ANNEX II
General Conditions applicable to European Union-financed grant contracts for external actions

CONTENTS

Explanations to the definitions used throughout this General Conditions may be found in the "Glossary of terms", annex A1 to the Practical Guide to contract procedures for EU external actions.

1 Article 1 - General obligations 2

2 Article 2 - Obligation to provide information and financial and narrative reports 3

3 Article 3 - Liability 4

4 Article 4 - Conflict of interests 5

5 Article 5 - Confidentiality 5

6 Article 6 - Visibility 5

7 Article 7 - Ownership/use of results and assets 6

8 Article 8 – Evaluation/monitoring of the Action 6

9 Article 9 - Amendment of the Contract 6

10 Article 10 - Assignment 7

11 Article 11 - Implementation period of the Action, extension, suspension, force majeure and end date 7

12 Article 12 - Termination of the Contract 8

13 Article 13 - Applicable law and dispute settlement 9

14 Article 14 - Eligible costs 10

15 Article 15 - Payment and interest on late payment 12

16 Article 16 - Accounts and technical and financial checks 16

17 Article 17 - Final amount of financing by the Contracting Authority 17

18 Article 18 - Recovery 18

GENERAL AND ADMINISTRATIVE PROVISIONS

ARTICLE 1 - GENERAL OBLIGATIONS

1.1. The Beneficiary shall implement the Action under its own responsibility and in accordance with the Description of the Action in Annex I with a view to achieving the objectives laid down therein.

1.2. The Beneficiary shall implement the Action with the requisite care, efficiency, transparency and diligence, in line with best practice in the field concerned and in compliance with this Contract.

For this purpose the Beneficiary shall mobilise all the financial, human and material resources required for full implementation of the Action as specified in the Description of the Action.

1.3. The Beneficiary shall act alone or in partnership with one or more non governmental organisations or other bodies identified in the Description of the Action. Partners take part in the implementation of the Action, and the costs they incur are eligible in the same way as those incurred by the Beneficiary.

If the Beneficiary or, where applicable its partners, have to conclude contracts in order to carry out the Action, these may only cover a limited portion of the Action and shall respect the contract-award procedures and rules of nationality and origin set out in Annex IV of this Contract.

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 Beneficiary may award sub-grants if so provided for in the Special Conditions. However, sub-granting may not be the main purpose of the Action and it shall be duly justified. The Special Conditions shall establish the total amount which may be used for awarding sub-grants as well as the minimum and maximum amount per sub-grant. The maximum amount of a sub-grant shall be limited to EUR 10 000 per third party while the total amount which may be awarded as sub-grants to third parties shall be limited to EUR 100 000. The Description of the Action shall include a list with the types of activity which may be eligible for sub-grants, together with the criteria for the selection of the beneficiaries of these sub-grants.

The bulk of the Action must, however, be undertaken by the Beneficiary and, where applicable, his partners.

The Beneficiary alone shall be accountable to the Contracting Authority for the implementation of the Action. It shall undertake that the conditions applicable to it under Articles 1, 3, 4, 5, 6, 7, 8, 10, 14, 16 and 17 shall also apply to its partners, and those applicable under Articles 1, 3, 4, 5, 6, 7, 8, 10 and 16 to all its contractors. It shall include provisions to that effect as appropriate in its contracts with them.

1.4. The Beneficiary and the Contracting Authority are the only parties to this Contract. Where the European Commission is not the Contracting Authority, it is not party to this Contract, which confers on it only the rights and obligations explicitly mentioned therein.

1.5. Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data. The data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Contracting Authority without prejudice to possible transmission to the bodies charged with a monitoring or inspection

task in application of Union law. The Beneficiary shall have the right of access to his/her personal data and the right to rectify any such data. Should the Beneficiary have any queries concerning the processing of his/her personal data, s/he shall address them to the Contracting Authority. The Beneficiary shall have right of recourse at any time to the European Data Protection Supervisor.

Where the Contract requires the processing of personal data, the Beneficiary may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

The data shall be confidential within the meaning of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. The Beneficiary shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

The Beneficiary undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:

   aa) unauthorised reading, copying, alteration or removal of storage media;

   ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;

   ac) unauthorised persons from using data-processing systems by means of data transmission facilities;

b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

c) record which personal data have been communicated, when and to whom;

d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;

e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;

f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE 2 - OBLIGATION TO PROVIDE INFORMATION AND FINANCIAL AND NARRATIVE REPORTS

2.1. The Beneficiary must provide the Contracting Authority with all required information on the implementation of the Action. To that end, the Beneficiary must draw up interim reports and a final report. These reports shall consist of a narrative section and a financial section and shall conform to the model in Annex VI. They shall cover the Action as a whole, regardless of which part of it is financed by the Contracting Authority. Each report must provide a full account of all aspects of the Action's implementation for the period covered. In case where, in accordance with Article 15.6, no expenditure verification report is required the Beneficiary has to provide a list detailing each item of

expenditure incurred in the period covered by the report, and indicating for each its title, amount, relevant heading in the Budget of the Action and the reference of the justifying document, is annexed to it. The proofs of the transfers of ownership referred to in Article 7.3 are also annexed to the final report.

