

## **ANNEX II**

### **General conditions applicable to sub-grant contracts**

The term 'Coordinator' refers to the beneficiary identified as the Coordinator in the Special Conditions.

The term 'Beneficiaries' refers collectively to all Beneficiaries, including the Coordinator, of the Action.

The term 'Party(ies) to this Contract' refers to the Party(ies) signatory of this Contract (i.e. the Beneficiaries and the Contracting Authority).

All references to 'days' in this Contract are to calendar days, unless otherwise specified.

## **GENERAL AND ADMINISTRATIVE PROVISIONS**

### **1. GENERAL PROVISIONS**

#### **General principles**

- 1.1. The Beneficiaries and the Contracting Authority are the only Parties to this Contract. In particular, whether it is an international organization, a non-governmental organization, a private or a public entity, the Donor not being a party to this Contract, the latter only confers on them the rights and obligations which are explicitly stipulated therein.
- 1.2. This 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.

#### **Processing of personal data by sequa**

- 1.3. Any personal data included in the grant Contract must be processed by the Contracting Authority in accordance with its privacy policy (<https://www.sequa.de/en/privacy-statement/>) in line with the General Data Protection Rules (GDPR).

Such data must be processed by sequa solely for implementing, managing and monitoring the grant Contract or to protect the financial interests of the Contracting Authority, including checks, audits and investigations in accordance with Article 16 of these general conditions.

The Beneficiaries have the right to access, rectify or erase their own personal data and the right to restrict the processing of their personal data or, where applicable, the right to data portability or the right to object to data processing in accordance with Regulation (EU) No 2018/1725. For this purpose, they must send any queries about the processing of their personal data to the data controller identified in the Special Conditions.

The Beneficiaries may have recourse at any time to the Contracting Authority's Data Protection Supervisor.

**Processing of personal data by the Beneficiaries**

1.4. The Beneficiaries must process personal data under the Agreement in compliance with applicable EU and national law on data protection (including authorisations or notification requirements).

The Beneficiaries may grant their personnel access only to data that is strictly necessary for implementing, managing and monitoring the grant Contract. Each beneficiary must ensure that the personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality.

The Beneficiaries must adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing of the personal data concerned. This is in order to ensure, as appropriate:

- a) the pseudonymisation and encryption of personal data;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

**Role of the Beneficiaries**

1.5. The Beneficiaries shall:

- a) carry out the Action jointly and severally vis-a-vis the Contracting Authority taking all necessary and reasonable measures to ensure that the Action is carried out in accordance with the description of the Action in Annex I and the terms and conditions of this Contract.
- b) to this purpose, the Beneficiaries shall implement the Action with the requisite care, efficiency, transparency and diligence, in line with the principle of sound financial management and with the best practices in the relevant field(s);
- c) be responsible for complying with any obligation incumbent on them from this Contract jointly or individually;
- d) forward to the Coordinator the data needed to draw up the reports, financial statements and other information or documents required by this Contract and the annexes thereto, as well as any information needed in the event of audits, checks, monitoring or evaluations, as described in Article 16;
- e) ensure that all information to be provided and requests made to the Contracting Authority are sent via the Coordinator;
- f) agree upon appropriate internal arrangements for the internal coordination and representation of the Beneficiaries vis-a-vis the Contracting Authority for any matter concerning this Contract, consistent with the provisions of this Contract and in compliance with the applicable legislation(s).



Grant Beneficiaries and contractors must ensure that the subcontractors and all natural persons linked to the Contract, including participants to workshops and/or trainings and recipients of financial support to third parties, do not include entities/persons included in the lists of EU restrictive measures.

## **Role of the Coordinator**

### 1.6. The Coordinator shall

- a) monitor that the Action is implemented in accordance with this Contract and ensure coordination with all Beneficiaries in the implementation of the Action;
- b) be the intermediary for all communications between the Beneficiaries and the Contracting Authority;
- c) be responsible for supplying all documents and information to the Contracting Authority which may be required under this Contract, in particular in relation to the technical reports and the requests for payment. Where information from the Beneficiaries is required, the Coordinator shall be responsible for obtaining, verifying and consolidating this information before passing it on to the Contracting Authority. Any information given, as well as any request made by the Coordinator to the Contracting Authority, shall be deemed to have been given in agreement with all Beneficiaries;
- d) inform the Contracting Authority of any event likely to affect or delay the implementation of the Action;
- e) inform the Contracting Authority of any change in the legal, financial, technical, organisational or ownership situation of any of the Beneficiaries, as well as, of any change in the name, address or legal representative of any of the Beneficiaries;
- f) be responsible in the event of audits, checks, monitoring or evaluations, as described in Article 16 for providing all the necessary documents, including the accounts of the Beneficiaries, copies of the most relevant supporting documents and signed copies of any contract concluded according to Article 10;
- g) have full financial responsibility for ensuring that the Action is implemented in accordance with this Contract;
- h) make the appropriate arrangements for providing the financial guarantee, if and when requested, under the provisions of Article 4 of the Special Conditions;
- i) establish the payment requests in accordance with the Contract;
- j) be the sole recipient, on behalf of each and all Beneficiaries, of the payments of the Contracting Authority. The Coordinator shall ensure that the appropriate payments are then made to the Beneficiaries without unjustified delay;
- k) not delegate or subcontract any, or part of, these tasks to the Beneficiaries or other entities.

## **2. OBLIGATION TO PROVIDE FINANCIAL AND TECHNICAL REPORTS**

- 2.1. The Beneficiaries shall provide the Contracting Authority with all required information on the implementation of the Action. The report shall describe the implementation of the Action according to the activities envisaged, difficulties encountered and measures taken to overcome problems, eventual changes introduced, as well as the degree of achievement of its results (impact, outcomes or outputs) as measured by corresponding indicators. The report shall be laid out in such a way as to allow monitoring of the objective(s), the means envisaged or



employed and the budget details for the Action. The level of detail in any report should match that of the description of the Action and of the budget for the Action. The Coordinator shall collect all the necessary information and draw up consolidated interim and final reports.

These reports shall

- a) cover the Action as a whole, regardless of which part of it is financed by the Contracting Authority;
- b) consist of a technical and a financial report drafted using the templates provided in Annex VI;
- c) provide a full account of all aspects of the Action's implementation for the period covered, including in case of simplified cost options the qualitative and quantitative information needed to demonstrate the fulfilment of the conditions for reimbursement established in this Contract;
- d) include the current results within an updated table based on the logical framework matrix including the results achieved by the Action (impact, outcomes or outputs) as measured by their corresponding indicators; agreed baselines and targets, and relevant sources of verification;
- e) determine if the intervention logic is still valid and propose any relevant modification including regarding the logical framework matrix;
- f) be drafted in the currency and language of this Contract;
- g) include any update on the communication plan as provided by Article 6.2;
- h) include any relevant reports, publications, press releases and updates related to the Action;
- i) include any update on the self-evaluation questionnaire on sexual exploitation, abuse and harassment (SEA-H) or on the related list of envisaged measures indicated therein and submitted during the award procedure (Annex IX).

