

ANNEX II – General Conditions for PA Grant or Delegation Agreements

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

Article 1: Definitions

Action:	the cooperation programme or project partly or wholly financed by the EU, which may be carried out by the Organisation as described in Annex I.
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 under a PA Grant Agreement.
Budget Implementation Tasks:	under a Delegation Agreement, tasks consisting of carrying out procurement and grant award procedures, and awarding, signing and executing the resulting Procurement Contracts and Grant contracts, notably accepting deliverables, carrying out payments and recovering the funds unduly paid, where two conditions are met: i) works, services, supplies and other benefits are directly provided to the partner country or to any other relevant beneficiary population of the Action; and ii) a margin of discretionary power (not involving policy choices) is delegated to implement the Action.
Central Exclusion Database:	database of all legal and natural persons excluded from EU funding set up by the European Commission under Regulation (EC, Euratom) No. 1302/2008, of 17 December 2008, on the central exclusion database (OJ L 344/12, 20.12.2008).
Co-Beneficiary:	an entity implementing part of the Action and being a party to the relevant PA Grant Agreement together with the Organisation. The Organisation normally signs the relevant PA Grant also on behalf of the Co-Beneficiaries.
Contractor:	a natural or legal person with whom a Procurement Contract has been signed.
Days:	All references to "days" are to calendar days.
EU External Action:	Action financed under EDF, DCI, ENI, IPA II, INSC, IcSP, PI, EIDHR and their predecessors.
Final Beneficiary:	a natural or legal person ultimately benefitting from the Action.
Force Majeure:	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, Affiliated Entities, Sub-delegatees, 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.
Grant:	a direct financial contribution by way of donation under a Delegation Agreement given by the Organisation to finance third parties activities.
Grant Beneficiary:	a natural or legal person to whom a Grant has been awarded under a Delegation Agreement. Grant Beneficiaries can sub-grant and procure for the implementation of their activities. Third parties receiving a financial contribution from the Organisation or a Co-Beneficiary or an Affiliated Entity under a PA Grant Agreement are not considered Grant Beneficiaries for the purpose of this Agreement.
Impact:	primary and secondary, long term effects produced by the Action.
Indicator:	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.
Internal Control System:	a process applicable at all levels of management designed to provide reasonable assurance of achieving the following objectives:

	<ul style="list-style-type: none"> 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.
Outcome:	the likely or achieved short-term and medium-term effects of an Action's outputs;
Output:	the products, capital goods and services which result from an Action's activities.
Procurement Contract:	A contract signed between the Organisation, a Sub-delegatee, a Co-Beneficiary or an Affiliated Entity and a Contractor under which the Contractor provides services, supplies or works.
Result:	the output, outcome or impact of an Action.
Regulations and Rules:	regulations, rules, organisational directives, instructions and other parts of the regulatory framework of the Organisation.
Sound Financial Management:	principle overarching the implementation of this Agreement, namely economy, effectiveness and efficiency. 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.
Sub-delegatee:	a third party entrusted with Budget Implementation Tasks by the Organisation. Sub-delegation is only authorised for EU External Actions. If the Delegation Agreement does not concern an EU External Action, the provisions related to Sub-delegatees shall not apply.

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, a Sub-delegatee, an Affiliated Entity, a Contractor or a Grant Beneficiary. Annex I shall specify the Indicators to measure achievements. 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.
- 2.2 When implementing the Action, the Organisation shall not unilaterally modify the main purpose of the Action as described in Annex I, such as its objectives, strategies and priority areas as well as any other essential element specified in the Special Conditions of this Agreement.

Responsibility

- 2.3 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 has followed its Regulations and Rules with the same level of duty and care which it applies in managing its own funds.
- 2.4 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 Sub-delegatees, 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. Where funds have been unduly paid to or incorrectly used by Sub-delegatees, Contractors or Grant Beneficiaries the Organisation shall take all applicable measures in accordance with its own Regulations and Rules to recover those funds including by bringing legal proceedings where necessary and relevant.
- 2.5 Under Delegation Agreements, the European Commission may waive the recovery of all or part of the amounts that could not be recovered from Sub-delegatees, Contractors or Grant Beneficiaries, provided that the following cumulative conditions are fulfilled:
- a) the Organisation has correctly followed its own Regulations and Rules and the non-recovery is not the result of error or negligence on the part of the Organisation;
 - b) the Organisation exercised in the recovery of the EU funds the same level of diligence which it applies in recovering its own funds and has demonstrated that it has exhausted all applicable measures at its disposal in accordance with its own Regulations and Rules to recover the funds including bringing legal proceedings where necessary and relevant against Sub-delegatees, Contractors and Grant Beneficiaries; and
 - c) the Organisation endeavours to assign the its claim against the debtor to the European Commission following the request of the European Commission.

Other obligations

- 2.6 The Organisation undertakes to ensure that the obligations stated in this Agreement under Articles 2.8, 5-Conflict of interest, 7.1- 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.
- 2.7 The Organisation shall notify the Contracting Authority and the 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, (ii) those which may affect the conditions for eligibility provided for in the applicable legal instruments of the EU, or (iii) any other circumstances likely to adversely affect the

implementation and management of the Action or delay or jeopardise the performance of the activities. 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 said 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.

- 2.8 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.
- 2.9 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 as defined in Article 2.3 of the Special Conditions (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, difficulties encountered and measures taken to overcome problems, eventual changes introduced, as well as the degree of achievement of its Results (Impact, 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 final report, narrative and financial, will cover the entire period of Action implementation. The level of detail in any report shall match that of Annexes I and III.
- 3.3 In case of Multi-Donor Actions under Delegation Agreements, and where the project or programme 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 project or programme once available. This is without prejudice to the close of the Execution Period of this Agreement following Article 13.5.
- 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 days deadline.

Content of the reports

- 3.6 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 (Impact, 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 implementation of the Visibility and Communication Plan (Annex VI) and any additional measures taken to identify the EU as source of financing;
 - e) information on the implementation costs incurred as well as the legal commitments entered into by the Organisation during the reporting period.
 - f) 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;
- g) under Delegation Agreements, control measures carried out on Sub-delegatees, if any. In case weaknesses are detected, information on their nature and extent as well as corrective measures adopted;
 - h) where applicable, a request for payment;
 - i) work plan for the following period.
- 3.7 The final report shall include:
Covering the entire period of implementation:
- a) all the information requested in Article 3.6 a) to h).
 - b) a summary of the Action's receipts, payments received and of the acceptable expenditure or 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 22.1, information on Grant Beneficiaries and Contractors is available;
 - e) for EU External Actions, if relevant, details of transfers of equipment, vehicles and remaining major supplies mentioned in Article 9;
 - f) in the case of Multi-Donor Actions, a mention that the Organisation assures that costs that are not eligible for the Contracting Authority are covered by other donors contributions that consider those cost as eligible.
- 3.8 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 Conditions¹. 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, the final report shall be submitted at the latest six months after the end of the Implementation Period. For non-EU External Actions, 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

