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EDUCATION AUDIOVISUAL AND CULTURE EXECUTIVE AGENCY

Culture

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RACM (RIJKSDIENST VOOR ARCHEOLOGIE,  
CULTUURLANDSCHAP EN MONUMENTEN

Kees DE RUITER  
BROEDERPLEIN, 41

NL - 3703 CD ZEIST

Brussels, 21 NOV. 2006

**Subject :** Contract n. 2006 - 1116 / 001 - 001 CLT CA22  
(please quote in ALL correspondence : failure to do so may result in your correspondence not being processed)

Dear Sir/Madam,

Please find enclosed your copy of the Contract duly signed by the Executive Agency.

Yours faithfully,

Antonios KOSMOPOULOS  
Head of Unit

Enclosure: 1



EDUCATION, AUDIOVISUAL AND CULTURE EXECUTIVE AGENCY

Culture

**GRANT AGREEMENT for an ACTION**

**AGREEMENT NUMBER - 2006 - 1116 / 001 - 001**

**CLT - CA22**

**ACTION 2 : CULTURAL COOPERATION AGREEMENTS**

The Education, Audiovisual and Culture Executive Agency ("the Agency"), acting under powers delegated by the Commission of the European Communities ("the Commission"), and represented by **Antonios KOSMOPOULOS**, Head of Unit at the Executive Agency

of the one part,

and

**RACM (RIJKSDIENST VOOR ARCHEOLOGIE, CULTUURLANDSCHAP EN MONUMENTEN ,**

BROEDERPLEIN, 41  
NL - 3703 CD ZEIST

("the Beneficiary"), represented for the purposes of signature of this agreement by **Kees DE RUITER**

of the other part,

hereafter referred to as "the parties to the Agreement"

HAVE AGREED

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

- Annex I** Description of the action
- Annex II** Estimated budget of the action
- Annex III** Final financial accounts for the operation, interim (III-1) and final (III-2)
- Annex IV** Technical implementation reports and financial statements to be submitted
- Annex V** Specific Conditions relating to the action - Publicity obligations

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

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

## I - SPECIAL CONDITIONS

### ARTICLE I.1 – PURPOSE OF THE GRANT

- I.1.1 The Agency has decided to award a grant, under the terms and conditions set out in the Special Conditions, the General Conditions and the Annexes to the agreement, which the Beneficiary hereby declares that he has taken note of and accepts, for the action entitled **CLT2006/A2/NL-2031 - Managing Cultural Heritage Underwater (MACHU)** ("the action").
- I.1.2 The Beneficiary accepts the grant and undertakes to do everything in his power to carry out the action as described in Annex I, acting on his own responsibility.

### ARTICLE I.2 - DURATION

- I.2.1 The agreement shall enter into force on the date when the last of the two parties signs.
- I.2.2 The action and the period of eligibility of costs shall begin on **01-09-2006** and shall end on **31-08-2009**.
- I.2.3 The Agency may consider the termination of the Agreement after evaluation of the interim report and financial accounts, should these documents give an indication to the Agency that the implementation of the **operation** is not in accordance with the terms of this Agreement and its annexes.

### ARTICLE I.3 - FINANCING THE ACTION

- I.3.1 The total eligible cost of the action for which the Agency grant is awarded is estimated at **EUR 1.488.001,14**, as shown in the estimated budget in Annex II. The estimated budget shall give a detailed breakdown of the costs that are eligible for Community funding under the terms of Article II.14, and of all receipts, so that receipts and costs balance.
- I.3.2 Indirect costs are eligible for flat-rate funding of **7%** of the total direct costs eligible, subject to the conditions laid down in Article II.14.3.
- I.3.3 The Agency shall contribute a maximum of **EUR 886.503,14**, equivalent to **59,58%** of the estimated total eligible costs indicated in paragraph 1. The final amount of the grant shall be determined as specified in Article II.17, without prejudice to Article II.19.
- The Community grant may not finance the entire costs of the action. The amounts and sources of co-financing other than from Community funds shall be set out in the 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 action, adjust the estimated budget by transfers between chapters of eligible costs, provided that this adjustment of expenditure does not affect implementation of the action and the transfer between chapters does not exceed **10%** of the amount of each chapter of estimated eligible costs for which the transfer is intended, and without exceeding the total eligible costs indicated in paragraph 1. He shall inform the Agency in writing.

### ARTICLE I.4 –PAYMENT ARRANGEMENTS

#### I.4.1 Pre-financing

Following the signature of the Contract by the last contracting party, within 45 days of the date when the last of the two parties signs the agreement, a pre-financing payment shall be made to the Beneficiary, representing **50%** of the amount specified in Article I.3.3.