2.2. Additionally, the final report shall

- a) cover any period not covered by the previous reports;
- b) include the proofs of the transfers of ownership as referred to in Article 7.6.

2.3. The Special Conditions may set out additional reporting requirements, such as the obligatory use of an electronic platform for reporting and monitoring purposes.

2.4. The Contracting Authority may request additional information at any time. The Coordinator shall provide this information within 30 days of the request, in the language of the Contract.

2.5. Reports shall be submitted with the payment requests, according to Article 15. If the Coordinator fails to provide any report or fails to provide any additional information requested by the Contracting Authority within the set deadline without an acceptable and written explanation of the reasons as well as a reasonable new deadline to remedy the default, the Contracting Authority may terminate this Contract according to Article 12.2 (a) and (f).

### **3. LIABILITY**

3.1. Under no circumstances and or for no reason whatsoever the Contracting Authority cannot be held liable for damage or injury sustained by the staff or property of the Beneficiaries 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 Beneficiaries 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 Beneficiaries shall discharge the Contracting Authority of all liability arising from any claim or Action brought as a result of an infringement of rules or regulations by the Beneficiaries or the Beneficiaries' employees or individuals for whom those employees are responsible, or as a result of violation of a third party's rights. For the purpose of this Article 3 employees of the Beneficiaries shall be considered as third parties.

#### **4. CONFLICT OF INTERESTS AND CODE OF CONDUCT <sup>1</sup>**

- 4.1. The Beneficiaries shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of this Contract. Such conflict of interests may arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.
- 4.2. Any conflict of interests which may arise during performance of this Contract must be notified in writing to the Contracting Authority promptly without delay. In the event of such conflict, the Coordinator shall immediately take all necessary steps to resolve it.
- 4.3. The Contracting Authority reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken if necessary.
- 4.4. The Beneficiaries shall ensure that their staff, including their management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under this Contract, the Beneficiaries shall replace, immediately and without compensation from the Contracting Authority, any member of its staff in such a situation.
- 4.5. The Beneficiaries shall at all-time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the Action or the services without the prior approval of the Contracting Authority. It shall not commit the Contracting Authority in any way whatsoever without its prior consent, and shall make this obligation transparent to third parties.
- 4.6. Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited. The Beneficiaries shall also inform the Contracting Authority of any breach of ethical standards or code of conduct as set in the present Article. In case the Beneficiaries are aware of any violations of the abovementioned standards, they shall report in writing within 30 days to the Contracting Authority.
- 4.7. The Beneficiaries and its/their staff shall respect human rights, applicable data protection rules and environmental legislation applicable in the country(ies) where the Action is taking place and internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.
- 4.8. The Beneficiaries or any related person shall not abuse of their entrusted power for private gain. The Beneficiaries or any of their subcontractors, agents or staff shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from performing any act relating to the performance of the Contract or for showing favour or disfavour to any person in relation to the Contract. The Beneficiaries

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<sup>1</sup> Further please refer to the sequa code of conduct <https://www.sequa.de/en/sequa/code-of-conduct/>



shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.

- 4.9. The payments to the Beneficiaries under the Contract shall constitute the only income or benefit they may derive in connection with the Contract, with the exception of revenue generating activities. The Beneficiaries and its/their staff must not exercise any activity or receive any advantage inconsistent with their obligations under the Contract.
- 4.10. The execution of the Contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the Contract or not stemming from a properly concluded Contract referring to the Contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company. The Contracting Authority and the European Commission may carry out documentary or on-the-spot checks they deem necessary to find evidence in case of suspected unusual commercial expenses.
- 4.11. The respect of the code of conduct set out in the present Article constitutes a contractual obligation. Failure to comply with the code of conduct is always deemed to be a breach of the Contract under Article 12 of the General Conditions. In addition, failure to comply with the provision set out in the present Article can be qualified as grave professional misconduct that may lead either to suspension or termination of the Contract, without prejudice to the application of administrative sanctions, including exclusion from participation in future Contract award procedures. In case of breach of Article 4.6, the Contracting Authority will take into consideration, amongst others, the information contained in the self-evaluation questionnaire on sexual exploitation, abuse and harassment (SEA-H) and in the related list of envisaged measures indicated therein and submitted during the award procedure.

## **5. CONFIDENTIALITY**

- 5.1. Subject to Article 16, the Contracting Authority and the Beneficiaries undertake to preserve the confidentiality of any information, notwithstanding its form, disclosed in writing or orally in relation to the implementation of this Contract and identified in writing as confidential until at least 5 years after the payment of the balance.
- 5.2. The Beneficiaries shall not use confidential information for any aim other than fulfilling their obligations under this Contract unless otherwise agreed with the Contracting Authority.
- 5.3. The European Commission shall still have access to all documents communicated to the Contracting Authority and shall maintain the same level of confidentiality.

## **6. VISIBILITY**

- 6.1. The Beneficiaries shall take all necessary steps to publicise the fact that AL-INVEST Verde has financed or co-financed the Action. Such measures shall comply with the requirements from the Communication and Visibility Guide for AL-INVEST Verde Component 1 & its Partnership Projects annexed to this Contract.
- 6.2. The Coordinator shall submit a communication plan for the approval of the Contracting Authority and report on its implementation in accordance with Article 2.
- 6.3. In particular, the Beneficiaries shall mention the Action and the AL-INVEST Verde'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 AL-INVEST Verde logo wherever appropriate.

- 6.4. Any notice or publication by the Beneficiaries concerning the Action, including those given at conferences or seminars, shall specify that the Action has received AL-INVEST Verde funding. Any publication by the Beneficiaries, in whatever form and by whatever medium, including the internet, shall include the following statement: 'This document has been produced with the financial assistance of AL-INVEST Verde. The contents of this document are the sole responsibility of < Beneficiaries' name > and can under no circumstances be regarded as reflecting the position of the Contracting Authority.'
- 6.5. Each Beneficiary authorises the Contracting Authority and the European Commission 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 the rate of funding of the Action's costs, as laid down in Article 3 of the Special Conditions. Derogation from publication of this information may be granted if it could endanger the Beneficiaries or harm their interests.

