodology, an example of which is attached to this ToR, should describe the purpose and the agreed-upon procedures of the engagement in sufficient detail in order to enable the Beneficiary and the FCH JU to understand the nature and extent of the procedures performed by the Auditor. Use of the reporting format attached as Annex VI (Form E) of the General

Conditions is compulsory. The Report should be written in the language indicated in Article 4 of the Grant Agreement. In accordance with Article II.22 of the Grant Agreement, the FCH JU, the European Commission and the European Court of Auditors have the right to audit any work carried out under the project for which costs are claimed. This audit may include the work related to this engagement.

1.7 Timing

The Report should be provided by [DATE]

1.8 Other Terms

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

[legal name of the audit firm]

[legal name of the Beneficiary]

[name & function of authorised representative]

[name & function of authorised representative]

<dd Month yyyy>

<dd Month yyyy>

<Signature of the Auditor>

<Signature of the Beneficiary>

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

Independent Report of factual findings on the methodology concerning FCH JU Grant Agreement financed under the Seventh Research Framework Programme (FP7)

To be printed on letterhead paper of the Auditor

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

< Beneficiary's name>

<Address>

<dd Month yyyy>

Dear <Name of contact person(s)>

In accordance with our contract dated <dd Month yyyy> with <name of the Beneficiary> “the Beneficiary” and the terms of reference attached thereto (appended to this Report), we provide our independent report of factual findings (“the Report”), with respect to the methodology used to calculate personnel costs and overhead rates (indirect costs). You requested certain procedures to be carried out in connection with the grant concerning [*title and number of the agreement*], the ‘Grant Agreement’. The Report covers the methodology used during the period [date]. In the event that the Beneficiary changes the methodology, the Report will not be applicable to Financial Statements³ submitted thereafter.

Objective

Our engagement was an engagement to perform agreed-upon procedures regarding the methodology used to calculate personnel costs and overhead rates (indirect costs) in the context of the grant agreements signed between you and the FCH JU. It involved performing certain specified procedures in order to confirm the factual basis of the responses and descriptions provided by the Beneficiary, the results of which the FCH JU uses to draw conclusions from the procedures performed by us.

The objective of this Report is for the Auditor to present factual findings on the methodology used by the Beneficiary to claim costs in its Financial Statements for the actions financed by the Grant Agreements.

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

Scope of Work

Our engagement was undertaken in accordance with:

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

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

The scope of these agreed upon procedures has been determined solely by the FCH JU and the procedures were performed solely to assist the FCH JU in evaluating whether the methodology for preparing cost claims by the Beneficiary is in accordance with the requirements of the financed Grant Agreement. The Auditor is not responsible for the suitability and appropriateness of these procedures.

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

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

Sources of Information

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

Factual Findings

The Auditor's factual findings based on the procedures carried out are presented in the table appended to this Report.

Exceptions

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

[exceptions such as inability to reconcile key information, unavailability of data which prevented the Auditor from carrying out the procedures, etc. should be listed here.]
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Use of this Report

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

This Report is prepared solely for the confidential use of the Beneficiary and the FCH JU and solely for the purpose of submission to the FCH JU in connection with the requirements as set out in Article

II.4.4 of the Grant Agreement. This Report may not be relied upon by the Beneficiary or by the FCH JU for any other purpose, nor may it be distributed to any other parties. The FCH JU may only disclose this Report to others who have regulatory rights of access to it, in particular, the European Commission, the European Anti-Fraud Office and the European Court of Auditors.

This Report relates only to the methodology specified above and does not constitute a report on the Financial Statements of the Beneficiary.

No conflict of interest⁴ exists between the Auditor and the Beneficiary in establishing this Report. The fee paid to the Auditor for providing the Report was € _____ .

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

Yours sincerely

[legal name of the audit firm]

[name and function of an authorized representative]

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

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

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

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Statements to be made by the Beneficiary and corresponding procedures carried out by the Auditor.

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

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

Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. <i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
<p>The methodology described below has been in use since [date]. The next planned alteration to the methodology used by the Beneficiary will be from [date]</p>	<p>Procedure: The Auditor has inspected records and documents which support the date given by the Beneficiary.</p> <p>Finding: The dates given by the Beneficiary are consistent with the management information provided by the Beneficiary.</p>
Personnel	
<p>1. Time recording exists, with authorization, which enables all personnel hours to be allocated to project work, management and administrative time, holidays, etc.</p> <p>The time recording enables the time of employees working on multiple projects to be allocated to those projects, and includes a check to prevent double charging of time.</p> <p>'Productive hours' represent the (average) number of hours made available by the employee in a year after the deduction of holiday, sick leave and other entitlements. This calculation should be provided by the Beneficiary, based on the period(s) corresponding to</p>	<p>Procedure: For 10 employees selected at random, the Auditor checked: That the employee had recorded management and administrative tasks separately from project time; That an authorization check exists which checks, inter alia, double-charging of time; The Auditor obtained the calculation of the productive hours after inspecting all necessary records, national legislation, labour agreements, contracts and any other relevant documentation</p>