Under Delegation Agreements, the following Articles 3.9 to 3.13 apply:

- 3.9 If the Action is an EU External Action, every annual or final report shall be accompanied by a management declaration in accordance with the template in Annex VII. Where the duration of the Implementation Period is shorter than 18 months the management declaration shall only be provided with the final report. If the Action is not an EU External Action and its Implementation Period is longer than 18 months, the management declaration shall be provided by 15 February of the year following the first year of implementation, and thereafter every year.
- 3.10 In case the Organisation is not an international organisation, it shall provide the Contracting Authority, within one month from submitting each management declaration (i.e. 15 March for non-EU External Actions) with an opinion by an independent audit body in accordance with Article 3.12.
- 3.11 In case the Organisation is an international organisation, which does not have a framework agreement with the European Commission, the Organisation shall provide the Contracting Authority, within six months from submitting each report, with an opinion by an independent audit body in accordance with Article 3.12 or an equivalent opinion by a control body of the Organisation.
- 3.12 The opinion referred to in Articles 3.10 and 3.11 shall be drawn up 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.

¹ For EU External Actions, by default, the reporting period is every 12 months as from the commencement of the Implementation Period.

- 3.13 In case the Organisation has an arrangement to that effect with the European Commission, the Organisation may provide annually the management declaration and/or audit or control opinion, which are made available to the European Commission headquarters separately from the reports provided under this Agreement. In the case of international organisations, the audit or control opinion refers to the annual audited financial statements of the Organisation in its entirety.

Currency for reporting

- 3.14 Unless otherwise agreed in the Special Conditions, the reports shall be submitted in the accounting currency of the Organisation for the Action.
- 3.15 The Organisation shall convert legal commitments, the Action's receipts and costs incurred in currencies other than the accounting currency for the Action according to its usual accounting practices.

Failure to comply with reporting obligations

- 3.16 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 3.8, 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 3.8, 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 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;
 - b) the confidential information becomes public through other means than in breach of the confidentiality obligation by the Party bound by that obligation;

- 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 (see Article 13.5) 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

- 7.1 The Organisation shall ensure appropriate protection of personal data. Personal data means any information relating to an identified or identifiable natural person. Any operation involving the processing of personal data, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure, erasure or destruction, shall be based on the Regulations and Rules of the Organisation and shall only be done as far as necessary for the performance of the mandate of the Organisation.
- 7.2 In particular, the Organisation shall take, in accordance with its Regulations and Rules, 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, this includes 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 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 such measures shall be carried out in accordance with the Communication and Visibility Manual² 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 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, the ownership of the equipment, vehicles or major supplies by the Organisation.
- 8.4 In the case of EU External Actions, if in application of Article 9.6, the equipment, vehicles or remaining major supplies purchased using EU funds have not been transferred to the local authorities, local Sub-delegates, 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

² Communication and Visibility Manual for EU External Actions

http://ec.europa.eu/europeaid/work/visibility/documents/communication_and_visibility_manual_en.pdf

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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 9.7, 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 Publicity pertaining to the EU contribution shall quote the EU contribution in Euro (€ or EUR). In case of international organisations, the publications and reports of the Organisation prepared in accordance with its rules and procedures are excluded from this provision.
- 8.6 Unless otherwise provided in the Special Conditions if disclosure risks threatening the Organisation's safety or harming its interests, the European Commission publishes 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.
- 8.7 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.
- 8.8 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: Ownership, right to use results and transfer of equipment

Ownership

- 9.1 To the extent legally possible, ownership, title and industrial and intellectual property rights of the results of the Action including the reports and other documents relating to it shall vest in the Organisation, as the case may be together with third parties or as otherwise agreed by the Contracting Authority.

Right to use

- 9.2 Notwithstanding the provisions of the first paragraph and subject to Article 6, the Organisation shall grant, and shall act to ensure that the third party concerned (Sub-delegatee, Grant Beneficiary, recipient of financial support or Contractor) grants the Contracting Authority (and the European Commission where it is not the Contracting Authority) the right to use free of charge those results referred to in Article 9.1 which are subject to industrial or intellectual property rights.
- 9.3 Where the results mentioned in Article 9.2 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 only)

- 9.4 In the field of EU External Actions, the equipment, vehicles and remaining major supplies purchased with the EU contribution in the framework of the Action shall be transferred to local authorities, local Sub-delegatees, local Co-Beneficiaries, local Grant Beneficiaries or to the Final Beneficiaries, at the latest when submitting the final report.
- 9.5 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 16.3.
- 9.6 By way of derogation from Article 9.4, 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 to 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.
- 9.7 In the event that there are no local authorities, local Sub-delegatees, 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 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 planned and completed in a collaborative manner between the staff of the Organisation and the European Commission's (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 a rider signed by both Parties. This Agreement can only be amended during the Execution Period as set forth under Article 2 of the Special Conditions.
- 11.2 The requesting Party shall submit in writing to the other Party any request for amendment to this Agreement, including its annexes.
- 11.3 The requesting Party shall request any amendment 30 days before the amendment is intended to enter into force and no later than 30 days before the end of the Execution Period, 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.
- 11.4 By derogation from Articles 11.1, 11.2 and 11.3, where an amendment to Annex I and/or Annex III does not affect the basic purpose of the Action, 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 rider) 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 Indicators described in Annex I may be changed by the Organisation in agreement with the European Commission, without the need for a formal rider to the Agreement if the change does not affect the basic purpose of the Action.
- 11.5 The method described in Article 11.4 shall not be used to amend the contingency reserve, nor the rate for indirect costs or the amounts or rates of simplified cost options defined in the PA Grant Agreement. 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.
- 11.6 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 the acceptability of the reported expenditure; 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 of the Sub-delegatees 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 or are incomplete, payment may be made on the basis of the partial information available.

