

ANNEX II - GENERAL CONDITIONS

Part One: Provisions Applicable to Activities for which the Beneficiary is the Contracting Authority

Article 1 – General principles

- 1.1 The purpose of Part One is to define the budget-implementation tasks entrusted to the Beneficiary in indirect management as described in Annex I (Technical and Administrative Provisions) and to define the rights and obligations of the Beneficiary and of the Commission in carrying out these tasks.

These tasks encompass the implementation by the Beneficiary as contracting authority of procurement and grant award procedures, and the awarding, signing and enforcing the resulting procurement and grant contracts.

As a rule, the Commission shall carry out related payments to contractors and grant beneficiaries. However, the Beneficiary shall carry out certain payments including to its own staff on the basis of a programme estimate as defined in Article 5 of these General Conditions.

Where the Beneficiary is an ACP State and the action is financed by the EDF pursuant to Article 1.1 of the Special Conditions, the tasks entrusted shall be those listed in points (c) to (k) of the sixth subparagraph of Article 35(1) and in Article 35(2) of Annex IV to the ACP-EC Partnership Agreement.

Where the Beneficiary is an OCT and the action is financed by the EDF pursuant to Article 1.1 of the Special Conditions, the tasks entrusted shall be those listed in points (c) to (k) of the fifth subparagraph of Article 14(1) and in Article 14(2) of Commission Regulation (EC) No 2304/2002 of 20 December 2002 implementing the Council Decision 2001/822/EC on the association of the overseas countries and territories with the European Community.

- 1.2 The Beneficiary shall remain responsible for the fulfilment of the obligations stipulated in this Financing Agreement even if it designates other entities identified in Annex I (Technical and Administrative Provisions) to carry out certain budget-implementation tasks in the context of the implementation of a programme estimate referred to in Article 5 of these General Conditions. The Commission, in particular, reserves the right to suspend payments, and to suspend and/or terminate this Financing Agreement on the basis of the acts, omissions and/or situations of any designated entity.

1.3 The tasks identified in Article 1.1 of these General Conditions shall be carried out by the Beneficiary in accordance with the procedures and standard documents laid down and published by the Commission for the award of procurement and grant contracts, in force at the time of the launch of the procedure in question.

1.4 The Beneficiary shall set up and ensure the functioning of an effective and efficient internal control system. The Beneficiary shall respect the principles of sound financial management, transparency and non-discrimination and avoid from situations of conflict of interest.

A conflict of interest exists where the impartial and objective exercise of the functions of any responsible person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a tenderer or applicant, or contractor or grant beneficiary.

Internal control system is a process aimed at providing reasonable assurance that operations are effective, efficient and economical, that the reporting is reliable, that assets and information are safeguarded, that fraud and irregularities are prevented, detected and corrected, and that risks relating to the legality and regularity of the financial operation are adequately managed, taking into account the multiannual character of the activities as well as the nature of the payments concerned.

In particular, where the Beneficiary carries out payments pursuant to a programme estimate, the functions of the authorising and accounting officers shall be segregated and mutually incompatible and the Beneficiary shall operate an accounting system that provides accurate, complete, reliable and timely information. The Beneficiary shall also reasonably protect data enabling the identification of a natural person (personal data).

1.5 The report on the implementation of the tasks entrusted to the Beneficiary shall follow the template provided in Annex III. However, where programme estimates are used pursuant to Article 5 of these General Conditions, the report shall follow the requirements stipulated in the standard documents referred to in Article 5.3 of these General Conditions.

1.6 An independent external audit opinion on the management declaration, performed in accordance with internationally accepted auditing standards, does not have to be provided in this case as the Commission shall conduct the audits for this action. These audits will verify the truthfulness of the assertions made in the management declaration and the legality and regularity of the underlying transactions made.

1.7 The Beneficiary shall conduct the procurement and grant award procedures and conclude the resulting contracts in the language of this Financing Agreement.

- 1.8 The Beneficiary shall inform the Commission when a candidate, tenderer or applicant is in a situation of exclusion from participating in procurement and grant award procedures referred to in Article 1.3 and when a contractor or grant beneficiary has been guilty of making false declarations or has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations.

In such cases, without prejudice to the power of the Commission to exclude an entity from future procurement and grant contracts financed by the EU according to the applicable Financial Regulation, financial penalties mentioned in the provisions on administrative and financial penalties of the General Conditions of procurement and grant contracts concluded by the Beneficiary pursuant to standard documents referred to in Article 1.3 may be imposed on the contractors and grant beneficiaries by the Beneficiary if this is allowed by its national law. Such financial penalties shall be imposed following an adversarial procedure ensuring the right of defence of the contractor or grant beneficiary.

The Beneficiary may take into account, as appropriate and on its own responsibility the information contained in the Central Exclusion Database, when awarding procurement and grant contracts. Access to the information can be provided through the liaison point(s) or via consultation to the Commission¹ (European Commission, Directorate-General for Budget, Accounting Officer of the Commission, BRE2-13/505, B-1049 Brussels, Belgium and by email to BUDG-C01-EXCL-DB@ec.europa.eu in copy to the Commission address identified in Article 3 of the Special Conditions). The Commission may refuse payments to a contractor or grant beneficiary in an exclusion situation.