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Grant Agreement FCH JU – Annex VI – Form E

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<p>Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. <i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i></p>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
<p>the Financial Statement(s) or to the last closed financial year (whichever is used by the beneficiary).</p>	<p>Finding: For the items checked, the time recording includes separation of time as specified above, and an authorization including a check for double charging of time. For the most recent full calendar year: The average productive hours for the 10 employees was _____. The average productive hours per employee for the organisation as a whole, as recorded by the Beneficiary's time records was _____. The productive hours calculation corresponds to the usual accounting practice of the beneficiary.</p>
<p>2. Personnel costs of the employees only include standard salaries, employer's costs, etc. and no special conditions exist for employees on FCH projects, unless they are explicitly foreseen in the Grant Agreement.</p>	<p>Procedure: The Auditor reconciled the personnel costs used in the personnel cost calculation to the payroll system and accounting records.</p> <p>Finding: The amounts used in the costs calculation and those in the accounting records were the same. The costs consisted of standard salaries and statutory employers' costs, and did not include bonuses and confirmation was obtained from the Beneficiary that no special conditions exist for employees on FCH projects.</p>
<p>3. Hourly rates are correctly calculated using (3a or 3b as appropriate) :</p> <p>3a: Actual personnel costs based on one of the following possibilities [choose one]:</p> <ul style="list-style-type: none"> • Actual personnel costs <i>per person</i> divided by actual productive hours <i>per person</i>; • Actual personnel costs <i>per person</i> divided by standard productive hours; 	<p>Procedure (apply 3a or 3b according to the method of calculation of personnel costs):</p> <p>3a:</p> <ul style="list-style-type: none"> • The Auditor reviewed the calculation and confirmed that hourly rates are calculated as specified by the Beneficiary. • The Auditor multiplied the personnel hourly rate by the total productive hours for the period of the Financial Statement(s) or to the last closed financial year (whichever is used by the beneficiary) and reconciled the result to the accounting records ('chargeable' personnel costs).

Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. <i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
<p>3b: For the average costing approach, the Beneficiary should state:</p> <ul style="list-style-type: none"> • The methodology used to calculate the average personnel hourly rate(s) represent(s) the usual cost accounting practice of the organisation; • Persons are allocated to the appropriate groups in accordance with the described methodology and the Full Time Equivalent (FTE) ratio is applied correctly; • Average personnel costs charged are based on the personnel costs registered in the statutory accounts of the organisation; • The calculation of the average personnel costs excludes ineligible items as defined in Art.II.14.3, Annex II to the Grant Agreement or any costs claimed under other cost categories. 	<p>3b:</p> <ul style="list-style-type: none"> • The auditor reviewed all relevant manuals and/or internal guidance describing the methodology used to calculate average personnel cost; • Obtained a list of all average personnel rates calculated by the beneficiary in accordance with the methodology used; • Obtained a list of all relevant employees (working on EU projects + not working on EU projects) based on which the average personnel rate(s) are calculated; • The auditor reviewed the allocation of employees to the relevant group(s) and verified the correctness of the Full Time Equivalent (FTE). • The auditor performed a numerical reconciliation between the total amount of personnel costs taken into consideration for the calculation of the average personnel rate and the total amount of personnel costs recorded in the statutory accounts; • The auditor reviewed that any ineligible items in particular those enumerated in Article II.14.3 of Annex II to the Grant Agreement or any costs claimed under other costs categories are excluded from the average personnel costs calculation. <p>Finding:</p> <p>3a:</p> <ul style="list-style-type: none"> • No differences arose from the comparisons listed above. • The result of the above reconciliation ('chargeable' personnel costs) in all cases did not exceed the costs recorded in the accounting records. • The Auditor confirms that the rates used were not budgeted or estimated amounts. <p>3b:</p> <ul style="list-style-type: none"> • The auditor found no discrepancies between the method described in the

