

## **ANNEX II - General Conditions for PA Grant or Delegation Agreements**

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## **PART I: Common provisions applicable to PA Grant and Delegation Agreements**

### **Article 1: Definitions**

<b>Action:</b>	the cooperation programme or project partly or wholly financed by the EU, which is carried out by the Organisation as described in Annex I.
<b>Contractor:</b>	a natural or legal person with whom a Procurement Contract has been signed.
<b>CFSP:</b>	Common Foreign and Security Policy of the European Union.
<b>Days:</b>	all references to "days" are to calendar days.
<b>End Date:</b>	the date by which the Agreement ends, i.e. is the moment of the payment of the balance by the Contracting Authority in accordance with Article 19 or when the Organisation repays any amounts paid in excess of the final amount due pursuant to Article 20. If any of the Parties invokes a dispute settlement procedure in accordance with Article 14, the End Date is postponed until the completion of such procedure.
<b>EU External Action:</b>	Action financed under EDF, DCI, ENI, IPA II, INSC, IcSP, PI, EIDHR and their predecessors. All other Actions are Internal Policies.
<b>Final Beneficiary:</b>	a natural or legal person ultimately benefitting from the Action.
<b>Force Majeure:</b>	any unforeseeable exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of its obligations under the Agreement, which may not be attributed to error or negligence on either part (or the part of the Grant Beneficiaries, Co-Delegates, Co-Beneficiaries, Affiliated Entities, Contractors, agents or staff), and which could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available cannot be invoked as force majeure, unless they stem directly from a relevant case of force majeure. Labour disputes, strikes or financial problems of the Organisation cannot be invoked as force majeure by the defaulting Party.
<b>Indicator:</b>	the quantitative and/or qualitative factor or variable that provides a simple and reliable means to measure the achievement of the Results of an Action.
<b>Internal Control System:</b>	a process applicable at all levels of management designed to provide reasonable assurance of achieving the following objectives: a) effectiveness, efficiency and economy of operations; b) reliability of reporting; c) safeguarding of assets and information; d) prevention, detection, correction and follow-up of fraud and irregularities; e) adequate management of the risks relating to the legality and regularity of the financial operations, taking into account the multiannual character of programmes as well as the nature of the payments concerned.
<b>Outcome:</b>	the likely or achieved short-term and medium-term effects of an Action's Outputs;
<b>Output:</b>	the products, capital goods and services which result from an Action's activities.
<b>Procurement Contract:</b>	a contract signed between the Organisation, a Co-Beneficiary, Co-Delegatee or an Affiliated Entity and a Contractor under which the Contractor provides services, supplies or works.
<b>Result:</b>	the Output or Outcome of an Action.
<b>Regulations and Rules:</b>	regulations, rules, organisational directives, instructions and other parts of the regulatory framework of the Organisation.
<b>Sound Financial Management:</b>	principle overarching the implementation of this Agreement, namely economy, effectiveness and efficiency (including regarding internal control). The principle of economy requires that resources used in the pursuit of the implementation of the Action shall be made available in due time, in appropriate quantity and quality and at the best price. The principle of effectiveness concerns the attainment of the specific objectives and the achievement of the intended results. The principle of efficiency concerns the best relationship between resources employed and results achieved.

## **Definitions applicable to Delegation Agreements only**

- Co-Delegatee:** an entity implementing part of the Action and being a party to the relevant Delegation Agreement together with the Organisation. The Co-Delegates together with the Organisation are referred to as "Delegates".
- Early Detection and Exclusion System:** system set up by Regulation (EU, Euratom) No 2015/1929 of 28 October 2015 on the financial rules applicable to the general budget of the Union (OJ L 286/1, 30.10.2015) which includes information on the early detection of risks threatening the EU financial interests, on the cases of exclusion from EU funding of legal and natural persons and on the cases of imposition of financial penalties.
- Grant:** a direct financial contribution by way of donation given by the Organisation or Co-Delegatee to finance third parties activities.
- Grant Beneficiary:** a natural or legal person to whom a Grant has been awarded. Grant Beneficiaries can sub-grant and procure for the implementation of their activities.
- Multi-donor Action:** an Action co-financed by the EU contribution (whether or not earmarked) and other donor(s).

## **Definitions applicable to PA Grant Agreements only**

- Affiliated Entity:** an entity having a structural link with the Organisation or a Co-Beneficiary, in particular a legal or capital link, and implementing part of the Action.
- Co-Beneficiary:** an entity implementing part of the Action and being a party to the Agreement together with the Organisation. The Organisation signs the Agreement also on behalf of the Co-Beneficiaries.

## **Article 2: General obligations**

### **Implementation of the Action**

- 2.1 The Organisation is responsible for the implementation of the Action described in Annex I of the Agreement, regardless whether the activities are carried out by the Organisation itself, an Affiliated Entity, a Contractor or a Grant Beneficiary. Both Parties will endeavour to strengthen their mutual contacts with a view to foster the exchange of information throughout the implementation of the Action. To this end, the Organisation and the Contracting Authority shall participate in coordination meetings and other jointly organised common activities, and the Organisation shall invite the European Commission to join any donor committee which may be set up in relation to the Action.

### **Responsibility**

- 2.2 The Organisation shall be responsible for the performance of the obligations under this Agreement with a due professional degree of care and diligence, which means that it shall apply the same level of duty and care which it applies in managing its own funds.
- 2.3 Under Delegation Agreements, the Organisation shall have full financial responsibility towards the Contracting Authority for all funds including those unduly paid to or incorrectly used by Contractors or Grant Beneficiaries. The Organisation shall take measures to prevent, detect and correct irregularities and fraud when implementing the Action. To this end, the Organisation shall carry out, in accordance with the principle of proportionality and its positively assessed Regulations and Rules, ex-ante and/or ex-post controls including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions, to ensure that the Action financed by the EU is effectively carried out and implemented correctly. The Organisation shall inform the European Commission of irregularities and fraud detected in the management of EU funds and the measures taken. Where funds have been unduly paid to or incorrectly used by Contractors or Grant Beneficiaries, the Organisation

shall take all applicable measures in accordance with its own Regulations and Rules to recover those funds, including, where appropriate, by bringing legal proceedings and by endeavouring to assign claims against its Contractors or Grant Beneficiaries to the Contracting Authority or the European Commission. Where the Organisation has exhausted such measures and the non-recovery is not the result of error or negligence on the part of the Organisation, the Contracting Authority will consider the amounts that could not be recovered from Contractors and/or Grant Beneficiaries as eligible costs of the Action.