## **7. OWNERSHIP/USE OF RESULTS AND ASSETS**

- 7.1. Unless otherwise stipulated in the Special Conditions, ownership of, and title and intellectual and industrial property rights to, the Action's results, reports and other documents relating to it will be vested in the Beneficiaries.
- 7.2. Without prejudice to Article 7.1, the Beneficiaries grant the Contracting Authority the right to use freely and as it sees fit, and in particular, to store, modify, translate, display, reproduce by any technical procedure, publish or communicate by any medium all documents deriving from the Action whatever their form, provided it does not thereby breach existing industrial and intellectual property rights.
- 7.3. The Beneficiaries shall ensure that they have all rights to use any pre-existing intellectual property rights necessary to implement this Contract.
- 7.4. In case natural, recognizable persons are depicted in a photograph or video, the Coordinator shall, in the final report to the Contracting Authority, submit a statement of these persons giving their permissions for the described use of their images. The above does not refer to photographs taken or videos recorded in public places where random members of the public are identifiable only hypothetically and to public persons acting in their public activities.
- 7.5. Unless otherwise clearly specified in the description of the Action in Annex I, the equipment, vehicles and supplies paid for by the budget for the Action shall be transferred to the final Beneficiaries of the Action, at the latest when submitting the final report.

If there are no final Beneficiaries of the Action to whom the equipment, vehicles and supplies can be transferred, the Beneficiaries may transfer these items to:

- local authorities
- local beneficiaries
- local partners
- another Action funded by the Contracting Authority
- or, exceptionally, retain ownership of these items after the Contracting Authority's prior approval.

In such cases, the Coordinator shall submit a justified written request for authorisation to the Contracting Authority, with an inventory listing the items concerned and a proposal concerning their future use, in due time and at the latest with the submission of the final report.



In no event may the end use jeopardize the sustainability of the Action or result in a profit for the Beneficiaries.

- 7.6 Copies of the proofs of transfer of any equipment and vehicles for which the purchase cost was above EUR 5,000 per item, shall be attached to the final report. Proofs of transfer of equipment and vehicles whose purchase cost was equal to or less than EUR 5,000 per item shall be kept by the Beneficiaries for control purposes.

## **8. MONITORING AND EVALUATION OF THE ACTION**

- 8.1. Annex I shall describe in detail the monitoring and evaluation arrangements that the Beneficiaries will put in place. An online tool will be established which will be used for M&E and reporting purposes of AL-INVEST Verde.
- 8.2. If the Contracting Authority and/or the European Commission and/or any of their agents carry out an interim or ex post evaluation or a monitoring exercise, the Coordinator shall undertake to provide it and/or the persons authorised by it with the documents or information necessary for the evaluation or monitoring exercise.

Furthermore, representatives of the Contracting Authority shall be invited to participate in the main monitoring and in the evaluation exercises relating to the performance of the Action performed by the Beneficiaries. The Contracting Authority shall be invited to comment the evaluation(s) terms of reference before the exercise is launched as well as the draft report(s) before they are finalised.

- 8.3. If either the Beneficiaries, the Contracting Authority or the European Commission or any of their agents carry out or commissions an evaluation or monitoring exercise in the course of the Action, it shall provide the other with a copy of the related report. All the evaluation and monitoring reports, including final values for each of the indicators in the logical framework, shall be submitted to the Contracting Authority with the final technical report (Annex Xa).

## **9. AMENDMENT OF THE CONTRACT**

- 9.1. Any amendment to this Contract, including the annexes thereto, shall be set out in writing. This Contract can be modified only during its execution period.
- 9.2. The amendment may not have the purpose or the effect of making changes to this Contract that would call into question the grant award decision or be contrary to the equal treatment of any and all applicants. The maximum grant referred to in Article 3.2 of the Special Conditions shall not be increased by any amendment to this Contract.
- 9.3. If an amendment is requested by the Beneficiaries, the Coordinator shall submit a duly justified 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 and accepted by the Contracting Authority.
- 9.4. Where the amendment to the budget does not affect the expected results of the Action (i.e. impact, outcomes, outputs), 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 25% or less of the amount originally entered (or as modified by addendum) in relation to each concerned main heading for eligible costs, the Coordinator may amend the budget. Such changes may only be made once per report and the Coordinator must inform the Contracting Authority accordingly, in writing and at the latest in the next report. This method may not be used to amend the headings





for indirect costs, for in-kind contributions or the amounts or rates of simplified cost options defined in the Contract.

Changes in Description of the Action and the Logical Framework that affect or may affect the expected results (impact, outcomes, outputs) shall be agreed in writing with the Contracting Authority before the modification takes place. Approved changes must be explained in the next report.

- 9.5. Changes of address, bank account or auditor may simply be notified by the Coordinator. However, in duly substantiated circumstances, the Contracting Authority may oppose the Coordinator's choice.
- 9.6. The Contracting Authority reserves the right to require that the auditor referred to in Article 5.2 of the Special Conditions shall be replaced if considerations which were unknown when this Contract was signed cast doubt on the auditor's independence or professional standards.

## **10. IMPLEMENTATION**

### **Implementation contracts**

- 10.1. If the implementation of the Action requires the Beneficiaries to procure goods, works or services, the corresponding contract must be awarded to the tender offering best value for money (i.e. the tender offering the best price-quality ratio) or, as appropriate, to the tender offering the lowest price.

#### **Principles**

10.1.1. Contracts must be awarded ensuring sufficient transparency, fair competition, equal treatment, non-discrimination and proportionality. In doing so, the Beneficiaries shall avoid any conflict of interests and respect the following basic principles:

- Where the Beneficiary does not launch an open tender procedure, it shall justify the choice of tenderers that are invited to submit an offer.
- The Beneficiary shall evaluate the offers received against objective criteria which enable measuring the quality of the offers and which take into account the price (the offer with the lowest price shall be awarded the highest score for the price criterion).
- The Beneficiary shall keep sufficient and appropriate documentation with regard to the procedures applied and which justify the decision on the pre-selection of tenderers (where an open tender procedure is not used) and the award decision.
- Where the total sum of the procured good, service or work is above EUR 1,000, three written quotations will have to be presented.
- The Beneficiary shall be responsible for the respect of EU restrictive measures in the award of contracts. The updated lists of sanctions are available at [www.sanctionsmap.eu](http://www.sanctionsmap.eu).

#### **Nationality rule**

10.1.2. Participation in tender procedures managed by the Beneficiaries shall be open on equal terms to all natural persons who are nationals of, and legal persons (participating either individually or in a consortium of tenderers) effectively established in a Member State or a country, territory or region mentioned as eligible by the relevant regulation/basic act governing the eligibility rules for the grant as per the Guidelines of the Call, the



Award Guide and these General Conditions. Tenderers must state their nationality in their tenders and provide the usual proof of nationality under their national legislation.

This rule does not apply to the experts proposed under service tenders financed by the grant.

### **The rule of origin**

10.1.3. If the basic act or the other instruments applicable to the programme under which the grant is financed (namely for grants financed by a basic act under the Multi-annual Financial Framework for the years 2014-2020) contain rules of origin for supplies acquired by the Beneficiaries in the context of the grant, the tenderer must be requested to state the origin of the supplies, and the selected contractor will always have to prove the origin of the supplies.

For equipment and vehicles of a unit cost on purchase of more than EUR 5,000, contractors must present proof of origin to the Beneficiaries at the latest when the first invoice is presented. The certificate of origin must be made out by the competent authorities of the country of origin of the supplies and must comply with the rules laid down by the relevant Union legislation. Failure to comply with this condition may result in the termination of the contract and/or suspension of payment.