Suspension of payments and of the Agreement by the Contracting Authority

- 12.3 The Contracting Authority may suspend payments, fully or partly, if:
- a) the Contracting Authority, on the basis of credible information it received, has serious concerns and needs to verify whether substantial errors, irregularities, fraud or breach of substantial obligations have been committed by the Organisation or the Sub-delegatees in the procedure of their selection, on their pillar assessment or in the implementation of the Action;
 - b) the Contracting Authority has proof that substantial errors, irregularities, fraud or breach of substantial obligations have been committed by the Organisation or the Sub-delegatees in the procedure of their selection, on their pillar assessment or in the implementation of the Action;
 - c) under a Delegation Agreement, the Contracting Authority has proof that systemic errors have occurred which call into question the reliability of the Organisation or the Sub-delegatee's Internal Control System or the legality and regularity of the underlying transactions;
 - d) the Contracting Authority has proof that the Organisation or Sub-delegatees have 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 In the situations listed in Article 12.3, the Contracting Authority shall immediately notify the Organisation about its intention to suspend payments and the reasons therefor. The Organisation shall provide its observations within 30 days. If no observations have been submitted or if the Contracting Authority, after examining the observations received, decides to pursue the suspension, the Contracting Authority will formally notify the suspension of payments specifying the reasons therefor and the conditions for resuming the payments. The suspension shall take effect on the date when the Contracting Authority sends the notification and it will be lifted once the conditions for resuming payments are met. During the suspension of payments, no payment request can be submitted by the Organisation. The suspension of payments does not suspend the eligibility of costs, however, the Organisation, in consultation with the Contracting Authority, may decide to suspend the implementation of all or part of the Action in duly justified cases of cash flow shortage.
- 12.5 In the situations listed in Article 13.1, the Contracting Authority may suspend payments as a precautionary measure informing the Organisation immediately in writing. The procedure described in Article 13.2 shall then apply.
- 12.6 The Contracting Authority may suspend all or part of the implementation of this Agreement in the situations listed in Article 12.3 b), c) and d). 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.

- 12.7 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 adopted³;
 - b) in cases such as crisis entailing a change of EU policy.
- 12.8 In the situations listed in Article 12.7, following a written notification by the Contracting Authority, and following consultations the Parties shall resume the implementation of the Agreement 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. The Parties shall agree on such costs, including the reimbursement of legal commitments entered into for implementing the Agreement 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.

Suspension of the Action by the Organisation, Force Majeure

- 12.9 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.
- 12.10 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 Article 12.9, provided it takes any measure to minimise any possible damage.
- 12.11 The Parties shall minimise the duration of the suspension and the Organisation shall, resume implementation once the conditions allow, in consultation with the Contracting Authority. 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 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 by the Contracting Authority which the Organisation cannot reasonably suspend, reallocate or terminate on legal grounds. The Implementation Period is automatically extended by an amount of time equivalent to the duration of the suspension. In case of suspension by Force Majeure or if the Action is a Multi-Donor Action, the contracting deadline under Delegation Agreements is automatically extended by an amount of time equivalent to the duration of the suspension.
- 12.12 The previous paragraph is without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions or to the termination of the Agreement in accordance with Article 13.3.

Article 13: Termination and end date of the Agreement

³ For instance, (i) a decision pursuant to Article 215 of the Treaty on the Functioning of the European Union or Article 96 of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, as revised on 25 June 2005 and 23 June 2010; or (ii) a European Commission decision suspending cooperation as a precautionary measure.

- 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 or Sub-delegatees:
- a) fail to fulfil a substantial obligation incumbent on them under the terms of the Agreement;
 - b) are guilty of misrepresentation or submit false or incomplete statements to obtain the EU contribution or provide reports that do not reflect reality to obtain or keep the EU contribution without cause;
 - c) are bankrupt or being wound up, or are subject to any other similar proceedings;
 - d) are guilty of grave professional misconduct proven by any justified means;
 - e) have 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) fail to comply with the reporting obligations in accordance with Article 3.16;
 - g) have 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. 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. In such case the termination will take effect if and when confirmed by the director. In that event, the Contracting Authority may demand full repayment of any amounts paid in excess of the final amount determined in accordance with Article 20 or 27 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:
- i) payment only for the part of the Action carried out up to the date of termination;
 - ii) in the situations described in Articles 12.7, 12.9 and 30.4, to the unavoidable residual expenditures incurred during the notice period; and,
 - iii) in the situations described in Articles 12.7 and 12.9 under a Delegation Agreement reimbursement of legal commitments it entered into for implementing the Action before the written notice on termination was received by the other Party 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 3.7, 3.8 and 19 or 26. The Contracting Authority shall not reimburse or cover any expenditure or costs which are not included or justified in a report approved by it.

End date

- 13.5 The Agreement shall end by the "End Date", which is the moment of the payment of the balance by the Contracting Authority in accordance with Article 19 or 26 or when the Organisation repays any amounts paid in excess of the final amount due pursuant to Article 20 or 27. 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.

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 fulfilment of the Agreement, including its existence, validity 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. Under a Delegation Agreement, in default of amicable settlement

and unless otherwise agreed by the Parties, any Party may refer the matter to the General Court of the EU and, in the event of appeal, the Court of Justice of the EU. Under a PA Grant Agreement, in default of amicable settlement and unless otherwise agreed by the Parties, any Party may refer the matter to the Brussels courts.

- 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, controversy or claim arising out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termination, 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 this Agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. 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. After the deadline or the director's decision, as the case may be, the Contracting Authority may issue a debit note specifying the terms and the date for payment.
- 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.
- 16.2 Under a Delegation Agreement, if interest on pre-financing is due the accounting methods of the Organisation shall make it possible to identify the payments of EU funds and the interest or other benefits yielded by those funds.

Archiving

- 16.3 For a period of five years from the End Date defined in Article 13.5 or up to the date of the limitation period of any claim pursuant to the applicable law governing the Agreement and any Procurement Contracts or Grants concluded under the Agreement if the latter last longer, the Organisation shall keep and make available according to Article 17 all relevant financial information in its original form (electronic as the case may be⁴) or, in exceptional and duly justified cases, certified copies of original documents 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 other authorised representatives to conduct desk reviews and on-the-spot checks on the use made of the EU contribution (including procedures for the award of Procurement Contracts and Grants) on the basis of supporting accounting documents and any other documents 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 and, where applicable, any administrative cooperation arrangements concluded between OLAF and the Organisation's anti-fraud bodies.
- 17.3 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.
- 17.4 In case of the European Commission or their authorised agents, if the Organisation is an international organisation, verifications shall cover on-the-spot checks and desk-reviews and follow any verification provisions agreed with the European Commission. If the Organisation is not an international organisation an investigation or audit may be performed.

⁴ Electronic documents can be accepted where the documentation was first received or created (e.g. an order form or confirmation) by the Organisation in electronic form; or the Organisation uses an electronic archiving system which meets reliable standards.

- 17.5 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.

Part II: Additional Provisions applicable only to Delegation Agreements

Article 18: Acceptable expenditure under Delegation Agreements

18.1 The Contracting Authority shall accept expenditure which meets all the following criteria:

- a) it is necessary for carrying out the Action, directly attributable to it and arising as a direct consequence of its implementation.

For that purpose, it falls within one of the following categories as described in accordance with Annex I:

- (i) costs of funding by the Organisation in the form of:

1. Procurement Contracts to be awarded for the benefit of the partner country or of the relevant beneficiary population of the Action in accordance with Annex I, including:

- Contracts for works, equipment (new or used) and assets, provided that ownership is transferred at the end of the Action when required in Article 9;
- Contracts for consumables and supplies, provided that, for EU External Action, ownership of remaining major supplies is transferred at the end of the Action in accordance with Article 9;
- Contracts for services.

