

ANNEX II TO THE EUROPEAN UNION DELEGATION AGREEMENT
GENERAL CONDITIONS TO THE EUROPEAN UNION DELEGATION
AGREEMENT FOR INDIRECT CENTRALISED METHOD OF
IMPLEMENTATION

GENERAL AND ADMINISTRATIVE PROVISIONS

ARTICLE 1 : GENERAL OBLIGATIONS

- 1.1 The Delegatee body is responsible for carrying out the tasks relating to the implementation of the Action described in Annex I of the Agreement which will specify indicators of achievement. The Delegatee body shall be responsible for the overall administration of all the activities required to implement the Action, among others, preparation, implementation and conclusion of grant agreements and procurement contracts, and management of corresponding expenditures. The Delegatee body will participate in coordination meetings and other jointly organised common activities with the Commission.
- 1.2 In performing the tasks entrusted to it under the Agreement, the Delegatee body may not carry out tasks involving a large measure of discretion implying political choices and it may not set nor modify objectives, strategies and priority areas of the Action as described in Annex I. The Delegatee body may directly provide ancillary technical assistance only.
- 1.3 The Delegatee body shall perform the tasks assigned to it under the Agreement in accordance with the principle of sound financial management, in conformity with the principles of economy, efficiency and effectiveness, and shall carry out the necessary checks in accordance with the terms and arrangements laid down in the relevant rules.
- 1.4 The Delegatee body shall not sub-delegate any of its tasks related to the implementation of the Action nor assign any of its rights and obligations, including any right under Article 15, to a third party without the prior written agreement of the Commission. In case where the Commission authorises the sub-delegation of a part of its tasks to a third party (the "Implementing partner"), the Delegatee body shall in any case keep the control over the delegated tasks in implementing the Action and shall remain entirely and directly responsible for ensuring compliance with the provisions of the Agreement and the obligations arising out of it.
- 1.5 The Delegatee body shall notify the Commission without delay of any substantial change in the procedures or systems actually applied in the implementation of the Action, in particular those which may affect the conditions for eligibility provided for in the applicable legal instruments, or of any other circumstance liable to affect the implementation of the Agreement or delay or jeopardise the performance of the delegated tasks. In particular, it shall update the information on audit, accounting, procurement and grant systems and effective and efficient internal control systems. The Commission reserves the right to adopt additional measures in response to the changes as referred above or to terminate the Agreement pursuant to the provisions of Article 12.2 hereafter.
- 1.6 The Delegatee body shall take appropriate measures to prevent irregularities, fraud, as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests of 26 July 1995 drawn up by the Council Act of 26 July 1995 (OJ C 316, 27.11.1995, p.48), corruption, as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up the Council Act of 26 May 1997 (OJ C 195, 25.6.1997, p. 1), or any other illegal activity in the management of the Action. All suspected and actual cases of irregularity, fraud and corruption related to the Agreement as well as measures related thereto

taken by the Delegatee body must be reported to the Commission without delay. The Delegatee body shall forward to the Commission without delay any information relating to suspected and actual cases of fraud or corruption or any other illegal activity.

Where appropriate, the Delegatee body shall terminate contracts or agreements with Implementing partners, grant beneficiaries, contractors, staff or agents involved in fraudulent behaviour or corrupt practices in connection with this Agreement or any other actions implemented by the Delegatee body and financed by the European Union, and take all reasonable measures to recover funds unduly paid or incorrectly used, including bringing legal proceedings.

- 1.7 The Delegatee body shall conduct regular checks to ensure that the Action has been implemented correctly. Where necessary, it shall take appropriate measures to resolve problems encountered, in proportion to their seriousness, including the suspension of the authorisation to conclude new contracts or grant agreements with third parties or suspension of further instalments of funds. If the situation requires so, it shall bring legal proceedings to recover funds wrongly paid or incorrectly used.
- 1.8 The Delegatee body is responsible towards the Commission for all unduly paid funds.
- 1.9 The Delegatee body shall ensure that the conditions imposed upon it under Articles 1, 3, 4, 5, 6, 7, 10, 14, 16 and 17 of this Agreement also apply to any third party involved in the implementation of the Action.