Under this contract, supplies may originate from any country if the amount of the supplies to be procured is below EUR 5,000 per purchase.

Where supplies may originate from any country, no certificate of origin needs to be submitted.

### **Exceptions to the rules on nationality and origin**

10.1.4. Where an agreement on widening the market for procurement of goods, works or services applies, access must also be open to nationals and goods originating from other countries under the conditions laid down in that agreement.

In addition, in duly substantiated exceptional cases foreseen by the applicable regulations, in order to give access to nationals or goods originating from countries other than those referred to in Sections 10.2 and 10.3, a prior authorisation by the Contracting Authority must be sought prior to the launch of the procedure, unless the action takes place in a country under a crisis declaration. Therefore, prior to the launch of the procedure a request should be made to the Contracting Authority. The Contracting Authority will seek the European Commission's authorisation. The Beneficiary may not ask for prior authorisation directly to the European Commission.

10.2. To the extent relevant, the Beneficiaries shall ensure that the conditions applicable to them under Articles 3, 4, 6 and 16 of these general conditions are also applicable to contractors awarded an implementation contract.

10.3. The Coordinator shall provide in its report to the Contracting Authority a comprehensive and detailed report on the award and implementation of the contracts awarded under Article 10.1, in accordance with the reporting requirements in section 2 of Annex VI.

### **Subcontracting**

10.4. Beneficiaries may subcontract tasks forming part of the Action. If they do so, they must ensure that, in addition to the conditions specified in Article 10.1, 10.2 and 10.3, the following conditions are also complied with:



- subcontracting does not cover core tasks of the Action;
- recourse to subcontracting is justified because of the nature of the Action and what is necessary for its implementation;
- the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex III;
- any recourse to subcontracting, if not provided for in Annex I, is communicated by the Coordinator and approved by the Contracting Authority.

## **11. EXTENSION AND SUSPENSION**

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

### **Suspension by the Coordinator**

- 11.2. The Coordinator may suspend the implementation of the Action, or any part thereof, if exceptional circumstances, notably of force majeure, make such implementation excessively difficult or dangerous. The Coordinator shall inform the Contracting Authority without delay, stating the nature, probable duration and foreseeable effects of the suspension.
- 11.3. The Coordinator or the Contracting Authority may then terminate this Contract in accordance with Article 12.1. If the Contract is not terminated, the Beneficiaries shall endeavour to minimise the time of their suspension and any possible damage and shall resume implementation once circumstances allow, informing the Contracting Authority accordingly.

### **Suspension by the Contracting Authority**

- 11.4. The Contracting Authority may request the Beneficiaries to suspend implementation of the Action, or any part thereof, if exceptional circumstances, notably of force majeure, make such implementation excessively difficult or dangerous. To this purpose, the Contracting Authority shall inform the Coordinator stating the nature and probable duration of the suspension.
- 11.5. The Coordinator or the Contracting Authority may then terminate this Contract in accordance with Article 12.1. If the Contract is not terminated, the Beneficiaries shall endeavour to minimise the time of their suspension and any possible damage and shall resume implementation once circumstances allow and after having obtained the approval of the Contracting Authority.
- 11.6. The Contracting Authority may also suspend this Contract or the participation of a Beneficiaries in this Contract if the Contracting Authority has evidence that, or if, for objective and well justified reasons, the Contracting Authority deems necessary to verify whether presumably:
- a) the grant award procedure or the implementation of the Action have been subject to breach of obligations, irregularities or fraud;
  - b) the Beneficiaries have breached any substantial obligation under this Contract.
- 11.7. The Coordinator shall provide any requested information, clarification or document within 30 days of receipt of the requests sent by the Contracting Authority. If, notwithstanding the information, clarification or document provided by the Coordinator, the award procedure or the implementation of the grant prove to have been subject to breach of obligations, irregularities,



fraud, or breach of obligations, then the Contracting Authority may terminate this Contract according to Article 12(2) h.

### **Force majeure**

- 11.8. The term force majeure, as used herein covers any unforeseeable events, not within the control of either Party to this Contract and which by the exercise of due diligence neither Party to this Contract is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosion. A decision of the European Commission to suspend the cooperation with the partner country is considered to be a case of force majeure when it implies suspending funding under this Contract.
- 11.9. The Beneficiaries shall not be held in breach of their contractual obligations if they are prevented from fulfilling them by circumstances of force majeure.

### **Extension of the implementation period following a suspension.**

- 11.10. In case of suspension according to Articles 11.2, 11.4 and 11.6, 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.

## **12. TERMINATION OF THE CONTRACT**

### **Termination in case of force majeure**

- 12.1. In the cases foreseen in Article 11.2 and 11.4, if the Coordinator or the Contracting Authority believes that this Contract can no longer be executed effectively or appropriately, it shall duly consult the other. Failing agreement on a solution, the Coordinator or the Contracting Authority may terminate this Contract by serving two months written notice, without being required to pay indemnity.

### **Termination by the Contracting Authority**

- 12.2. Without prejudice to Article 12.1, in the following circumstances the Contracting Authority may, after having duly consulted the Coordinator, terminate this Contract or the participation of any Beneficiary in this Contract without any indemnity on its part if and when:
- a) any Beneficiary fails, without justification, to fulfil any substantial obligation incumbent on them individually or collectively by this Contract 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 receipt of the letter;
  - b) any Beneficiary or any person that assumes unlimited liability for the debts of such Beneficiary is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulations relevant to the Beneficiary;



- c) any Beneficiary, or any related entity or person, have been found guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- d) it has been established by a final judgment or a final administrative decision or by proof in possession of the Contracting Authority that any Beneficiary has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose;
- e) a change to any Beneficiary's legal, financial, technical, organisational or ownership situation or the termination of the participation of any Beneficiary substantially affects the implementation of this Contract or calls into question the decision awarding the grant;
- f) any Beneficiary or any related person, are guilty of misrepresentation in supplying the information required in the award procedure or in the implementation of the Action or fail to supply – or fail to supply within the deadlines set under this Contract - any information related to the Action required by the Contracting Authority;
- g) any 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;
- h) the Contracting Authority has evidence that any Beneficiary, or any related entity or person, has committed breach of obligations, irregularities or fraud in the award procedure or in the implementation of the Action;
- i) any Beneficiary is subject to an administrative penalty referred to in Article 12.8;
- j) the Contracting Authority has evidence that any Beneficiary is subject to a conflict of interests;
- k) the Contracting Authority or the European Commission have evidence that any Beneficiary has committed systemic or recurrent errors or irregularities, fraud, or serious breach of obligations under other grants financed by the European Commission and awarded to that specific Beneficiary under similar conditions, provided that those errors, irregularities, fraud or serious breach of obligations have a material impact on this grant.

