

## **ANNEX II - General Conditions for Humanitarian Aid Contribution Agreements**

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## Article 1: Definitions

Action:	the programme or project partly or wholly financed by the EU, which is carried out by the Organisation as described in the Single Form. Where reference is made to the Action or part of the Action financed by the EU Contribution, this refers both (i) to activities exclusively financed by the EU Contribution and (ii) to activities jointly co-financed by the EU.
Contractor:	a natural or legal person with whom a Procurement Contract has been signed.
Days:	calendar days.
Early Detection and Exclusion System:	a system set up by Regulation (EU, Euratom) No 2015/1929 of 28 October 2015 on the financial rules applicable to the general budget of the Union (OJ L 286/1, 30.10.2015), which includes information on the early detection of risks threatening the EU financial interests, on the cases of exclusion from EU funding of legal and natural persons and on the cases of imposition of financial penalties.
End Date:	the date by which the Agreement ends, i.e. the moment of the payment of the balance by the European Commission in accordance with Article 17 or when the Organisation repays any amounts paid in excess of the final amount due pursuant to Article 18. If any of the Parties invokes a dispute settlement procedure in accordance with Article 13, the End Date shall be postponed until the completion of such procedure.
Equipment:	lasting items that can be used multiple times over their estimated economic useful lifespan. They comprise both support equipment, intended to assist the implementation of the Action, and operational equipment, intended for the direct benefit of the Final Beneficiaries.
EU Financial Regulation	Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 2024/2509, 26.9.2024).
Ex-ante Pillar-Assessment:	an assessment of the systems, rules and procedures carried out in order to check whether such entity demonstrates a level of protection of the EU financial interests equivalent to that existing when the European Commission implements the budget itself.
Final Beneficiary:	a natural or legal person ultimately benefitting from the Action.
Force Majeure:	any unforeseeable and exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of their obligations under the Agreement, which may not be attributed to error or negligence on either part (or on the part of the Partners, Implementing Partners, 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 given by the Organisation or a Partner to finance third parties activities, including sub-granting and procurement for the implementation of these activities.

Grave Professional Misconduct:	<p>any of:</p> <p>a violation of applicable laws or regulations, in particular the Organisation's Regulations and Rules, or ethical standards of the profession to which a person or entity belongs, including any conduct leading to sexual or other exploitation or abuse and/or sexual harassment, or</p> <p>any wrongful conduct of a person or entity which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.</p>
Humanitarian Aid Principles:	principles of humanity, impartiality, neutrality and independence
Implementing Partners:	a natural or legal person to whom a Grant has been awarded. Implementing Partners can sub-grant and procure for the implementation of their activities
Indicator:	the quantitative and/or qualitative factor or variable that provides a simple and reliable means to measure progress in the achievement of the relevant Results of the Action. An indicator must have an agreed baseline, target and source of data.
Internal Control System:	<p>a process applicable at all levels of management designed to provide reasonable assurance of achieving the following objectives:</p> <ul style="list-style-type: none"> <li>a) effectiveness, efficiency and economy of operations;</li> <li>b) reliability of reporting;</li> <li>c) safeguarding of assets and information;</li> <li>d) prevention, detection, correction and follow-up of fraud and irregularities;</li> <li>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.</li> </ul>
International Organisation:	an international public-sector organisation set up by international agreement (including specialised agencies set up by such organisations), or an organisation assimilated to international organisations in accordance with the EU Financial Regulation. However, for the purpose of Article 13, 'International Organisation' shall not be construed as encompassing an organisation assimilated to international organisations in accordance with the EU Financial Regulation.
Member State Organisation:	an entity established in a Member State of the European Union as a public law body or as a body governed by private law entrusted with a public service mission and provided with adequate financial guarantees from the Member State.
Multi-Donor Action:	an Action co-financed by the EU Contribution and other donor(s), including where the Organisation itself is the other donor.
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.
Partner:	a pillar assessed entity implementing part of the Action and being a party to the relevant Humanitarian Aid Contribution Agreement together with the Organisation.
Procurement Contract:	a contract signed between the Contractor and either the Organisation or a Partner under which the Contractor provides services, supplies or works.

Regulations and Rules: regulations, rules, organisational directives, instructions and other parts of the regulatory framework of the Organisation.

Result: the Output, Outcome of an Action.

Sound Financial Management: a principle overarching the implementation of this Agreement, namely economy, effectiveness and efficiency (including all aspects of internal control). The principle of economy requires that resources used in the pursuit of the implementation of the Action shall be made available in due time, in appropriate quantity and quality and at the best price. The principle of effectiveness concerns the attainment of the specific objectives and the achievement of the intended results. The principle of efficiency concerns the best relationship between resources employed and results achieved.

## **Article 2: General obligations**

### **Implementation of the Action**

- 2.1 The Organisation is responsible for the implementation of the Action described in the Single Form, regardless of whether the activities are performed by the Organisation itself, a Contractor or an Implementing Partner. 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 European Commission 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 In the performance of the activities and subject to ad-hoc provisions and specific conditions stipulated in the Special Conditions, if any, the Organisation shall apply its own rules and procedures, which have been subject to the Ex-ante Pillar-Assessment, as regards:
- a) internal control;
  - b) accounting system;
  - c) independent external audit;
  - d) exclusion from access to funding;
  - e) publication of information on recipients;
  - f) protection of personal data.

The Organisation may apply its own rules and procedures as regards the award and management of Grants and/or Procurement Contracts only if and to the extent provided for by the Special Conditions, including any ad hoc measures and specific conditions.

As regards the publication of information on recipients, the Organisation shall authorise the publication of the website where it publishes the information referred to in Article 3.8 d) on the European Commission's website.