2.2. The Contracting Authority may request additional information at any time and that information must be supplied within 30 days of the request.

2.3. The reports shall be drafted in the language of the Contract. They shall be submitted to the Contracting Authority at the following intervals:

- if payments are made in accordance with option 1 or option 3 of Article 15.1: a single final report shall be forwarded no later than three months after the implementation period as defined in Article 2 of the Special Conditions;

- if payments are made in accordance with option 2 of Article 15.1:

  – an interim report must accompany every request for payment ;

  – the final report shall be forwarded no later than three months after the implementation period as defined in Article 2 of the Special Conditions.

The deadline for submission of the final report is extended to six months where the Beneficiary does not have its headquarters in the country where the Action is implemented.

2.4. Any additional reporting requirement shall be set out in the Special Conditions.

2.5. If the Beneficiary fails to supply the Contracting Authority with a final report by the final report deadline laid down in Article 2.3 and fails to furnish an acceptable and sufficient written explanation of the reasons why it is unable to comply with this obligation, the Contracting Authority may terminate the Contract in accordance with Article 12.2 a) and recover the amounts already paid and not substantiated.

Furthermore, where payments are made in accordance with option 2 of Article 15.1 and the Beneficiary fails to present an interim report and a request for payment by the end of each twelve-month period following the date laid down in Article 2.2 of the Special Conditions, the Beneficiary must inform the Contracting Authority of the reasons why it is unable to do so, and provide a summary of progress in the Action. If the Beneficiary fails to comply with this obligation, the Contracting Authority may terminate the Contract in accordance with Article 12.2 a) and recover the amounts already paid and not substantiated.

ARTICLE 3 - LIABILITY

3.1. The Contracting Authority cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Beneficiary while the Action is being carried out or as a consequence of the Action. The Contracting Authority cannot therefore accept any claim for compensation or increases in payment in connection with such damage or injury.

3.2. The Beneficiary shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them while the Action is being carried out or as a consequence of the Action. The Beneficiary shall discharge the Contracting Authority of all liability arising from any claim or action brought as a result of an infringement by the Beneficiary or the Beneficiary's employees or individuals for whom those employees are responsible of rules or regulations, or as a result of violation of a third party's rights.

ARTICLE 4 - CONFLICT OF INTERESTS

The Beneficiary undertakes to take all necessary precautions to avoid conflicts of interests and shall inform the Contracting Authority without delay of any situation constituting or likely to lead to any such conflict.

There is a conflict of interests where the impartial and objective exercise of the functions of any person under this Contract is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another person.

ARTICLE 5 - CONFIDENTIALITY

Subject to Article 16, the Contracting Authority and the Beneficiary undertake to preserve the confidentiality of any document, information or other material communicated to them in confidence until at least seven years after the final payment. 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 confidentiality.

ARTICLE 6 - VISIBILITY

6.1. Unless the European Commission agrees or requests otherwise, the Beneficiary must take all necessary steps to publicise the fact that the European Union has financed or co-financed the Action. Such measures must comply with the Communication and Visibility Manual for EU External Actions laid down and published by the European Commission, that can be found at: http://ec.europa.eu/europeaid/work/visibility/documents/communication_and_visibility_manual_en.pdf. The Beneficiary shall submit a communication plan for the approval of the European Commission and report on its implementation in accordance with Article 2.

6.2. In particular, the Beneficiary shall mention the Action and the European Union's financial contribution in information given to the final recipients of the Action, in its internal and annual reports, and in any dealings with the media. It shall display the EU logo wherever appropriate.

6.3. Any notice or publication by the Beneficiary concerning the Action, including those given at a conference or seminar, must specify that the Action has received EU funding. Any publication by the Beneficiary, in whatever form and by whatever medium, including the internet, must include the following statement: "*This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of < Beneficiary's name > and can under no circumstances be regarded as reflecting the position of the European Union*."

6.4. The Beneficiary authorises the Contracting Authority and the European Commission (where it is not the Contracting Authority) to publish its name and address, nationality, the purpose of the grant, duration and location as well as the maximum amount of the

grant and rate of funding of the Action's costs, as laid down in Article 3 of the Special Conditions. A derogation from publication of this information may be granted if it could endanger the Beneficiary or harm its commercial interests.

ARTICLE 7 - OWNERSHIP/USE OF RESULTS AND ASSETS

7.1. Ownership of, and title and intellectual and industrial property rights to, the Action's results, reports and other documents relating to it shall be vested in the Beneficiary.

7.2. Notwithstanding the provisions of Article 7.1 and subject to Article 5, the Beneficiary grants the Contracting Authority (and the European Commission where it is not the Contracting Authority) the right to use freely and as it sees fit all documents deriving from the Action, other than those reports referred to in Article 2, whatever their form, provided it does not thereby breach existing industrial and intellectual property rights.