ARTICLE 2: OBLIGATIONS REGARDING INFORMATION AND REPORTING

- 2.1 The Delegatee body shall provide the Commission with full information on the implementation of the Action and on the carrying out of the delegated tasks. To that end, the Delegatee body shall provide before conclusion of the Agreement a work plan for the first period of implementation as specified in the Description of the Action and submit to the Commission implementation report(s) (the "Implementation Report") and a final report (the "Final Report") in accordance with the provisions below. These reports shall consist of a narrative part and a financial part. Reporting, narrative as well as financial, shall cover the whole of the Action, regardless of whether this Action is wholly financed or co-financed by the Commission.
- 2.2 Any additional reporting requirement will be set out in the Special Conditions.
- 2.3 The Commission may request additional information at any time, providing the reasons for that request. Such information shall be supplied within 30 days of the request.
- 2.4 Every Implementation Report shall provide a complete account of all aspects of implementation for the period covered. The report shall be laid out in such a way as to allow comparison of the objective(s), the means envisaged or employed (in particular all expenses actually incurred by the Delegatee body), the results expected and obtained and the budget details for the Action. The level of detail in any report should match that of the Description of the Action.
- 2.5 The Delegatee body has to submit an Implementation Report for every twelve-month period as from the commencement of the Implementation Period of the Agreement. The Delegatee body shall submit the Implementation Report within 60 days after the period covered by such report is over. If the Implementation Period does not exceed 12 months, the Delegatee body only submits the Final Report.
- 2.6 The Implementation Report shall at least include:
 - (a) Summary and context of the Action;

- (b) Summary of how each activity was implemented and information on the measures taken to identify the European Union as source of financing, including information on expenditures actually committed and incurred per activity;
- (c) Difficulties encountered and measures taken to overcome problems;
- (d) Changes introduced in implementation;
- (e) Achievements/results by using the indicators included in this Agreement;
- (f) Information on the control and audit measures to which the Delegatee body itself has been subjected, as well as measures of control carried out on Implementing partner(s). In case where an inspection was carried out a summary inspection report indicating the number and results of on-the-spot checks audits already carried out;
- (g) Overall financial statement providing an account of the use of the funds transferred to the Delegatee body;
- (h) Work plan for the following period including objectives and indicators of achievement. If the report is sent after the end of the period covered by the preceding work plan, a new work plan, albeit provisional, is always required before such date;
- (i) When appropriate, a request for payment.

2.7 The Delegatee body shall submit to the Commission, as soon as possible and at the latest six months after the end of the Implementation Period of the Agreement, a Final Report summarising the implementation of the various activities covered (broken down by operation where the Action covers more than one operation) and giving an account of the use of the funds transferred to the Delegatee body. If the Implementation Period of the Agreement is less than 12 months, the Final Report shall contain, in addition to the information set out in paragraph 8 below, all the information mentioned in paragraph 6 above (excluding the information referred in indent (h) and (i)).

2.8 The Final Report shall at least include:

- (a) a full summary of the Action's income and expenditure and payments received, including the total amount actually paid by the Delegatee body or Implementing partner(s) to third parties, the total amount of the financial compensation for the administrative costs and the total of the real costs of the technical assistance provided by the Delegatee body to third parties thereby enabling to determine the total balance to be recovered by the Commission from the Delegatee body;
- (b) the control and audit measures to which the Delegatee body itself has been or will be subjected including Implementing partner(s), accompanied, if appropriate, by current information on measures taken to remedy any identified problems ;
- (c) a summary table setting out the final amount of each grant agreement or procurement contract;
- (d) description of the results generated by each operation and their impact in relation to the objectives of the Action using the indicators included in the Agreement;
- (e) details of transfers of assets mentioned in Article 7.3 if relevant;
- (f) when appropriate, a request for payment.

2.9 The reports shall be submitted in Euro and may be drawn from financial statements denominated in other currencies pursuant to the Delegatee body's requirements. In such case and for the purpose of reporting, conversion into Euro shall be made using the rate applied by the European Central Bank to its principal refinancing operations as published in InforEuro in force on the day the payment is executed.

2.10 If the Delegatee body fails to supply a Final Report by the deadline set down in Article 2.7 and fails to furnish an acceptable written explanation of the reasons why it is unable to comply with this obligation, the Commission may refuse to pay any outstanding amount and recover any amounts unduly paid.

Furthermore, where the Delegatee body fails to present an Implementation Report and a request for payment by the end of the deadline set out in Article 2.5, the Delegatee body shall inform the Commission of the reasons why it is unable to do so, and shall provide a summary of the state of progress of the Action. If the Delegatee body fails to comply with this obligation, the Commission may terminate the Agreement in accordance with the letter (b) of Article 12.2, refuse to pay any outstanding amount and recover any amounts unduly paid.

2.11 In addition to the abovementioned reports, the Delegatee body shall ensure that progress and situation reports, publications, press releases and updates, relevant to the Agreement are communicated to the Commission as and when they are issued.

The Delegatee body and the Commission will further endeavour to promote close collaboration and exchange of information on the Action.

2.12 In any event, the Delegatee body shall inform the Commission without delay of any circumstances likely to hamper or delay the implementation of the Action.

ARTICLE 3: LIABILITY

3.1 The Delegatee body shall have sole responsibility for complying with any legal obligation incumbent on it under the terms of the Agreement.

3.2 The Commission may not under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the Delegatee body's staff or property while the Action is being carried out or as a consequence of the Action. The Commission may not therefore accept any claim for compensation or increases in payment in connection with such damage or injury.