- 1.9 The Beneficiary shall keep all relevant financial and contractual supporting documents from the date of the entry into force of this Financing Agreement or as from an earlier date which is stipulated as the start date of cost eligibility in Article 6 of the Special Conditions for five years as from the end of the execution period, in particular, the following:

Procurement procedures:

- a. Forecast notice with proof of publication of the procurement notice and any corrigenda
- b. Appointment of shortlist panel
- c. Shortlist report (incl. annexes) and applications
- d. Proof of publication of the shortlist notice
- e. Letters to non-shortlisted candidates

¹ The Beneficiary shall be allowed to have direct access to the Central exclusion database through a liaison point when the Beneficiary certifies to the Commission 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).

- f. Invitation to tender or equivalent
- g. Tender dossier including annexes, clarifications, minutes of the meetings, proof of publication
- h. Appointment of the evaluation committee
- i. Tender opening report, including annexes
- j. Evaluation / negotiation report, including annexes and bids received²
- k. Notification letter
- l. Supporting documents
- m. Cover letter for submission of contract
- n. Letters to unsuccessful candidates
- o. Award / cancellation notice, including proof of publication
- p. Signed contracts, amendments, riders and relevant correspondence

Calls for proposals and direct award of grants:

- a. Appointment of the evaluation committee
- b. Opening and administrative report including annexes and applications received³
- c. Letters to successful and unsuccessful applicants following concept note evaluation
- d. Concept note evaluation report
- e. Evaluation report of the full application or negotiation report with relevant annexes
- f. Eligibility check and supporting documents
- g. Letters to successful and unsuccessful applicants with approved reserve list following full application evaluation
- h. Cover letter for submission of grant contract
- i. Award/cancellation notice with proof of publication
- j. Signed contracts, amendments, riders and relevant correspondence

In case of programme estimates: In addition to the above, all relevant documentation relating to payments, recoveries and operating costs.

Article 2 – Deadline for the signature of the procurement and grant contracts by the Beneficiary

- 2.1 The procurement and grant contracts shall be duly signed by both parties during the operational implementation phase of this Financing Agreement and at the latest within three years of the entry into force of this Financing Agreement.

Where this action is financed from the EDF, programme estimates referred to in Article 5 of these General Conditions shall also be endorsed by the Commission within that three-year deadline.

² Elimination of unsuccessful bids five years after the closure of the procurement procedure.

³ Elimination of unsuccessful applications three years after the closure of the grant procedure.

That three-year deadline may not be extended, except in Article 6 of the Special Conditions when the action is financed by the EDF.

2.2 However, the following transactions may be signed at any time during the operational implementation phase.

- a. procurement and grant contracts implementing the imprest component of a programme estimate financed under the EDF;
- b. amendments to procurement and grant contracts already signed;
- c. individual procurement contracts to be concluded after early termination of an existing procurement contract;
- d. amendment of this Financing Agreement resulting from the change of the entity charged with the entrusted tasks, referred to in Article 1.2 of these General Conditions; the amendment shall also stipulate a new period within which procurement and grant contracts shall be concluded by this new entity in accordance with Article 2.1.

2.3 After expiry of the three years of the entry into force of this Financing Agreement, any financial balance for activities entrusted to the Beneficiary for which contracts have not been duly signed shall be decommitted by the Commission.

2.4 Article 2.3 shall not apply to any financial balance of the contingency reserve or to funds available again after early termination of a contract. This balance or funds may be used to finance contracts referred to in Article 2.2.

2.5 A procurement or grant contract which has not given rise to any payment within three years of its signature shall be automatically terminated and its funding shall be decommitted.

Article 3 – Visibility

3.1 The Beneficiary shall take the necessary measures to ensure the visibility of EU funding for the activities entrusted to it or for other activities under this action. These measures shall either be defined in Annex I (Technical and Administrative Provisions) or shall be agreed later between the Beneficiary and the Commission.

These communication and information measures shall comply with the Communications and Visibility Manual for EU External Actions laid down and published by the Commission, in force at the time of the measures.

Article 4 – Provisions on payments made by the Commission to contractors and grant beneficiaries on behalf of the Beneficiary

4.1 The Beneficiary shall provide the Commission with the approved payment requests within the following deadlines, starting from the date of receipt of the payment request, not counting the periods of suspension of the time-limit for payment:

(a) for pre-financing specified in the procurement or grant contract:

- (i) 15 calendar days for an action financed under the Budget;
- (ii) 30 calendar days for an action financed under the EDF;

b) 45 calendar days for other payments;

The Commission shall act in accordance with Articles 4.6 and 4.7 within the period amounting to the time-limit for payment provided for in the procurement and grant contracts minus the above deadlines.