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<p>Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. <i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i></p>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
	<p>relevant documents and the method used by the beneficiary;</p> <ul style="list-style-type: none"> • No differences arose from the numerical reconciliation. • The Auditor confirms that the rates used for the calculation of the average personnel costs were not based on budgeted or estimated amounts.
Overheads/ Indirect costs	
<p>4. The Beneficiary confirms the following:</p> <p>Indirect costs only include those costs which cannot be allocated to specific projects and support the functioning of the organisation as a whole.</p> <p>The indirect costs do not include costs which relate exclusively to non-research parts of the organisation.</p> <p>If the organisation carries out activities other than research (e.g., manufacturing, education etc), these indirect costs are transparently separated via cost accounting and do not form part of the claim.</p> <p><i>(This procedure does not apply to beneficiaries using a flat rate to claim indirect costs in accordance with Annex II of the Grant Agreement attached to the grant agreement being reviewed.)</i></p>	<p>Procedure: The Auditor obtained the calculation of hourly overhead rates (indirect costs), including a detailed breakdown of the indirect costs to be allocated to research activity;</p> <p>Finding: This breakdown did not contain costs relating to direct project activity, such as the cost of research personnel, project consumables and expenses; This breakdown does not contain costs relating to education or manufacturing, or other non-research activities of the Beneficiary; The breakdown of indirect costs used to calculate overhead rates was reconciled to the accounting records.</p>
<p>5. The accounting system provides for fully traceable elimination of:</p> <ol style="list-style-type: none"> a) identifiable indirect taxes including value added tax, b) duties, c) interest owed, d) provisions for possible future losses or charges, e) exchange losses, cost related to return on capital, f) costs declared or incurred, or reimbursed in respect of another JU, Union or 	<p>Procedure: The Auditor inspected the accounting records and chart of accounts. The Auditor reviewed the breakdown provided by the Beneficiary in order to check that the ineligible items specified were eliminated; The Auditor also checked (if necessary also via a written declaration/ representation of the Beneficiary) that no implicit interest was included, e.g., by finance leasing or other credit arrangements.</p>

<p>Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. <i>For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.</i></p>	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
<p>Euratom project, g) debt and debt service charges, excessive or reckless expenditure⁵.</p> <p>With regard to excessive or reckless expenditure, the Beneficiary confirms that purchases are made according to the principles of best value for money (best price-quality ratio), transparency and equal treatment between the FCH – JU funded grant agreement and any other agreement or convention that the Beneficiary may have.</p> <p>Where the Beneficiary is allocating shared costs, they should provide a list of allocation methods used (usage records, floor space, activity-based-costing, headcount, etc.)</p> <p><i>(This procedure does not apply to beneficiaries using a flat rate to claim indirect costs in accordance with Annex II of the Grant Agreement attached to the grant agreement being reviewed.)</i></p>	<p>Finding: The Auditor was able to obtain confirmation that no implicit interest was included, and did not find costs which explicitly relate to any of the items specified. For each allocation method used by the Beneficiary, the Auditor reconciled the amount to be allocated to the accounting records, and reconciled the allocation basis to the relevant management accounting information (usage records, floor space, activity-based-costing, headcount, etc.)</p> <p>Only the types of excessive and reckless expenditure listed in the Commission's guidance should be considered, the Auditor is not required to exercise professional judgement or provide assurance in this matter.</p>
<p>6. If the organisation is using a simplified indirect cost calculation (either due to the lack of analytical accounting or use of a form of cash-based accounting) all estimates are clearly described and are based on factual criteria which can be objectively confirmed.</p> <p>The Beneficiary must provide a list of cost allocations which are not based on underlying accounting information.</p> <p>In general costs which cannot be identified and allocated using a traceable source of information should not be included in the indirect cost calculation.</p> <p><i>(This procedure does not apply to beneficiaries using a flat rate to claim indirect costs in accordance with Annex II of the Grant Agreement attached to the grant agreement being reviewed.)</i></p>	<p>Procedure: The Auditor was able to trace all cost allocation to underlying accounting and management information.</p> <p>Finding: Percentage estimates were traced to the supporting factual criteria used by the Beneficiary and were found to be in agreement.</p>
<p>7. Allocation of indirect costs to the project is via</p>	<p>Procedure:</p>

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

Statements to be made by the Beneficiary and corresponding procedures to be carried out by the Auditor with examples of factual findings. For a methodology to be considered compatible with the requirements of the Grant Agreement a positive answer should be provided to all of the statements below regarding the Beneficiary's methodology. Any exception should be highlighted in the main summary of the Report.	
Statement to be made by Beneficiary	Procedure to be carried out by the Auditor & factual findings
<ul style="list-style-type: none"> - a percentage of personnel costs - a fixed personnel hourly rate - another cost driver to be specified by the beneficiary <p><i>(This procedure does not apply to beneficiaries using a flat rate to claim indirect costs in accordance with Annex II of the Grant Agreement attached to the grant agreement being reviewed.)</i></p>	<p>The Auditor checked that the allocation of indirect costs to the project corresponds with the methodology specified by the Beneficiary;</p> <p>Finding: The allocation of indirect costs to the project corresponds with the methodology specified by the Beneficiary; Where percentages are used the Auditor found that, the 'chargeable' personnel costs (defined above) multiplied by the overhead percentage does not exceed the total indirect costs to be allocated defined above; Where a fixed hourly rate is used, the productive hours figures used to distribute indirect costs and personnel were found to be the same. Where another cost driver not based on personnel is used, the Auditor found that the result of its application does not exceed the total amount of indirect costs to be allocated.</p>

[legal name of the Beneficiary]

[legal name of the audit firm]

[name and function of an authorised representative]

[name and function of an authorised representative]

<dd Month yyyy>

<dd Month yyyy>

<Signature of the Beneficiary>

<Signature of the Auditor>