3.3 The Delegatee body shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them arising out of the implementation of the Action. The Delegatee body shall discharge the Commission of all liability associated with any claim or action brought as a result of an infringement by the Delegatee body or Delegatee body's employees or individuals for whom those employees are responsible of rules or regulations, or as a result of violation of a third party's rights.

ARTICLE 4: CONFLICT OF INTERESTS

4.1 The Delegatee body undertakes to take all necessary precautions to avoid conflicts of interests and shall inform the Commission without delay of any situation constituting or likely to lead to any such conflict.

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

ARTICLE 5: CONFIDENTIALITY

Subject to Article 16, the Commission and the Delegatee body undertake to preserve the confidentiality of any document, information or other material directly related to the performance of the Agreement that is duly classified as confidential. The Commission shall have access to all those documents, information or other material upon request.

The Parties shall remain bound by this obligation for at least seven (7) years after the Implementation Period as referred to in Article 2 of the Special Conditions.

ARTICLE 6: VISIBILITY AND EX-POST PUBLICATION

- 6.1 Unless the Commission requests or agrees otherwise, the Delegatee body shall take all appropriate measures to publicise the fact that the Action has received funding from the European Union. Information given to the press, the beneficiaries of the Action, all related publicity material, official notices, reports and publications, shall acknowledge that the Action was carried out "*with funding by the European Union*" and shall display in an appropriate way the European logo (twelve yellow stars on a blue background). Such measures shall be carried out in accordance with the Communication and Visibility Manual for EU External Actions laid down and published by the Commission.
- 6.2 In cases where in the framework of the Action equipment or vehicles or major supplies have been purchased using funds transferred by the Commission, the appropriate acknowledgement on such vehicles, equipment or major supplies, including display of the European logo (twelve yellow stars on a blue background), shall be included.
- 6.3 The size and prominence of the acknowledgement and European Union logo shall be clearly visible in a manner that will not create any confusion regarding the identification of the Action as an activity of the Delegatee body, the ownership of the equipment and supplies by the Delegatee body.
- 6.4 All publications by the Delegatee body pertaining to the Action, in whatever form and whatever medium, including the internet, shall carry the following or a similar disclaimer: "*This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union.*".
- 6.5 Publicity pertaining to European Union contributions shall quote these contributions in Euro (€or EUR), in parenthesis if necessary.
- 6.6 The Delegatee body accepts that the Commission publishes in any form and medium, including on its websites the name and address of the Delegatee body, the purpose of the contribution as well as the amount contributed and, if relevant, the percentage of co-financing. Upon a duly substantiated request by the Delegatee body, the Commission may agree to forego such publicity if disclosure of the above information would risk threatening the Delegatee body's safety or harming its interests.
- 6.7 The Delegatee body shall conduct regular checks at least once a year in order to ensure whether the requirements related to visibility of the Action are duly respected.
- 6.8 With due respect to the applicable rules on confidentiality, security and protection of personal data, the Delegatee body shall publish on annual basis, including by electronic means such as its Internet site, the following information on each grant and procurement contract financed by the European Union: title of the contract/project, name, address and nationality of the contractor or grant beneficiary, and amount of the grant or procurement contract.

- 6.9 The Delegatee body ensures that the obligation to publish this information shall also be applied by its Implementing partner(s), pursuant to Article 1.5, with regard to their own grant and procurement contracts financed by the European Union. The Delegatee body shall provide to the Commission the address of the website where this information can be found and shall authorise the Commission to publish such address in the appropriate internet site of the Commission.
- 6.10 The Delegatee body accepts that the Commission can forward the information on grant(s) and procurement contracts awarded under the Agreement as well as the information on the Delegatee body itself to the European Union budgetary authority.

ARTICLE 7: OWNERSHIP OF RESULT

- 7.1 Ownership, title and industrial and intellectual property rights in the results of the Action and the reports and other documents relating to it shall vest in the Delegatee body, as the case may be together with third parties or as may otherwise be agreed by the Delegatee body.
- 7.2 Notwithstanding the provisions of the first paragraph and subject to Article 5, the Delegatee body shall grant, and shall act to ensure that the third party concerned (Implementing partner, grant beneficiary or contractor) grants the Commission the right to use free of charge and as it sees fit all results of the Action, whatever their form, provided it does not thereby breach existing industrial and intellectual property rights.
- 7.3 Unless stipulated otherwise in the Special Conditions, the equipment, vehicles and supplies provided within the Action carried out in the framework of the Agreement shall be transferred to local authorities or Implementing partner(s) (excluding commercial contractors) or to the final recipients of the Action at the latest when submitting the Final Report. The documentary proof of those transfers shall be presented with the Final Report in accordance with Article 2.

ARTICLE 8: EVALUATION

- 8.1 The representatives of the Commission shall be invited to participate in the main monitoring and in the evaluation missions relating to the performance of the Action. The results of such missions shall be reported to the Commission by the Delegatee body.
- 8.2 Article 8.1 is without prejudice to any evaluation mission which the Commission as a donor may wish to perform. Evaluation missions by representatives of the Commission should be planned and completed in a collaborative manner between the Delegatee body and the Commission's representatives, keeping in mind the commitment of the Parties to the effective and efficient operation of the Agreement. These missions are to be planned ahead and procedural matters are to be agreed upon by the Commission and the Delegatee body in advance. The Commission will make a draft of its report drafted during the evaluation mission available to the Delegatee body for comments prior to final issuance.