The acceptable costs of Procurement Contracts may include duties, taxes and charges, including VAT, if they are not recoverable by the Organisation, and unless otherwise provided for in the Special Conditions;

2. Grants to be paid to Grant Beneficiaries in accordance with Annex I;

- (ii) where the Action includes other tasks than Budget Implementation Tasks clearly identified in Annex I, which are directly implemented by the Organisation:

i. costs of procurement contracts and grants referred to in point (i), and required for the implementation of tasks other than Budget Implementation Tasks;

ii. costs of staff (working under an employment contract or equivalent appointing act) directly assigned to the tasks other than the Budget Implementation Tasks, as identified in Annex I. These shall correspond to gross salaries including social security charges and other remuneration-related costs provided that they are in line with the usual remuneration practices of the Organisation, and excluding any other cost such as indirect costs, provisions or reserves and bonuses; The costs of natural persons seconded by a third party to the Organisation against payment or working under a contract with the Organisation other than an employment contract may be assimilated to such costs of staff, if the following conditions are fulfilled:

1. the natural person works under the instructions of the Organisation and, unless otherwise agreed with the Organisation, in the premises of the Organisation;
2. the result of the work belongs to the Organisation; and
3. the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the Organisation;

The Organisation shall retain evidence regarding the time worked by the staff on the tasks other than the Budget Implementation Tasks, be that through a time-recording system, a reliable method of apportionment or through an employment contract stipulating the precise assignment to those other tasks;

iii. travel and subsistence costs for staff and other persons directly assigned to the tasks other than the budget implementation tasks, as identified in Annex I, provided that they are in line with the usual practices of the Organisation on travel;

- b) it is actually incurred by the Organisation, i.e. it represents real expenditure definitely and genuinely borne by the Organisation. Amounts that shall be recovered by the Organisation in accordance with Article 2.8 shall not be considered as expenditure actually incurred;

- c) it is reasonable, justified and complies with the principle of Sound Financial Management in accordance with the Organisation's rules and procedures;

- d) it is incurred during the Implementation Period:

i) Grants to Grant Beneficiaries are acceptable if the activities supported by the Grants are implemented during the Implementation Period;

ii) Costs of services, works and supplies are acceptable if the services, works and supplies are delivered during the Implementation Period;

- e) it is identifiable and verifiable pursuant to Article 16, in particular it is:

- i) recorded in the accounting records of the Organisation and determined according to the usual accounting practices of the Organisation;
- ii) backed by effective supporting evidence (originals, as the case may be in electronic form);
- f) it is indicated under one of the categories of costs in the estimated budget in Annex III, distinguishing between the estimated costs of Budget Implementation Tasks and the estimated costs of other tasks, if any;
- g) it complies with the applicable tax and social legislation taking into account the respective Organisation's privileges and immunities.

18.2 The Organisation may declare its acceptable costs of staff referred to in Article 18(1)(a)(ii)(ii) as actual costs or on the basis of unit costs (hourly or daily or half-daily rates) determined by the Organisation according to its usual cost accounting practices, if the following conditions are complied with:

- a) the cost accounting practices used are applied in a consistent manner, based on objective criteria, regardless of the source of funding;
- b) the unit cost is calculated using the actual staff costs as defined in Article 18(1)(a)(ii)(ii) and as recorded in the Organisation's accounts, excluding any ineligible cost, such as provisions or reserves, or costs included in other cost categories, such as indirect costs. The actual staff costs may be adjusted by the Organisation on the basis of budgeted or estimated elements. Those elements must be relevant for calculating the costs of staff, reasonable and correspond to objective and verifiable information; and
- c) 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).

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;

- d) the number of actual units (hours or days or half-days) declared by the Organisation is necessary for the implementation of the Action and is identifiable and verifiable.

18.3. The Organisation shall keep adequate records and documentation to prove that the cost accounting practices used comply with the conditions set out in Article 18.2.

When the Commission approves the Organisation's cost accounting practices, costs of staff declared by the Organisation in application of those practices shall not be verified or challenged ex-post, provided that the practices actually used comply with those approved by the Commission and that the Organisation did not conceal any information for the purpose of their approval.

Remuneration under Delegation Agreements

18.4 The remuneration of the Organisation and the Sub-delegatees, by the Contracting Authority for the implementation of the Action shall be the percentage of the final amount of accepted expenditure of the Action to be reimbursed by the Contracting Authority, as specified in Article 3.2 of the Special Conditions. The remuneration shall not exceed 7% of the final amount of accepted expenditure of the Action to be reimbursed by the Contracting Authority.

18.5 Subject to the above, for comparable Actions and for Multi-Donor Actions the amount claimed as remuneration shall not, in percentage terms, be higher than for other comparable contributions.

- 18.6 The conditions stated in Article 18.1 do not apply to the remuneration of the Organisation or the Sub-delegatees. The remuneration does not need to be supported by accounting documents.

Inacceptable expenditure

- 18.7 The following expenditure is not acceptable in addition to any other expenditure not fulfilling the conditions set out in Article 18.1:
- a) return on capital;
 - b) debts and debt service charges;
 - c) provisions for losses, debts or potential future liabilities;
 - d) banking charges for the transfers from the Contracting Authority;
 - e) deductible value added tax;
 - f) costs of purchase of land or buildings, except where justified and necessary for the implementation of the Action and according to the conditions specified in the Special Conditions; For EU External Actions, the ownership shall be transferred in accordance with Article 9, at the latest at the end of the Action;
 - g) costs incurred during the suspension of the implementation of the Agreement except the minimum costs agreed on in accordance with Article 12.8 and 12.11;
 - h) 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 acceptable expenditure if it complies with the conditions set out in Article 18.1;
 - i) any cost incurred by the Organisation for the management of EU funds in excess of the percentage of the remuneration agreed in Article 3.2 of the Special Conditions.

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 of the Special Conditions within 30 days of receiving this Agreement signed by both Parties;
 - b) for each further pre-financing instalment the Organisation shall submit a payment request and a progress report in accordance with Article 4 of the Special Conditions, excluding not authorised contingencies, provided that at least 70% of the immediately preceding instalment (and 100% of previous instalments if any) has been subject to a legal commitment between the Organisation or the Sub-delegatees and a third party as proven by the relevant report;
 - c) in line with the deadlines set out in Article 3.8, the Organisation shall submit a payment request for the balance together with the final report. The amount of the balance shall be determined 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 payment or the time limit for payment was suspended according to Article 12.1 to 12.5.
- 19.2 Payment requests shall be accompanied by narrative and financial reports presented in accordance with Article 3. Requests for pre-financing payments shall be drafted in Euro. Unless otherwise agreed in the Special Conditions, the payment request for the balance shall be submitted in the accounting currency of the Organisation for the Action. 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 payment requests 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 Euro into the bank account referred to in the financial identification form in Annex IV.