- 2.3 Where the Organisation has been fully or partially exempted, by the European Commission, from undergoing the Ex-ante Pillar Assessment, it may apply its own rules and procedures in the areas provided for under Article 2.2, subject to ad-hoc provisions and specific conditions stipulated in the Special Conditions, if any.
- 2.4 The Organisation may use any Regulations and Rules which have not been subject to an Ex-ante Pillar Assessment to the extent that these Regulations and Rules are not in conflict with the provisions of this Agreement and with the rules and procedures which have been subject to the Ex-ante Pillar-Assessment.

### **Responsibility**

- 2.5 The Organisation shall be responsible for the performance of the obligations under this Agreement with a due degree of professional care and diligence, which means that it shall apply the same level of duty and care which it applies in managing its own funds. The Organisation shall respect the principles of Sound Financial Management, transparency, non-discrimination and visibility of the European Union in the implementation of the Action.
- 2.6 The Organisation shall have full financial responsibility towards the European Commission for all funds, including those unduly paid to or incorrectly used by Contractors or Implementing Partners. 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 Contribution is effectively carried out and implemented correctly. The Organisation shall inform the European Commission without delay of cases of established fraud and irregularities and their follow-up as well as of any information relating to suspected cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union. Where funds have been unduly paid to or incorrectly used by Contractors or Implementing Partners, the Organisation shall take all applicable measures in

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

## **Other obligations**

- 2.7 The Organisation undertakes to ensure that the obligations stated in this Agreement under Article 2.9, the second and third subparagraphs of Article 2.10, and Article 2.11-Other obligations, Article 5-Conflict of interests, Article 7-Visibility, Article 8.7 and Article 15-Archiving, access and financial checks apply, where applicable, to all Contractors and Implementing Partners.

In addition, the Organisation also undertakes to require Contractors and Implementing Partners to:  
(i) comply with the relevant national laws and regulations as regards protection of personal data, and  
(ii) ensure accurate and regular records and accounts.

- 2.8 The Organisation shall notify the European Commission without delay of any substantial change in the rules, procedures and systems applied in the implementation of the Action. This obligation concerns in particular (i) substantial changes affecting the Ex-ante Pillar Assessment undergone by the Organisation or affecting the rules and procedures which have been assessed by the European Commission for the purpose of granting an exemption from the obligation to undergo an Ex-ante Pillar Assessment, or (ii) those that may affect the conditions for eligibility provided for in the applicable legal instruments of the EU. The Parties shall use their best efforts to resolve amicably any issues resulting from such changes. The European Commission reserves the right to adopt or require additional measures in response to such changes. In the event an agreement on such measures or other solutions cannot be reached between the Parties, either Party may terminate the Agreement in accordance with Article 12.3.

- 2.9 The Organisation shall respect the applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards. The Organisation shall not support activities that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.

- 2.10 The European Commission and the Organisation have a zero tolerance for inaction approach to tackling sexual exploitation and abuse, as well as to sexual harassment.

The Organisation shall take all reasonable steps to prevent sexual exploitation and abuse and/or sexual harassment (hereinafter referred to 'SEA-H') and will respond appropriately when reports of SEA-H arise, in accordance with the legal framework applicable to it, including its Regulations and Rules.

When the Organisation becomes aware of reasonable suspicions, complaints or reports of SEA-H in relation to the implementation of the Action, it will, as appropriate under the legal framework applicable to it, including its Regulations and Rules, take reasonable, swift and appropriate action to stop harm occurring, investigate and report to relevant authorities, as appropriate and when safe to do so, after considering the wishes of the victim/survivor.

The Organisation shall promptly report to the European Commission all allegations of SEA-H, credible enough to warrant an investigation, that are directly related to the activities funded under this Agreement or would have a significant impact on the partnership between the Organisation and the European Commission. Upon request by the European Commission, the Organisation shall provide all available information concerning such allegations, including information on the subsequent measures taken by the Organisation.

The Organisation shall report and provide all available information in accordance with the legal framework applicable to it, including its Regulations and Rules, in particular those on disclosure of information and confidentiality, with due care not to compromise the safety, security, privacy

and due process rights of any concerned persons.

Any information or documentation provided in accordance with these provisions will be treated by the European Commission with the utmost discretion in order to ensure, *inter alia*, the probity of any investigation, protect sensitive information, ensure the safety and security of persons and respect the due process rights of all involved. The European Commission will presume information/documentation to be confidential, deliberative, and investigatory and will ensure that information/documentation provided to the European Commission will be available solely to those who strictly require access to such information/documentation according to its own regulations, rules and procedures. Any disclosure of such information/documentation beyond such personnel will require notification and consultation with the Organisation. The European Commission will obtain the express written authorisation of the Organisation before disclosing any such information/documentation in a judicial proceeding or to the public, unless disclosure is otherwise required by the regulations, rules and procedures applicable to the European Commission. It is understood that, for this purpose, the Organisation shall require Contractors and Implementing Partners to report such allegations and provide all available information to the Organisation.

- 2.11 The Organisation shall ensure that the Action is implemented with respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of persons belonging to minorities, in accordance with the Organisation's rules and procedures.

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

#### **General issues**

- 3.1 The Organisation shall provide the European Commission with full information on the implementation of the Action. To that end, the Organisation shall include a work plan as required by the Single Form. The Organisation shall submit to the European Commission 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 the Single Form as well as the degree of progress towards the achievement of its Results (Outcomes or Outputs) as measured by corresponding Indicators. The report shall be drafted in such a way as to allow monitoring of the objective(s) and the means envisaged and employed to implement the Action. The level of detail in any report shall match that of the Single Form.
- 3.3 Where the overall action of the Organisation lasts longer than the Implementation Period of this Agreement, the European Commission may request – in addition to the final report to be submitted pursuant to Article 3.8 - the final reports of the overall action, once available. In the event of a final surplus balance at the end of the overall multi-donor action, any surplus balance shall be considered used to the benefit of humanitarian aid purposes.
- 3.4 Any alternative or additional reporting requirement shall be set out in the Special Conditions.
- 3.5 The European Commission 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 thirty (30) Days of receipt of the request. The Organisation may submit a duly motivated request to extend the 30-Day deadline.
- 3.6 The Organisation shall notify the European Commission without delay of any circumstances likely to adversely affect the implementation and management of the Action, or to delay or jeopardise the performance of the activities, including any credible allegations of violations of human rights.