4.2 Upon receipt of a payment request from a contractor or grant beneficiary, the Beneficiary shall inform the Commission of its receipt and shall immediately examine whether the request is admissible, i.e. whether it contains the identification of that contractor or grant beneficiary, the contract concerned, the amount, the currency and the date. If the Beneficiary concludes that the request is inadmissible, it shall reject it and inform the contractor and grant beneficiary of this rejection and of its reasons within 30 days of receipt of the request. The Beneficiary shall also inform the Commission of this rejection and its reasons.

4.3 Upon receipt of an admissible payment request, the Beneficiary shall examine whether a payment is due, i.e. whether all contractual obligations justifying the payment have been fulfilled, including examining a report, where applicable. If the Beneficiary concludes that a payment is not due, it shall inform the contractor or grant beneficiary thereof and of the reasons. The dispatch of this information suspends the time-limit for payment. The Commission shall receive a copy of the information so dispatched. The Commission shall also be informed of the reply or corrective action of the contractor or grant beneficiary. That reply or action aimed at correcting the non-compliance with its contractual obligations shall restart the time-limit for payment. The Beneficiary shall examine this reply or action pursuant to this paragraph.

4.4 If the Commission disagrees with the Beneficiary's conclusion that a payment is not due, it shall inform the Beneficiary thereof. The Beneficiary shall re-examine its positions and, if it concludes that the payment is due, it shall inform thereof the contractor or grant beneficiary. The suspension of the time-limit for payment shall be lifted upon dispatch of this information. The Beneficiary shall also inform the Commission. The Beneficiary shall further proceed as provided for in Article 4.5.

If disagreement between the Beneficiary and the Commission persists, the Commission may pay the undisputed part of the invoiced amount provided that it is clearly separable

from the disputed amount. It shall inform the Beneficiary and the contractor or grant beneficiary of this partial payment.

- 4.5 Where the Beneficiary concludes that the payment is due, it shall transfer the payment request and all necessary accompanying documents to the Commission for approval and payment. It shall provide an overview of how many days of the time-limit for payment are left and of all periods of suspension of this time-limit.
- 4.6 After transfer of the payment request pursuant to Article 4.5, if the Commission concludes that the payment is not due, it shall inform the Beneficiary and, in copy, the contractor or grant beneficiary thereof and of the reasons. Informing the contractor or grant beneficiary shall have the effect of suspending the time-limit for payment, where provided for in the contract concluded. A reply or corrective action of the contractor or grant beneficiary shall be treated by the Beneficiary in accordance with Article 4.3.
- 4.7 Where the Beneficiary and the Commission concludes that the payment is due, the Commission shall execute the payment.
- 4.8 Where late-payment interest is due to the contractor or grant beneficiary, it shall be allocated between the Beneficiary and the Commission pro rata to the days of delay in excess of the time limits stipulated in Article 4.1, subject to the following:
- (a) the number of days used by the Beneficiary is calculated from the date of the registration of an admissible payment request referred to in Article 4.3 to the date of the transfer of the request to the Commission referred to in Article 4.5 and from the date of information by the Commission referred to Article 4.6 to the following transfer of the request to the Commission referred to in Article 4.5. Any period of suspension of the time-limit for payment shall be deducted.
 - (b) the number of days used by the Commission is calculated from the date following that of transfer of the request by the Beneficiary referred to in Article 4.5 to the date of payment and from the date of transfer to the date of informing the Beneficiary pursuant to Article 4.6.
- 4.9 Any circumstances unforeseen by the above procedure shall be solved in a spirit of cooperation between the Beneficiary and the Commission by analogy to the above provisions while respecting the contractual relations of the Beneficiary with the contractor or grant beneficiary.

Where feasible, one party shall cooperate at the request of the other party in providing useful information for the assessment of the payment request, even before the payment request is formally transferred to or returned from the first party.

Article 5 – Programme estimate

- 5.1 When the Beneficiary is additionally entrusted with making payments to contractors, grant beneficiaries and/or in the context of direct labour, it shall do so on the basis of a programme estimate agreed by the Beneficiary and the Commission beforehand. Article 1.3 of these General Conditions shall not apply to purchases made in the context of direct labour.
- 5.2 The programme estimate is a document laying down the programme of activities to be carried out and the human and material resources required, the corresponding budget and the detailed technical and administrative implementing arrangements for the execution of these activities over a specified period by means of procurement, grants and/or direct labour.

The programme estimate shall have an imprest component and a component of specific commitments.

Under the imprest component of a programme estimate, the Beneficiary shall be entrusted with implementing the procurement and grant award procedures and carry out the related payments and the payments for direct labour.

Under the component for specific commitments, the Beneficiary shall carry out tasks as referred to in the second subparagraph of Article 1.1 of these General Conditions; the Commission shall carry out related payment to contractors and grant beneficiaries. Certain identified activities, including audits, evaluations and recourse to the framework contract, may be implemented directly by the Commission.

Where the action is financed under the EDF, the tasks described in Annex 1 may be implemented by a body governed by private law on the basis of a service contract, awarded by the Beneficiary in accordance with the procedures and standard documents referred to in Article 1.3.

- 5.3 All programme estimates implementing the Financing Agreement must respect the procedures and standard documents concerning programme estimates and laid down by the Commission, in force at the time of the adoption of the programme estimate in question.