#### **Other obligations**

- 2.4 The Organisation undertakes to ensure that the obligations stated in this Agreement under Articles 2.6, 5-Conflict of interests, 7-Data protection, 8-Communication and Visibility, 16-Accounts and archiving and Article 17-Access and financial checks apply, where applicable, to all Contractors and Grant Beneficiaries.
- 2.5 The Organisation shall notify the Contracting Authority and the European Commission without delay of any substantial change in the rules, procedures and systems applied in the implementation of the Action. This obligation concerns in particular (i) substantial changes affecting the pillar assessment undergone by the Organisation or (ii) those which may affect the conditions for eligibility provided for in the applicable legal instruments of the EU. The Parties shall use their best efforts to resolve amicably any issues resulting from such changes. The Contracting Authority reserves the right to adopt or require additional measures in response to such changes. In the event an agreement on such measures or other solutions cannot be reached between the Parties, either Party may terminate the Agreement according to Article 13.3.
- 2.6 The Organisation shall promote the respect of human rights and respect applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards.
- 2.7 Where the European Commission is not the Contracting Authority, it shall not be a party to this Agreement, which shall only confer on it rights and obligations where explicitly stated. This is without prejudice to the European Commission's role in promoting a consistent interpretation of the terms of this Agreement.

### **Article 3: Obligations regarding information and reporting**

#### **General issues**

- 3.1 The Organisation shall provide the Contracting Authority with full information on the implementation of the Action. To that end, the Organisation shall include in Annex I a work plan at least for the first year of the Implementation Period (or the whole Implementation Period where it is less than one year). The Organisation shall submit to the Contracting Authority progress report(s) and a final report in accordance with the provisions below. These reports shall consist of a narrative part and a financial part.
- 3.2 Every report, whether progress or final, shall provide a complete account of all relevant aspects of the implementation of the Action for the period covered. The report shall describe the implementation of the Action according to the activities envisaged in Annex I as well as the degree of achievement of its Results (Outcomes or Outputs) as measured by corresponding Indicators. The report shall be laid out in such a way as to allow monitoring of the objective(s), the means envisaged and employed. The level of detail in any report shall match that of Annexes I and III.
- 3.3 Where the Action of the Organisation lasts longer than the Implementation Period of this Agreement, the Contracting Authority may request – in addition to the final reports to be submitted under Article 3.8 - the final reports of the Action, once available.
- 3.4 Any alternative or additional reporting requirement shall be set out in the Special Conditions.
- 3.5 The Contracting Authority may request additional information at any time, providing the reasons for that request. Subject to the Organisation's Regulations and Rules, such information shall be supplied

within 30 days of receipt of the request. The Organisation may submit a reasoned request to extend the 30-day deadline.

- 3.6 The Organisation shall notify the Contracting Authority without delay on any circumstances likely to adversely affect the implementation and management of the Action or to delay or jeopardise the performance of the activities.

#### **Content of the reports**

- 3.7 The progress report(s) shall directly relate to this Agreement and shall at least include:
- a) summary and context of the Action;
  - b) actual Results: an updated table based on a logical framework matrix including reporting of Results achieved by the Action (Outcomes or Outputs) as measured by their corresponding Indicators, agreed baselines and targets, and relevant data sources;
  - c) activities carried out during the reporting period (i.e. directly related to the Action and described in this Agreement);
  - d) information on the difficulties encountered and measures taken to overcome problems and eventual changes introduced;
  - e) information on the implementation of the Visibility and Communication Plan (Annex VI) and any additional measures taken to identify the EU as source of financing;
  - f) information on the costs incurred as well as the legal commitments entered into by the Organisation during the reporting period;
  - g) a summary of controls carried out, if any under PA Grant Agreements, and available final audit reports in line with the Organisation's policy on disclosure of such controls and audit reports. Where errors and weaknesses in systems were identified, analysis of their nature and extent as well as information on corrective measures taken or planned shall also be provided;
  - h) where applicable, a request for payment;
  - i) work plan and forecast budget for the next reporting period.
- 3.8 The final report shall cover the entire period of implementation and include:
- a) all the information requested in Article 3.7 a) to h);
  - b) a summary of the Action's receipts, payments received and of the eligible costs incurred;
  - c) where applicable, an overview of any funds unduly paid or incorrectly used which the Organisation could or could not recover itself;
  - d) under a Delegation Agreement, the exact link to the webpage where, according to Article 21.1, information on Grant Beneficiaries and Contractors is available;
  - e) for EU External Actions and CFSP, if relevant, details of transfers of equipment, vehicles and remaining major supplies mentioned in Article 9;
  - f) in the case of Multi-donor Actions and where the EU contribution is not earmarked, a confirmation from the Organisation that an amount corresponding to that paid by the Contracting Authority has been used in accordance with the obligations laid down in this Agreement and that costs that were not eligible for the Contracting Authority have been covered by other donors' contributions.
- 3.9 The Organisation shall submit a report for every reporting period as specified in the Special Conditions as from the commencement of the Implementation Period, unless otherwise specified in the Special Conditions<sup>1</sup>. Reporting, narrative as well as financial, shall cover the whole Action, regardless of whether this Action is entirely or partly financed by EU funds. Progress reports shall be submitted within 60 days after the period covered by such report. For EU External Actions and CFSP, the final report shall be submitted at the latest six months after the end of the Implementation Period. For Internal Policies, the final report shall be submitted at the latest three months after the end of the Implementation Period.

#### **Management declaration and audit or control opinion under Delegation Agreements**

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<sup>1</sup> For EU External Actions and CFSP, by default, the reporting period is every 12 months as from the commencement of the Implementation Period.

### **Management declaration**

- 3.10 Every progress or final report shall be accompanied by a management declaration in accordance with the template of Annex VII, unless, in the fields of EU External Actions and CFSP, Article 1.5 of the Special Conditions states that an annual management declaration shall be sent to the European Commission headquarters, separately from the reports provided under this Agreement.

### **Audit or control opinion for non-international organisations**

- 3.11 In case the Organisation is not an international organisation, an audit or control opinion shall be provided in accordance with internationally accepted audit standards, establishing whether the accounts give a true and fair view, whether the control systems in place function properly, and whether the underlying transactions are managed in accordance with the provisions of this Agreement. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration mentioned above.
- 3.12 Such audit or control opinion shall be provided up to 1 month following the management declaration sent with every progress or final report, unless, in the field of EU External Actions, Article 1.5 of the Special Conditions states that the management declaration and the audit or control opinion shall be sent annually to the European Commission headquarters separately from the reports provided under this Agreement.

### **Currency for reporting**

- 3.13 The reports shall be submitted in the Currency of the Agreement as specified in Article 3 of the Special Conditions.
- 3.14 The Organisation shall convert legal commitments, the Action's receipts and costs incurred in currencies other than the accounting currency of the Organisation according to its usual accounting practices.

### **Failure to comply with reporting obligations**

- 3.15 If the Organisation is unable to present a progress or final report and the accompanying documents by the end of the deadline set out in Article 3.9, the Organisation shall inform the Contracting Authority in writing of the reasons, and shall provide a summary of the state of progress of the Action and, where applicable, a provisional work plan for the next period. If the Organisation fails to comply with this obligation for two (2) months, following the deadline set out in Article 3.9, the Contracting Authority may terminate the Agreement in accordance with Article 13, refuse to pay any outstanding amount and recover any amount unduly paid.