ARTICLE 9: AMENDMENT OF THE AGREEMENT

- 9.1 Any modification to the Agreement, including the annexes thereto, shall be set out in writing in an amendment.
- 9.2 Any request of modification of the Agreement, including the annexes thereto, or any change having an impact in the implementation of the Agreement, such as the extension of the Implementation Period of the Agreement or the suspension of the implementation of all or part of the Action as referred to in Article 11, shall be submitted by one Party to another in writing.
- 9.3 Unless otherwise provided for in the Agreement, where the request for an amendment is submitted by the Delegatee body, it shall submit that request to the Commission one month

before the amendment is intended to enter into force, unless there are special circumstances duly substantiated by the Delegatee body and accepted by the Commission.

- 9.4 Where a modification to the Description of the Action and/or the Budget does not affect the basic purpose of the Action and the financial impact is limited to a transfer within a single budget heading, including cancellation or introduction of an item, or a transfer between budget headings involving a variation (as the case may be in cumulative terms) of 15 % or less of the amount originally entered (or as modified by a formal amendment) in relation to each concerned heading, the Delegatee body may amend the Budget and shall inform the Commission accordingly in writing. This method may not be used to amend headings for administrative costs.
- 9.5 Changes of address and changes of bank account may simply be notified in writing to the Commission. Where applicable, changes of bank account must be specified in the request for payment, attached as Annex VII, using the Commission's financial identification form attached as Annex VI.

ARTICLE 10: CONTRACTING AND CENTRAL EXCLUSION DATABASE

- 10.1 Candidates, tenderers or applicants shall be excluded from participation in procurement and grant award procedures if:
- a. They are bankrupt or being wound up, are having their affairs administered by the courts, have entered into arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - b. They have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
 - c. They have been the subject of a judgment which has the force of *res judicata* for fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests; corruption, as defined in Article 3 of Council Act of 26 May 1997; involvement in a criminal organisation as defined in Article 2 of Council Joint Action 98/733/JHA; or any other illegal activity detrimental to the European Union's financial interests;
 - d. They are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or fail to supply this information;
 - e. They are subject to a conflict of interest.
- 10.2 At the latest before the procurement or grant award decision is taken, the Delegatee body shall verify, pursuant to one of the modalities reflected in Annex IV, that there is not a detection, for one of the grounds listed in paragraph 1 above, of the third party concerned (an applicant for a grant, candidate or tenderer, including partners) in the Central Exclusion Database set up by Commission Regulation (EC, Euratom) No. 1302/2008, of 17 December 2008, on the central exclusion database (OJ L 344/12, 20.12.2008) (the "Central Exclusion Database"). Should the Delegatee body fail to take this information into account when contracting with the concerned entity the related costs will not be considered eligible pursuant to Article 14. In case the Action is co-financed, the obligation set out in this paragraph shall be deemed to have been complied with, provided the amounts contributed by the other donors to the Action are sufficient to cover those amounts which are ineligible under European Union rules.

- 10.3 If so provided in Article 4bis of the Special Conditions, the Delegatee body shall have direct access to the Central Exclusion Database. Detailed provisions on the Central Exclusion Database are included in Annex IV.
- 10.4 The Delegatee body shall inform its liaison point (the "Liaison point") pursuant to the provisions included in Annex IV and V about any judgment rendered after 1 January 2009 and having the force of *res judicata* that comes to its knowledge - at any stage of contracting or grant awarding or implementation - for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the European Union's financial interests against any of the following entities: candidates, tenderers, grant applicants and their respective subcontractors; contractors, suppliers, service providers and their respective subcontractors; and grant beneficiaries and their contractors and those receiving financial support..
- 10.5 Where the Action is co-financed by the Delegatee body and/or other donors, 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 Delegatee body's relevant rules. In any event goods, organisations, companies and experts eligible under the applicable regulatory provisions of the European Union shall be eligible. Where the Action is exceptionally fully financed by the European Union, partners, contractors, experts and goods, shall originate in the European Union or in the country or countries eligible under the programme of which the Action is part. Any departure from the rules of origin and nationality set out above is subject to the specific provisions on exceptions of the applicable regulatory framework of the European Union.