Ordinary operating costs incurred by the entity in charge of the tasks entrusted to the Beneficiary referred to in Articles 1.1 and 5.1 of these General Conditions shall be eligible for EU financing under the imprest component of a programme estimate during the entire duration of the execution period of this Financing Agreement, unless an earlier start of cost eligibility is stipulated in Article 6 of the Special Conditions. These costs are incurred in carrying out budget-implementation tasks and include local staff, utilities (e.g. water, gas, and electricity), rental of premises, consumables, maintenance,

short-term business trips and fuel for vehicles. They shall not include purchase of vehicles or of any other equipment, or any operational activity. Article 1.3 and 2.1 of these General Conditions shall not apply to these ordinary operating costs.

- 5.4 The Beneficiary shall submit to the Commission annually, by the date stipulated in Article 6 of the Special Conditions, a management declaration signed by the Beneficiary at the appropriate level using the template in Annex IV.

Article 6 – Payments to the Beneficiary implementing the imprest component of a programme estimate

- 6.1 The Commission shall transfer funds no later than 30 calendar days after the date on which it registers an admissible payment request for pre-financing from the Beneficiary which contains the date, the amount and the currency; the time-limit shall be 90 calendar days for a payment request for replenishment or closure. Late-payment interest shall be due pursuant to the applicable Financial Regulation. The time-limit for the payment may be suspended by the Commission by informing the Beneficiary, at any time during the period referred to above, that the payment request cannot be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information which puts in doubt the eligibility of expenditure appearing in a payment request comes to the notice of the Commission, the Commission may suspend the time-limit for the payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The suspension and the reasons for it shall be communicated to the Beneficiary as soon as possible. The time-limit for the payment shall resume once the missing supporting documents have been provided or the payment request has been corrected.
- 6.2 The Commission shall make payments to a bank account opened at a financial institution accepted by the Commission.
- 6.3 The Beneficiary shall guarantee that funds paid by the Commission can be identified in this bank account.
- 6.4 Transfers in euro shall, if necessary, be converted into the Beneficiary's national currency as and when payments have to be made by the Beneficiary, at the bank rate in force on the day of payment by the Beneficiary.
- 6.5 The imprest component of a programme estimate which has not given rise to any payment to the Beneficiary within three years of the conclusion of the programme estimate shall be automatically terminated, and the corresponding committed amount shall be decommitted.

Article 7 – Publication of information on procurement and grant contracts by the Beneficiary

- 7.1 The Beneficiary undertakes to publish each year in a dedicated and easily accessible place of its internet site, for each procurement and grant contract for which it is contracting authority under Part One, its nature and purpose, the name and locality of the contractor (contractors in case of a consortium) or grant beneficiary (grant beneficiaries in case of a multi-beneficiary grant), as well as the amount of the contract.

The locality of a natural person shall be a region at NUTS2 level. The locality of a natural person shall be its address.

If such internet publication is impossible, the information shall be published by any other appropriate means, including the official journal of the Beneficiary.

Article 6 of the Special Conditions shall stipulate the location, on the internet or otherwise, of the place of publication; reference shall be made to this location in the dedicated place of the internet site of the Commission.

- 7.2 Scholarships to, and direct financial support of natural persons most in need shall be published anonymously and in an accumulated manner by category of expenditure.

Otherwise, names of natural persons shall be replaced by "natural person" two years after publication. The name of a legal entity containing that of a natural person involved in this entity shall be treated as a natural person's name.

Publication of names of natural persons shall be waived if such publication risks violating their fundamental rights or damaging their commercial interests.

The Beneficiary shall present a list of data to be published on natural persons with any justifications for proposed waivers of publication to the Commission which must grant prior approval to this list. Where necessary, the Commission shall complete the locality of the natural person limited to a region at NUTS2 level.

- 7.3 Publication of the procurement and grant contracts concluded (i.e. signed by the Beneficiary and the contractor or grant beneficiary) during the reporting period shall take place within six months following the date for submitting the report pursuant to Article 6 of Special Conditions.
- 7.4 Publication of contracts may be waived if such publication risks harming the commercial interests of contractors or grant beneficiaries. The Beneficiary shall present a list with such justifications to the Commission which must grant prior approval to such publication waiver.

Article 8 – Recovery of funds

- 8.1 The Beneficiary shall take any appropriate measures to recover the funds unduly paid.

Amounts unduly paid and recovered by the Beneficiary, amounts from financial guarantees lodged on the basis of procurement and grant award procedures, amounts from financial penalties imposed by the Beneficiary on candidates, tenderers, applicants, contractors or grant beneficiaries, as well as damages awarded to the Beneficiary shall be returned to the Commission.