7.3. Where the Beneficiary does not have its headquarters in the country where the Action is implemented and unless otherwise specified in the Special Conditions, the equipment, vehicles and supplies paid for by the Budget for the Action must be transferred to any local partners of the Beneficiary and/or the final beneficiaries of the Action, at the latest when submitting the final report. Copies of the proofs of transfers of equipments and vehicles, the purchase cost of which was more than EUR 5 000 per item, must be attached to the final report. Such proofs must be kept for control in all other cases.

ARTICLE 8 – EVALUATION/MONITORING OF THE ACTION

8.1. If the European Commission carries out an interim or ex post evaluation or a monitoring mission, the Beneficiary shall undertake to provide it and/or the persons authorised by it with any document or information which will assist with the evaluation or monitoring mission, and grant them the access rights described in Article 16.2.

8.2. If either party (or the European Commission) carries out or commissions an evaluation in the course of the Action, it must provide the other party and the European Commission (or the Parties) with a copy of the evaluation report.

ARTICLE 9 - AMENDMENT OF THE CONTRACT

9.1. Any amendment to the Contract, including the annexes thereto, must be set out in writing in an addendum. This Contract can be modified only during its execution period.

If an amendment is requested by the Beneficiary, it must submit that request to the Contracting Authority thirty days before the date on which the amendment should enter into force, unless there are special circumstances duly substantiated by the Beneficiary and accepted by the Contracting Authority.

9.2. However, where the amendment to the Budget or Description of the Action does not affect the basic purpose of the Action and the financial impact is limited to a transfer between items within the same main budget heading including cancellation or introduction of an item, or a transfer between main budget headings involving a variation of 15% or less of the amount originally entered (or as modified by addendum) in relation to each concerned main heading for eligible costs, the Beneficiary may amend the budget and inform in writing without delay the Contracting Authority accordingly. This method may not be used to amend the headings for administrative costs or the contingency reserve.

Changes of address, bank account or auditor may simply be notified, although this does not stop the Contracting Authority from opposing the Beneficiary's choice of bank account or auditor.

The Contracting Authority reserves the right to require that the auditor referred to in Article 5.2 of the Special Conditions be replaced if considerations which were unknown when the Contract was signed cast doubt on the auditor's independence or professional standards.

9.3. An addendum may not have the purpose or the effect of making changes to the Contract that would call into question the grant award decision or be contrary to the equal treatment of applicants. The maximum grant referred to in Article 3.2 of the Special Conditions may not be increased.

ARTICLE 10 - ASSIGNMENT

The Contract and the payments attached to it may not be assigned to a third party in any manner whatsoever without the prior written consent of the Contracting Authority.

ARTICLE 11 - IMPLEMENTATION PERIOD OF THE ACTION, EXTENSION, SUSPENSION, FORCE MAJEURE AND END DATE

11.1. The implementation period of the Action is laid down in Article 2 of the Special Conditions. The Beneficiary must inform the Contracting Authority without delay of any circumstances likely to hamper or delay the implementation of the Action. The Beneficiary may request an extension of the Action's implementation period in accordance with Article 9. The request must be accompanied by all the supporting evidence needed for its appraisal.

11.2. The Beneficiary may suspend implementation of all or part of the Action if circumstances (chiefly force majeure) make it too difficult or dangerous to continue. The Beneficiary must inform the Contracting Authority without delay and provide all the necessary details. Each party may terminate the Contract in accordance with Article 12.1. If the Contract is not terminated, the Beneficiary shall endeavour to minimise the time of its suspension and shall resume implementation once circumstances allow, and shall inform the Contracting Authority accordingly.

11.3. The Contracting Authority may request the Beneficiary to suspend implementation of all or part of the Action if circumstances (chiefly force majeure) make it too difficult or dangerous to continue. Each party may terminate the Contract in accordance with Article 12.1. If the Contract is not terminated, the Beneficiary shall endeavour to minimise the time of its suspension and shall resume implementation once circumstances allow, after obtaining the prior written approval of the Contracting Authority.

11.4. The implementation period of the Action shall be extended by a period equivalent to the length of suspension, without prejudice to any amendment to the Contract that may be necessary to adapt the Action to the new implementing conditions.

11.5. Force majeure shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their contractual obligations, is not attributable to error or negligence on their part (or the part of their subcontractors, agents or employees), and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as force majeure. A party shall not be held in breach of its contractual obligations if it is prevented from fulfilling them by force majeure. Without prejudice to Articles 12.2 and 12.4, the party faced with force

majeure shall inform the other party without delay, stating the nature, probable duration and foreseeable effects of the problem, and take any measure to minimise possible damage.

11.6. The payment obligations of the European Union under this Contract shall end 18 months after the implementation period laid down in Article 2 of the Special Conditions, unless the Contract is terminated under Article 12.

The Contracting Authority shall notify the Beneficiary of any postponement of the end date.