The cases of termination under points (b), (c), (d), (h), (j) and (k) may refer also to persons who are members of the administrative, management or supervisory body of the Beneficiary and/or to persons having powers of representation, decision or control with regard to the Beneficiary.

- 12.3. In the cases referred to in points (c), (f), (h) and (k) above, any related person means any physical person with powers of representation, decision-making or control in relation to the Beneficiary. Any related entity means, in particular, any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive No 83/349/EEC of 13 June 1983.

### **Termination of any Beneficiary's participation by the Coordinator**

- 12.4. In duly justified cases, the participation of any Beneficiary in this Contract may be also terminated by the Coordinator. To this purpose, the Coordinator shall communicate to the Contracting Authority the reasons for the termination of its participation and the date on which the termination shall take effect, as well as a proposal on the reallocation of the tasks of the Beneficiary whose participation is terminated, or on its possible replacement. The proposal shall be sent in good time before the termination is due to take effect. If the Contracting Authority agrees, the Contract shall be amended accordingly in conformity with Article 9.

**End date**

- 12.5. The payment obligations of the Contracting Authority under this Contract shall end 18 months after the implementation period laid down in Article 2 of the Special Conditions, unless this Contract is terminated according to Article 12.

The Contracting Authority shall postpone this end date, so as to be able to fulfil its payment obligations, in all cases where the Coordinator has submitted a payment request in accordance with contractual provisions or, in case of dispute, until completion of the dispute settlement procedure provided for in Article 13. The Contracting Authority shall notify the Coordinator of any postponement of the end date.

- 12.6. This Contract will be terminated automatically if it has not given rise to any payment by the Contracting Authority within two years of its signature.

**Effects of termination**

- 12.7. Upon termination of this Contract, the Coordinator shall take all immediate steps to bring the Action to a close in a prompt and orderly manner and to reduce further expenditure to a minimum.

Without prejudice to Article 14, the Beneficiaries shall be entitled to payment only for the part of the Action carried out, excluding costs relating to current commitments that are due to be executed after termination.

To this purpose, the Coordinator shall introduce a payment request to the Contracting Authority within the time limit set by Article 15.2 starting from the date of termination.

In the event of termination according to Article 12.1, the Contracting Authority may agree to reimburse the unavoidable residual expenditures incurred during the notice period, provided, the first paragraph of this Article 12.7 has been properly executed.

In the cases of termination foreseen in Article 12.2 a), c), d), f), h) and k) the Contracting Authority may, after having properly consulted the Coordinator and depending on the gravity of the failings, request full or partial repayment of amounts unduly paid for the Action.

**Administrative sanctions**

- 12.8 Without prejudice to the application of other remedies laid down in the Contract, a sanction of exclusion from all contracts and grants financed by the Contracting Authority, may be imposed, after an adversarial procedure, upon the Beneficiary who, in particular,

- a) is guilty of grave professional misconduct, has committed irregularities or has shown significant deficiencies in complying with the main obligations in the performance of the Contract or has been circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, three years;
- b) is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, five years;

- 12.9 In the situations mentioned in Article 12.8, in addition or in alternative to the sanction of exclusion, the Beneficiaries may also be subject to financial penalties up to 10% of the Contract value.





- 12.10 Where the Contracting Authority is entitled to impose financial penalties, it may deduct such financial penalties from any sums due to the Beneficiaries or call on the appropriate guarantee.
- 12.11 The decision to impose administrative sanctions may be published on a dedicated internet-site, explicitly naming the Beneficiary concerned.

### **13. APPLICABLE LAW AND DISPUTE SETTLEMENT**

- 13.1. This Contract shall be governed by the law of the country of the Contracting Authority.
- 13.2. The Parties to this Contract shall do everything possible to amicably settle any dispute arising between them during the implementation of this Contract. To that end, they shall communicate their positions in writing, and meet each other at either's request. The Coordinator and the Contracting Authority shall reply to a request sent for an amicable settlement within 30 days. Once this period has expired, or if the attempt to achieve an amicable settlement has not produced an agreement within 120 days of the first request, the Coordinator or the Contracting Authority may notify the other part that it considers the procedure to have failed.
- 13.3. In the event of failure to reach an amicable agreement 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 to this Contract may submit the dispute to the courts of the country of the Contracting Authority.

## **FINANCIAL PROVISIONS**

### **14. ELIGIBLE COSTS**

#### **Cost eligibility criteria**

- 14.1. Eligible costs are actual costs incurred by the Beneficiaries 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. In particular:
    - (i) Costs relating to services and works shall relate to activities performed during the implementation period. Costs relating to supplies shall relate to delivery and installation of items during the implementation period. Signature of a contract, placing of an order, or entering into any commitment for expenditure within the implementation period for future delivery of services, works or supplies after expiry of the implementation period do not meet this requirement. Cash transfers between the Coordinator and/or the other Beneficiaries may not be considered as costs incurred;
    - (ii) Costs incurred should be paid before the submission of the final reports. They may be paid afterwards, provided they are listed in the final report together with the estimated date of payment;
    - (iii) An exception is made for costs relating to final reports, including expenditure verification, audit and final evaluation of the Action, which may be incurred after the implementation period of the Action;



- (iv) Procedures to award contracts may have been initiated and contracts may be concluded by the Beneficiaries before the start of the implementation period of the Action, provided the provisions of article 10 have been respected.
- b) they are indicated in the estimated overall budget for the Action;
- c) they are necessary for the implementation of the Action;
- d) they are identifiable and verifiable, in particular being recorded in the accounting records of the Beneficiaries and determined according to the accounting standards and the usual cost accounting practices applicable to the Beneficiaries;
- e) they comply with the requirements of applicable tax and social legislation;
- f) they are reasonable, justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

### Eligible direct costs

14.2. Subject to Article 14.1 and, where relevant, to the provisions of Article 10 being respected, the following direct costs of the Beneficiaries shall be eligible:

- a) the cost of staff assigned to the Action, corresponding to actual gross salaries including social security charges and other remuneration-related costs (excluding bonuses); salaries and costs shall not exceed those normally borne by the Beneficiaries;
- b) travel and subsistence costs for staff and other persons taking part in the Action, provided they do not exceed those normally borne by the Beneficiaries according to its rules and regulations. In addition, the per diem rates published by the European Commission at the time of Contract signature may never be exceeded;
- c) purchase costs for equipment (new or used) and supplies specifically dedicated to the purposes of the Action, provided that ownership is transferred at the end of the Action if and when required according to the stipulations under Articles 7.5 and 7.6;
- d) depreciation, rental or leasing costs for equipment (new or used) and supplies specifically dedicated to the purposes of the Action;
- e) costs of consumables specifically dedicated to the Action;
- f) costs of service, supply and work contracts awarded by the Beneficiaries for the purposes of the Action referred to in Article 10; this includes the costs for mobilising expertise to improve the quality of the logical framework (e.g. accuracy of baselines, monitoring systems, etc.), both at the beginning and during the implementation of the Action.
- g) 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 where required according to the Contract);
- h) duties, taxes and charges, including VAT, related to the purposes of the Action, paid and not recoverable by the Beneficiaries, unless otherwise provided in the Special Conditions;
- i) project office costs:  
Costs actually incurred in relation to a project office used for the Action or a portion of these costs may be accepted as eligible direct costs if:
  1. the need for setting up or using a project office is recognised by the Contracting Authority in the Special Conditions;