### **Article 4: Liability towards third parties**

- 4.1 The European Commission shall not under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Organisation while the Action is being carried out or as a consequence of the Action. The European Commission shall not therefore accept any claim for compensation or increase in payment in connection with such damage or injury.
- 4.2 The European Commission shall not under any circumstances or for any reason whatsoever be held liable towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the implementation of the Action.
- 4.3 The Organisation shall discharge the European Commission of all liability associated with any claim or action brought as a result of an infringement of the Organisation's Regulations and Rules committed by the Organisation or Organisation's employees or individuals for whom those employees are responsible, or as a result of a violation of a third party's rights in the context of the implementation of the Action.

### **Article 5: Conflict of interests**

- 5.1 The Organisation shall refrain, in accordance with its Regulations and Rules, from any action which may give rise to a conflict of interests.

- 5.2 There is a conflict of interests where the impartial and objective exercise of the functions of any person implementing the Agreement is compromised.

#### **Article 6: Confidentiality**

- 6.1 The Contracting Authority and the Organisation shall both preserve the confidentiality of any document, information or other material directly related to the implementation of the Action that is communicated as confidential. The confidential nature of a document shall not prevent it from being communicated to a third party on a confidential basis when the rules binding upon the Parties, or the European Commission when it is not the Contracting Authority, so require. In no case can disclosure put into jeopardy the Parties' privileges and immunities or the safety and security of the Parties' staff, Contractors or the Final Beneficiaries of the Action.
- 6.2 The Parties shall obtain each other's prior written consent before publicly disclosing such confidential information unless:
- a) the communicating Party agrees to release the other Party from the earlier confidentiality obligations; or
  - b) the confidential information becomes public through other means than in breach of the confidentiality obligation by the Party bound by that obligation; or
  - c) the disclosure of confidential information is required by law or by Regulations and Rules established in accordance with the basic constitutive document of any of the Parties.
- 6.3 The Parties shall remain bound by confidentiality for five years after the End Date of the Agreement or longer as specified by the communicating Party at the time of communication.
- 6.4 Where the European Commission is not the Contracting Authority, it shall still have access to all documents communicated to the Contracting Authority and shall maintain the same level of confidentiality.

#### **Article 7: Data Protection**

The Organisation shall ensure an appropriate protection of personal data in accordance with its applicable Regulations and Rules.

#### **Article 8: Communication and visibility**

- 8.1 The Organisation shall implement the Communication and Visibility Plan detailed in Annex VI.
- 8.2 Unless the European Commission requests or agrees otherwise, the Organisation shall take all appropriate measures to publicise the fact that the Action has received funding from the EU. Information given to the press and to the Final Beneficiaries, as well as all related publicity material, official notices, reports and publications shall acknowledge that the Action was carried out "with funding by the European Union" and shall display the EU logo (twelve yellow stars on a blue background) in an appropriate way. Publications by the Organisation pertaining to the Action, in whatever form and whatever medium, including the internet, shall carry the following disclaimer: "This document was produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union." In the case of EU External Actions and CFSP such measures shall be carried out in accordance with the Communication and Visibility Manual<sup>2</sup> published by the European Commission or with any other guidelines agreed between the European Commission and the Organisation.
- 8.3 If during the implementation of the Action, equipment, vehicles or major supplies are purchased using EU funds, the Organisation shall display appropriate acknowledgement on such vehicles, equipment or major supplies, including the display of the EU logo (twelve yellow stars on a blue background). Where such display could jeopardise the Organisation's privileges and immunities or the safety of the Organisation's staff or of the Final Beneficiaries, the Organisation shall propose appropriate

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<sup>2</sup> Communication and Visibility Manual for EU External Actions, available at:  
[https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions\\_en](https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en)

alternative arrangements. The acknowledgement and the EU logo shall be of such a size and prominence as to be clearly visible in a manner that shall not create any confusion regarding the identification of the Action as an activity of the Organisation, nor the ownership of the equipment, vehicles or major supplies by the Organisation.

- 8.4 In the case of EU External Actions and CFSP, if in application of Article 9.5, the equipment, vehicles or remaining major supplies purchased using EU funds have not been transferred to the local authorities, local Co-Beneficiaries, local Grant Beneficiaries or Final Beneficiaries when submitting the final report, the visibility requirements as regards this equipment, vehicles or major supplies (in particular display of the EU logo) shall continue to apply between submission of the final report and the end of the Action, if the latter is longer. Where the Organisation retains ownership in accordance with Article 9.6, the visibility requirements shall continue to apply as long as the relevant equipment, vehicles or remaining major supplies are used by the Organisation.
- 8.5 Unless otherwise provided in the Special Conditions if disclosure risks threatening the Organisation's safety or harming its interests, the European Commission and the Contracting Authority (if other than the European Commission) may publish in any form and medium, including on its internet sites, the name and address of the Organisation, the purpose and amount of the EU contribution.
- 8.6 The Organisation shall ensure that reports, publications, press releases and updates relevant to the Action are communicated to the addresses stated in the Special Conditions, as and when they are issued.
- 8.7 The Parties will consult immediately and strive to remedy any detected shortcoming in implementing the visibility requirements set out in this Article. This is without prejudice to measures the Contracting Authority may take in case of substantial breach of an obligation.

#### **Article 9: Right to use results and transfer of equipment**

##### **Right to use**

- 9.1 Ownership of the results of the Action shall not vest in the Contracting Authority. Subject to Article 6, the Organisation shall grant, and shall act to ensure that any third party concerned grants the Contracting Authority (and the European Commission where it is not the Contracting Authority) the right to use free of charge the results of the Action, including the reports and other documents relating to it, which are subject to industrial or intellectual property rights.
- 9.2 Where the results mentioned in Article 9.1 include pre-existing rights and the Organisation cannot warrant the Contracting Authority (and the European Commission where it is not the Contracting Authority) the right to use such results, the Organisation shall accordingly inform in writing the Contracting Authority (and the European Commission, where it is not the Contracting Authority).

##### **Transfer (EU External Actions and CFSP only)**

- 9.3 In the field of EU External Actions and CFSP, the equipment, vehicles and remaining major supplies purchased with the EU contribution in the framework of the Action shall be transferred to or remain with local authorities, local Co-Beneficiaries, local Grant Beneficiaries or to the Final Beneficiaries, at the latest when submitting the final report.
- 9.4 The documentary proof of those transfers shall not be presented with the final reports, but shall be kept for verification for the duration and along with the documents mentioned in Article 16.2.
- 9.5 By way of derogation from Article 9.3, the equipment, vehicles and remaining major supplies purchased with the EU contribution in the framework of Actions which continue after the end of the Implementation Period may be transferred at the end of the Action. The Organisation shall use the equipment, vehicles and remaining major supplies for the benefit of the Final Beneficiaries. The Organisation shall inform the Contracting Authority on the end use of the equipment, vehicles and remaining major supplies in the final report.
- 9.6 In the event that there are no local authorities, local Co-Beneficiaries, local Grant Beneficiaries or Final Beneficiaries to whom the equipment, vehicles and remaining major supplies could be transferred, the Organisation may transfer them to another Action funded by the EU or, exceptionally, retain ownership of the equipment, vehicles and remaining major supplies at the end of the Action. In such cases, it shall submit a justified written request with an inventory listing of the items concerned



and a proposal concerning their use in due time and at the latest with the submission of the final report. In no event may the end use jeopardize the sustainability of the Action.