- 8.2 Without prejudice to the above responsibility of the Beneficiary to recover funds unduly paid, the Beneficiary agrees that the Commission may, in accordance with the provisions of the Financial Regulation applicable and this Financing Agreement, formally establish an amount as being unduly paid under procurement and grant contracts financed under Part One and proceed to its recovery by any means on behalf of the Beneficiary, including by offsetting the amount owed by the contractor or grant beneficiary against any of his claims against the EU.
- 8.3 To this end, the Beneficiary shall provide to the Commission all the documentation and information necessary. The Beneficiary hereby empowers the Commission to carry out the recovery in particular by calling on a guarantee of a contractor or grant beneficiary of which the Beneficiary is the contracting authority or by offsetting the funds to be recovered against any amounts owed to the contractor or grant beneficiary by the Beneficiary as contracting authority and financed by the EU under this or another Financing Agreement.
- 8.4 The Commission shall inform the Beneficiary that the recovery proceedings have been initiated (including where necessary before a national court).
- 8.5 Where the Beneficiary is a sub-delegatee of an entity with which the Commission concluded an indirect management delegation agreement, the Commission may recover funds from the Beneficiary which are due to the entity but which the entity was not able to recover itself.

Article 9 – Financial claims under procurement and grant contracts

The Beneficiary undertakes to confer with the Commission before taking any decision concerning a request for compensation made by a contractor or grant beneficiary and considered by the Beneficiary to be justified in whole or in part. The financial consequences may be borne by the EU only where the Commission has given its prior approval. Such prior approval is also required for any use of funds committed under the present Financing Agreement to cover costs arising from disputes relating to contracts.

Article 10 – Cost overruns and ways of financing them

- 10.1 Individual overruns of the budget headings of the activities implemented by the Beneficiary shall be dealt with by reallocating funds within the overall budget, in accordance with Article 26 of these General Conditions.
- 10.2 Wherever there is a risk of overrunning the amount foreseen for the activity implemented by the Beneficiary, the Beneficiary shall immediately inform the Commission and seek its prior approval for the corrective activities planned to cover the overrun, proposing either to scale down the activities or to draw on its own or other non-EU resources.
- 10.3 If the activities cannot be scaled down, or if the overrun cannot be covered either by the Beneficiary's own resources or other resources, the Commission may, at the Beneficiary's duly substantiated request, decide to grant additional EU financing. Should the Commission take such a decision, the excess costs shall be financed, without prejudice to the relevant EU rules and procedures, by the release of an additional financial contribution to be set by the Commission. This Financing Agreement shall be amended accordingly.

Part Two: Provisions Applicable to the Budget Support Component

Article 11 – Policy dialogue

The Beneficiary and the EU commit to engage in a regular constructive dialogue at the appropriate level on the implementation of this Financing Agreement.

[For ACP States financed under the EDF: This dialogue may form a part of the broader political dialogue provided for in Article 8 of the ACP-EC Partnership Agreement.]

Article 12 – Verification of conditions and disbursement

- 12.1. The Commission shall verify the conditions for the payment of the tranches of the budget support component, as identified in Annex I (Technical and Administrative Provisions).
- Where the Commission concludes that the conditions for payment are not fulfilled, it shall inform the Beneficiary thereof without undue delay.
- 12.2. Disbursement requests submitted by the Beneficiary shall be eligible for EU financing provided that they are in accordance with the provisions set out in Annex I (Technical and Administrative Provisions) and that they are submitted during the operational implementation phase.

- 12.3. The Beneficiary shall apply its national foreign exchange regulations in a non-discriminatory manner to all disbursements of the budget support component.

Article 13 – Transparency of budget support

The Beneficiary hereby agrees to the publication by the Commission, of this Financing Agreement and any amendment thereof, including by electronic means, and of such basic information on the budget support which the Commission deems appropriate. Such publication shall not contain any data in violation of the EU laws applicable to the protection of personal data.

Article 14 – Recovery of budget support

All or part of the budget support disbursements may be recovered by the Commission, with due respect to the principle of proportionality, if the Commission establishes that payment has been vitiated by a serious irregularity attributable to the Beneficiary, in particular if the Beneficiary provided unreliable or incorrect information, or if corruption or fraud was involved.

Part Three: Provisions Applicable to This Action as a Whole, Irrespective of the Management Mode

Article 15 – Execution period and contracting deadline in direct management

- 15.1 The execution period of this Financing Agreement shall comprise two phases:

- an operational implementation phase, in which the principal operational activities of the action are carried out. This phase shall start on the entry into force of this Financing Agreement and end with the opening of the closure phase;
- a closure phase, during which final audits and evaluation are carried out and contracts and programme estimates for the implementation of this Financing Agreement are technically and financially closed. The duration of this phase is stipulated in Article 2.3 of the Special Conditions. It starts after the end of the operational implementation phase. Only expenditure necessary for the closure shall be eligible.

These periods shall be reflected in the agreements to be concluded by the Beneficiary and by the Commission in the implementation of this Financing Agreement, in particular in delegation agreements and procurement and grant contracts.

- 15.2 Costs related to the principal operational activities shall be eligible for EU financing only if they have been incurred during the operational implementation phase; the costs incurred by the Beneficiary before the entry into force of this Financing Agreement shall not be eligible for EU financing unless provided otherwise in Article 6 of the

Special Conditions. Costs related to final audits and evaluation, and to closure activities shall be eligible until the end of the closure phase.