ARTICLE 11: IMPLEMENTATION PERIOD OF THE AGREEMENT, SUSPENSION, *FORCE MAJEURE*

- 11.1 The Implementation Period of the Agreement shall be set out in Article 2 of the Special Conditions.
- 11.2 The individual contracts and grant agreements implementing the Action under the Agreement shall be concluded, as specified in Article 2.5 of the Special Conditions, by 31 December of the year $n+1$ at the latest, year n being the one in which the Agreement is signed by both parties or no later than three (3) years following the date of the signature of the financing agreement between the Commission and the beneficiary country covering the tasks provided in the Agreement. After the Implementation Period up to submission of Final Report, only contracts concerning final audits, evaluation and closure activities may be concluded.
- 11.3 In exceptional and duly substantiated cases, a request may be made for the extension of the Implementation Period in accordance with Article 9.
- 11.4 The deadline for conclusion of individual contracts and grant agreements implementing the Action under the Agreement set out in Article 2.5 of the Special Conditions cannot be extended.
- 11.5 The Delegatee body may suspend without delay implementation of all or part of the Action if circumstances so require, in particular in case of *force majeure*, provided that it informs the Commission immediately and providing all the necessary details and the foreseeable date of resumption. The Agreement may be terminated in accordance with Article 12.1. If the Agreement is not terminated, the Delegatee body shall endeavour to minimise the duration of the suspension and shall resume implementation of the Action once the conditions allow, and shall inform the Commission accordingly.
- 11.6 The Commission may request the Delegatee body to suspend implementation of all or part of the Action if circumstances so require, in particular in case of *force majeure*. The Agreement may be terminated in accordance with Article 12.1. If the Agreement is not terminated, the Delegatee body shall endeavour to minimise the duration of the suspension and shall resume

implementation of the Action once the conditions allow, with the prior written approval of the Commission.

- 11.7 The Implementation Period of the Agreement is automatically extended by an amount of time equivalent to the duration of the suspension. This is without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions or to Article 12.1.
- 11.8 *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of their obligations under the Agreement, was not attributable to error or negligence on their part (or the part of their Implementing partners, contractors, agents or staff), and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as *force majeure* by the defaulting party. Neither of the Parties shall be held liable for breach of its obligations under the Agreement if it is prevented from fulfilling them by *force majeure*. Without prejudice to paragraphs 5 and 6 above, the Party invoking *force majeure* shall notify the other without delay, stating the nature, likely duration and foreseeable effect, and take any measure to minimise possible damage.

ARTICLE 12: TERMINATION OF THE AGREEMENT

- 12.1 If, at any time, either Party believes that the purposes of the Agreement can no longer be effectively or appropriately carried out, it shall consult the other Party. Failing agreement on a solution, either Party may terminate the Agreement by serving two months' written notice. In this event, the Delegatee body shall be entitled to payment of the contribution only for the part of the Action carried out, and to reimbursement of commitments entered into by the Delegatee body before the written notice on termination was submitted to the other Party and which the Delegatee body cannot reasonably terminate on legal grounds. The part of the contribution relating to activities not yet performed or to the unperformed part of certain activities shall be recovered by the Commission, in accordance with Articles 17 and 18.
- 12.2 The Commission may also decide to terminate the Agreement in the following circumstances:
- (a) in the event any legal, technical or organisational change substantially affecting the conditions and obligations under Article 1;
 - (b) if the Delegatee body fails to fulfil a substantial obligation incumbent on it under the terms of the Agreement, including its annexes and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within 30 days of sending of the letter;
 - (c) if the Delegatee body fails to comply with Articles 1.4, 1.6 or 4;
 - (d) if the Delegatee body is declared bankrupt, is being wound up, or is subject to any other similar proceedings;
 - (e) if the Delegatee body is guilty of grave professional misconduct proven by any justified means;
 - (f) if the Delegatee body is guilty of misrepresentation or submits reports inconsistent with reality to obtain funding or to keep the funds made available to it without cause;
 - (g) if the Delegatee body has intentionally or by negligence committed a substantial irregularity in performing the Agreement, or in the event of fraud, corruption or any other illegal activity from the Delegatee body to the detriment of the European Union's financial interests. A substantial irregularity consists of any infringement of a

provision of an agreement or regulation resulting from an act or an omission from the Delegatee body which causes or might cause a loss to the funds transferred under the Agreement.

The Commission will enter into discussions with the Delegatee body and, failing to find a proper solution within one month, may terminate the Agreement, after giving seven days' notice, and without paying compensation of any kind to the Delegatee body. In that event the Commission may demand full or partial repayment of any amounts unduly paid, after allowing the Delegatee body to submit its observations.

- 12.3 Prior to or instead of terminating the Agreement as provided for in paragraph 2, the Commission may suspend payments or may challenge the eligibility of expenses as a precautionary measure, informing the Delegatee body immediately.
- 12.4 A procurement contract or grant agreement which has not given rise to any payment within three years of its signature shall be automatically terminated and its funding shall be recovered by the Commission without delay, following the provisions of Article 18.
- 12.5 Unless this Agreement is earlier terminated pursuant to Article 12, the payment obligations of the European Union hereunder shall cease at the "end date", which shall occur 18 months after the end of the Implementation Period as defined in Article 2 of the Special Conditions.