ARTICLE 12 - TERMINATION OF THE CONTRACT

12.1. If a party believes that the Contract can no longer be executed effectively or appropriately, it shall consult the other party. Failing agreement on a solution, either party may terminate the Contract by serving two months' written notice, without being required to pay compensation.

12.2. The Contracting Authority may terminate the Contract, by giving a seven day notice and without paying compensation of any kind:

a) where the Beneficiary fails, without justification, to fulfil any of the obligations incumbent on it and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within 30 days of sending of the letter;

b) where the Beneficiary is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

c) where the Contracting Authority has evidence on the Beneficiary or any related entity or person, of grave professional misconduct; this also applies to partners and agents of the Beneficiary;

d) where the Contracting Authority has evidence on the Beneficiary or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the European Union's financial interests; this also applies to partners and agents of the Beneficiary;

e) where the Beneficiary changes legal personality, unless an addendum recording that fact is drawn up;

f) where the Beneficiary does not comply with Articles 4, 10 and 16;

g) where the Beneficiary makes false or incomplete statements to obtain the grant provided for in the Contract or provides reports that do not reflect reality;

h) where the Beneficiary has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;

i) where the Contracting Authority has evidence on the Beneficiary or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the grant; this also applies to partners and agents of the Beneficiary;

In the cases referred to in points (c), (d) and (i) above, any related person shall mean any physical person with powers of representation, decision-making or control in relation to the Beneficiary. Any related entity shall mean in particular any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive n° 83/349/EEC of 13 June 1983.

12.3. The Beneficiary who has made false declarations, has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations may be excluded from all contracts financed by the Contracting Authority for a maximum of five years from the date on which the infringement is established, as confirmed following the adversarial procedure with the Beneficiary. This period can be extended to 10 years in the event of a repeated offence within 5 years of the date referred above.

12.4. In the event of termination, the Beneficiary shall be entitled to payment of the grant only for the part of the Action carried out, excluding costs connected with current commitments that would be implemented after termination. For this purpose the Beneficiary shall introduce a payment request and a final report in accordance with Article 2.

12.5. However, in the event of termination of the Contract by the Contracting Authority under the cases specified in points d), e) and g) of Article 12.2, the Contracting Authority may request full or partial repayment of sums already paid from the grant, in proportion to the gravity of the failings in question and after allowing the Beneficiary to submit its observations.

12.6. Prior to, or instead of, terminating the Contract as provided for in this Article, the Contracting Authority may suspend payments as a precautionary measure without prior notice.

12.7. This Contract shall be terminated automatically if it has not given rise to any payment by the Contracting Authority within three years of its signature.

ARTICLE 13 - APPLICABLE LAW AND DISPUTE SETTLEMENT

13.1. This Contract shall be governed by the law of the Contracting Authority or, where the Contracting Authority is the European Commission, by the European Union law supplemented as appropriate by Belgian law.

13.2. The Parties shall do everything possible to settle amicably any dispute arising between them during implementation of this Contract. To that end, they shall communicate their positions and any solution that they consider possible in writing, and meet each other at either's request. A party must reply to a request for an amicable settlement within 30 days. Once this period has expired, or if the attempt to reach amicable settlement has not produced agreement within 120 days of the first request, each party may notify the other that it considers the procedure to have failed.

13.3. In the event of failure to reach an amicable agreement, the dispute may by common agreement of the Parties be submitted to the conciliation of the European Commission if it is not the Contracting Authority. 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.

13.4. In the event of failure of the above procedures, each party may submit the dispute to the courts of the country of the Contracting Authority, or to the Brussels courts where the Contracting Authority is the European Commission.

FINANCIAL PROVISIONS

ARTICLE 14 - ELIGIBLE COSTS

14.1. Eligible costs are costs actually incurred by the Beneficiary which meet all the following criteria:

a) they are incurred during the implementation of the Action as specified in Article 2 of the Special Conditions with the exception of costs relating to final reports, expenditure verification and evaluation of the Action, whatever the time of actual disbursement by the Beneficiary and/or its partners. Procedures to award contracts, as referred to in the Article 1.3, may have been initiated but contracts may not be concluded by the Beneficiary or its partners before the start of the implementation period of the Action, provided the provisions of Annex IV were respected;

b) must be indicated in the estimated overall budget of the Action;

c) must be necessary for the implementation of the Action;

d) they are identifiable and verifiable, in particular being recorded in the accounting records of the Beneficiary and determined according to the applicable accounting standards of the country where the Beneficiary is established and according to the usual cost accounting practices of the Beneficiary;

e) must be reasonable, justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

14.2. Subject to the above and where relevant to the provisions of Annex IV being respected, the following direct costs of the Beneficiary and its partners shall be eligible:

- the cost of staff assigned to the Action, corresponding to actual gross salaries including social security charges and other remuneration-related costs; salaries and costs must not exceed those normally borne by the Beneficiary or its partners, as the case may be, unless it is justified by showing that it is essential to carry out the Action;
- travel and subsistence costs for staff and other persons taking part in the Action, provided they do not exceed those normally borne by the Beneficiary or its partners, as the case may be. Any flat-rate reimbursement of the subsistence costs must not exceed the rates set out in Annex III, which correspond to the scales published by the European Commission at the time of signing this Contract;
- purchase or rental costs for equipment and supplies (new or used) specifically for the purposes of the Action, and costs of services, provided they correspond to market rates;
- costs of consumables;
- costs entailed by contracts awarded by the Beneficiary for the purposes of the Action referred to in Article 1.3;
- costs deriving directly from the requirements of the Contract (dissemination of information, evaluation specific to the Action, audits, translation, reproduction, insurance, etc.) including financial service costs (in particular the cost of transfers and financial guarantees;
- taxes, including VAT, where the Regulation and/or Financing Agreement with the third country under which the Contract is financed do not exclude coverage

of taxes and the Beneficiary (or, where applicable, its partners) can show it cannot reclaim. Notwithstanding, the Beneficiary (or its partners) will not have to show it cannot reclaim taxes in any of the cases set out in Article 14.7.

14.3. A contingency reserve not exceeding 5 % of the direct eligible costs may be included in the Budget of the Action. It can be used only with the prior written authorisation of the Contracting Authority

14.4. A fixed percentage not exceeding the percentage laid down in Article 3 of the Special Conditions of the total amount of direct eligible costs of the Action may be claimed as indirect costs to cover the administrative overheads incurred by the Beneficiary for the Action, save where the Beneficiary is in receipt of an operating grant financed from the EU budget. The flat-rate funding in respect of indirect costs does not need to be supported by accounting documents.

Indirect costs are eligible provided that they do not include costs assigned to another heading of the budget of this Contract.

This Article 14.4 does not apply in the case of an operating grant.

14.5. Any contributions in kind, which must be listed separately at Annex III, do not represent actual expenditure and are not eligible costs. Unless otherwise specified in the Special Conditions, the contributions in kind may not be treated as co-financing by the Beneficiary. Notwithstanding to the above, if the Description of the Action foresees the contributions in kind, such contributions have to be provided.

14.6. The following costs shall not be considered eligible:

- debts and debt service charges;
- provisions for losses or potential future liabilities;
- interest owed;
- costs declared by the Beneficiary and covered by another action or work program;
- purchases of land or buildings, except where necessary for the direct implementation of the Action, in which case ownership must be transferred to the final beneficiaries and/or local partners, at the latest at the end of the Action;
- currency exchange losses;
- credits to third parties, unless otherwise specified in the Special Conditions

14.7. The Beneficiary (or, where applicable, its partners) will not have to show it cannot reclaim taxes in any of the following cases:

- where the amount of taxes per invoice is less than EUR 200, within a maximum of EUR 2 500, representing not more than 5% of the Contracting Authority's contribution;
- where the Beneficiary can demonstrate that the steps necessary for recovery of taxes oblige it to incur costs in a country where it only performs the relevant operations on an ad hoc and isolated basis; and that these costs for recovery (e.g., registration fees in the country or the costs for appointing a tax representative, declaration fees, etc.) clearly exceed the amount of the taxes declared to the Contracting Authority;
- where a country has been declared in crisis situation or in the need for emergency and post-emergency assistance by the European Commission. This exception is limited to the period in which the declaration is in force. The Beneficiary shall be informed in writing thereof.

– Where the Action relates to the protection of fundamental rights of peoples, as provided for in the Special Conditions.

The Beneficiary shall certify that the concerned taxes have not been or will not be recovered from the local tax authorities and prove that the above requirements are met at the latest when submitting the final report.

ARTICLE 15 - PAYMENT AND INTEREST ON LATE PAYMENT

15.1. Payment procedures are set out in Article 4 of the Special Conditions and correspond to one of the three options below:

Option 1: Actions with an implementation period not exceeding 12 months or where the financing provided by the Contracting Authority does not exceed EUR 100 000

The Contracting Authority shall pay the grant to the Beneficiary in the following manner:

- pre-financing of 80% of the sum referred to in Article 3.2 of the Special Conditions following the provisions in Article 4.3 of the Special Conditions.

- the balance within 45 days of the Contracting Authority approving the final report in accordance with Article 15.2, accompanied by a request for payment of the balance conforming to the model in Annex V.

Option 2: Actions with an implementation period of more than 12 months and where the financing provided by the Contracting Authority is more than EUR 100 000

The Contracting Authority shall pay the grant to the Beneficiary in the following manner:

- an initial pre-financing instalment of 80% of that part of the estimated budget for the first 12 months financed by the Contracting Authority by applying the percentage to eligible costs laid down in article 3.2 of the Special Conditions, following the provisions in Article 4 of the Special Conditions.