#### **Article 10: Evaluation and monitoring of the Action**

- 10.1 The Organisation shall invite representatives of the Contracting Authority and the European Commission to participate at their own costs in the main monitoring and evaluation missions relating to the performance of the Action. The Organisation shall report the results of such missions to the European Commission.
- 10.2 Article 10.1 is without prejudice to any evaluation or monitoring mission which the European Commission as a donor, or the Contracting Authority at their own costs, may wish to perform. Evaluation and monitoring missions by representatives of the European Commission or Contracting Authority shall be planned ahead and completed in a collaborative manner between the staff of the Organisation and the European Commission's (or the Contracting Authority's) representatives, keeping in mind the commitment of the Parties to the effective and efficient operation of the Agreement. The European Commission (or the Contracting Authority) and the Organisation shall agree on procedural matters in advance. The European Commission (or the Contracting Authority) shall make the draft report of the evaluation or monitoring mission available to the Organisation for comments prior to final issuance. The European Commission (or the Contracting Authority) shall send the final report to the Organisation once issued.

#### **Article 11: Amendment to the Agreement**

- 11.1 Any amendment to this Agreement, including its annexes, shall be set out in writing in an addendum signed by both Parties. This Agreement can only be amended before the End Date.
- 11.2 The requesting Party shall request in writing any amendment 30 days before the amendment is intended to enter into force and no later than 30 days before the End Date, unless there are special circumstances duly substantiated by it and accepted by the other Party. The other Party shall notify its decision regarding the amendment proposed in due time and in any case no later than 30 days after the date when the amendment request was received.
- 11.3 By derogation from Articles 11.1 and 11.2, where an amendment to Annex I and/or Annex III does not affect the main purpose of the Action, such as its objectives, strategy and priority areas, and the financial impact is limited to a transfer within a single budget heading, including cancellation or introduction of an item, or a transfer between budget headings involving a variation (as the case may be in cumulative terms) of 25 % or less of the amount originally entered (or as amended by a written addendum) in relation to each concerned heading, the Organisation may unilaterally amend Annex I and/or Annex III and shall inform the Contracting Authority accordingly in writing, at the latest in the next report. The Organisation may also, in agreement with the Contracting Authority, change the outputs, the Indicators and their related targets, baselines and sources of verification described in Annex I and in the logical framework if the change does not affect the main purpose of the Action.
- 11.4 The method described in Article 11.3 shall not be used to amend the contingency reserve, nor the rate for remuneration/indirect costs or the amounts or rates of simplified cost options. Under a PA Grant Agreement, amendments shall not have the purpose or the effect of making such changes to the Agreement as would call into question the award decision or, where applicable, be contrary to the equal treatment of applicants.
- 11.5 Annex VI may be changed by the Organisation in agreement with the European Commission, without the need for a formal addendum to the Agreement.
- 11.6 Changes of address and of bank account shall be notified in writing to the Contracting Authority. Where applicable, changes of bank account must be specified in the request for payment, using the financial identification form attached as Annex IV.

#### **Article 12: Suspension**

##### **Suspension of the time limit for payment**

- 12.1 The Contracting Authority may suspend the time limit for payment following a single payment request by notifying the Organisation that either:
- a) the amount is not due; or

- b) the appropriate supporting documents have not been provided and therefore the Contracting Authority needs to request clarifications, modifications or additional information to the narrative or financial reports. Such clarifications or additional information may notably be requested by the Contracting Authority if it has doubt about compliance by the Organisation with its obligations in the implementation of the Action; or
- c) credible information has come to the notice of the Contracting Authority that puts in doubt the eligibility of the reported costs; or
- d) under a Delegation Agreement, credible information has come to the notice of the Contracting Authority that indicates a significant deficiency in the functioning of the Internal Control System of the Organisation or that the expenditure reported by the Organisation is linked to a serious irregularity and has not been corrected. In this case, the Contracting Authority may suspend the payment deadline if it is necessary to prevent significant damage to the EU's financial interests.

12.2 In the situations listed in Article 12.1 the Contracting Authority shall notify to the Organisation as soon as possible and in any case within 30 days from the date on which the payment request was received the reasons for the suspension, specifying, where applicable, the additional information required. Suspension shall take effect on the date when the Contracting Authority sends the notification stating the reasons for the suspension. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further checks are carried out. If the requested information or documents are not provided within the deadline fixed in the notification or are incomplete, payment may be made on the basis of the partial information available.

#### **Suspension of the Agreement by the Contracting Authority**

12.3 The Contracting Authority may suspend the implementation of the Agreement, fully or partly, if:

- a) the Contracting Authority has proof that substantial errors, irregularities, fraud or breach of substantial obligations have been committed by the Organisation in the procedure of its selection, in its pillar assessment or in the implementation of the Action;
- b) under a Delegation Agreement, the Contracting Authority has proof that systemic errors have occurred which call into question the reliability of the Organisation's Internal Control System or the legality and regularity of the underlying transactions;
- c) the Contracting Authority has proof that the Organisation has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other agreements funded by EU funds provided that those errors, irregularities, fraud or breach of obligations have a material impact on this Agreement.

12.4 Before suspension, the Contracting Authority shall formally notify the Organisation of its intention to suspend, inviting the Organisation to make observations within 10 days from the receipt of the notification. If the Organisation does not submit observations, or if, after examination of the observations submitted by the Organisation, the Contracting Authority decides to pursue the suspension, the Contracting Authority may suspend all or part of the implementation of this Agreement serving 7 days' prior notice. In case of suspension of part of the implementation of the Agreement, upon request of the Organisation, the Parties shall enter into discussions in order to find the arrangements necessary to continue the part of the implementation which is not suspended. Any expenditure or costs incurred by the Organisation during the suspension and related to the part of the Agreement suspended shall not be reimbursed or covered by the Contracting Authority. Following suspension of the implementation of the Agreement, the Contracting Authority may terminate the Agreement in accordance with Article 13.2, recover amounts unduly paid and/or, in agreement with the Organisation, resume implementation of the Agreement. In the latter case the Parties will amend the Agreement where necessary.

#### **Suspension for exceptional circumstances**

12.5 The Organisation may decide to suspend the implementation of all or part of the Action if exceptional or unforeseen circumstances beyond the control of the Organisation make such implementation impossible or excessively difficult, such as in cases of Force Majeure. The Organisation shall inform

the Contracting Authority immediately and provide all the necessary details, including the measures taken to minimise any possible damage, and the foreseeable effect and date of resumption.