The Commission notifies the Delegatee body of any postponement of the end date. The Commission shall postpone the end date, so as to be able to fulfil its payment obligations, in all cases where the Delegatee has filed the payment request in accordance with contractual provisions or, in case of dispute, until completion of the dispute settlement procedure provided for in Article 13.

ARTICLE 13: APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- 13.1 This Agreement is governed by European Union law, complemented if necessary by the relevant provisions of the Belgian law.
- 13.2 The Parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or fulfilment of the Agreement, including its existence, validity or termination. In default of amicable settlement, any Party may refer the matter to the General Court of the European Union and, in the event of appeal, the Court of Justice of the European Union.

FINANCIAL PROVISIONS

ARTICLE 14: ELIGIBLE COSTS

- 14.1 To be considered eligible as direct costs under this Agreement, costs must be:
- a. be necessary for carrying out the Action, be provided for specifically in the Agreement and comply with the principles of sound financial management, in particular value for money and cost-effectiveness;
 - b. have been actually incurred during the Implementation Period as defined in Article 2.2 of the Special Conditions, as regards the principal activities, whatever the time of actual disbursement by the Delegatee body. However, costs related to final audits and evaluation and closure activities can be incurred up to the submission of the Final Report referred to in Article 2;

- c. be recorded in the Delegatee body's or in its Implementing partners' accounts, be identifiable, backed by effective supporting evidence (originals, as the case may be in electronic form), and verifiable pursuant to the provisions of Article 16.3.

14.2 Subject to the above, and without prejudice to Article 10, the following direct costs may in particular be eligible:

- a. in case of grants: funding provided to grant beneficiaries on the basis of supporting evidence;
- b. in case of procurement contracts: costs incurred with contractors on the basis of supporting evidence;
- c. in case of technical assistance provided by the Delegatee body to third parties by its own means: cost of staff assigned to the Action, corresponding to actual salaries plus social security charges and other remuneration-related costs; travel and subsistence costs for staff taking part in the Action, on the basis of supporting evidence;
- d. costs deriving directly from the requirements of this Agreement (dissemination of information, evaluation specific to the Action, specific reporting for the needs for the Commission, translation...) including financial service costs (in particular bank fees for transfers).

14.3 The following costs shall not be considered as eligible, whether or not presented as being related to the Action:

- a. Debts and debts service charges;
- b. Provisions for losses or potential future liabilities;
- c. Interest owed by the Delegatee body to any third party;
- d. Items already financed from other sources;
- e. Purchases of land or buildings;
- f. Currency exchange losses;
- g. Taxes, duties and charges charged to the Delegatee body (unless the Delegatee body can show it cannot reclaim and the European Union applicable regulations do not exclude coverage of taxes).

14.4 A fix percentage of direct eligible costs, not exceeding 7%, may be claimed as indirect costs by the Delegatee body to cover the administrative overheads incurred for the Action. This percentage will be set out in Article 3.3 of the Special Conditions

Subject to the above, for comparable action and actions where there is more than one donor the amount recovered shall not, in percentage terms, be higher or lower than for other comparable contributions.

Indirect costs are eligible provided that they do not include costs assigned to another heading of the budget of this Agreement. Except for technical assistance provided by the Delegatee body, administrative overheads of the Delegatee body and Implementing partner(s) shall be exclusively covered by the indirect cost percentage.

Indirect costs shall not be eligible where the Agreement concerns the financing of an Action where the Delegatee body is already receiving an operating grant from the European Union during the period in question.

ARTICLE 15: PAYMENTS

- 15.1 Payment procedures as set forth in Article 4 of the Special Conditions shall follow one of the options below:

Option 1: Where the Implementation Period does not exceed 12 months

The Commission will provide a pre-financing of 100% of the amount reflected in Article 3.2 of the Special Conditions within 45 days of receiving the Agreement signed by both Parties.

Option 2: Where the Implementation Period of the Agreement exceeds 12 months

The Commission will provide a pre-financing of 100% of the Commission's part of the forecast budget for the first 12 months of the Action within 45 days of receiving the Agreement signed by both Parties.

Each further instalment will constitute a pre-financing of 100% of the Commission's part of the forecast budget for the subsequent 12-month period (or of the remaining period if shorter) which is financed by it. Such instalment shall be paid by the Commission within 45 days of approving the Implementation Report and accompanied by a request for payment from the Delegatee body conforming to the model attached as Annex VII, provided that at least 70% of the immediately preceding payment (and 100% of all previous payments if any) has been incurred as proven by the relevant report.

Final payment will exclusively relate to costs related to final audits, evaluation and closure activities incurred between the end of the Implementation Period and submission of Final Report. The Commission will pay the balance within 45 days of approving the Final Report.

For the purpose of this Agreement, the funds are considered incurred when they are subject of a formal legal commitment between the Delegatee body (or its Implementing partner(s)) and a third party.