2. the description of the project office, the services or resources it makes available, its overall capacity and (where applicable) the distribution key are provided in the Description of the Action and the Budget;
3. (where applicable) the distribution key reasonably reflects the portion of the resources or services needed by and actually used for the Action;
4. the costs concerned comply with the cost eligibility criteria referred to in Article 14.1;
5. they fall within one of the following categories:
  - i) depreciation costs, rental costs or lease of building, equipment and assets;
  - ii) costs of maintenance and repair contracts;
  - iii) costs of consumables and supplies specifically dedicated to the Action;
  - iv) costs of IT and telecommunication services;
  - v) costs of facility management contracts including security fees and insurance costs.

### **Indirect costs**

14.3. The indirect costs for the Action are those eligible costs which may not be identified as specific costs directly linked to the implementation of the Action and may not be booked to it directly according to the conditions of eligibility in Article 14.1. However, they are incurred by the Beneficiaries in connection with the eligible direct costs for the Action. They may not include ineligible costs as referred to in Article 14.4 or costs already declared under another costs item or heading of the budget of this Contract.

A fixed percentage of the total amount of direct eligible costs of the Action not exceeding the percentage laid down in Article 3.3 of the Special Conditions may be claimed to cover indirect costs for the Action.

Indirect costs shall not be eligible under a grant for an Action awarded to a beneficiary who already receives an operating grant financed from the European Union budget during the period in question.

### **Non-eligible costs**

14.4. The following costs shall not be considered eligible:

- a) debts and debt service charges (interest);
- b) provisions for losses, debts or potential future liabilities;
- c) costs declared by the Beneficiaries and financed by another Action or work programme receiving a European Union grant;
- d) purchases of land or buildings, except where necessary for the direct implementation of the Action and according to the conditions specified in the Special Conditions; in all cases the ownership shall be transferred in accordance with Article 7.5, at the latest at the end of the Action;
- e) currency exchange losses;
- f) credits to third parties, unless otherwise specified in the Special Conditions;
- g) in kind contributions;



- h) salary costs of the personnel of national administrations, unless otherwise specified in the Special Conditions and/or only to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the Action were not undertaken;
- i) bonuses included in costs of staff;
- j) Negative interest charged by banks or other financial institutions.

### **Tax regime**

14.5. VAT is not eligible where it is paid by a public body ('Public body' means a body governed by public law being part of public administrations. This implies that private bodies entrusted with public activities are never considered as acting as public authorities for this purpose.) of an EU Member State in relation to activities it carries out as a public authority of an EU Member State. These activities are strictly limited to the exercise of sovereign powers or prerogatives of an EU Member State (police, justice and public domain management).

14.6. The Beneficiary must show that it is not tax exempted and that it cannot recover taxes under the applicable national law. The Beneficiary will have to prove that it has undertaken the necessary steps to obtain an exemption or the recovery of paid taxes vis-à-vis the relevant authorities.

This evidence will have to be delivered by presenting a respective letter from the auditor specified in the Special Conditions together with an official document from the competent tax authority stating that the entity is not entitled to reclaim taxes incurred for the activities in question (and that this does not depend on the simple fact that it does not wish to be subject to VAT). This official document may be a specific declaration or a refused claim for reimbursement by the competent tax authority. The Beneficiary shall provide the evidence at the latest one month after the signature of the contract.

14.7. The no-profit rule must be obeyed in all cases, except where a derogation is provided for in the Contract. A Beneficiary that is not required to submit such proof must therefore certify that the taxes paid by the EU funding or covered by its share of co-financing will ultimately not be recovered from the local tax authorities.

14.8. The Contracting Authority waives the proof obligation in the following cases:

- a) Low value taxes: no proof needs to be provided for taxes for expenses where the amount of taxes per invoice is less than EUR 200, within a maximum of EUR 2,500 per Grant Contract, representing not more than 5 % of the Contracting Authority's contribution.
- b) Reimbursement of local expenses, including all taxes: the following cases will be considered as proof that the Beneficiary has attempted to take the necessary steps to obtain exemption or recovery of taxes from the competent authorities:
  - 1. the Beneficiary demonstrates 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, one-off basis; and/or
  - 2. the Beneficiary shows that the recovery costs (registration fees in the country or the cost of appointing a tax representative, declaration fees, etc.) clearly exceed the amount of the taxes declared to the Contracting Authority.



## 15. PAYMENT AND INTEREST ON LATE PAYMENT

### Payment procedures

15.1. The Contracting Authority must pay the grant to the Coordinator following one of the payment procedures below, as set out in Article 4 of the Special Conditions.

Option 1: Reimbursement of actual costs incurred

Option 2: Advance payment

- (i) an initial pre-financing payment of 100 % of the part of the estimated budget financed by the Contracting Authority for the first six months of implementation. The part of the budget financed by the Contracting Authority is calculated by applying the percentage set out in Article 3.2 of the Special Conditions;
- (ii) further pre-financing payments of 100 % of the part of the estimated budget financed by the Contracting Authority for the following reporting period:
  - the reporting period is intended as a three-month period unless otherwise provided for in the Special Conditions. When the remaining period to the end of the Action is up to five months, the reporting period shall cover it entirely;
  - within 15 days following the end of the reporting period, the Coordinator shall present an interim report or, if unable to do so, it shall inform the Contracting Authority of the reasons and provide a summary of progress of the Action;
  - if at the end of the reporting period the part of the expenditure actually incurred which is financed by the Contracting Authority is less than 70 % of the previous payment (and 100 % of any previous payments), the further pre-financing payment shall be reduced by the amount corresponding to the difference between the 70 % of the previous pre-financing payment and the part of the expenditure actually incurred which is financed by the Contracting Authority;
  - the Coordinator may submit a request for further pre-financing payment before the end of the reporting period, when the part of the expenditure actually incurred which is financed by the Contracting Authority is more than 70 % of the previous payment (and 100 % of any previous payments). In this case, the following reporting period starts anew from the end date of the period covered by this payment request;
  - the total sum of pre-financing payments may not exceed 90 % of the amount referred to in Article 3.2 of the Special Conditions;
- (iii) the balance of the final amount of the grant.

### Submission of final reports

15.2. The Coordinator shall submit the final report to the Contracting Authority no later than one month after the implementation period as defined in Article 2 of the Special Conditions.