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

- 3.7 The progress report(s) shall relate directly to this Agreement, follow the format of the Single Form

and shall at least include:

- a) summary and context of the Action;
- b) actual Results: an updated table based on a logical framework matrix including reporting of Results achieved by the Action (Outcomes or Outputs) as measured by their corresponding Indicators, against agreed baselines and targets, and relevant data sources;
- c) information on the activities directly related to the Action as described in the Single Form and carried out during the reporting period;
- d) information on the difficulties encountered and measures taken to overcome problems and eventual changes introduced;
- e) information on measures taken to identify the EU as source of financing, in accordance with Article 7;
- f) a breakdown of the total costs, following the structure set out in the Financial Statement annexed to the Single Form, incurred from the beginning of the Action;
- g) a summary of controls carried out 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, an analysis of their nature and extent, as well as information on corrective measures taken or planned, shall also be provided;
- h) where applicable, a request for payment;
- i) work plan and budget forecast for the next reporting period.

3.8 The final report shall cover the entire Implementation Period, follow the format of the Single Form and include:

- a) all the information requested in Article 3.7 a) to h);
- b) a summary of the Action's receipts, payments received and of the eligible costs incurred;
- c) where applicable, an overview of any funds unduly paid or incorrectly used which the Organisation could or could not recover itself;
- d) the exact link to the website referred to in last subparagraph of Article 2.2;
- e) if relevant, details of transfers of equipment, vehicles and remaining major supplies mentioned in Article 8;
- f) where the Action is a Multi-Donor Action and the EU Contribution is not earmarked, a confirmation from the Organisation that an amount corresponding to that paid by the European Commission has been used in accordance with the obligations laid down in this Agreement and that costs that were not eligible for the EU Contribution have been covered by other donors' contributions;
- g) where applicable, a request for payment.

3.9 The Organisation shall submit a report for every reporting period as specified in the Special Conditions starting from the commencement of the Implementation Period, unless otherwise specified in the Special Conditions<sup>1</sup>. Reporting, narrative as well as financial, shall cover the whole Action, regardless of whether this Action is entirely or partly financed by the EU Contribution.

### **Management declaration**

3.10 Every progress report (related to a payment request) and final report shall be accompanied by a management declaration in accordance with the template included in Annex III unless Article 1.5 of the Special Conditions states that a global management declaration shall be sent annually to the European Commission headquarters, separately from the reports provided under this Agreement.

### **Currency for reporting**

3.11 The reports shall be submitted in the Currency of the Agreement as specified in Article 3 of the Special Conditions.

3.12 The Organisation shall convert legal commitments, the Action's receipts and costs incurred in

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<sup>1</sup> By default, the reporting period is every twelve (12) months as from the commencement of the Implementation Period.



currencies other than the accounting currency of the Organisation according to its usual accounting practices.

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

- 3.13 If the Organisation is unable to present a progress or final report, together with the accompanying documents, by the deadline set out in Article 3.9, the Organisation shall inform the European Commission in writing of the reasons. The Organisation shall also provide a summary of the state of progress of the Action and, where applicable, a provisional work plan for the next period. If the Organisation fails to comply with this obligation for two (2) months, following the deadline set out in Article 3.9, the European Commission may terminate the Agreement in accordance with Article 12, 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 A conflict of interest shall be deemed to arise where the impartial and objective exercise of the functions of any person implementing the Agreement is compromised.

### **Article 6: Confidentiality**

- 6.1 The European Commission 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 the Parties so require. In no case can disclosure put in jeopardy the Parties' privileges and immunities or the safety and security of the Parties' staff, Contractors, Implementing Partners 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 in writing to release the other Party from the earlier confidentiality obligations; or
  - b) the confidential information becomes public through other means than in breach of the confidentiality obligation by the Party bound by that obligation; or
  - c) the disclosure of confidential information is required by law or by Regulations and Rules established in accordance with the basic constitutive document of any of the Parties.
- 6.3 The Parties shall remain bound by confidentiality for five (5) years after the End Date of the Agreement, or longer as specified by the communicating Party at the time of communication.

## **Article 7: Visibility**

### **Visibility**

- 7.1 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. Such measures shall be carried out in accordance with the Visibility Requirements for EU External Action<sup>2</sup> (where applicable), as in effect at the time of entry into force of this Agreement or with any other guidelines agreed between the European Commission and the Organisation.
- 7.2 If, during the implementation of the Action, equipment, vehicles or major supplies are purchased using the EU Contribution, the Organisation shall display appropriate acknowledgement on such vehicles, equipment or major supplies, including the display of the EU emblem (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 emblem shall be of such a size and prominence as to be clearly visible in a manner that shall not create any confusion regarding the identification of the Action as an activity of the Organisation, nor the ownership of the equipment, vehicles or major supplies by the Organisation.
- 7.3 If, pursuant to Article 8.5, the equipment, vehicles or remaining major supplies purchased with the EU Contribution have not been transferred to the local authorities, local Implementing Partners or Final Beneficiaries when submitting the final report, the visibility requirements as regards this equipment, vehicles or major supplies (in particular display of the EU emblem) shall continue to apply between submission of the final report and the end of the overall action, if the latter is longer. Where the Organisation retains ownership in accordance with Article 8.6, the visibility requirements shall continue to apply as long as the relevant equipment, vehicles or remaining major supplies are used by the Organisation.
- 7.4 Unless otherwise provided in the Special Conditions, if disclosure risks threatening the Organisation's safety or harming its interests, the European Commission may publish in any form and medium, including on its websites, the name and address of the Organisation, the purpose and amount of the EU Contribution.
- 7.5 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 upon their issuance.
- 7.6 The Parties will consult immediately and endeavour to remedy any detected shortcomings in implementing the visibility requirements set out in this Article. This is without prejudice to measures the European Commission may take in case of substantial breach of an obligation.