- 15.3 Any balance remaining from the EU contribution will be automatically decommitted no later than six months after the end of the execution period.
- 15.4 In exceptional and duly substantiated cases, a request may be made for the extension of the operational implementation phase and correlatively of the execution period. If the extension is requested by the Beneficiary, the request must be made at least three months before the end of the operational implementation phase and approved by the Commission before that end. This Financing Agreement shall be amended accordingly.
- 15.5 In exceptional and duly substantiated cases, and after the end of the operational implementation phase, a request may be made for the extension of the closure phase and correlatively of the execution period. If the extension is requested by the Beneficiary, the request must be made at least three months before the end of the closure phase and approved by the Commission before that end. This Financing Agreement shall be amended accordingly.
- 15.6 Article 2 of these General Conditions shall apply to activities implemented by the Commission as contracting authority (direct management) with the exception of the second and third subparagraph of Article 2.1. For the purpose of direct management, audit and evaluation contracts shall be added to the exceptions stipulated in Article 2.2.

Article 16 – Verifications and checks by the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors

- 16.1 The Beneficiary shall assist and support the verifications and checks carried out by the Commission, OLAF and the Court of Auditors at their request.

The Beneficiary agrees to the Commission, OLAF and the European Court of Auditors conducting documentary and on-the-spot controls on the use made of EU financing under the activities under this Financing Agreement and carrying out a full audit, if necessary, on the basis of supporting documents of accounts and accounting documents and any other documents relating to the financing of the activities, throughout the duration of this Financing Agreement and for seven years after the date of its closure.

- 16.2 The Beneficiary also agrees that OLAF may carry out on-the-spot checks and verifications in accordance with the procedures laid down by EU law for the protection of the EU's financial interests against fraud and other irregularities.

To that end, pursuant to Regulation (EC, Euratom) No. 2185/96 and to Regulation (EC, Euratom) No. 883/2013, the Beneficiary shall grant officials of the Commission, OLAF and the European Court of Auditors and their authorised agents access to sites and premises at which operations financed under this Financing Agreement are carried out, including their computer systems, and to any documents and computerised data concerning the technical and financial management of those operations, and to take every appropriate measure to facilitate their work. Access by authorised agents of the Commission, OLAF and the European Court of Auditors shall be granted on conditions of strict confidentiality with regard to third parties, without prejudice to public law obligations to which they are subject. Documents must be accessible and filed in a manner permitting easy inspection, the Beneficiary being bound to inform the Commission, OLAF or the European Court of Auditors of the exact location at which they are kept.

- 16.3 The checks and audits described above shall also apply to contractors and grant beneficiaries, and subcontractors who have received EU financing.
- 16.4 The Beneficiary shall be notified of on the spot missions by agents appointed by the Commission, OLAF or the European Court of Auditors.

Article 17 - Tasks of the Beneficiary in fighting irregularities, fraud and corruption

- 17.1 The Beneficiary shall immediately inform the Commission of any element brought to its attention which arouses suspicions of irregularities, fraud or corruption and of any measure taken or planned to deal with them.
- 17.2 The Beneficiary shall ensure and check regularly that the actions financed from the budget are effectively carried out and implemented correctly. It shall take appropriate measures to prevent, detect and correct irregularities and fraud and where necessary, bring prosecutions and recover funds unduly paid.

"Irregularity" shall mean any infringement of this Financing Agreement, implementing contracts and programme estimates or of EU law resulting from an act or omission by anyone who has, or would have, the effect of prejudicing the funds of the EU, either by reducing or losing revenue owed to the EU, or by an unjustified item of expenditure.

"Fraud" shall mean any intentional act or omission concerning:

- the use or presentation of false, incorrect or incomplete, statements or documents which has as its effect the misappropriation or wrongful retention of funds from the general budget of the EU or the EDF;
- non-disclosure of information in violation of a specific obligation, with the same effect;

- the misapplication of such funds for purposes other than those for which they are originally granted.

17.3 The Beneficiary undertakes to take every appropriate measure to prevent, detect and punish any practices of active or passive corruption during the implementation of the Financing Agreement.

"Passive corruption" shall mean the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the EU's financial interests.

"Active corruption" shall mean the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official, for himself or for a third party, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the EU's financial interests.

17.4 The Beneficiary shall immediately inform the Commission (contacts pursuant to the third subparagraph of the Article 1.8 of the General Conditions) of the name of the entity that has been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity detrimental to the EU's financial interests.

17.5 If the Beneficiary does not take appropriate measures to prevent fraud, irregularities and corruption, the Commission may adopt precautionary measures including the suspension of this Financing Agreement.

Article 18 – Suspension of payments

18.1 Without prejudice to the suspension or termination of this Financing Agreement according to Articles 27 and 28, respectively, the Commission may suspend payments partially or fully, if:

- a) The Commission has evidence that the Beneficiary has committed substantial errors, irregularities or fraud in the procurement and grant award procedure or in the implementation of the action, or if the Beneficiary fails to comply with its obligations under this Financing Agreement, including obligations regarding the implementation of the Communications and Visibility plan;
- b) The Commission has evidence that the Beneficiary has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under this or other

Financing Agreements, provided that those errors, irregularities, fraud or breach of obligations have a material impact on the implementation on this Financing Agreement or which call into question the reliability of the Beneficiary's internal control system or the legality and regularity of the underlying expenditure;

- c) The Commission suspects that the Beneficiary committed substantial errors, irregularities, fraud or breach of obligations committed by the Beneficiary in the procurement and grant award procedure or in the implementation of the action and needs to verify whether they have occurred.
- d) it is necessary to prevent significant damage to the financial interests of the EU.