- 12.6 The Contracting Authority may also notify to the Organisation the suspension of the implementation of the Agreement if exceptional circumstances so require, in particular:
- a) when a relevant EU Decision identifying a violation of human rights has been adopted;
  - b) in cases such as crisis entailing a change of EU policy.
- 12.7 Neither of the Parties shall be held liable for breach of its obligations under the Agreement if it is prevented from fulfilling them by Force Majeure or exceptional circumstances as set forth under Articles 12.5 and 12.6 provided it takes any measure to minimise any possible damage.
- 12.8 In the situations listed in Articles 12.5 and 12.6, the Parties shall minimise the duration of the suspension and shall resume implementation once the conditions allow. During the suspension period the Organisation shall be entitled to the reimbursement of the minimum costs, including new legal commitments, necessary for a possible resumption of the implementation of the Agreement or of the Action. The Parties shall agree on such costs, including the reimbursement of legal commitments entered into for implementing the Action before the notification of the suspension was received which the Organisation cannot reasonably suspend, reallocate or terminate on legal grounds. This is without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions, including, if possible, the extension of the Implementation Period and, for Delegation Agreements, the contracting deadline, or to the termination of the Agreement in accordance with Article 13.3. In case of suspension due to Force Majeure or if the Action is a Multi-donor Action, the contracting deadline under Delegation Agreements and the Implementation Period are automatically extended by an amount of time equivalent to the duration of the suspension.

### **Article 13: Termination**

- 13.1 Without prejudice to any other provision of these General Conditions or penalties foreseen in the EU Financial Regulation where applicable, and with due regard to the principle of proportionality, the Contracting Authority may terminate the Agreement if the Organisation:
- a) fails to fulfil a substantial obligation incumbent on it under the terms of the Agreement;
  - b) is guilty of misrepresentation or submits false or incomplete statements to obtain the EU contribution or provides reports that do not reflect reality to obtain or keep the EU contribution without cause;
  - c) is bankrupt or being wound up, or is subject to any other similar proceedings;
  - d) is guilty of grave professional misconduct proven by any justified means;
  - e) has committed fraud, corruption or any other illegal activity to the detriment of the EU's financial interests on the basis of proof in the possession of the Contracting Authority;
  - f) fails to comply with the reporting obligations in accordance with Article 3.15;
  - g) has committed any of the failings described in Article 12.3 on the basis of proof in the possession of the Contracting Authority.
- 13.2 Before terminating the Agreement in accordance with Article 13.1, the Contracting Authority shall formally notify the Organisation of its intention to terminate, inviting the Organisation to make observations (including proposals for remedial measures) within 30 days from the receipt of the notification. During this period and until the termination takes effect, the Contracting Authority may suspend the time limit for any payment in accordance with Article 12.2 as a precautionary measure informing the Organisation immediately in writing. If the Organisation does not submit observations, or if, after examination of the observations submitted by the Organisation, the Contracting Authority decides to pursue the termination, the Contracting Authority may terminate the Agreement serving 7 days' prior notice. During that period the Organisation may refer the matter to the responsible director in the European Commission. Where the Contracting Authority is the European Commission, the termination will take effect if and when confirmed by the director. Where the Contracting Authority is not the European Commission, the referral to the responsible director in the European Commission will not suspend the effects of the decision of the Contracting Authority. In case of termination, the Contracting Authority may demand full repayment of any amounts paid in excess of the final amount determined in accordance with Article 20 after allowing the Organisation to submit its observations.

Neither Party shall be entitled to claim indemnity by the other Party on account of the termination of this Agreement.

13.3 If, at any time, either Party believes that the purpose of the Agreement can no longer be effectively or appropriately carried out, it shall consult the other Party. Failing agreement on a solution, either Party may terminate the Agreement by serving 60 days written notice. In this case, the final amount shall cover:

- a) payment only for the part of the Action carried out up to the date of termination;
- b) in the situations described in Articles 12.5 and 12.6, the unavoidable residual expenditures incurred during the notice period; and,
- c) in the situations described in Articles 12.5 and 12.6 under a Delegation Agreement reimbursement of legal commitments the Organisation entered into for implementing the Action before the written notice on termination was received by it and which the Organisation cannot reasonably terminate on legal grounds.

The Contracting Authority shall recover the remaining part in accordance with Article 15.

13.4 In the event of termination, a final report and a request for payment of the balance have to be submitted according to Articles 3.8, 3.9 and 19. The Contracting Authority shall not reimburse or cover any expenditure or costs which are not included or justified in a report approved by it.

#### **Article 14: Applicable law and settlement of disputes**

14.1 The Parties shall endeavour to amicably settle any dispute or complaint relating to the interpretation, application or validity of the Agreement, including its existence, or termination.

14.2 Where the Organisation is not an international organisation and the European Commission is the Contracting Authority, this Agreement is governed by EU law, complemented if necessary by the relevant provisions of Belgian law. In the absence of an amicable settlement in accordance with Article 14.1 above, the General Court, or on appeal the Court of Justice of the European Union, has sole jurisdiction. Such actions must be brought under Article 272 of the Treaty on the Functioning of the EU (TFEU).

14.3 Where the Organisation is not an international organisation and the European Commission is not the Contracting Authority, the Agreement shall be governed by the law of the country of the Contracting Authority and the courts of the country of the Contracting Authority shall have exclusive jurisdiction, unless otherwise agreed by the Parties. The dispute may, by common agreement of the Parties, be submitted for conciliation to the European Commission. If no settlement is reached within 120 days of the opening of the conciliation procedure, each Party may notify the other that it considers the procedure to have failed and may submit the dispute to the courts of the country of the Contracting Authority.

14.4 Where the Organisation is an international organisation:

- a) nothing in the Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party by its constituent documents, privileges and immunities agreements or international law;
- b) in the absence of amicable settlement in accordance with Article 14.1 above, any dispute shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, as in effect on the date of entry into force of this Agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The arbitration proceedings must take place in the Hague and the language used in the arbitral proceedings will be English. The arbitrator's decision shall be binding on all Parties and there shall be no appeal.

#### **Article 15: Recovery**

15.1 Where an amount is to be recovered under the terms of the Agreement, the Organisation shall repay to the Contracting Authority the amount due.

- 15.2 Before recovery, the Contracting Authority shall formally notify the Organisation of its intention to recover any undue amount, specifying the amount and the reasons for recovery and inviting the Organisation to make any observations within 30 days from the date of receipt of the notification. If, after examination of the observations submitted by the Organisation or if the Organisation does not submit any observations, the Contracting Authority decides to pursue the recovery procedure, it may confirm recovery by formally notifying the Organisation. If there is a disagreement between the Organisation and the Contracting Authority on the amount to be repaid, the Organisation may refer the matter to the responsible director in the European Commission within 30 days. Where the Contracting Authority is the European Commission, a debit note specifying the terms and the date for payment may be issued after the deadline for the referral to the director. Where the Contracting Authority is not the European Commission, the referral to the responsible director in the European Commission will not prevent the Contracting Authority from issuing the debit note.
- 15.3 If the Organisation does not make the payment by the date specified in the debit note, the Contracting Authority shall recover the amount due:
- a) by offsetting it against any amounts owed to the Organisation by the EU;
  - b) by taking legal action in accordance with Article 14;
  - c) in exceptional circumstances, justified by the necessity to safeguard the financial interests of the EU, the Contracting Authority may, when it has justified grounds to believe that the amount due would be lost, recover by offsetting before the deadline specified in the debit note without the Organisation's prior consent.
- 15.4 If the Organisation fails to repay by the due date, the amount due shall be increased by late payment interest calculated at the rate indicated in Article 19.5(a). The interest shall be payable for the period elapsing from the day after the expiration of the time limit for payment up to and including the date when the Contracting Authority actually receives payment in full of the outstanding amount. Any partial payment shall first cover the interest.
- 15.5 Bank charges incurred from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Organisation.
- 15.6 Where the European Commission is not the Contracting Authority, it may, if necessary, proceed itself to the recovery.
- 15.7 Where the Contracting Authority is the European Commission, it may waive the recovery in accordance with the principle of Sound Financial Management and proportionality or it shall cancel the amount in the event of a mistake.