### **Communication**

- 7.7 In addition to the obligations stipulated under Article 7.1 to 7.6, the Organisation shall implement, if applicable, communication activities as described in the Single Form.

## **Article 8: Right to use results and transfer of equipment**

### **Right to use**

- 8.1 Ownership of the results of the Action shall not vest in the European Commission. Subject to Article 6, the Organisation shall grant, and shall act to ensure that any third party concerned grants the European Commission the right to use free of charge the results of the Action, including the reports and other documents relating to it, which are subject to industrial or intellectual property rights.
- 8.2 Where the results mentioned in Article 8.1 include pre-existing rights and the Organisation cannot warrant the European Commission the right to use such results, the Organisation shall inform in

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<sup>2</sup> Visibility in EU-financed external actions – Requirements for implementing partners (Projects), available at: [https://ec.europa.eu/intpa/comm-visibility-requirements\\_en](https://ec.europa.eu/intpa/comm-visibility-requirements_en). DG ECHO's Communication and Visibility manual is available at: <https://www.dgecho-partners-helpdesk.eu/reference-documents-visibility>

writing the European Commission accordingly.

## **Transfer**

- 8.3 The equipment, vehicles and remaining major supplies purchased with the EU Contribution shall be transferred to another EU-funded humanitarian aid Action of the Organisation, provided that their destination is indicated in the Final Report. If transfer to another EU funded humanitarian aid Action is not possible or appropriate, they shall be transferred to or remain with local authorities, local Implementing Partners or Final Beneficiaries, at the latest when submitting the final report.
- 8.4 The documentary proof of those transfers shall not be presented with the final reports, but shall be kept for verification for the duration and along with the documents mentioned in Article 15.1.
- 8.5 By way of derogation from Article 8.3, the equipment, vehicles and remaining major supplies purchased with the EU Contribution in the framework of actions which continue after the end of the Implementation Period may be transferred at the end of the overall action. The Organisation shall use the equipment, vehicles and remaining major supplies for the benefit of the Final Beneficiaries. The Organisation shall inform the European Commission on the end use of the equipment, vehicles and remaining major supplies in the final report.
- 8.6 In the event that there are no local authorities, local Implementing Partners or Final Beneficiaries to whom the equipment, vehicles and remaining major supplies could be transferred, the Organisation may - exceptionally - retain ownership of the equipment, vehicles and remaining major supplies at the end of the Action or the overall action. In such cases, it shall submit a justified written request with an inventory listing of the items concerned and a proposal concerning their use in due course and - at the latest – together with the submission of the final report. In no event may the end use jeopardize the sustainability of the Action.
- 8.7 The equipment, vehicles and remaining major supplies purchased with the EU Contribution shall be used, including after the End Date, with respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
- Where the equipment, vehicles and remaining major supplies purchased with the EU Contribution are transferred to any of the entities referred to in Article 8.3 the Organisation undertakes to require such entity(ies) to comply with the obligations set forth in the preceding subparagraph.
- 8.8 When the equipment, vehicles and remaining major supplies are purchased within the framework of a Multi-donor Action, the Organisation is exempted from the provisions set out in Articles 8.3 to 8.6 provided that the equipment, vehicles and remaining major supplies are used to the benefit of humanitarian aid purposes.

## **Article 9: Monitoring and evaluation of the Action**

- 9.1 Keeping in mind the commitment of the Parties to the effective and efficient operation of the Agreement, the Organisation shall invite representatives of the European Commission to participate at their own costs to the main monitoring missions and evaluation exercises related to the performance of the Action. Participation in evaluation exercises should be ensured by requesting comments from the European Commission on the terms of reference before the exercise takes place, and on the different deliverables related to an evaluation exercise prior to their final approval (as a minimum, on the final report). The Organisation shall send all monitoring and evaluation reports relating to the Action to the European Commission once issued, subject to confidentiality.
- 9.2 Article 9.1 is without prejudice to any monitoring mission or evaluation exercise, which the European Commission as a donor, at its own costs, may wish to perform. Monitoring and evaluation missions by representatives of the European Commission shall be planned ahead and completed in a collaborative manner between the staff of the Organisation and the European Commission's representatives, keeping in mind the commitment of the Parties to the effective and efficient operation of the Agreement. The European Commission and the Organisation shall agree on procedural matters in advance. The European Commission shall make available to the Organisation the terms of reference of the evaluation exercise before it takes place, as well as the

different deliverables (as a minimum, the draft final report) for comments prior to final issuance. The European Commission shall send the final monitoring and evaluation report to the Organisation once issued.

- 9.3 In line with the spirit of partnership, the Organisation and the European Commission may also carry out joint monitoring and/or evaluation. Such arrangements will be discussed and agreed in due time, planned ahead and completed in a collaborative manner.

## **Article 10: Amendment to the Agreement**

- 10.1 Without prejudice to Articles 10.3 to 10.6, any amendment to this Agreement, including its annexes, shall be set out in writing in an addendum signed by both Parties. This Agreement can only be amended before the End Date.
- 10.2 The requesting Party shall request in writing any amendment at least thirty (30) Days before the amendment is intended to enter into force and no later than thirty (30) Days before the End Date, unless there are special circumstances, duly demonstrated 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 thirty (30) Days after the date when the amendment request was received.
- 10.3 Provided that the Action is implemented as described in the Single Form, the Organisation is allowed to adjust the estimated budget set out in the Financial Statement of the Action annexed to the Single Form, by transfers between the different budget headings, without this adjustment being considered as an amendment of the Agreement within the meaning of Article 10.1.
- 10.4 The method described in Article 10.3 shall be used neither to amend the contingency reserve referred to under Article 16.2, the rate for remuneration, nor the agreed methodology or fixed amounts/rates of simplified cost options.
- 10.5 By way of derogation from Articles 10.1 and 10.2, the Organisation may unilaterally amend the Single Form and shall inform the European Commission accordingly in writing, at the latest in the next report, where such amendment does not affect the main purpose or main characteristics of the Action, such as its principal and specific objective, results, indicators related to the specific objective and results, number and type of Final Beneficiaries, or the country and/or region of implementation.
- 10.6 Changes of address and of bank account shall be notified in writing to the European Commission. Where applicable, changes of bank account must be specified in the request for payment, using the financial identification form used by the Commission to that effect.