18.2 The Commission shall immediately inform the Beneficiary about the suspension of payments and of the reasons for this suspension.

18.3 The suspension of payments shall have the effect of suspending payment time-limits for any payment request pending.

18.4 In order to resume payments the Beneficiary shall endeavour to remedy the situation leading to the suspension as soon as possible and shall inform the Commission of any progress made in this respect. The Commission shall, as soon as it considers that the conditions for resuming payments have been met, inform the Beneficiary thereof.

Article 19 – Allocation of funds recovered by the Commission to the action [Article 16.2 FA GC]

Where the action is financed under the EDF, amounts unduly paid and recovered by the Commission, amounts from financial guarantees lodged on the basis of procurement and grant award procedures, amounts from financial penalties imposed on candidates, tenderers, applicants, contractors or grant beneficiaries, as well as damages awarded to the Commission shall be allocated to this action.

Article 20 – Right of establishment and residence

20.1 Where justified by the nature of the procurement or grant contract, the Beneficiary shall entitle natural and legal persons participating in invitations to tender for works, supply or service contracts or calls for proposals and entities expected to be entrusted with budget-implementation tasks identified in Annex I with a provisional right of establishment and residence in the Beneficiary's territory(ies). This right shall remain valid for one month after the contract is awarded.

20.2 The Beneficiary shall also entitle procurement contractors and grant beneficiaries, entities entrusted with budget-implementation tasks identified in Annex I (Technical and Administrative Provisions), natural persons whose services are required for the

performance of this action and members of their families with similar rights during the implementation of the action.

Article 21 – Tax and customs provisions

21.1 The Beneficiary shall apply to procurement contracts and grants financed by the EU the most favoured tax and customs arrangements applied to States or international development organisations with which it has relations.

Where the Beneficiary is an ACP State, account shall not be taken of arrangements applied by it to the other ACP States or to other developing countries for the purpose of determining the most-favoured-State treatment.

21.2 Where a Framework Agreement is applicable, which includes more detailed provisions on this subject, these provisions shall apply as well.

Article 22 – Confidentiality

22.1 The Beneficiary agrees that its documents possessed by an entity to which the Commission entrusted budget-implementation tasks in the framework of this or another Financing Agreement may be forwarded to the Commission by that entity for the sole purpose of monitoring the execution of those tasks. The Commission shall respect all confidentiality arrangements agreed between the Beneficiary and that entity.

22.2 Without prejudice to Article 16 of these General Conditions, the Beneficiary and the Commission shall preserve the confidentiality of any document, information or other material directly related to the implementation of this Financing Agreement that is classified as confidential.

22.3 The Parties shall obtain each other's prior written consent before publicly disclosing such information.

22.4 The Parties shall remain bound by the confidentiality until five years after the end of the execution period.

Article 23 - Data protection

23.1 The Beneficiary shall ensure a reasonable protection of personal data. Personal data means any information related to a natural person. Any operation performed upon personal data, such as collection, recording, organisation, storage, adaption or alteration, retrieval, consultation, use, disclosure, erasure or destruction, shall be based on rules and procedures of the Beneficiary and shall only be done as far as it is necessary for the implementation of this Financing Agreement.

23.2 In particular, the Organisation shall take appropriate technical and organisational security measures concerning the risks inherent in any such operation and the nature of the information relating to the natural person concerned, in order to:

- a) Prevent any unauthorised person from gaining access to computer systems performing such operations, and especially unauthorised reading, copying, alteration or removal of storage media; unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored information;
- b) Ensure that authorised users of an IT system performing such operations can access only the information to which their access right refers;
- c) Design its organisational structure in such a way that it meets the above requirements.

Article 24 – Use of studies

The procurement contract related to any study financed under this Financing Agreement shall include the right for the Beneficiary and for the Commission to use the study, to publish it and to disclose it to third parties.

Article 25 – Consultation between the Beneficiary and the Commission

- 25.1 The Beneficiary and the Commission shall consult each other before taking any dispute relating to the implementation or interpretation of this Financing Agreement further pursuant to Article 29 of these General Conditions.
- 25.2 Where the Commission becomes aware of problems in carrying out procedures relating to management of this Financing Agreement, it shall establish all necessary contacts with the Beneficiary to remedy the situation and take any steps that are necessary.
- 25.3 The consultation may lead to the amendment, suspension or termination of this Financing Agreement.
- 25.4 The Commission shall regularly inform the Beneficiary of the implementation of activities described in Annex I which do not fall under Part One of these General Conditions.