If the currency of the payment request for the balance is not the Euro, the Contracting Authority shall convert into Euro the amount of the balance reported at the daily rate published in the Official Journal of the European Union applicable on the day when the payment order, or if the balance is negative (surplus of amounts already paid over the EU final contribution) the recovery order, is issued by the Contracting Authority. Where no daily Euro exchange rate is published in the Official Journal of the European Union for the currency in question, the monthly or daily accounting rate established by the Contracting Authority and published on its website shall be used.

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 or of payments by the Contracting Authority in accordance with Article 12 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) the interest shall not be treated as an income for the purpose of determining the final amount of the EU contribution within the meaning of Article 20.

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 amounts 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 amounts already paid to the Organisation.
- 20.2 The final amount shall be the lower of the following two amounts:
- a) the sum of the acceptable expenditure approved by the Contracting Authority and of the remuneration, after any reduction in accordance with article 20.3;
 - b) the maximum EU contribution referred to in Article 3.2 of the Special Conditions.
- 20.3 Where the Action is not implemented, is not implemented in line with the Agreement, is implemented partially or late, or if the Organisation has substantially breached an obligation under the Agreement, such as the obligations on access stated in Article 17, 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.

Article 21: Sub-delegation (Only applicable to EU External Actions)

- 21.1 The Organisation may delegate activities to one or more Sub-delegatees, as described in Annex I. When the Sub-delegatees are not stated in Article 1.7 of the Special Conditions, the Organisation shall ask prior written approval of the Contracting Authority once they are identified.
- 21.2 The Sub-delegatee may not further sub-delegate the activities delegated to it by the Organisation. The costs incurred by the Sub-delegatees are eligible under the same conditions as those of the Organisation.
- 21.3 Sub-delegation of activities is only possible where the following conditions are met:
- a) the Sub-delegatee is a third country or the body that it has designated, an international organisation or one of its agencies, a public law body or a body governed by private law with a public service mission to the extent that in the view of the Organisation it provides adequate financial guarantees.

In the case of EU Member States bodies and international organisations, Sub-delegation is also possible to non-profit organisations possessing, in the view of the Organisation, the appropriate operational and financial capacity;

- b) the Sub-delegatee has been positively assessed ex-ante by the European Commission to work in indirect management, or it has been positively assessed ex-ante by the Organisation which carried out a pillar assessment equivalent to the one performed on the Organisation, in line with its Regulations and Rules. Where approved in the pillar assessment performed on the Organisation, the Organisation may sub-delegate imposing rules, ex-ante approvals, ex-post checks or a combination of remedial measures on the Sub-delegatee which provide guarantees equivalent to those applied by the Organisation;
- c) the Organisation ensures that the necessary ex-post controls are in place in order to guarantee the Sound Financial Management of the EU contribution;
- d) the Organisation entrusts to the Sub-delegatee a part of the Action described in Annex I provided that this part includes Budget Implementation Tasks.

21.4 The Organisation undertakes to ensure that Sub-delegatees carry out the activities entrusted to them for the implementation of the Action and that the provisions laid down in Articles: 2.2, 2.3, 2.6 to 2.8- General obligations, 4-Liability, 5-Conflict of interest, 6-Confidentiality, 7-Data protection, 8-Communication and Visibility, 9-Ownership, right to use and transfer of results and equipment, 10-Evaluation and monitoring of the Action, 16-Accounts and archiving, 17-Access and financial checks, 22-Ex-post publication of Contractors and Grant Beneficiaries, and 23-Contracting and Central Exclusion Database apply mutatis mutandis to Sub-delegatees.

21.5 Unless otherwise specified in the Special Conditions, where the Organisation and a Sub-delegatee have both concluded framework agreements with the European Commission only the framework agreement of the Organisation shall apply for the purpose of this Agreement. Notwithstanding the foregoing, where a Sub-delegatee has agreed on arrangements for verifications as part of a framework agreement such arrangements shall continue to apply.

Article 22: Ex-post publication of information on Contractors and Grant Beneficiaries

- 22.1 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 NUTS⁵ 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.
- 22.2 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.
- 22.3 If the Action is a Multi-Donor Action in the field of the EU External Actions, the publication of information on Contractors and Grant Beneficiaries shall follow the rules of the Organisation.

Article 23: Contracting and Central Exclusion Database

Contracting

- 23.1 The Procurement Contracts and Grant contracts implementing the EU contribution shall be signed by the contracting deadline set out in Article 2.5 of the Special Conditions. After the contracting deadline up to submission of the final report, only contracts following early termination of an existing contract, riders to existing contracts and contracts concerning final audits and evaluation may be signed.
- 23.2 Procedures to award contracts, as referred to in Article 23.1, may have been initiated and contracts may be signed by the Organisation before the start of the Implementation Period.
- 23.3 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

⁵ Nomenclature of Territorial Units for Statistics, available at: <http://ec.europa.eu/eurostat/ramon>.

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.

- 23.4 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 persons:
- a) are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - b) or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgement of a competent authority which has the force of res judicata;
 - c) or persons having powers of representation, decision making or control over them have been the subject of a judgement 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;
 - d) 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;
 - e) are subject to a conflict of interest.

Central Exclusion Database

- 23.5 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 23.4 (c). The information shall be transmitted using the ad-hoc template⁶, which shall be sent to the European Commission with an indication of the duration of the exclusion, if any, decided on the basis of the judgement which is being notified. If available to the Organisation, a copy of the definitive judgement and where available and applicable of the necessary documents establishing the legal existence of the entity concerned shall also be provided. The European Commission shall introduce this information in the Central Exclusion Database. The Organisation shall inform the European Commission when it becomes aware that transmitted 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 Central Exclusion Database. These requirements cease upon end of the Implementation Period.
- 23.6 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.
- 23.7 The Organisation may take into account, as appropriate and on its own responsibility the information contained in the Central Exclusion Database, when awarding contracts. Access to the information can be provided through the liaison point(s) or via consultation to the European Commission as referred in Article 5.6 of the Special Conditions⁷ when the Organisation 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).
- 23.8 In the event of failure to comply with Articles 23.1 to 23.4, the Contracting Authority may declare the related costs ineligible for funding by the EU.

⁶ Annex C8f at DEVCO Companion published at: <http://ec.europa.eu/europeaid/companion>

⁷ The Organisation shall be allowed to have direct access to the Central exclusion database through a liaison point 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).