## **Article 11: Suspension**

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

- 11.1 The European Commission 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 European Commission 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 European Commission if it has doubts 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 European Commission that puts in doubt the eligibility of the reported expenditure; or
  - d) credible information has come to the notice of the European Commission that indicates a significant deficiency in the functioning of the Internal Control System of the Organisation or that the expenditure reported by the Organisation is linked to a serious irregularity and has not been corrected. In this case, the European Commission may suspend the payment deadline if it

is necessary to prevent significant damage to the EU's financial interests.

- 11.2 In the situations listed in Article 11.1, the European Commission shall notify the Organisation as soon as possible, and in any case within thirty (30) Days from the date on which the payment request was received, of the reasons for the suspension, specifying - where applicable - the additional information required. Suspension shall take effect on the date when the European Commission sends the notification stating the reasons for the suspension. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further checks are carried out. If the requested information or documents are not provided within the deadline fixed in the notification or are incomplete, payment may be made on the basis of the partial information available.

### **Suspension of the Agreement by the European Commission**

- 11.3 The European Commission may suspend the implementation of the Agreement, fully or partly, if:
- a) the European Commission has proof that irregularities, fraud, corruption or any other illegal activities or breach of substantial obligations have been committed by the Organisation in the procedure of its selection, in its Ex-ante Pillar Assessment or in the implementation of the Action;
  - b) the European Commission has proof that irregularities, fraud, corruption or any other illegal activities or breach of obligations have occurred which call into question the reliability or effectiveness of the Organisation's Internal Control System or the legality and regularity of the underlying transactions;
  - c) the European Commission has proof that the Organisation has committed irregularities, fraud, corruption or any other illegal activities or breaches of obligations under other agreements funded by EU funds provided that those irregularities, fraud, corruption or illegal activities or breaches of obligations have a material impact on this Agreement;
  - d) if the Commission considers that there is an incompatibility between the further implementation of the Action and compliance with humanitarian principles.
- 11.4 Before suspension, the European Commission shall formally notify the Organisation of its intention to suspend, inviting the Organisation to make observations within ten (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 European Commission decides to pursue the suspension, the European Commission may suspend all or part of the implementation of this Agreement serving seven (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 that is not suspended. Any expenditures or costs incurred by the Organisation during the suspension and related to the part of the Agreement suspended shall not be reimbursed, nor be covered by the European Commission. Following suspension of the implementation of the Agreement, the European Commission may terminate the Agreement in accordance with Article 12.2, recover amounts unduly paid and/or, in agreement with the Organisation, resume implementation of the Agreement. In the latter case, the Parties will amend the Agreement where necessary.

### **Suspension for exceptional circumstances**

- 11.5 The Organisation may decide to suspend the implementation of all or part of the Action if exceptional and unforeseen circumstances beyond the control of the Organisation make such implementation impossible or excessively difficult, such as in cases of Force Majeure, or where the circumstances pose a threat to the safety and security of humanitarian workers or Final beneficiaries, or the inability to comply with the humanitarian principles. The Organisation shall inform the European Commission immediately and provide all the necessary details, including the measures taken to minimise any possible damage, and the foreseeable effect and date of resumption.
- 11.6 The European Commission may also notify the Organisation of the suspension of the

implementation of the Agreement if exceptional circumstances so require, including Force Majeure, or when such circumstances make such implementation excessively difficult or dangerous for the humanitarian workers and Final Beneficiaries;

and in particular:

- a) when a relevant EU Decision identifying a violation of human rights has been adopted; or
- b) in cases such as crisis entailing a change of EU policy.

- 11.7 Neither of the Parties shall be held liable for breach of its obligations under the Agreement if Force Majeure or exceptional circumstances as set forth under Articles 11.5 and 11.6 prevent it from fulfilling said obligations, and provided it takes any measures to minimise any possible damage.
- 11.8 In the situations listed in Articles 11.5 and 11.6, the Parties shall minimise the duration of the suspension and shall resume implementation once the conditions allow. During the suspension period, the Organisation shall be entitled to the reimbursement of the minimum costs, including new legal commitments, necessary for a possible resumption of the implementation of the Agreement or of the Action. The Parties shall agree on such costs, including the reimbursement of legal commitments entered into for implementing the Action before the notification of the suspension was received which the Organisation cannot reasonably suspend, reallocate or terminate on legal grounds. This is without prejudice to any amendments to the Agreement that may be necessary to adapt the Action to the new implementing conditions, including, if possible, the extension of the Implementation Period or to the termination of the Agreement in accordance with Article 12.3. In case of suspension due to Force Majeure or if the Action is a Multi-Donor Action, the Implementation Period is automatically extended by an amount of time equivalent to the duration of the suspension.