## **Article 16: Accounts and archiving**

### **Accounting**

- 16.1 The Organisation shall keep accurate and regular records and accounts of the implementation of the Action. The accounting Regulations and Rules of the Organisation shall apply, provided that these Regulations and Rules conform to internationally accepted standards. Financial transactions and financial statements shall be subject to the internal and external auditing procedures laid down in the Regulations and Rules of the Organisation.

### **Archiving**

- 16.2 For a period of five years from the End Date and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim or investigation by the European Anti-Fraud Office (OLAF), if notified to the Organisation, has been disposed of, the Organisation shall keep and make available according to Article 17 all relevant financial information (originals or copies) related to the Agreement and to any Procurement Contracts, Grant agreements and financial support to third parties concluded under this Agreement.

## **Article 17: Access and financial checks**

- 17.1 The Organisation shall allow the European Commission and the European Court of Auditors, or any authorised representatives to conduct desk reviews and on-the-spot checks on the use made of the EU

contribution on the basis of supporting accounting documents and any other document related to the financing of the Action.

- 17.2 The Organisation agrees that OLAF may carry out investigations, including on-the-spot checks, in accordance with the provisions laid down by EU law for the protection of the financial interests of the EU against fraud, corruption and any other illegal activity.
- 17.3 The Organisation agrees that the execution of this Agreement may be subject to scrutiny by the Court of Auditors when the Court of Auditors audits the European Commission's implementation of EU expenditure. In such case the Organisation shall provide to the Court of Auditors access to the information that is required for the Court to perform its duties.
- 17.4 To that end, the Organisation undertakes to provide officials of the European Commission, OLAF and the European Court of Auditors and their authorised agents, upon request, information and access to any documents and computerised data concerning the technical and financial management of operations financed under the Agreement, as well as grant them access to sites and premises at which such operations are carried out. The Organisation shall take all necessary measures to facilitate these checks in accordance with its Regulations and Rules. The documents and computerised data may include information which the Organisation considers confidential in accordance with its own established Regulations and Rules or as governed by contractual agreement. Such information once provided to the European Commission, OLAF, the European Court of Auditors, or any other authorised representatives, shall be treated in accordance with EU confidentiality rules and legislation and Article 6. Documents must be accessible and filed in a manner permitting checks, the Organisation being bound to inform the European Commission, OLAF or the European Court of Auditors of the exact location at which they are kept. Where appropriate, the Parties may agree to send copies of such documents for a desk review.
- 17.5 Where applicable, the desk reviews, investigations and on-the-spot checks referred to in Article 17.1 to 17.4 shall refer to a verification which shall be performed in accordance with the verification clauses agreed between the Organisation and the Commission. This is without prejudice to any cooperation agreement between OLAF and the Organisation's anti-fraud bodies.
- 17.6 The European Commission shall inform the Organisation of the planned on-the-spot missions by agents appointed by the European Commission in due time in order to ensure adequate procedural matters are agreed upon in advance.
- 17.7 Failure to comply with the obligations set forth in Article 17 constitutes a case of breach of a substantial obligation under this Agreement.

#### **Article 18: Eligibility of costs**

- 18.1 The eligible direct costs of the Action are costs that meet all the following criteria:
- a) they are necessary for carrying out the Action, directly attributable to it, arising as a direct consequence of its implementation and charged in proportion to the actual use;
  - b) they are incurred in accordance with the provisions of this Agreement.
  - c) they are actually incurred by the Organisation, i.e. they represent real expenditure definitely and genuinely borne by the Organisation, without prejudice to Article 18.5;
  - d) they are reasonable, justified, comply with the principle of Sound Financial Management and are in line with the usual practices of the Organisation regardless of their source of funding;
  - e) they are incurred during the Implementation Period with the exception of costs related to final report, final evaluation, audit and other costs linked to the closure of the Action which may be incurred after the Implementation Period;
  - f) they are identifiable and backed by supporting documents, in particular determined and recorded in accordance with the accounting practices of the Organisation;
  - g) they are covered by one of the sub-headings indicated in the estimated budget in Annex III and by the activities described in Annex I;

h) they comply with the applicable tax and social legislation taking into account the Organisation's privileges and immunities.

- 18.2 The following costs may not be considered eligible direct costs but may be charged as part of the remuneration/indirect costs: all eligible costs that, while necessary and arising as a consequence of implementation, are supporting the implementation of the Action and not considered part of the activities that the Union finances as described in Annex I, including corporate management costs or other costs linked to the normal functioning of the Organisation, such as horizontal and support staff, office or equipment costs (except when duly justified and described in Annex I, such as a project office).
- 18.3 The remuneration/indirect costs shall be declared on the basis of a flat-rate which shall not exceed 7% of the total eligible direct costs to be reimbursed by the Contracting Authority. The remuneration/indirect costs do not need to be supported by accounting documents. For Multi-donor and comparable Actions, the remuneration/indirect costs shall not be higher than that charged by the Organisation to comparable contributions.
- 18.4 The following costs are ineligible for Union financing:
- a. bonuses, provisions, reserves or non-remuneration related costs. Employers' contributions to pension or other insurance funds run by the Organisation may only be eligible to the extent they do not exceed the actual payments made by these schemes and that the amount provisioned does not exceed the contribution that could have been made to an external fund;
  - b. full-purchase cost of equipment and assets unless, for EU External Actions and CFSP, the asset or equipment is specifically purchased for the Action and ownership is transferred in accordance with Article 9;
  - c. duties, taxes and charges, including VAT, that are recoverable/deductible by the Organisation;
  - d. return of capital;
  - e. debts and debt service charges;
  - f. provision for losses, debts or potential future liabilities;
  - g. banking charges for the transfers from the Contracting Authority;
  - h. costs incurred during the suspension of the implementation of the Agreement except the minimum costs agreed on in accordance with Article 12.8;
  - i. costs declared by the Organisation under another agreement financed by the European Union budget (including through the European Development Fund);
  - j. contributions in kind. The cost of staff assigned to the Action and actually incurred by the Organisation is not a contribution in kind and may be declared as direct eligible cost if it complies with the conditions set out in Article 18.1;
  - k. costs of purchase of land or buildings, unless otherwise provided in the Special Conditions;
  - l. for PA Grants: Salary costs of the personnel of national administrations, except if stated in the Special Conditions and if they relate to activities which the relevant public authority would not carry out if the Action were not undertaken.