- 15.2 Any report will be deemed approved by the Commission 45 days after its receipt, accompanied by a request for payment conforming to the model attached as Annex VII, if the Commission has not reacted within this period of time.

If the Commission does not intend to approve a report, as submitted, it shall revert to the Delegatee body with a request explaining the reason and specifying the additional information it requires within the first 45-day period. The deadline for approving the report shall be suspended pending the receipt of the requested information. If the Commission deems that a payment request cannot be met, it shall revert to the Delegatee body with a request explaining the reason and specifying the additional information it requires within the second 45-day period. The payment period shall be suspended pending the registration of a properly formulated payment request. Any payment request conforming to the model attached as Annex VII will be deemed approved by the Commission 45 days after the approval of the report by the Commission as set forth in the first paragraph.

Reports shall be presented in accordance with stipulations of Article 2.

Approval of the report shall not imply recognition of their regularity, authenticity, completeness and correctness of the declarations and information contained therein.

15.3 Payments by the Commission shall be deemed to be made on the date on which they are debited from its accounts. If the Delegatee body is established in a State not being a member of the European Union, on expiry of the payment period specified in Article 15.1, the Delegatee body may, within two months of receiving late payment, demand interest at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union on the first day of the month in which payment was due, increased by three and a half percentage points

The interest shall be payable for the period elapsing from the day following expiry of the time limit for payment up to the day of payment. Any partial payment shall first cover the interest.

The interest shall not be treated as an income for the purposes of determining the final amount of European Union financing within the meaning of Article 17. The suspension of payment by the Commission may not be considered as late payment.

15.4 The Commission will make payments in Euro into the bank account referred to in the financial identification form in Annex VI. Where payment is to be made to a bank account which is already known to the Commission, the Delegatee body may provide a copy of the relevant financial identification form.

15.5 Where feasible, the funds paid by the Commission shall be maintained in Euro denominated bank accounts. They may be pooled together with contributions from other donors. They may be exchanged for other currencies in order to facilitate their disbursement.

15.6 If possible, the bank account into which payments are made, will bear interest or offer identifiable equivalent advantages. Where the Delegatee body is established in a State not being a member of the European Union, any interest or equivalent benefits earned by the Delegatee body accruing from funds received from the Commission shall be identified as such and reflected in the Implementation Report(s) and Final Report referred to in Article 2. In such cases, subject to the conditions provided for in the applicable regulations of the European Union:

- (a) For pre-financing equal or below EUR 250 000 (or for crisis management, equal or below EUR 750 000 per agreement at the end of each financial year and for projects of a duration of more than 12 months), any interest or equivalent benefit earned on such pre-financing shall not be due to the Commission;
- (b) For pre-financing exceeding the amounts indicated above and below EUR 750 000 (except in case of crisis management), any interest or equivalent benefit earned on such pre-financing shall be assigned to the Action and deducted from the payment of the final amount due to the Delegatee body, unless the Commission requests the Delegatee body to reimburse the interest generated by pre-financing before the payment of the balance;
- (c) For pre-financing exceeding EUR 750 000 per agreement, the amount of earned interest or equivalent benefits shall be recovered by the Commission at the end of each financial year for each reporting period following the implementation of the Agreement.

In all other cases, the Delegatee body's rules and procedures pertaining to bank interest or equivalent benefits shall apply, and an equal treatment among donors shall be ensured.

ARTICLE 16: ACCOUNTS, TECHNICAL AND FINANCIAL CHECKS

16.1 The Delegatee body shall keep accurate and regular records and accounts of the implementation of the Action. Separate accounts or sub-accounts shall be kept for each Action and shall enable:

- (a) identification of funds transferred by the Commission and related interests or equivalent benefits;
- (b) details of all income and expenditure;
- (c) identification and monitoring of operations with third parties;

The Commission accepts that the accounting regulations and rules of the Delegatee body shall apply.

16.2 The Commission accepts that the financial transactions and financial statements shall be subject to the internal and external auditing procedures laid down in the financial regulations, rules and directives of the Delegatee body. A copy of the audited financial statements shall be submitted to the Commission by the Delegatee body.

16.3 The Delegatee body shall, for a minimum period of seven years from the date of approval of the Final Report and up to the date of the limitation period of any dispute action pursuant to the applicable law governing the Agreement and any contracts or grants concluded under the Agreement:

- (a) Allow the Commission, OLAF and the Court of Auditors, or to any other representative authorised by the Commission to conduct documentary and on-the-spot checks on the use made of European Union funding under the Agreement (including procedures for the award of procurement contracts and grants) and to carry out a full audit, if necessary, on the basis of supporting accounting documents and any other documents relating to the financing of the Action;
- (b) Keep at the disposal of the Commission, OLAF, the Court of Auditors, and any other qualified external body authorised by the Commission to conduct such checks on all original documents or, in exceptional and duly justified cases, on certified copies of original documents relating to the Agreement and on any procurement contracts or grants agreement concluded under the Agreement.