- further pre-financing instalments designed to normally cover the part of the Beneficiary's financing needs for each twelve month period of implementation of the Action financed by the Contracting Authority by applying the percentage to eligible costs laid down in article 3.2 of the Special Conditions. Payment will be made within 45 days of the Contracting Authority approving an interim report in accordance with Article 15.2, accompanied by:

  – a request for payment conforming to the model in Annex V,

  – a forecast budget for the subsequent 12-month period (or of the remaining period if its shorter),

  – an expenditure verification report under Article 15.6, if required,

  – a financial guarantee if required under Article 15.7;

- the balance within 45 days of the Contracting Authority approving the final report in accordance with Article 15.2, accompanied by:

  – a request for payment of the balance conforming to the model in Annex V,

  – an expenditure verification report required under Article 15.6.

Further pre-financing may only be given if the part of the expenditure actually incurred which is financed by the Contracting Authority (by applying the percentage set out in Article 3.2 of the Special Conditions) stands at 70% at least of the previous payment (and at 100% of any previous payments) as supported by the corresponding interim report and, where applicable, by an expenditure verification report as specified in Article 15.6.

Where reports are submitted in compliance with Article 2 but where the consumption of the previous pre-financing is less than 70%, the amount of the new pre-financing payment shall be reduced by the amount corresponding to the difference between the 70% threshold and the amount actually consumed of the previous pre-financing payment.

The total sum of pre-financing under the Contract may not exceed 90% of the amount referred to in Article 3.2 of the Special Conditions.

Option 3: All Actions

The grant shall be paid to the Beneficiary by the Contracting Authority in one payment within 45 days of the Contracting Authority approving the final report in accordance with Article 15.2, accompanied by:

- a request for payment of the balance conforming to the model in Annex V,
- an expenditure verification report if required under Article 15.6.

15.2. Any report shall be considered approved if there is no written reply from the Contracting Authority within 45 days of its receipt accompanied by the required documents. Approval of the reports shall not imply recognition of their regularity nor of the authenticity, completeness and correctness of the declarations and information they contain.

The Contracting Authority may suspend the time-limit for approval of a report by notifying the Beneficiary that the report cannot be approved and that it finds it necessary to carry out additional checks. Suspension shall take effect when the notification is sent by the Contracting Authority. In such cases, the Contracting Authority may request clarification, alteration or additional information, which must be produced within 30 days of the request. The time-limit starts running again on the date the required information is received.

Reports shall be presented in accordance with Article 2.

15.3. The time-limit of 45 days for payment referred to in Article 15.1 above shall expire on the date on which the Contracting Authority's account is debited. Without prejudice to Article 12.6, the Contracting Authority may suspend this time-limit by notifying the Beneficiary that the request for payment is inadmissible, either because the amount in question is not due or because proper supporting documents have not been supplied or it thinks it is necessary to conduct further checks, including on-the-spot checks, to make sure that the expenditure is eligible. Suspension shall take effect when the notification is sent by the Contracting Authority. The time-limit for payment shall start running again on the date on which a correctly formulated request for payment is recorded.

15.4. Once the time-limit referred to above has expired, the Beneficiary - unless the Beneficiary is a government department or public body in a European Union Member State - may, within two months of receipt of the late payment, receive default interest:

- at the rediscount rate applied by the central bank of the country of the Contracting Authority if payments are in the currency of that country;

– at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, if payments are in euro,

on the first day of the month in which the time-limit expired, plus three and a half percentage points. The interest shall be payable for the time elapsed between the expiry of the payment deadline and the date on which the Contracting Authority's account is debited. By way of exception, when the interest calculated in accordance with this provision is lower than or equal to EUR 200, it shall be paid to the Beneficiary only upon demand submitted within two months of receiving late payment. This interest is not considered income for the purposes of Article 17.3.

15.5. Where the award procedure or performance of the Contract is vitiated by substantial errors or irregularities or by fraud attributable to the Beneficiary, the Contracting Authority may refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud. The Contracting Authority may also suspend payments in cases where there are suspected or established errors, irregularities or fraud committed by the Beneficiary in the performance of another contract funded by the general budget of the European Union or by EDF, which are likely to affect the performance of the present Contract. Suspension shall take effect when the notification is sent by the Contracting Authority.

15.6. A report on the verification of the Action's expenditure, produced by an approved auditor who meets the specific conditions of the Terms of Reference for the expenditure verification, shall be attached to:

– any request for pre-financing payments per financial year in case of grants of EUR 750 000 or more;

– any final report in the case of a grant of more than EUR 100 000;

– any request for payment of over EUR 100 000 for the financial year, in the case of an operating grant

The auditor examines whether the costs declared by the Beneficiary are real, accurately recorded and eligible in accordance with the Contract, as well as the revenue of the Action and issues an expenditure verification report conforming to the model in Annex VII.

The Beneficiary grants the auditor all access rights mentioned in Article 16.2.

The expenditure verification report accompanying a request for payment of the balance covers all expenditures not covered by any previous expenditure verification report.

Based on the expenditure verification report the Contracting Authority determines the total amount of eligible expenditure which may be deducted from the total sum of pre-financing under the Contract (clearance).

Where the Beneficiary is a government department or a public body or an international organisation, the Contracting Authority may exempt it from the expenditure verification requirement.