Article 26 – Amendment of this Financing Agreement

- 26.1 Any amendment of this Financing Agreement shall be made in writing, including an exchange of letters.
- 26.2 If the request for an amendment comes from the Beneficiary, the latter shall submit that request to the Commission at least three months before the amendment is intended to enter into force, except in cases which are duly substantiated by the Beneficiary and accepted by the Commission. In exceptional cases of an adjustment of the objectives of the action, an increase in the EU contribution or an extension of the deadline pursuant to the third subparagraph of Article 2.1, such request shall be submitted at least six months before the amendment is intended to enter into force.

- 26.3 If the adjustment does not significantly affect the objectives of the activity implemented pursuant to Part One of these General Conditions, if it concerns matters of detail which do not affect the technical solution adopted, and if it does not include the reallocation of funds or, for an action funded by the EDF, if it concerns reallocations of funds within the limit of the contingency reserve, the Beneficiary shall inform the Commission of the adjustment and its justification in writing as soon as possible and may apply that adjustment.
- 26.4 The use of contingency reserve for an action funded by the EU Budget shall be subject to the Commission's prior written approval. For an action funded by the EDF, the Commission shall be informed of the use of the contingency reserve.
- 26.5 Where the Commission considers that the Beneficiary ceases to perform satisfactorily the tasks entrusted pursuant to Article 1(1) of these General Conditions and without prejudice to Articles 27 and 28 of these General Conditions, the Commission may decide to retake the tasks entrusted from the Beneficiary in order to continue the implementation of the activities on behalf of the Beneficiary after informing the latter in writing.

Article 27 – Suspension of this Financing Agreement

- 27.1 The Financing Agreement may be suspended in the following cases:
- The Commission may suspend the implementation of this Financing Agreement if the Beneficiary breaches an obligation under this Financing Agreement.
 - The Commission may suspend the implementation of this Financing Agreement if the Beneficiary breaches any obligation set under the procedures and standard documents referred to in Article 1.3 and 5.3 of these General Conditions.
 - The Commission may suspend this Financing Agreement if the Beneficiary breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.
 - This Financing Agreement may be suspended in cases of force majeure, as defined below. "Force majeure" shall mean any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations, not attributable to error or negligence on their part (or the part of their contractors, agents or employees) and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as force majeure. A party shall not be held in breach of its obligations if it is prevented from fulfilling them by a case of force majeure of which the other party is duly informed. A party faced with force majeure shall inform the other party without delay, stating the

nature, probable duration and foreseeable effects of the problem, and take any measure to minimise possible damage.

- 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, provided it takes measures to minimise any possible damage.

27.2 The Commission may suspend this Financing Agreement without prior notice.

27.3 The Commission may take any appropriate precautionary measure before suspension takes place.

27.4 When the suspension is notified, the consequences for the on-going procurement and grant contracts and programme estimates and for contracts and programme estimates to be signed shall be indicated.

27.5 A suspension of this Financing Agreement is without prejudice to the suspension of payments and termination of the Agreement by the Commission in accordance with Article 18 and 28 of the General Conditions.

27.6 The parties shall resume the implementation of the Financing Agreement once the conditions allow with the prior written approval of the Commission. This is without prejudice to any amendments of this Financing Agreement which may be necessary to adapt the action to the new implementing conditions, including, if possible, the extension of the implementation period, or the termination of the Agreement in accordance with Article 28.

Article 28 – Termination of this Financing Agreement

28.1. If the issues which led to the suspension of this Financing Agreement have not been resolved within a maximum period of 180 days, either party may terminate this Financing Agreement at 30 days' notice.

28.2. This Financing Agreement shall be automatically terminated, if within the period of three years of its signature:

- a) it has not given rise to any payment;
- b) no implementing contract has been signed;
- c) and where this action is financed under the EDF, no programme estimate has been signed;

28.3 When the termination is notified, the consequences for the on-going procurement and grant contracts and programme estimates and for contracts and programme estimates to be signed shall be indicated.

Article 29 – Dispute settlement arrangements

- 29.1 Any dispute concerning this Financing Agreement which cannot be settled within a six-month period by the consultations between the parties provided for in Article 25 of these General Conditions may be settled by arbitration at one of the parties' request.

Where the Beneficiary is an ACP State and this action is financed under the EDF, the dispute shall be submitted, prior to arbitration and after the consultations provided for in Article 25 of these General Conditions, to the ACP-EC Council of Ministers, or, between its meetings, to the ACP-EC Committee of Ambassadors, pursuant to Article 98 of the ACP-EC Partnership Agreement. If the Council or Committee does not succeed in settling the dispute, either party may request settlement of the dispute by arbitration in accordance with Articles 29.2, 29.3 and 29.4.

- 29.2 In this case each party shall designate an arbitrator within 30 days of the request for arbitration. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration (The Hague) to designate a second arbitrator. The two arbitrators shall in their turn designate a third arbitrator within 30 days. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration to designate the third arbitrator.
- 29.3 Unless the arbitrators decide otherwise, the procedure laid down in the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States shall apply. The arbitrators' decisions shall be taken by a majority within a period of three months.
- 29.4 Each party shall be bound to take the measures necessary for the application of the arbitrators' decision.