PART III: Additional provisions applicable only to PA Grants

Article 24: Affiliated Entities

- 24.1 Where the Special Conditions contain a provision on any Affiliated Entity, costs incurred by such entity will be eligible under the same conditions as those applicable to the Organisation, provided that it satisfies the same conditions under Article 25-Eligible Costs as apply to the Organisation, and that the Organisation ensures that the Contracting Authority and the European Commission where it is not the Contracting Authority, OLAF, the European Court of Auditors and any authorised representatives may exercise their rights under Article 17 also towards the Affiliated Entity.
- 24.2 The Organisation shall ensure that Articles 2-General obligations, 4-Liability towards third parties, 5-Conflict of interest, 6-Confidentiality, 7-Data protection, 8-Communication and visibility, 9-Ownership, right to use results and transfer of equipment, 10 – Evaluation and monitoring of the Action, 16-Accounts and archiving, 28-No profit and 29-Contracting and financial support to third parties, are also applicable to the Affiliated Entity.

Article 25: Eligible direct costs under PA Grant Agreements

- 25.1 The eligible direct costs of the Action are costs which meet all the following criteria:
- a) they are necessary for the implementation of the Action, directly linked to its implementation, and arising as a direct consequence of its implementation;
 - b) they fall within one of the following categories:
 - (i) costs of staff (working under an employment contract or equivalent appointing act) directly assigned to the Action; These shall correspond to gross salaries including social security charges and other remuneration-related costs provided that they are in line with the usual remuneration practices of the Organisation, and excluding any other cost such as indirect costs, provisions or reserves and bonuses; The costs of natural persons seconded by a third party to the Organisation against payment or working under a contract with the Organisation other than an employment contract may be assimilated to such costs of staff, if the following conditions are fulfilled:
 - i. the natural person works under the instructions of the Organisation and, unless otherwise agreed with the Organisation, in the premises of the Organisation;
 - ii. the result of the work belongs to the Organisation; and
 - iii. the costs are not significantly different from the costs of staff performing similar tasks under an employment contract with the Organisation;
 - (ii) travel and subsistence costs for staff and other persons directly assigned to the Action, provided that they are in line with the usual practices of the Organisation on travel;
 - (iii) depreciation costs, rental costs or leasing costs for equipment (new or used) and assets in proportion to the duration of Action and the rate of actual use for the Action, provided that the equipment or asset has been purchased by the Organisation in accordance with Article 29.1 and is written off in accordance with the usual accounting practices of the Organisation;
For EU External Actions, the full purchase costs of equipment (new or used) and assets may be eligible, provided that they are specifically purchased by the Organisation for the purposes of the Action in accordance with Article 29.1 and that ownership is transferred at the end of the Action in accordance with Article 9;
 - (iv) costs of consumables and supplies specifically purchased for the purposes of the Action, provided that they are purchased by the Organisation in accordance with Article 29.1 and, for EU External Actions, that ownership of remaining major supplies is transferred at the end of the Action in accordance with Article 9;
 - (v) costs entailed by service contracts specifically awarded by the Organisation for the purposes of the Action, provided that they are purchased by the Organisation in accordance with Article 29.1;
 - (vi) costs of services necessary to meet specific requirements of the Contracting Authority (translation and reproduction of reports, evaluation specific to the Action and, where exceptionally required, audits), provided that the corresponding services are purchased by the Organisation in accordance with Article 29.1;
 - (vii) costs of financial support to third parties, provided that the conditions referred to in Articles 29.3, 29.5 and 29.6 are respected;

- (viii) duties, taxes and charges, including VAT, paid as part of the direct costs referred to above and not recoverable by the Organisation, unless otherwise provided in the Special Conditions;
- c) they are actually incurred by the Organisation, i.e. they represent real expenditure definitely and genuinely borne by the Organisation. They are reasonable, justified and comply with the principle of Sound Financial Management;
- d) they are incurred during the Implementation Period:
 - i) Costs of financial support to third parties are eligible if the supported activities are implemented during the Implementation Period;
 - ii) Costs of services, works and supplies are eligible if the services, works and supplies are delivered during the Implementation Period;
 An exception is made for costs relating to final reports, which may be incurred after the Implementation Period;
- e) they are identifiable and verifiable pursuant to Article 17, in particular they are:
 - i) recorded in the accounting records of the Organisation and determined according to the usual accounting practices of the Organisation;
 - ii) backed by effective supporting evidence (originals, as the case may be in electronic form);
- f) they are indicated under one of the categories of costs in the estimated budget in Annex III;
- g) they comply with the applicable tax and social legislation taking into account the Organisation's privileges and immunities.

Simplified cost options

- 25.2 In accordance with the detailed provisions in Annex III, eligible costs may also be constituted by 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 be clearly described and substantiated in Annex III and shall ensure compliance with the no profit rule (see Article 28) and shall avoid double funding of costs. The information used can be based on the Organisation's historical and/or actual accounting and cost accounting data or on external information where available and appropriate.

Costs declared under simplified cost options shall satisfy the eligibility criteria set out in Article 25.1. They do not need to be backed by accounting or supporting documents, save those necessary to demonstrate the fulfillment of the conditions for reimbursement established in Annex I and III. These costs may not include ineligible costs as referred to in Article 25.7 or costs already declared under another cost item or heading of the budget of this Agreement. The amounts or rates of unit costs, lump sums or flat-rates set out in Annex III may not be amended unilaterally and may not be challenged by ex-post verifications.

The total amount of financing that may be awarded on the basis of simplified cost options may not exceed EUR 60.000, unless otherwise provided for in the Special Conditions.

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 and, therefore an undue payment has been made, the Contracting Authority shall be entitled to recover proportionately up to the amount of the unit costs, lump sums or flat-rate financing.

- 25.3 The Organisation may declare its eligible costs of staff referred to in Article 25.1 (b)(i) as actual costs or, in addition to the simplified cost options referred to in Article 25.2, on the basis of unit costs (hourly or daily or half-daily rates) determined by the Organisation according to its usual cost accounting practices, if the following conditions are complied with:
- a) the cost accounting practices used are applied in a consistent manner, based on objective criteria, regardless of the source of funding;
 - b) the unit cost is calculated using the actual staff costs as defined in Article 25.1 (b)(i) and as recorded in the Organisation's accounts, excluding any ineligible cost, such as provisions or reserves, or costs included in other cost categories, such as indirect costs. The actual staff costs may be adjusted by the Organisation on the basis of budgeted or estimated elements. Those elements must be relevant for calculating the costs of staff, reasonable and correspond to objective and verifiable information; and

- c) 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).

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;

- d) the number of actual units (hours or days or half-days) declared by the Organisation is necessary for the implementation of the Action and is identifiable and verifiable.

- 25.4. The Organisation shall keep adequate records and documentation to prove that the cost accounting practices used comply with the conditions set out in Article 25.3.