## **Article 12: Termination**

- 12.1 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 European Commission may terminate the Agreement if the Organisation:
- a) fails to fulfil a substantial obligation incumbent on it under the terms of the Agreement;
  - b) is guilty of misrepresentation or submits false or incomplete statements to obtain the EU Contribution or provides reports that do not reflect reality to obtain or keep the EU Contribution without cause;
  - c) is bankrupt or being wound up, or is subject to any other similar proceedings;
  - d) is guilty of Grave Professional Misconduct proven by any justified means;
  - e) fails to comply with the reporting obligations in accordance with Article 3.15;
  - f) has committed any of the failings described in Article 11.3 on the basis of proof in the possession of the European Commission.
- 12.2 Before terminating the Agreement in accordance with Article 12.1, the European Commission shall formally notify the Organisation of its intention to terminate, inviting the Organisation to make observations (including proposals for remedial measures) within thirty (30) Days from the receipt of the notification. During this period, and until the termination takes effect, the European Commission may suspend the time limit for any payment in accordance with Article 11.2 as a precautionary measure informing the Organisation immediately in writing. If the Organisation does not submit observations, or if, after examination of the observations submitted by the Organisation, the European Commission decides to pursue the termination, the European Commission may terminate the Agreement serving seven (7) Days' prior notice. During that period, the Organisation may refer the matter to the responsible director in the European Commission. In that case the termination will take effect if and when confirmed by the director. In case of termination, the European Commission may demand full repayment of any amounts paid in excess of the final amount determined in accordance with Article 18 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.

- 12.3 If, at any time, either Party believes that the purpose of the Agreement can no longer be effectively or appropriately performed, it shall consult the other Party. Failing agreement on a solution, either Party may terminate the Agreement by serving sixty (60) Days written notice. In this case, the final amount shall cover:
- a) payment only for the part of the Action carried out up to the date of termination;
  - b) in the situations described in Articles 11.5 and 11.6, the unavoidable residual expenditures incurred during the notice period; and,
  - c) in the situations described in Articles 11.5 and 11.6, reimbursement of legal commitments the Organisation entered into for implementing the Action before the written notice on termination was received by it and which the Organisation cannot reasonably terminate on legal grounds.

The European Commission shall recover the remaining part in accordance with Article 14.

- 12.4 In the event of termination, a final report and a request for payment of the balance shall be submitted in accordance with Articles 3 and 17. The European Commission shall not reimburse or cover any expenditure or costs which are not included or justified in a report approved by it.

### **Article 13: Applicable law and settlement of disputes**

- 13.1 The Parties shall endeavour to settle amicably any disputes or complaints relating to the interpretation, application or validity of the Agreement, including its existence or termination.
- 13.2 Where the Organisation is not an International Organisation, this Agreement is governed by EU law, complemented - if necessary - by the relevant provisions of Belgian law. In the absence of an amicable settlement in accordance with Article 13.1 above, the General Court, or on appeal the Court of Justice of the European Union, has sole jurisdiction. Such actions must be brought under Article 272 of the Treaty on the Functioning of the EU (TFEU). Notwithstanding the foregoing sentence, where the Organisation is not established or incorporated in the EU, any of the Parties may bring before the Brussels courts any dispute between them concerning the interpretation, application or validity of the Agreement, if such dispute cannot be settled amicably. Where one party has brought proceedings before the Brussels courts, the other party may not bring a claim arising from the interpretation, application or validity of the Agreement in any other court than the Brussels courts before which the proceedings have already been brought
- 13.3 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 an amicable settlement pursuant to Article 13.1 above, any dispute, controversy or claim arising out of or in relation to this Agreement, or the existence, interpretation, application, breach, termination, or invalidity thereof, shall be settled by final and binding arbitration in accordance with the 2012 Permanent Court of Arbitration Rules for Arbitration, as in effect on the date of entry into force of this Agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The arbitration proceedings must take place in the Hague and the language used in the arbitral proceedings will be English. The arbitrator's decision shall be binding on all Parties and there shall be no appeal.

### **Article 14: Recovery**

- 14.1 Where an amount is to be recovered under the terms of the Agreement, the Organisation shall repay the amount due to the European Commission.
- 14.2 Before recovery, the European Commission 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 European Commission 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 European Commission on the amount to be repaid, the Organisation may refer the matter to the responsible director in the European Commission within thirty (30) days. A debit note specifying the terms and the date for payment may be issued after the deadline for the referral to the director.

- 14.3 If the Organisation does not make the payment by the date specified in the debit note, the European Commission shall recover the amount due:
- a) by offsetting it against any amounts owed to the Organisation by the EU;
  - b) by taking legal action pursuant to Article 13;
  - c) in exceptional circumstances justified by the necessity to safeguard the financial interests of the EU, the European Commission 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.
- 14.4 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 17.7(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 European Commission actually receives payment in full of the outstanding amount. Any partial payment shall first cover the interest.
- 14.5 The European Commission 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 15: Archiving, access and financial checks**

- 15.1 For a period of five (5) years from the End Date and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim or investigation by the European Anti-Fraud Office (OLAF) or the European Public Prosecutor's Office (EPPO), if notified to the Organisation, has been disposed of, the Organisation shall keep and make available according to this Article all relevant financial information (originals or copies) related to the Agreement and to any Procurement Contracts and Grant agreements financed by the EU Contribution.
- 15.2 The Organisation shall allow the European Commission, or any authorised representatives, to conduct desk reviews and on-the-spot checks on the use made of the EU Contribution on the basis of supporting accounting documents and any other document related to the financing of the Action.
- 15.3 The Organisation agrees that OLAF may carry out investigations, including on-the-spot checks and inspections, 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.
- 15.4 The Organisation agrees that the execution of this Agreement may be subject to scrutiny by the Court of Auditors when the Court of Auditors audits the European Commission's implementation of EU expenditure. In such case the Organisation shall provide to the Court of Auditors access to the information that is required for the Court to perform its duties.
- 15.5 To that end, the Organisation undertakes to provide officials of the European Commission, OLAF, EPPO 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 that 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, EPPO, 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, EPPO 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.

- 15.6 Where applicable, the desk reviews, investigations, on-the-spot checks and inspections referred to in Article 15.2 to 15.5 shall refer to a verification that shall be performed in accordance with the verification clauses agreed between the Organisation and the European Commission. This is without prejudice to any cooperation arrangement between OLAF or EPPO and the Organisation's anti-fraud bodies.
- 15.7 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.
- 15.8 Failure to comply with the obligations set forth in Article 15 constitutes a case of breach of a substantial obligation under this Agreement.