### Payment request

15.3. The payment request shall be drafted using the model in Annex **12bAnnex-XIIb-CfP2-PaymentRequest** and shall be accompanied by:

- a) a technical and financial report in line with Article 2;
- b) a forecast budget for the following reporting period in case of request of further pre-financing;



- c) an Expenditure verification report, under Article 15.7;

For the purposes of the initial pre-financing payment, the signed Contract serves as payment request. A financial guarantee shall be attached as defined in Article 4.3 of the Special Conditions.

Payment shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information provided.

### **Payment deadlines**

15.4. The initial pre-financing payment shall be made within 30 days of receipt of the payment request by the Contracting Authority.

Further pre-financing payments and payments of the balance shall be made within 30 days of receipt of the payment request by the Contracting Authority.

### **Suspension of the period for payments**

15.5. Without prejudice to Article 12, the time-limits for payments may be suspended by notifying the Coordinator that:

- a) the amount indicated in its request of payments is not due, or;
- b) proper supporting documents have not been supplied, or;
- c) clarifications, modifications or additional information to the technical or financial reports are needed, or;
- d) there are doubts on the eligibility of expenditure and it is necessary to carry out additional checks, including on-the-spot checks or an audit to make sure that the expenditure is eligible, or;
- e) it is necessary to verify, including through an EU OLAF investigation, whether presumed breach of obligations, irregularities or fraud have occurred in the grant award procedure or the implementation of the Action, or;
- f) it is necessary to verify whether the Beneficiaries have breached any substantial obligations under this Contract, or;
- g) the visibility obligations set out in Article 6 are not complied with.

The suspension of the time-limits for payments starts when the above notification is sent to the Coordinator. The time-limit starts running again on the date on which a correctly formulated request for payment is recorded. The Coordinator shall provide any requested information, clarification or document within 30 days of the request.

If, notwithstanding the information, clarification or document provided by the Coordinator, the payment request is still inadmissible, or if the award procedure or the implementation of the grant proves to have been subject to irregularities, fraud, or breach of obligations, then the Contracting Authority may suspend payments, and in the cases foreseen in Article 12, terminate accordingly this Contract.

In addition, the Contracting Authority may also suspend payments as a precautionary measure without prior notice, prior to, or instead of, terminating this Contract as provided for in Article 12.





### Interest on late payment

15.6. If the Contracting Authority pays the Coordinator after the time limit, it shall pay default interest as follows:

- a) 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;
- b) 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;
- c) on the first day of the month in which the time-limit expired, plus three and a half percentage points. The interest will 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 will be paid to the Coordinator only upon demand submitted within two months of receiving late payment.

The default interest is not considered as income for the purposes of Article 17.

This Article 15.6 does not apply if the Coordinator is a European Union Member State, including regional and local government authorities or other public body acting in the name and on behalf of the Member State for the purpose of the Contract.

### Expenditure verification report

15.7. The Coordinator must provide an expenditure verification report:

- a) for any further request for pre-financing or reimbursement;
- b) at the end of the implementation period of the Action accompanying the final report.

The expenditure verification report shall conform to the models in Annex **11bAnnex-XIb-CfP2-ToRaudit** (depending on the purpose) and shall be produced by an auditor approved or chosen by the Contracting Authority. The auditor shall meet the requirements set out in the terms of reference for expenditure verification in Annex **11aAnnex-XIa-CfP2-ToReExpenditVerifisimple**.

The auditor shall examine whether the costs declared by the Beneficiaries and the revenue of the Action are real, accurately recorded and eligible under this Contract. The expenditure verification report shall cover all expenditure not covered by any previous expenditure verification report.

The final report shall in all cases include a detailed breakdown of expenditure covering the whole Action.

The expenditure verification report shall not be provided by the Coordinator if the verification is directly done by the Contracting Authority's own staff, by the Commission or by a body authorised to do so on their behalf, according to Article of 5.2 of the Special Conditions.

### Financial guarantee

15.8. If the grant exceeds EUR 60,000 the Contracting Authority may request a financial guarantee for the amount of the initial pre-financing payment.

The guarantee shall be denominated in Euro, conforming to the model in Annex VII. The guarantee shall be provided by an approved bank or financial institution established in one of the Member States of the European Union. Where the Coordinator is established in a third



country, the Contracting Authority may agree that a bank or financial institution established in that third country may provide the guarantee if the Contracting Authority considers that the bank or financial institution offers equivalent security and characteristics as those offered by a bank or financial institution established in a Member State of the European Union. This guarantee shall remain in force until its release by the Contracting Authority when the payment of the balance is made.

During the execution of the Contract, if the natural or legal person providing the guarantee (i) is not able or willing to abide by its commitments, (ii) is not authorised to issue guarantees to contracting authorities, or (iii) appears not to be financially reliable, or the financial guarantee ceases to be valid, and the Coordinator fails to replace it, either a deduction equal to the amount of the pre-financing may be made by the Contracting Authority from future payments due to the Coordinator under the Contract, or the Contracting Authority shall give formal notice to the Coordinator to provide a new guarantee on the same terms as the previous one. Should the Coordinator fail to provide a new guarantee, the Contracting Authority may terminate the Contract.

### **Rules for currency conversion**

15.9. The Contracting Authority shall make payments to the Coordinator to the bank account referred to in the financial identification form in Annex V, which allows the identification of the funds paid by the Contracting Authority. The Contracting Authority shall make payments in the currency set in the Special Conditions.

Reports shall be submitted in the currency set out in the Special Conditions and may be drawn from financial statements denominated in other currencies, on the basis of the Beneficiaries' applicable legislation and applicable accounting standards. In such case and for the purpose of reporting, conversion into the currency set in the Special Conditions shall be made using the rate of exchange at which each Contracting Authority's contribution was recorded in the Beneficiaries' accounts, unless otherwise provided for in the Special Conditions. If at the end of the Action, a part of the expenses is pre-financed by the Beneficiaries (or by other donors), the conversion rate to be applied to this balance is the one set in the special condition according to the Beneficiaries' usual accounting practice. If no specific provision is foreseen in the Special Conditions, the exchange rate of the last instalment received from the Contracting Authority will be applied. This exchange rate system is referred to as "first in - first out (FIFO)" principle.

15.10. Unless otherwise provided for in the Special Conditions, costs incurred in other currencies than the one used in the Beneficiaries' accounts for the Action shall be converted according to its usual accounting practices, provided they respect the following basic requirements: (i) they are written down as an accounting rule, i.e. they are a standard practice of the beneficiary, (ii) they are applied consistently, (iii) they give equal treatment to all types of transactions and funding sources, (iv) the system can be demonstrated and the exchange rates are easily accessible for verifications.

In the event of an exceptional exchange-rate fluctuation, the Parties shall consult each other with a view to amending 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.



## 16. ACCOUNTS AND TECHNICAL AND FINANCIAL CHECKS

### Accounts

16.1. The Beneficiaries shall keep accurate and regular accounts of the implementation of the Action using an appropriate accounting and double-entry book-keeping system.