When the Commission approves the Organisation's cost accounting practices, costs of staff declared by the Organisation in application of those practices shall not be verified or challenged ex-post, provided that the practices actually used comply with those approved by the Commission and that the Organisation did not conceal any information for the purpose of their approval.

Indirect costs under PA Grant Agreements

- 25.5 The indirect costs for the Action are those eligible costs which cannot be identified as specific costs directly linked to the implementation of the Action and cannot be booked to it directly. However, they are incurred by the Organisation in connection with the eligible direct costs for the Action. They may not include ineligible costs as referred to in Article 25.7 or costs already declared under another cost item or heading of the estimated budget.

- 25.6 Eligible indirect costs shall be declared on the basis of the flat-rate laid down in Article 3.3 of the Special Conditions, which shall not exceed 7% of the total eligible direct costs. Flat-rate financing in respect of indirect costs does not need to be supported by accounting documents. This amount shall not be taken into account with regard to the maximum amount of simplified cost options.

Ineligible costs

- 25.7 The following costs are ineligible in addition to any other costs not fulfilling the conditions set out in Article 25:

- a) return on capital;
- b) debts and debt service charges;
- c) provisions for losses, debts or potential future liabilities;
- d) banking charges for the transfers from the Contracting Authority;
- e) deductible value added tax;
- f) costs of purchase of land or buildings, except where justified and necessary for the implementation of the Action and according to the conditions specified in the Special Conditions; For EU External Actions, the ownership shall be transferred in accordance with Article 9, at the latest at the end of the Action;
- g) costs incurred during the suspension of the implementation of the Agreement, except the minimum costs agreed on in accordance with Article 12.8 and 12.11;
- h) costs declared by the Organisation under another agreement financed by the European Union budget (including through the European Development Fund);
- i) 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 acceptable expenditure or eligible cost if it complies with the conditions set out in Article 25.1;

- j) credits to third parties, unless otherwise specified in the Special Conditions;
- k) salary costs of the personnel of national administrations, unless otherwise specified in the Special Conditions and only to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the Action were not undertaken;
- l) any indirect costs in excess of the percentage agreed in Article 3.3 of the Special Conditions.

Article 26: Payments

26.1 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.

For EU External Actions, the following additional provisions shall 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) within 60 days following the end of the reporting period, the Organisation shall present an interim report or, if unable to do so, it shall inform the Contracting Authority of the reasons and provide a summary of progress of the Action;
- iii) if at the end of the reporting period the part of the expenditure actually incurred which is financed by the Contracting Authority is less than 70 % of the previous payments, the further pre-financing payment shall be reduced by the amount corresponding to the difference between the 70 % of the previous pre-financing payments and the part of the expenditure actually incurred which is financed by the Contracting Authority;
- iv) the Organisation may submit a request for further pre-financing payment before the end of the reporting period, when the part of the expenditure actually incurred which is financed by the Contracting Authority is more than 70 % of the previous payments. In this case, the following reporting period starts anew from the end date of the period covered by this payment request;
- v) the total sum of pre-financing payments may not exceed 95 % of the amount referred to in Article 3.2 of the Special Conditions, excluding not authorised contingencies;

For Actions other than EU External Actions, the additional following provision shall apply:

- vi) if, at the end of the reporting period, the financial report shows that less than 70 % of the previous pre-financing payment have been used to cover costs of the Action, the further pre-financing payment shall be reduced by the amount corresponding to the difference between the 70 % of the previous pre-financing payment and the part actually used;
- c) at the end of the Implementation Period, the Organisation shall submit a payment request for the balance together with the final report. The amount of the balance shall be determined 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 payment or the time limit for payment was suspended according to Article 12.1 to 12.5.

26.2 Payment requests shall be accompanied by narrative and financial reports presented in accordance with Article 3. Requests for pre-financing payments shall be drafted in Euro. Unless otherwise agreed in the Special Conditions, the payment request for the balance shall be submitted in the accounting currency of the Organisation for the Action. 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 27. If the balance is negative, the payment of the balance takes the form of recovery.

26.3 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.

26.4 The Contracting Authority shall make payments in Euro into the bank account referred to in the financial identification form in Annex IV.

If the currency of the payment request for the balance is not the Euro, the Contracting Authority shall convert into Euro the amount of balance at the daily rate published in the Official Journal of the European Union applicable on the day when the payment order, or if the balance is negative (surplus of amounts already paid over the final EU contribution) the recovery order, is issued by the Contracting Authority. Where no daily Euro exchange rate is published in the Official Journal of the European Union for the currency in question, the monthly or daily accounting rate established by the Contracting Authority and published on its website shall be used.

Late payment interest

- 26.5 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 26.1, 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 or of payments by the Contracting Authority in accordance with Article 12 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 26.1. 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) the interest shall not be treated as an income for the purpose of determining the final amount of the EU contribution within the meaning of Article 27.

Article 27: Final amount of the EU contribution

- 27.1 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 26 where the final amount of the EU contribution is higher than the total amounts 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 amounts already paid to the Organisation.
- 27.2 Without prejudice to Article 28 the final amount shall be the lower of the following amounts:
- a) 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;
 - b) the maximum ceiling in Article 3.2 of the Special Conditions in terms of the absolute value.
 - c) the amount obtained after reduction of the EU contribution in accordance with article 27.3.
- 27.3 Where the Action is not implemented, is not implemented in line with the Agreement, is implemented partially or late, or if the Organisation has breached a substantial obligation under the Agreement, such as the obligations on access stated in Article 17, the Contracting Authority may, after allowing the Organisation to submit its observations (including proposal for remedial measures), 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.

Article 28: No Profit

- 28.1 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.
- 28.2 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.
- 28.3 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.
- 28.4 The provisions in Articles 28.1 to 28.3 shall not apply to:
- a) Actions the objective of which is the reinforcement of the financial capacity of the Organisation or a Co-Beneficiary, 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 29: Contracting and financial support to third parties

Implementation contracts

- 29.1 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. For that purpose the Organisation may apply its procurement rules and procedures if these rules and procedures have been positively assessed by the European Commission.
- 29.2 In the field of EU External Actions:
- a) Where the Organisation or another donor provides co-financing to the Action⁸, 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. Procedures to award Procurement Contracts may have been initiated and Procurement Contracts may be concluded by the Organisation before the start of the Implementation Period of the Action.
 - b) The Contracting Authority may impose in the Special Conditions additional rules for implementation of Procurement Contracts above EUR 60.000 if the Organisation's procurement rules and procedures have not been positively assessed by the European Commission.
 - c) Should the Organisation fail to comply with the conditions set out in points a) and b), the Contracting Authority may reduce its contribution to the Organisation in accordance with Article 27.3.