16.4 The Delegatee body also agrees that OLAF may carry out on-the-spot checks and verifications in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities.

16.5 To that end, the Delegatee body undertakes to grant officials of the Commission, OLAF and the Court of Auditors and their authorised agents access to sites and premises at which operations financed under the Agreement are carried out, including their computer systems, and to any documents and computerised data concerning the technical and financial management of those operations, and to take every appropriate measure to facilitate their work. Access by authorised agents of the Commission, OLAF and the Court of Auditors shall be granted on conditions of strict confidentiality with regard to third parties, without prejudice to public law obligations to which they are subject. Documents must be accessible and filed in a manner permitting easy inspection, the Delegatee body being bound to inform the Commission, OLAF or the Court of Auditors of the exact location at which they are kept.

16.6 The Delegatee body shall be notified of on-the-spot missions by agents appointed by the Commission, OLAF or the Court of Auditors.

ARTICLE 17: FINAL AMOUNT

17.1 The final amount of funds due to the Delegatee body is determined with the Commission's approval of the Delegatee body's Final Report. When the Commission approves the Final Report, it shall close the accounts and determine the final amount of funds due to the Delegatee body and any outstanding balance to be recovered without prejudice to Article 16.

- 17.2 The final amount is the difference between the total amount of funds paid by the Commission to the Delegatee body and the total costs incurred by the Delegatee body in accordance with Article 14.
- 17.3 The total final amount to be paid by the Commission to the Delegatee body shall not exceed the maximum contribution laid down in Article 3.2 of the Special Conditions, even if the overall actual and eligible expenditure exceeds the estimated total Budget set out in Annex III.
- 17.4 If the eligible costs at the end of the Action are less than the estimated total cost specified in Article 3.1 of the Special Conditions, the contribution of the European Union may be limited to the amount resulting from multiplying the actual expenditure by the percentage laid down in Article 3.2 of the Special Conditions.

Where the percentage(s) set out in Article 3.2 of the Special Conditions is likely to change in the course of implementation, the Delegatee body shall consult the Commission without delay so as to agree on appropriate measures, in accordance with Article 9.

- 17.5 The Delegatee body accepts that the contribution of the European Union shall be limited to the amount required to balance income and expenditure for the Action and that it may not in any circumstances result in a surplus for the Delegatee body.

In case of unexpended funds, and where the Delegatee body financial statements are not denominated in Euro, the Delegatee body shall specify in the Final Report the amount of the surplus balance in its holding currency together with the estimated amount in Euro and where the exchange rate applied by the Delegatee body can be consulted. This amount shall be converted into Euro using the rate of exchange of the Delegatee body in force on the day when the Commission's internal recovery order is established, which amount is later reflected in the debit note sent to the Delegatee body. The resulting Euro equivalent shall then be refunded to the Commission. This provision shall not apply to the exchange rates used for reporting.

- 17.6 The Commission shall inform the Delegatee body of the approval of the Final Report, indicating, where appropriate, the amount it intends to recover. It shall give the Delegatee body 45 days to submit any observations it may have. If, at the end of this period, the Delegatee body has not submitted any observations regarding the above calculation and/or the basis of the amount to be recovered, the Commission shall issue a recovery order, later reflected in the debit note sent to the Delegatee body, which the Delegatee body shall undertake to carry out under the conditions laid down and by the deadline set out in Article 18.
- 17.7 Any amount paid in excess by the Commission to the Delegatee body shall be recovered pursuant to the provisions of Article 18.
- 17.8 In cases where the Action is suspended or not completed within the Implementation Period of the Agreement, the funds that remain unexpended after all liabilities incurred in this period have been satisfied, including interest earned where applicable, will be reimbursed to the Commission.
- 17.9 Where the Action is not carried out at all, or not carried out properly, in full or on time and without prejudice to its right to terminate the Agreement pursuant to Article 12.2, the Commission may, after allowing the Delegatee body to submit its observations and without prejudice to Article 13, reduce the contribution pro rata the actual implementation of the Action on the terms laid down in the Agreement.

ARTICLE 18: RECOVERY

- 18.1 Where recovery is justified, the Delegatee body shall repay in Euro to the Commission within 45 days of the issuing of a letter (debit note) by which the Commission reclaims from the Delegatee body, any amounts paid in excess of the final amount due.

- 18.2 Payments by the Delegatee body shall be deemed to be made on the date on which they are debited from its account. If the Delegatee body fails to repay by the due date, the sum due shall bear interest at the rate indicated in Article 15.3. The interest shall be payable for the period elapsing from the day following expiry of the time limit for payment up to the day of payment. Any partial payment shall first cover the interest.
- 18.3 Amounts to be repaid to the Commission may be offset against amounts of any kind due to the Delegatee body, after informing it accordingly. The Delegatee body's prior consent is not required. This shall not affect the Parties' option to agree on payment in instalments.
- 18.4 Bank charges incurred from the repayment of amounts due to the Commission shall be borne entirely by the Delegatee body.