#### I.4.2 New payment of prefinancing:

The prefinancing payment may be divided into several instalments. In this case, a new prefinancing instalment may only be paid when at least **70%** of the preceding prefinancing instalment representing **50%** of the amount specified in Article I.3.3 has been spent.



Any request for a new prefinancing payment must be accompanied by the documents mentioned in article II.15.2 (and by a report on the state of progress of the action).

Within 45 days of the date of receipt by the Agency of the request for a new prefinancing payment, accompanied by the documents mentioned in the preceding paragraph, a new prefinancing payment representing 30% of the amount mentioned in article I.3.3 shall be made to the beneficiary.

#### **I.4.3 Payment of the balance**

The request for payment of the balance shall be accompanied by the final technical implementation report and financial statement specified in Article II.15.4. The final financial statement must be submitted in Euro. Any conversion of actual costs into Euro shall be made at the monthly accounting rate established by the Commission and published on its website and applicable on the month when the final report is submitted by the Beneficiary and this, not later than two months after the end of the eligibility period

The Agency shall have 45 days to approve or reject the documents in question or to request additional supporting documents or information under the procedure laid down in Article II.15.4. In that case the Beneficiary shall have 30 days to submit the additional information or new documents requested.

A payment representing the balance of the grant determined in accordance with Article II.17 shall be made to the beneficiary within 45 days following approval by the Commission of the documents accompanying the request for payment of the balance.

#### **ARTICLE I.5 - SUBMISSION OF REPORTS AND OTHER DOCUMENTS**

The provisions relating to the submission of the technical implementation reports, financial statements and other documents referred to in Article I.4 are contained in Annex III.

The technical and financial implementation reports and other documents referred to in Article I.4 must be submitted in 2 copies by the following deadlines:

- **final report:** within 2 months following the date for ending the action set out in Article I.2.2.

#### **ARTICLE I.6 - BANK ACCOUNT**

Payments shall be made to the Beneficiary's bank account or sub-account denominated in euro, as indicated below:

RABOBANK NEDERLAND  
18, CROESELAAN,  
NL - UTRECHT  
Account holder: RIJKSDIENST VOOR ARCHEOLOGIE CULTUURLANDSCHAP EN MONUMENTEN  
Full account number (including bank codes): IBAN\_ONLY  
IBAN account code: NL42RABO0192321684

This account or sub-account must identify the payments made by the Agency. 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 the Agency as specified in Article II.16.4.

#### **ARTICLE I. 7 -GENERAL ADMINISTRATIVE PROVISIONS**

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

For the Agency:

Requests for payment, technical reports and other financial information must be addressed to:

Education Audiovisual and culture Executive Agency  
Mr Antonios KOSMOPOULOS  
Unit Culture  
Office : BOUR, 04/002  
B - 1049 Brussels

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

For the Beneficiary:

**RACM (RIJKSDIENST VOOR ARCHEOLOGIE, CULTUURLANDSCHAP EN MONUMENTEN)**  
MANDERS Martijn Rene  
BROEDERPLEIN, 41  
NL - 3703 CD ZEIST

#### **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 law of Belgium relating to grants.

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

#### **ARTICLE I.9 – SPECIFIC TERMS AND CONDITIONS APPLYING TO THE OPERATION**

- I.9.1** Expenditure incurred by citizens and organisations from a country not participating to the programme are not eligible.
- I.9.2** Changes to the bank references mentioned in Article I.6 will only be accepted in highly exceptional circumstances and on the basis of a duly justified request. Should the change be accepted, payment of the grant will be effected within 90 days;
- I.9.3** No reimbursement of travel expenses or subsistence allowances will be made either to Agency or Commission representatives with regard to this Agreement;
- I.9.4** Any request for amendment, duly justified, must be received by the Agency at the latest **30 days before the end of the eligibility period referred to in Art. I.2.2.**
- I.9.5** The following persons are empowered to supervise the performance of this Agreement :
- for the Agency : **TSIRAKIDIS Anastasios**
  - for the Beneficiary : **MANDERS Martijn Rene**

#### **ARTICLE I.10 – DATA PROTECTION**

All personal data contained in the agreement shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely in connection with the implementation and follow-up of the agreement by the Agency, without prejudice to the possibility of passing the data to the bodies responsible for inspection and audit in accordance with Community legislation. Beneficiaries may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. They should address any questions regarding the processing of their personal data to the Agency. Beneficiaries may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