## **Article 16: Eligibility of costs**

- 16.1 Direct costs are eligible for EU financing if they meet all the following criteria:
- a) they are necessary for carrying out the Action, directly attributable to it, arising as a direct consequence of its implementation and charged in proportion to the actual use;
  - b) they are incurred in accordance with the provisions of this Agreement;
  - c) they are actually incurred by the Organisation, i.e. they represent real expenditure definitely and genuinely borne by the Organisation, without prejudice to Article 16.6;
  - d) they are reasonable, justified, comply with the principle of Sound Financial Management and are in line with the usual practices of the Organisation regardless of their source of funding;
  - e) they are incurred during the Implementation Period with the exception of costs related to final report, final evaluation, audit and other costs linked to the closure of the Action which may be incurred after the Implementation Period;
  - f) they are identifiable and backed by supporting documents, in particular determined and recorded in accordance with the accounting practices of the Organisation;
  - g) they are covered by one of the sub-headings indicated in the estimated budget of the Action and by the activities described in the Single Form; and
  - h) they comply with the applicable tax and social legislation taking into account the Organisation's privileges and immunities.
- 16.2 The following costs may not be considered eligible direct costs, but may be charged as part of the remuneration: all eligible costs that, while necessary and arising as a consequence of implementation, are supporting the implementation of the Action and not considered part of the activities that the European Union finances as described in the Single Form, including corporate management costs or other costs linked to the normal functioning of the Organisation, such as horizontal and support staff, office or equipment costs (except when duly justified and described in the Single Form, such as a project office).
- 16.3 The remuneration shall be declared on the basis of a flat-rate which shall not exceed 7% of the total eligible direct costs to be reimbursed by the European Commission. The remuneration does not need to be supported by accounting documents. For Multi-Donor and comparable actions, the remuneration shall not be higher than that charged by the Organisation to comparable contributions.
- 16.4 The following costs are ineligible for EU financing:
- a) bonuses, provisions, reserves or non-remuneration related costs. Employers' contributions to

pension or to any other employee insurance funds run by the Organisation shall only be eligible to the extent they do not exceed the cost incurred during the reporting period, calculated following applicable international accounting standards;

- b) full-purchase cost of equipment and assets unless the asset or equipment is specifically purchased for the Action and ownership is transferred in accordance with Article 8;
- c) duties, taxes and charges, including VAT, that are recoverable/deductible by the Organisation;
- d) return of capital;
- e) negative remuneration (otherwise referred to as 'negative interest') charged by banks or other financial institutions;
- f) debts and debt service charges;
- g) provision for losses, debts or potential future liabilities;
- h) banking charges for the transfers from and to the European Commission;
- i) costs incurred during the suspension of the implementation of the Agreement except the minimum costs agreed on in accordance with Article 11.8;
- j) costs declared by the Organisation under another agreement financed by the European Union budget (including through the European Development Fund);
- k) in-kind contributions. The cost of staff assigned to the Action and actually incurred by the Organisation is not an in-kind contribution and may be declared as a direct eligible cost if it complies with the conditions set out in Article 16.1; and
- l) costs of purchase of land or buildings, unless otherwise provided in the Special Conditions.

#### **Simplified cost options**

- 16.5 Direct eligible costs may also be declared by using any or a combination of unit costs, lump sums and flat-rate financing.
- 16.6 The methods used by the Organisation to determine unit costs, lump sums or flat-rates shall comply with the principles provided in Articles 16.1, 16.3 and 16.5, be clearly described and substantiated in the estimated budget of the Action set out in the Financial Statement annexed to the Single Form, shall avoid double funding of costs and shall respect the principle of Sound Financial Management. These methods shall be based on the Organisation's historical or actual accounting data, its usual accounting practices, an expert judgment or on statistical or other objective information where available and appropriate.
- 16.7 Costs declared under simplified cost options do not need to be backed by accounting or supporting documents except if they are necessary to demonstrate that the costs have been declared according to the declared method or cost accounting practices and that the qualitative and quantitative conditions defined in the Single Form or the estimated budget of the Action set out in the Financial Statement attached thereto, have been respected.
- 16.8 Simplified cost options not linked to the achievement of concrete Results shall only be eligible if they have been ex ante-assessed by the European Commission.
- 16.9 If a verification reveals that the methods used by the Organisation to determine unit costs, lump sums or flat-rates are not compliant with the conditions established in this Agreement, the European Commission shall be entitled to recover proportionately up to the amount of the unit costs, lump sums or flat-rate financing.

## Article 17: Payments

17.1 Payment procedures shall be as follows:

- a) the European Commission shall provide a first pre-financing instalment as set out in Article 4.1 of the Special Conditions within thirty (30) Days of receiving the Agreement signed by both Parties. If the Implementation Period starts later than the entry into force of the Agreement, the European Commission shall provide the first pre-financing within thirty (30) Days of receiving the Agreement signed by both Parties or 10 days before the start of the Implementation Period (whichever is the latest);
- b) the Organisation may submit a request for further pre-financing instalment for the following reporting period in accordance with Article 4 of the Special Conditions; the following provisions apply:
  - i) the reporting period is intended as a twelve-month period, unless otherwise provided for in the Special Conditions. When the remaining period to the end of the Action is up to eighteen (18) months, the reporting period shall cover it entirely;
  - ii) if at the end of the reporting period less than 70% of the last payment (and 100% of previous payments, if any) has been paid by the Organisation to its staff or otherwise subject to a legal commitment with a third party, the further pre-financing payment shall be reduced by the amount corresponding to the difference between the 70 % of the immediately preceding pre-financing payment (and 100% of previous payments, if any) and the part of the previous pre-financing payments which has been paid by the Organisation to its staff or has been subject to a legal commitment with a third party;
  - iii) the Organisation may submit a request for further pre-financing payment before the end of the reporting period, once more than 70 % of the immediately preceding payment (and 100% of previous payments, if any) has been paid by the Organisation to its staff or otherwise subject to a legal commitment with a third party. In this case, the following reporting period starts anew from the end date of the period covered by this payment request;
- c) at the end of the Implementation Period, the Organisation shall submit a payment request for the balance, where applicable, together with the final report. The amount of the balance shall be determined according to Article 18 and following approval of the request for payment of the balance and of the final report; and
- d) the European Commission shall pay the further pre-financing instalments and the balance within sixty (60) days of receiving a payment request accompanied by a progress or final report, unless the time limit for payment was suspended according to Article 11 or 12.