#### **Simplified cost options**

- 18.5 Direct eligible costs may also be declared by using any or a combination of unit costs, lump sums and flat-rate financing. The methods used by the Organisation to determine unit costs, lump sums or flat-rates shall comply with the principles provided in Articles 18.1, 18.2 and 18.4, be clearly described and substantiated in Annex III, shall avoid double funding of costs and shall ensure reasonably that no profit is generated. These methods shall be based on the Organisation's historical or actual accounting data, its usual accounting practices or on external information where available and appropriate.
- 18.6 Costs declared under simplified cost options do not need to be backed by accounting or supporting documents except if they are necessary to demonstrate that the costs have been declared according to the agreed method or cost accounting practices and that the qualitative and quantitative conditions defined in Annex I and III have been respected.

- 18.7 For staff costs, the unit cost (the hourly, daily or half-daily rate) is calculated using the number of annual productive units (respectively productive hours, days or half-days).
- a) For the number of annual productive units, the Organisation may choose one of the following:
- i) 1720 hours or 215 days or 430 half-days for persons working full time (or corresponding pro-rata for persons not working full time);
  - ii) the total number of hours or days or half-days worked by the person in the year for the Organisation, defined as the annual workable hours or days or half-days of the person (according to the employment contract, applicable labour agreement or national law) plus overtime worked minus absences (such as sick leave and special leave);
  - iii) the standard number of annual hours or days or half-days generally applied by the Organisation for its staff in accordance with its usual cost accounting practices. This number must be at least 90% of the standard annual workable hours or days or half-days.
- For the purposes of points (ii) and (iii), the annual workable hours or days or half-days mean the period during which the staff must be working, at the Organisation's disposal and carrying out his/her activity or duties under the employment contract, applicable collective labour agreement or national working time legislation;
- b) The number of actual units (hours or days or half-days) declared by the Organisation shall be necessary for the implementation of the Action and shall be identifiable and verifiable.
- 18.8 The total amount declared on the basis of simplified cost options may not exceed EUR 60.000, unless otherwise provided for in the Special Conditions. The ceiling of EUR 60.000 does not apply to staff costs determined on the basis of the usual accounting practices of the Organisation as referred to in Article 18.7, nor to the costs of project offices where declared using a simplified allocation method as set out in the Special Conditions.
- 18.9 If a verification reveals that the methods used by the Organisation to determine unit costs, lump sums or flat-rates are not compliant with the conditions established in this Agreement, the Contracting Authority shall be entitled to recover proportionately up to the amount of the unit costs, lump sums or flat-rate financing.
- 18.10 Upon request of the Organisation, the European Commission may validate ex-ante the compliance of the methods used for determining the unit costs, lump sums or flat-rates or of the usual costs accounting practices. In such case, costs declared in compliance with those methods and accounting practices will not be challenged by ex post controls if the Organisation did not conceal any information for the purpose of their approval.

## **Article 19: Payments**

- 19.1 Payment procedures shall be as follows:
- a) the Contracting Authority shall provide a first pre-financing instalment as set out in Article 4.1 of the Special Conditions within 30 days of receiving this Agreement signed by both Parties;
  - b) the Organisation may submit a request for further pre-financing instalment for the following reporting period in accordance with Article 4 of the Special Conditions; the following provisions apply:
    - i) the reporting period is intended as a twelve-month period unless otherwise provided for in the Special Conditions. When the remaining period to the end of the Action is up to 18 months, the reporting period shall cover it entirely;
    - ii) if at the end of the reporting period less than 70% of the immediate preceding payment (and 100% of previous payments, if any) has been subject to a legal commitment with a third party, the further pre-financing payment shall be reduced by the amount corresponding to the difference between the 70 % of the immediately pre-financing payment (and 100% of previous payments, if any) and the part of the previous pre-financing payments which has been subject to a legal commitment;
    - iii) the Organisation may submit a request for further pre-financing payment before the end of the reporting period, once more than 70 % of the immediately preceding payment (and 100% of previous payments, if any) has been paid by the Organisation to its staff or otherwise subject



- to a legal commitment with a third party. In this case, the following reporting period starts anew from the end date of the period covered by this payment request;
- c) at the end of the Implementation Period, the Organisation shall submit a payment request for the balance, where applicable, together with the final report. The amount of the balance shall be determined according to Article 20 and following approval of the request for payment of the balance and of the final report;
  - d) the Contracting Authority shall pay the further pre-financing instalments and the balance within 90 days of receiving a payment request accompanied by a progress or final report, unless the time limit for payment was suspended according to Article 12 or 13.

- 19.2 Payment requests shall be accompanied by narrative and financial reports presented in accordance with Article 3. The requests for pre-financing payments and the request for the balance shall be drafted in the Currency of the Agreement as specified in the Special Conditions. Except for the first pre-financing instalment, the payments shall be made upon approval of the payment request accompanied by a progress or final report. The final amount shall be established in line with Article 20. If the balance is negative, the payment of the balance takes the form of recovery.
- 19.3 Approval of the requests for payment and of the accompanying reports shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information contained therein.
- 19.4 The Contracting Authority shall make payments in the Currency of the Agreement as specified in the Special Conditions into the bank account referred to in the financial identification form in Annex IV.

#### **Late payment interest**

- 19.5 In case of late payment of the amounts stated in Article 4 of the Special Conditions the following conditions apply:
  - a) on expiry of the time limits for payments specified in Article 19.1, if the Organisation is not an EU Member State, it shall receive interest on late payment based on the rate applied by the European Central Bank for its main refinancing operations in Euros (Reference Rate), increased by three and a half percentage points. The Reference Rate shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the Official Journal of the EU;
  - b) the suspension of the time limit for payment by the Contracting Authority in accordance with Article 12 or 13 shall not be considered as late payment;
  - c) interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date of actual payment as established in Article 19.1. Any partial payment shall first cover the interest;
  - d) by way of exception to point (c), when the interest calculated in accordance with this provision is lower than or equal to EUR 200, the Contracting Authority shall pay such interest to the Organisation only upon request from the Organisation submitted within two months of it receiving late payment;
  - e) by way of exception to point (c), when the Contracting Authority is not the European Commission, and the European Commission does not make the payments, the Organisation shall be entitled to late payment interest upon its request submitted within two months of it receiving late payment;
  - f) for the purpose of Article 23.2, the interest shall not be treated as a receipt.

#### **Article 20: Final amount of the EU contribution**

- 20.1 The Contracting Authority shall determine the final amount of the EU contribution when approving the Organisation's final report. The Contracting Authority shall then determine the balance:
  - a) to be paid to the Organisation in accordance with Article 19 where the final amount of the EU contribution is higher than the total amount already paid to the Organisation; or
  - b) to be recovered from the Organisation in accordance with Article 15 where the final amount of the EU contribution is lower than the total amount already paid to the Organisation.