15.7. If the total sum of pre-financing paid under the Contract is more than 80% of the Contract amount and exceeds EUR 60 000, its payment must be fully covered by a financial guarantee. Where the Beneficiary is a non governmental organisation, such guarantee is requested if the total sum of pre-financing paid under the Contract is more than EUR 1 million or 90% of the contracting authority's contribution. The financial guarantee must be denominated in euro or currency of the Contracting Authority,

conforming to the model in Annex VIII and, unless the Contracting Authority otherwise agrees, provided by an approved bank or financial institution established in one of the Member States of the European Union. This guarantee shall remain in force until its release by the Contracting Authority when the total amount of pre-financing under the Contract is once again less than EUR 1 million or after payment of the balance.

This provision shall not apply if the Beneficiary is a government department or public body or an international organisation, unless otherwise stipulated in the Special Conditions. The payments owed by the Contracting Authority shall be made to the bank account or sub-account referred to in the financial identification form in Annex V, which identifies the funds paid by the Contracting Authority and allows the calculation of the interests produced by such funds. The funds paid to this account or sub-account shall, in accordance with the law of the State in which the account or sub-account is opened, yield interest or equivalent benefits. Such interest or benefits shall, if they are generated by pre-financing, be deducted from the payment of the balance or recovered by the Contracting Authority as specified in Article 15.9

15.8. The Contracting Authority shall make payments in the currency of the country to which it belongs or in euro, in accordance with the Special Conditions. In the latter case, any conversion into euro of the real costs borne in other currencies shall be done at the rate made up by the average of the rates published in InforEuro for the months covered by the relevant report, unless otherwise provided in the Special Conditions.

In the event of an exceptional exchange-rate fluctuation, the Parties shall consult each other with a view to restructuring the Action in order to lessen the impact of such a fluctuation. Where necessary, the Contracting Authority may take additional measures such as terminating the Contract.

15.9. Any interest or equivalent benefits accruing from pre-financing paid by the Contracting Authority to the Beneficiary shall be mentioned in the interim and final reports. Subject to the conditions laid down in the basic act, any interest accruing from pre-financing equal or below EUR 250 000 paid by the Contracting Authority shall not be due to the Contracting Authority and may be used by the Beneficiary for the Action. Any interest accruing from pre financing of more than EUR 250 000 paid by the Contracting Authority shall be assigned to the Action and deducted from the payment of the balance of the amounts due to the Beneficiary, unless the Contracting Authority requests the Beneficiary to reimburse the interest generated by pre-financing payments before the payment of the balance.

Interest shall not be due to the Contracting Authority either for pre-financing paid to the EU Member States or for pre-financing under pre-accession aid.

15.10. Subject to the conditions laid down in the basic act, in case of crisis management actions recognized as such by the Contracting Authority, the interests accruing form pre-financing equal or below EUR 750 000 shall not be due to the Contracting Authority and may be used by the Beneficiary for the Action. Any interest accruing from pre-financing of more than EUR 750 000 is due to the Contracting Authority.

15.11. Subject to the conditions laid down in basic act, the Contracting Authority shall recover for each reporting period the interests accruing from pre-financing of more than EUR 750 000 at the end of each financial year.

15.12. The interests are not taken into account when calculating the total sum of pre-financing under the Contract and are not considered as revenue of the Action for the purposes of final amount as referred to in Article 17.

15.13. All references to days in this Article 15 are to calendar days.

ARTICLE 16 - ACCOUNTS AND TECHNICAL AND FINANCIAL CHECKS

16.1. The Beneficiary shall keep accurate and regular accounts of the implementation of the Action using an appropriate accounting and double-entry book-keeping system. These systems may either be an integrated part of the Beneficiary's regular system or an adjunct to that system. This system shall be run in accordance with the accounting and bookkeeping policies and rules that apply in the country concerned. Accounts and expenditure relating to the Action must be easily identifiable and verifiable. This can be done by using separate accounts for the Action concerned or by ensuring that expenditure for the Action concerned can be easily identified and traced to and within the Beneficiary's accounting and bookkeeping systems. Accounts must provide details of interest accruing on funds paid by the Contracting Authority.

The Beneficiary shall ensure that the financial report (both interim and final) as required under Article 2 can be properly and easily reconciled to the Beneficiary's accounting and bookkeeping system and to the underlying accounting and other relevant records. For this purpose the Beneficiary shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification.

16.2. The Beneficiary shall allow the European Commission, the European Anti-Fraud Office, the European Court of Auditors and any external auditor authorised by the Contracting Authority carrying out verifications as required per Article 15.6 to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks, the implementation of the Action and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the Action. These inspections may take place up to 7 years after the payment of the balance.