## II -GENERAL CONDITIONS

### **PART A: LEGAL AND ADMINISTRATIVE PROVISIONS**

#### **ARTICLE II.1 - LIABILITY**

- II.1.1 The Beneficiary shall have sole responsibility for complying with any legal obligations incumbent on him.
- II.1.2 The Agency shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the agreement relating to any damage caused during the action's execution. Consequently, the Agency will not entertain any request for indemnity or reimbursement accompanying any such claim.
- II.1.3 Except in cases of force majeure, the Beneficiary shall make good any damage sustained by the Agency as a result of the execution or faulty execution of the action.
- II.1.4 The Beneficiary shall bear sole liability vis-à-vis third parties, including for damage of any kind sustained by them while the action is being carried out.

#### **ARTICLE II.2 - CONFLICT OF INTERESTS**

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

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

#### **ARTICLE II.3 - OWNERSHIP/USE OF THE RESULTS**

- II.3.1 Unless stipulated otherwise in this agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the Beneficiary.
- II.3.2 Without prejudice to paragraph 1, the Beneficiary grants the Agency and the Commission the right to make free use of the results of the action as it deems fit, provided it does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights.

#### **ARTICLE II.4 - CONFIDENTIALITY**

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

#### **ARTICLE II.5 - PUBLICITY**

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

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

- II.5.2 The Beneficiary authorises the Agency to publish the following information in any form and medium, including via the Internet:
- the Beneficiary's name and the address,
  - the subject and purpose of the grant,
  - the amount granted and the proportion of the action's total cost covered by the funding.

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

#### **ARTICLE II.6 - EVALUATION**

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

#### **ARTICLE II.7 - SUSPENSION**

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

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

#### **ARTICLE II.8 - FORCE MAJEURE**

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

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

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

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

#### **ARTICLE II.9 – PROCUREMENT**

II.9.1 If procurement has to be undertaken by the Beneficiary in order to be able to carry out the action and such procurement constitutes costs of the action under an item of eligible direct costs in the estimated budget, the Beneficiary is obliged to ensure that competition takes place among the potential suppliers and to award the contract to the economically most advantageous offer, that is to say, that which provides the best value for money; in doing so the Beneficiary 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 Recourse to procurement as referred to in II.9.1 is possible only in the following cases:

- (a) only the execution of a limited part of the action may be concerned;
- (b) recourse to the award of contracts must be justified having regard to the nature of the action and what is necessary for its implementation;
- (c) the tasks concerned must be set out in Annex I and the corresponding estimated costs must be set out in detail in the budget in Annex II;
- (d) any recourse to procurement while the action is under way, if not provided for in the initial grant application, shall be subject to prior written authorisation by the Agency;

- (e) the Beneficiary shall retain sole responsibility for carrying out the action and for compliance with the provisions of the agreement. The Beneficiary must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Agency under the agreement;
- (f) the Beneficiary must undertake to ensure that the conditions applicable to him under Articles II.1, II.2, II.3, II.4, II.5, II.6, II.10 and II.19 of the agreement are also applicable to the contractor.

## **ARTICLE II.10 - ASSIGNMENT**

Claims against the Agency may not be transferred

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

In no circumstances shall such an assignment release the Beneficiary from his obligations to the Agency.

## **ARTICLE II.11 – TERMINATION OF THE AGREEMENT**

### **II.11.1 Termination by the Beneficiary**

In duly justified cases, the Beneficiary may withdraw 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 the Agency does not accept the reasons, the Beneficiary shall be deemed to have terminated this agreement improperly, with the consequences set out in the third subparagraph of paragraph 4.

### **II.11.2 Termination by the Agency**

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

- (a) in the event of a legal, financial, technical, organisational or auditing change in the Beneficiary's 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 action has been suspended as a result of exceptional circumstances, notified in accordance with Article II.7;
- (d) if the Beneficiary is declared bankrupt, is being wound up or is the subject of any other similar proceedings;
- (e) if 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 reports inconsistent with reality to obtain the grant provided for in the agreement;
- (g) if the Beneficiary has intentionally or by negligence committed a substantial irregularity in performing the agreement or in the event of fraud, corruption or any other illegal activity on the part of the Beneficiary to the detriment of the European Communities' financial interests. A substantial irregularity consists of any infringement of a provision of an agreement or regulation resulting from an act or an omission on the part of the Beneficiary which causes or might cause a loss to the Community budget.

### **II.11.3 Termination procedure**

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

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