The accounts:

- a) may be an integrated part of or an adjunct to the Beneficiaries' regular system;
- b) shall comply with the accounting and bookkeeping policies and rules that apply in the country concerned;
- c) shall enable income and expenditure relating to the Action to be easily traced, identified and verified.

16.2. The Coordinator shall ensure that any financial report as required under Article 2 can be properly and easily reconciled to the accounting and bookkeeping system and to the underlying accounting and other relevant records. For this purpose the Beneficiaries shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification.

### Right of access

16.3. The Beneficiaries shall allow verifications to be carried out by the Contracting Authority, the European Commission, the European Anti-Fraud Office, the European Public Prosecutor's Office, the European Court of Auditors and any external auditor authorised by the Contracting Authority. The Beneficiaries have to take all steps to facilitate their work.

16.4. The Beneficiaries shall allow the above entities to:

- a) access the sites and locations at which the Action is implemented;
- b) examine its accounting and information systems, documents and databases concerning the technical and financial management of the Action;
- c) take copies of documents;
- d) carry out on-the-spot-checks;
- e) conduct a full audit on the basis of all accounting documents and any other document relevant to the financing of the Action.

16.5. Additionally, the European Anti-Fraud Office shall be permitted to carry out on-the-spot checks and inspections in accordance with the procedures laid down by the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.

Where appropriate, the findings may lead to recovery by the Contracting Authority.

16.6. Access given to agents of the Contracting Authority, the European Commission, European Anti-Fraud Office, the European Public Prosecutor's Office and the European Court of Auditors and to any external auditor authorised by the Contracting Authority carrying out verifications as provided for by this article 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.

### Retention periods

16.7. The Beneficiaries shall keep all records, accounting and supporting documents related to this Contract for five years following December 31 of the year of the payment of the balance, and



in any case until any on-going audit, verification, appeal, litigation or pursuit of claim has been disposed of.

They shall be easily accessible and filed so as to facilitate their examination and the Coordinator shall inform the Contracting Authority of their precise location.

16.8. All the supporting documents shall be available either in the original form, including in electronic form, or as a copy.

16.9. In addition to the reports mentioned in Article 2, the documents referred to in this article include:

- a) Accounting records (computerised or manual) from the Beneficiaries' accounting system such as general ledger, sub-ledgers and payroll accounts, fixed assets registers and other relevant accounting information;
- b) Proof of procurement procedures such as tendering documents, bids from tenderers and evaluation reports;
- c) Proof of commitments such as contracts and order forms;
- d) 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.;
- e) Proof of receipt of goods such as delivery slips from suppliers;
- f) Proof of completion of works, such as acceptance certificates;
- g) Proof of purchase such as invoices and receipts;
- h) Proof of payment such as bank statements, debit notices, proof of settlement by the contractor;
- i) Proof that taxes and/or VAT that have been paid cannot actually be reclaimed;
- j) For fuel and oil expenses, a summary list of the distance covered, the average consumption of the vehicles used, fuel costs and maintenance costs;
- k) Staff and payroll records such as contracts, salary statements and 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.

16.10 Failure to comply with the obligations set forth in Article 16.1 to 16.9 constitutes a case of breach of a substantial obligation under this Contract. In this case, the Contracting Authority may in particular suspend the Contract, payments or the time-limit for a payment, terminate the Contract and/or reduce the grant.

## **17. FINAL AMOUNT OF THE GRANT**

### **Final amount**

17.1. The grant may not exceed the maximum ceiling in Article 3.2 of the Special Conditions either in terms of the absolute value or the percentage stated therein.

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



17.2. In addition and without prejudice to its right to terminate this Contract pursuant to Article 12, if the Action is implemented poorly or partially - and therefore not in accordance with the description of the Action in Annex I - or late, the Contracting Authority may, by a duly reasoned decision and after allowing the Beneficiaries to submit their observations, reduce the initial grant in line with the actual implementation of the Action and in accordance with the terms of this Contract. This applies as well with regards to the visibility obligations set out in Article 6. In case of breach of obligations, fraud or irregularities the Contracting Authority may also reduce the grant in proportion of the seriousness of breach of obligations, fraud or irregularities. The measures described in the last paragraph may equally be adopted by the European Commission in pursuance of its administrative powers under the Financial Regulation (Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018, OJ-L 193/30.07.2018, p.1).

### **No-profit**

17.3. The grant may not produce a profit for the Beneficiaries, unless specified otherwise in Article 7 of the Special Conditions. Profit is defined as a surplus of the receipts over the eligible costs approved by the Contracting Authority when the request for payment of the balance is made.

17.4. The receipts to be taken into account are the consolidated receipts on the date on which the payment request for the balance is made by the Coordinator which fall within one of the two following categories:

- a) EU grant;
- b) income generated by the Action; unless otherwise specified in the Special Conditions.

17.5. In case of an operating grant, amounts dedicated to the building up of reserves shall not be considered as a receipt.

17.6. Where the final amount of the grant determined in accordance with the Contract would result in a profit, it shall be reduced by the percentage of the profit corresponding to the final contribution of the Contracting Authority to the eligible costs actually incurred approved.

17.7. The provisions in Article 17.3 and 17.6 shall not apply to:

- a) Actions the objective of which is the reinforcement of the financial capacity of a beneficiary, if specified in Article 7 of the Special Conditions;
- b) Actions which generate an income to ensure their continuity beyond the end of this Contract, if specified in Article 7 of the Special Conditions;
- c) Actions implemented by non-profit organisations.

## **18. RECOVERY**

### **Recovery**

18.1. If any amount is unduly paid to the Coordinator, or if recovery is justified under the terms of this Contract, the Coordinator undertakes to repay the Contracting Authority these amounts.

In particular, payments made do not preclude the possibility for the Contracting Authority to issue a recovery order following an expenditure verification report, an audit or further verification of the payment request.

18.2. If a verification reveals that the methods used by the Beneficiaries to determine unit costs, lump sums or flat-rates are not compliant with the conditions established in this Contract, the Contracting Authority shall be entitled to reduce the final amount of the grant proportionately up to the amount of the unit costs, lump sums or flat rate financing.



18.3. The Coordinator 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 Coordinator.

### **Interest on late payments**

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

- a) 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;
- b) 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 euros;

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.

### **Offsetting**

18.5. Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Coordinator, after informing it accordingly. This shall not affect the Parties' right to agree on payment in instalments.

### **Other provisions**

18.6. The repayment under Article 18.4 or the offsetting under Article 18.6 amount to the payment of the balance.

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

18.8. The guarantee securing the prefinancing may be invoked in order to repay any amount owed by the Beneficiaries, and the guarantor shall not delay payment nor raise objections for any reason whatsoever.

18.9. Without prejudice to the prerogative of the Contracting Authority, if necessary, the European Union may, as donor, proceed itself to the recovery by any means.