Furthermore, the Beneficiary shall allow the European Anti-Fraud Office and any external auditor authorised by the Contracting Authority carrying out verifications as required per Article 15.6 to carry out checks and verification on the spot in accordance with the procedures set out in the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities

To this end, the Beneficiary undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors as well as to any external auditor authorised by the Contracting Authority carrying out verifications as required per Article 15.6 to the sites and locations at which the Action is implemented, including its information systems, as well as all documents and databases concerning the technical and financial management of the Action and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors and to any external auditor authorised by the Contracting Authority carrying out verifications as required per Article 15.6 shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Beneficiary must inform the Contracting Authority of their precise location.

The Beneficiary guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors as well as of any external auditor authorised by the Contracting Authority carrying out verifications as required per Article 15.6 to carry out audits, checks and verification shall be equally applicable, under the same conditions and according to the same rules as those set out in this Article 16, to the Beneficiary's partners, contractors and sub-grantees. Where a partner, contractor or sub-grantee is an international organisation, any verification agreement concluded between such organisation and the European Commission applies.

16.3. In addition to the reports mentioned in Article 2, the documents referred to in Article 16.2 include:

- Accounting records (computerised or manual) from the Beneficiary's accounting system such as general ledger, sub ledgers and payroll accounts, fixed assets registers and other relevant accounting information;
- Proof of procurement procedures such as tendering documents, bids from tenderers and evaluation reports;
- Proof of commitments such as contracts and order forms;
- Proof of delivery of services such as approved reports, time sheets, transport tickets , proof of attending seminars, conferences and training courses (including relevant documentation and material obtained, certificates), etc;
- Proof of receipt of goods such as delivery slips from suppliers;
- Proof of completion of works, such as acceptance certificates;
- Proof of purchase such as invoices and receipts.
- Proof of payment such as bank statements, debit notices, proof of settlement by the contractor;
- Proof that taxes and/or VAT that have been paid cannot actually be reclaimed;
- For fuel and oil expenses, a summary list of the distance covered, the average consumption of the vehicles used, fuel costs and maintenance costs;
- Staff and payroll records such as contracts, salary statements, time sheets. For local staff recruited on fixed-term contracts, details of remuneration paid, duly substantiated by the person in charge locally, broken down into gross salary, social security charges, insurance and net salary. For expatriate and/or European-based staff (if the Action is implemented in Europe) analyses and breakdowns of expenditure per month of actual work; assessed on the basis of unit prices per verifiable block of time worked and broken down into gross salary, social security charges, insurance and net salary.

ARTICLE 17 - FINAL AMOUNT OF FINANCING BY THE CONTRACTING AUTHORITY

17.1. The total amount to be paid by the Contracting Authority to the Beneficiary may not exceed the maximum grant laid down in Article 3.2 of the Special Conditions neither in terms of absolute amount nor in percentage.

17.2. If the total costs of the Action at the end of the Action are less than the estimated total eligible costs as referred to in Article 3.1 of the Special Conditions, the Contracting Authority's contribution shall be limited to the amount obtained by applying the percentage laid down in Article 3.2 of the Special Conditions to the total eligible costs of the Action approved by the Contracting Authority.

17.3. The Beneficiary accepts that the grant can under no circumstances result in a profit for itself and that it must be limited to the amount required to balance income and expenditure for the Action. Profit shall be defined as:

- In the case of a grant for an Action, a surplus of actual receipts over the actual costs of the Action in question when the request is made for payment of the balance. However, in the case of Actions designed specifically to strengthen the financial capacity of the Beneficiary, it is distribution to the members making up the beneficiary body of the surplus revenue resulting from its activity leading to their personal enrichment.

– In the case of an operating grant, a surplus balance on the operating budget of the Beneficiary.

These provisions shall not apply to study, research or training scholarships paid to natural persons, nor in the case of prizes awarded following contests.

17.4. In addition and without prejudice to the right to terminate the Contract in accordance with Article 12.2, the Contracting Authority may, by a duly reasoned decision, if the Action is not implemented or is implemented poorly, partially or late, reduce the grant initially provided for in line with the actual implementation of the Action on the terms laid down in this Contract.

ARTICLE 18 - RECOVERY

18.1. The Beneficiary undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority within 45 days of the issuing of the debit note, the latter being the letter by which the Contracting Authority requests the amount owed by the Beneficiary.

18.2. Should the Beneficiary fail to make repayment within the deadline set by the Contracting Authority, the Contracting Authority may increase the amounts due by adding interest:

– at the rediscount rate applied by the central bank of the country of the Contracting Authority if payments are in the currency of that country;

– at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euro,

on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the Contracting Authority, and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.

18.3. Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Beneficiary. This shall not affect the Parties' right to agree on payment in instalments.

18.4. Bank charges incurred by the repayment of amounts due to the Contracting Authority shall be borne entirely by the Beneficiary.

18.5. Where necessary the European Union may as a donor subrogate itself to the Contracting Authority.

18.6 If the Contract is terminated for any reason whatsoever, the guarantee securing the pre-financing may be invoked forthwith in order to repay the balance of the pre-financing still owed by the Beneficiary, and the guarantor shall not delay payment or raise objection for any reason whatever.

* * *