- 20.2 Without prejudice to Article 23 the final amount shall be the lower of the following amounts:
- a) the maximum EU Contribution referred to in Article 3.1 (for Delegation Agreements) and Article 3.2 (for PA Grant Agreements) of the Special Conditions in terms of absolute value;
  - b) the amount obtained after reduction of the EU contribution in accordance with Article 20.3;
  - c) for PA Grant Agreements only, the amount obtained by applying the percentage laid down in Article 3.2 of the Special Conditions to the eligible costs of the Action approved by the Contracting Authority.
- 20.3 Where the Action is not implemented, is not implemented in line with the Agreement, is implemented partially or late, the Contracting Authority may, after allowing the Organisation to submit its observations, reduce the EU contribution in proportion to the seriousness of the above mentioned situations. If there is a disagreement between the Organisation and the Contracting Authority on the reduction, the Organisation may refer the matter to the responsible director in the European Commission.

## **Part II: Additional Provisions applicable only to Delegation Agreements**

### **Article 21: Ex-post publication of information on Contractors and Grant Beneficiaries**

- 21.1 The Organisation shall publish, on an annual basis, on its internet site, the following information on Procurement Contracts exceeding EUR 15.000 and all Grants financed by the EU: title of the contract/project, nature and purpose of the contract/project, name and locality of the Contractor or Grant Beneficiary and amount of the contract/project. The term "locality" shall mean the address for legal persons and the Region on NUTS<sup>3</sup> 2 level, or equivalent, for natural persons. This information shall not be published for scholarships paid to natural persons and other direct support paid to natural persons in most need. This information shall be published with due observance of the requirements of confidentiality security and in particular the protection of personal data. The publication shall be waived, if such disclosure risks threatening rights and freedoms as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of the Contractors or Grant Beneficiaries.
- 21.2 The Organisation shall provide to the European Commission the address of the internet site where this information can be found and shall authorise the publication of such address on the European Commission's internet site.
- 21.3 In the field of EU External Actions, where the Action is a Multi-donor Action and the EU contribution is not earmarked, the publication of information on Contractors and Grant Beneficiaries shall follow the rules of the Organisation.

### **Article 22: Contracting and Early Detection and Exclusion System**

#### **Contracting**

- 22.1 The Procurement Contracts and Grant contracts implementing the EU contribution shall be signed by the contracting deadline set out in Article 2.4 of the Special Conditions. After the contracting deadline, only contracts following early termination of an existing contract, addenda to existing contracts and contracts concerning final audits and evaluation may be signed.
- 22.2 Unless otherwise provided for in the Special Conditions, the origin of the goods and the nationality of the organisations, companies and experts selected for carrying out activities in the Action shall be determined in accordance with the Organisation's relevant rules. However, and in any event, goods, organisations, companies and experts eligible under the applicable regulatory provisions of the European Union shall be eligible.
- 22.3 The Organisation shall adopt reasonable measures, in accordance with its own Regulations and Rules, to ensure that potential candidates or tenderers and applicants shall be excluded from the participation in a procurement or grant award procedure and from the award of a Procurement Contract or Grant financed by EU funds, if the Organisation becomes aware that these entities:

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<sup>3</sup> Nomenclature of Territorial Units for Statistics, available at: <http://ec.europa.eu/eurostat/ramon>.

- a) or persons having powers of representation, decision making or control over them, have been the subject of a final judgement or of a final administrative decision for fraud, corruption, involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings;
- b) or persons having powers of representation, decision making or control over them have been the subject of a final judgement or of a final administrative decision for an irregularity affecting the EU's financial interest;
- c) are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or if they fail to supply this information.

#### **Early Detection and Exclusion System**

- 22.4 The Organisation shall inform the European Commission if, in relation to the implementation of the Action, it has found that a third party is in one of the situations referred to in Article 22.3 (a) and (b) or if it has detected a fraud and/or an irregularity according to Article 2.2. The European Commission will introduce this information in the Early Detection and Exclusion System. The Organisation shall inform the European Commission when it becomes aware that transmitted information needs to be rectified updated or removed. The Organisation shall ensure that the entity concerned is informed that its data was transmitted to the European Commission and may be included in the Early Detection and Exclusion System and be published on the website of the European Commission. These requirements cease at the end of the Implementation Period.
- 22.5 Without prejudice to the power of the European Commission to exclude an entity from future procurement contracts and grants financed by the EU, the Organisation may impose financial penalties on Contractors and Grant Beneficiaries according to its own Regulations and Rules ensuring, where applicable, the right of defence of the Contractor or Grant Beneficiary.
- 22.6 The Organisation may take into account, as appropriate and on its own responsibility the information contained in the Early Detection and Exclusion System, when implementing EU funds. Access to the information can be provided through the authorised persons or via consultation with the European Commission as referred in Article 5.6 of the Special Conditions<sup>4</sup>.

### **PART III: Additional provisions applicable only to PA Grants**

#### **Article 23: No Profit**

- 23.1 The EU contribution may not produce a profit in the framework of the Action, unless specified otherwise in Article 7 of the Special Conditions. Profit is defined as a surplus of the receipts over the eligible costs approved by the Contracting Authority when the request for payment of the balance is made.
- 23.2 The receipts to be taken into account are the consolidated receipts on the date on which the payment request for the balance is made by the Organisation that fall within one of the two following categories:
- a) income generated by the Action, unless otherwise specified in the Special Conditions;
  - b) financial contributions specifically assigned by the donors to the financing of the same eligible costs financed by the Agreement and declared by the Organisation as actual costs under the Agreement. Any financial contribution that may be used by the Organisation to cover costs other than those eligible under this Agreement or that are not due to the donor where unused at the end of the Action are not to be considered as a receipt to be taken into account for the purpose of verifying whether the EU contribution produces a profit in the framework of the Action.

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<sup>4</sup> The Organisation shall be allowed to have direct access to the Early Detection and Exclusion System through an authorised person when the Organisation certifies to the Contracting Authority service responsible that it applies the adequate data protection measures as provided in the Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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 (OJ L 8, 12.1.2001, p. 1).

- 23.3 Where the final amount of the EU contribution determined in accordance with the Agreement would result in a profit, it shall be reduced by the percentage of the profit corresponding to the final EU contribution to the eligible costs actually incurred approved by the Contracting Authority.
- 23.4 The provisions in Articles 23.1 to 23.3 shall not apply to:
- a) Actions the objective of which is the reinforcement of the financial capacity of the Organisation if specified in Article 7 of the Special Conditions;
  - b) Actions which generate an income to ensure their continuity beyond the end of this Agreement, if specified in Article 7 of the Special Conditions;
  - c) EU contributions of EUR 60.000 or less.

#### **Article 24: Contracting**

- 24.1 Where the implementation of the Action requires the procurement of goods, works or services, the Organisation shall award the Procurement Contracts to the tender offering best value for money or, as appropriate, to the tender offering the lowest price. In doing so, it shall avoid any conflict of interests. Where the procurement rules and procedures of the Organisation have been positively assessed by the European Commission, Procurement Contracts awarded in line with the assessed rules and procedures are deemed compliant with the aforementioned principles.
- 24.2 In the field of EU External Actions: where the Organisation or another donor provides co-financing other than in-kind contributions to the Action, the origin of the goods and the nationality of the organisations, companies and experts selected for carrying out activities in the Action shall be determined in accordance with the Organisation's Regulations and Rules. However, and in any event, goods, organisations, companies and experts eligible under the applicable regulatory provisions of the European Union shall be eligible.