Financial support to third parties

- 29.3 In order to support the achievement of the objectives of the Action, and in particular where the implementation of the Action requires financial support to be given to third parties, the Organisation may award financial support if so provided by the Special Conditions. The Organisation shall ensure that the Contracting Authority and the European Commission where it is not the Contracting Authority, OLAF, the European Court of Auditors and any authorised representatives may exercise their rights under Article 17 also towards the third parties awarded financial support.
- 29.4 To the extent relevant, the Organisation shall ensure that the conditions applicable to the Organisation under Articles 5-Conflict of interest, 8-Communication and visibility and 16-Accounts and archiving are also applicable to third parties awarded financial support.
- 29.5 The maximum amount of financial support shall be specified in Annex I and be limited to EUR 60.000 per each third party, except where one of the main purposes of the Action is to redistribute the EU

⁸ The requirement of co-financing is deemed to be complied with where the total accepted costs are higher than the total eligible costs.

contribution.

- 29.6 The description of the Action in Annex I shall also define the types of entities eligible for financial support and include a fixed list with the types of activity which may be eligible for financial support. The criteria for the selection of the third party recipients of this financial support, including the criteria for determining its exact amount, shall also be specified.
- 29.7 The Contracting Authority shall consider the costs of financial support as ineligible if the financial support is not given by the Organisation in accordance with the conditions referred to in Articles 29.3, 29.5 and 29.6. The Contracting Authority may reduce its contribution to the Organisation if the third party recipient of financial support has substantially breached one of the obligations listed in Article 29.4, or if the third party recipient has not used the funds for the purpose foreseen in its agreement with the Organisation, if any.
- 29.8 In the field of EU External Actions, the Organisation shall provide in its report to the Contracting Authority information on the award and implementation of any financial support given. The report shall demonstrate compliance with the requirements defined in accordance with Article 29.5 and 29.6 1st sentence and describe the results achieved.

Article 30: Multi-beneficiary agreements

- 30.1 Where the Organisation implements the Action together with Co-Beneficiaries, these General Conditions apply to Co-Beneficiaries mutatis mutandis, subject to the provisions of this Article 30.
- 30.2 The Organisation shall:
- a) monitor that the Action is implemented in accordance with this Agreement and ensure coordination with all Co-Beneficiaries in the implementation of the Action;
 - b) be the intermediary for all communications between the Co-Beneficiaries and the Contracting Authority;
 - c) be responsible for supplying all documents and information to the Contracting Authority which may be required under this Agreement, in particular in relation to the narrative reports and the requests for payment. Where information from the Co-Beneficiaries is required, the Organisation shall be responsible for obtaining, verifying and consolidating this information before passing it on to the Contracting Authority. Any information given, as well as any request made by the Organisation to the Contracting Authority, shall be deemed to have been given in agreement with all Co-Beneficiaries;
 - d) inform the Contracting Authority of any event likely to affect or delay the implementation of the Action;
 - e) inform the Contracting Authority of any change in the legal, financial, technical, organisational or ownership situation of any of the Co-Beneficiaries, as well as, of any change in the name, address or legal representative of any of the Co-Beneficiaries;
 - f) be responsible in the event of audits, checks, monitoring or evaluations, as described in Articles 10 and 17 for providing all the necessary documents, without prejudice to Article 30.8;
 - g) have full financial responsibility for ensuring that the Action is implemented in accordance with this Agreement. This includes the implementation done by the Co-Beneficiaries. By exception, where a Co-Beneficiary's pillars have been positively assessed by the European Commission and the Organisation can demonstrate that amounts to be recovered under this Agreement only relate to activities that have or should have been implemented by the Co-Beneficiary in accordance with Annex I, the Contracting Authority shall recover these amounts from that Co-Beneficiary.;
 - h) establish the payment requests in accordance with the Agreement;
 - i) be the sole recipient, on behalf of all of the Co-Beneficiaries, of the payments of the Contracting Authority. The Organisation shall ensure that the appropriate payments are then made to the Co-Beneficiaries without unjustified delay;
 - j) not delegate any, or part of, these tasks to the Co-Beneficiaries or other entities;
 - k) where relevant, repay funds to the Contracting Authority in line with Article 15.
- 30.3 The Organisation and the Co-Beneficiaries shall:

- a) carry out the Action jointly taking all necessary and reasonable measures to ensure that the Action is carried out in accordance with the description of the Action in Annex I and the terms and conditions of this Agreement;
 - b) be responsible for complying with any obligation incumbent on them jointly or individually;
 - c) ensure that the Organisation has or obtains the data needed to draw up the reports, financial statements and other information or documents required by this Agreement and the annexes thereto, as well as, without prejudice to Article 30.8, any information needed in the event of audits, checks, monitoring or evaluations, as described in Articles 10 and 17;
 - d) ensure that all information to be provided and requests made to the Contracting Authority are sent via the Organisation;
 - e) agree upon appropriate internal arrangements for the internal coordination and representation of the Co-Beneficiaries vis-a-vis the Contracting Authority for any matter concerning this Agreement, consistent with the provisions of this Agreement and in compliance with the applicable legislation(s).
- 30.4 In duly justified cases, the participation of a Co-Beneficiary in this Agreement may be terminated by the Organisation. To this purpose, the Organisation shall communicate to the Contracting Authority the reasons for the termination of its participation and the date on which the termination shall take effect, as well as a proposal on the reallocation of the tasks of the Co-Beneficiary whose participation is terminated, or on its possible replacement. The proposal shall be sent in good time before the termination is due to take effect. If the Contracting Authority agrees, the Agreement shall be amended accordingly in conformity with Article 11. If the Contracting Authority does not agree, either Party may terminate the Agreement in accordance with Article 13.3.
- 30.5 In duly justified cases, the Contracting Authority may suspend the participation of a Co-Beneficiary in the Agreement for the reasons referred to in Article 12.6 or terminate the participation of a Co-Beneficiary in the Agreement for the reasons referred to in Article 13.1.
- 30.6 In the case of termination of the participation of a Co-Beneficiary in accordance with Article 30.5, the request for payment for the Co-Beneficiary concerned shall be included in the next payment request following termination communicated by the Organisation.
- 30.7 The ceiling of EUR 60.000 for simplified cost options set forth under Article 25.2 applies to the Organisation and each Co-Beneficiary individually. Indirect costs shall not be eligible under the Agreement for a Co-Beneficiary who already receives an operating grant financed from the European Union budget during the period in question. Where the budget of the Action includes a breakdown per Co-Beneficiary and the Organisation, the Organisation and the Co-Beneficiaries are allowed to adjust the budget by transfers between themselves without an amendment to the Agreement.
- 30.8 Unless otherwise specified in the Special Conditions, where the Organisation and a Co-Beneficiary have both concluded framework agreements with the European Commission only the framework agreement of the Organisation shall apply for the purpose of this Agreement. Notwithstanding the foregoing, where a Co-Beneficiary has agreed on arrangements for verifications as part of a framework agreement such arrangements shall continue to apply.