17.2 Payment requests shall be accompanied by narrative and financial reports presented in accordance with Article 3. The requests for pre-financing payments and the request for the balance shall be drafted in the Currency of the Agreement as specified in the Special Conditions. Except for the first pre-financing instalment, the payments shall be made upon approval of the payment request accompanied by a progress or final report. The final amount shall be established in line with Article 18. If the balance is negative, the payment of the balance takes the form of recovery.

17.3 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.

17.4 The European Commission shall make payments in the Currency of the Agreement as specified in the Special Conditions to the bank account referred to in the financial identification form of the Organisation.

17.5 Payment arrangements for financing not linked to costs in accordance with Article 19 shall be set out in Article 4 of the Special Conditions and in the Single Form.

17.6 If no payment has been made by the European Commission within two (2) years of the entry into force of the Agreement, the Agreement shall be terminated.

### Late payment interest

17.7 In case of late payment of the amounts stated in Article 4 of the Special Conditions the following conditions apply:

- a) upon expiry of the time limits for payments specified in Article 17.1, if the Organisation is not a Member State Organisation, it shall receive interest on late payment based on the rate applied by the European Central Bank for its main refinancing operations in Euros (Reference Rate), increased by three and a half percentage points. The Reference Rate shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the Official Journal of the EU;
- b) the suspension of the time limit for payment by the European Commission in accordance with Article 11 or 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 17.1. 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 European Commission shall pay such interest to the Organisation only upon request from the Organisation submitted within two (2) months of it receiving late payment;

## **Article 18: Final amount of the EU Contribution**

18.1 The European Commission shall determine the final amount of the EU Contribution when approving the Organisation's final report. The European Commission shall then determine the balance:

- a) to be paid to the Organisation in accordance with Article 17 where the final amount of the EU Contribution is higher than the total amount already paid to the Organisation; or
- b) to be recovered from the Organisation in accordance with Article 14 where the final amount of the EU Contribution is lower than the total amount already paid to the Organisation.

18.2 The final amount shall be the lower of the following amounts:

- a) the maximum EU Contribution referred to in Article 3.1 of the Special Conditions in terms of absolute value;
- b) the amount obtained after reduction of the EU Contribution in accordance with Article 18.3.

18.3 Where the Action (i) is not implemented, (ii) is not implemented in line with the Agreement or (iii) is implemented partially or late, the European Commission 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 European Commission on the reduction, the Organisation may refer the matter to the responsible director in the European Commission.

## **Article 19: Financing not linked to costs**

19.1 The payment of the EU Contribution may be partly or entirely linked to the achievement of Results measured by reference to previously set milestones or through performance Indicators. Such financing not linked to costs is not subject to Article 16. The relevant Results and the means to measure their achievement shall be clearly described in the Single Form.

19.2 The amount to be paid per achieved Result shall be set out in the Single Form. The method to determine the amount to be paid per achieved Result shall be clearly described in the Single Form and take into account the principle of Sound Financial Management.

19.3 The Organisation shall not be obliged to report on costs linked to the achievement of Results. However, the Organisation shall submit any necessary supporting documents, including where relevant accounting documents, to prove that the Results triggering the payment as defined in the Single Form have been achieved.

Articles 3.7 f), 3.8 b), 3.8 f), 10.3 and 10.5 do not apply to the part of the Action supported by way of financing not linked to costs.

## **Article 20: Contracting and Early Detection and Exclusion System**

### **Contracting**

- 20.1 Unless otherwise provided for in the Special Conditions, the origin of the goods and the nationality of the organisations, companies and experts selected for carrying out activities in the Action shall be determined in accordance with the Organisation's relevant rules. However, and in any event, goods, organisations, companies and experts eligible under the applicable regulatory provisions of the European Union shall be eligible. Without prejudice to the foregoing or to the Organisation's assessed Regulations and Rules, the Organisation shall promote the use of local contractors when implementing the Action.

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

- 20.2 The Organisation shall inform the European Commission if, in relation to the implementation of the Action, it has detected a situation of exclusion pursuant to its rules and procedures referred to in Article 2.2 d) and any ad hoc measure stipulated in the Special Conditions or in case of established fraud and irregularities or if it has any information relating to suspected cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union pursuant to Article 2.6. This information may be used by the European Commission for the purpose of the Early Detection and Exclusion System. The Organisation shall inform the European Commission when it becomes aware that transmitted information needs to be rectified updated or removed. The Organisation shall ensure that the entity concerned is informed that its data was transmitted to the European Commission and may be included in the Early Detection and Exclusion System and be published on the website of the European Commission. These requirements cease at the end of the Implementation Period.
- 20.3 Without prejudice to the power of the European Commission to exclude a person or an entity from future procurement contracts and grants financed by the EU and/or to impose financial penalties according to the EU Financial Regulation, the Organisation may impose sanctions on third parties according to its own Regulations and Rules ensuring, where applicable, the right of defence of the third party.
- 20.4 The Organisation may take into account, as appropriate and on its own responsibility, the information contained in the Early Detection and Exclusion System, when implementing the EU Contribution. Access to that information can be provided through the authorised persons or via consultation with the European Commission as referred in Article 5.6 of the Special Conditions.