

## **ANNEX II**

# **General conditions applicable to European Union-financed grant contracts for external actions**

## **CONTENTS**

Explanations of the terms used throughout these general conditions may be found in the ‘Glossary of terms’, Annex A 1a to the practical guide.

In case of operating grants, the term ‘action’ should be understood as ‘work programme’.

The term ‘coordinator’ refers to the beneficiary identified as the coordinator in the special conditions.

The term ‘beneficiary(ies)’ refers collectively to all beneficiaries, including the coordinator, of the action. When there is only one beneficiary of the action, the terms beneficiary(ies) and coordinator should both be understood as referring to the only beneficiary of the action.

The term ‘party(ies) to this contract’ refers to the party signatory of this contract (i.e. the beneficiary(ies) and the contracting authority).

All references to ‘days’ in this contract are to calendar days, unless otherwise specified.

## Table of content

ARTICLE 1 – GENERAL PROVISIONS .....	3
ARTICLE 2 - REPORTING OBLIGATIONS.....	5
ARTICLE 3 – LIABILITY .....	8
ARTICLE 4 - CONFLICT OF INTERESTS AND CODE OF CONDUCT .....	9
ARTICLE 5 - CONFIDENTIALITY .....	10
ARTICLE 6 – VISIBILITY .....	10
ARTICLE 7 - OWNERSHIP/USE OF RESULTS AND ASSETS .....	11
ARTICLE 8 - MONITORING AND EVALUATION OF THE ACTION.....	12
ARTICLE 9 - AMENDMENT OF THE CONTRACT.....	12
ARTICLE 10 - IMPLEMENTATION .....	13
ARTICLE 11 - EXTENSION AND SUSPENSION .....	14
ARTICLE 12 - TERMINATION OF THIS CONTRACT.....	16
ARTICLE 13 - APPLICABLE LAW AND DISPUTE SETTLEMENT.....	19
ARTICLE 14 - GRANT IN THE FORM OF REIMBURSEMENT OF COSTS .....	19
ARTICLE 14 BIS - GRANT IN THE FORM OF FINANCING NOT LINKED TO COSTS.....	23
ARTICLE 15 - PAYMENT AND INTEREST ON LATE PAYMENT .....	23
ARTICLE 16 – RECORD KEEPING AND CHECKS .....	29
ARTICLE 17 - FINAL AMOUNT OF THE GRANT .....	32
ARTICLE 18 - RECOVERY.....	33

## **GENERAL AND ADMINISTRATIVE PROVISIONS**

### **ARTICLE 1 – GENERAL PROVISIONS**

#### **General principles**

- 1.1. The beneficiary(ies) and the contracting authority are the only parties to this contract. Where the European Commission is not the contracting authority, it is not party to this contract, which confers on the European Commission only the rights and obligations explicitly mentioned in this contract.
- 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 the European Commission**

- 1.3. Any personal data included in the grant contract must be processed by the European Commission in accordance with Regulation (EU) No 2018/1725.

Such data must be processed by the data controller identified in the special conditions solely for implementing, managing and monitoring the grant contract or to protect the financial interests of the EU, 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 European Data Protection Supervisor.

#### **Processing of personal data by the beneficiaries**

- 1.4. The beneficiaries must process personal data under this contract 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. The 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 beneficiary(ies)**

1.5. The beneficiary(ies) 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.

To this purpose, the beneficiary(ies) 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 field;

- b) be responsible for complying with any obligation incumbent on them from this contract jointly or individually;
- c) 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;
- d) ensure that all information to be provided and requests made to the contracting authority are sent via the coordinator;
- e) agree upon appropriate internal arrangements for the internal coordination and representation of the beneficiary(ies) 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).

1.6. The beneficiary(ies) must ensure that no funds or economic resources are made available directly or indirectly to, or for the benefit of, any entities, individuals or groups of individuals designated by the EU as subject to the EU Restrictive measures. This includes, but it is not limited to, contractors, subcontractors, all natural persons linked to this contract, recipients of financial support to third parties. .

The beneficiary(ies) must ensure the application of any relevant measure pursuant to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

### **Role of the coordinator**

1.7. The coordinator shall:

- a) monitor that the action is implemented in accordance with this contract and ensure coordination with all beneficiary(ies) in the implementation of the action;
- b) be the intermediary for all communications between the beneficiary(ies) 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 narrative reports and the requests for payment. Where information from the beneficiary(ies) 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 beneficiary(ies);

- 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 beneficiary(ies), as well as, of any change in the name, legal representative, or postal and electronic address of any of the beneficiary(ies); this last obligation shall continue to apply in the period of five years following the payment of the balance or in the absence of such payment, the transaction. This period shall be three years where the funding is of an amount lower than or equal to EUR 60 000;
- f) be responsible in the event of audits, checks, monitoring or evaluations, third party assessment, as described in Article 16 for providing all the necessary documents, including the accounts of the beneficiary(ies), 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, when requested, under the provisions of Article 4.1 of the special conditions;
- i) establish the payment requests in accordance with this contract;
- j) be the sole recipient, on behalf of all of the beneficiary(ies), of the payments of the contracting authority. The coordinator shall ensure that the appropriate payments are then made to the beneficiary(ies) without unjustified delay;
- k) not delegate or subcontract any, or part of, these tasks to the beneficiary(ies) or other entities.

### **Affiliated entities**

- 1.8. Where the special conditions contain a provision on entities affiliated to a beneficiary, costs incurred or results achieved by such entity may be eligible, provided that they satisfy the same conditions under Articles 14, 14bis, and that the beneficiary ensures that Articles 3, 4, 5, 6, 7, 8, 10 and 16 are also applicable to the entity. References in Articles 11 and 12 to the beneficiary(ies) are to be understood as referring to affiliated entity(ies) too.

## **ARTICLE 2 - REPORTING OBLIGATIONS**

### **Narrative and financial reports**

- 2.1. The beneficiary(ies) shall provide the contracting authority with all required information on the implementation of the action, both during its implementation and at the end. 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 consist of a narrative and a financial report drafted using the templates provided in Annex VI that shall:
- a) cover the action as a whole, regardless of which part of it is financed by the contracting authority;
  - b) provide a full account of all aspects of the action's implementation for the period covered, including in case of simplified cost options or financing not linked to costs, the qualitative and quantitative information needed to demonstrate the fulfilment of the conditions and/or results established in this contract.
  - c) 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;
- d) determine if the intervention logic is still valid and propose any relevant modification including regarding the logical framework matrix, without prejudice to Article 9;
  - e) be drafted in the currency and language of this contract. In case of expenditure in other currencies, it shall detail the rates used in accordance with Articles 2.5 to 2.7 or any derogation set in the special conditions;
  - f) include any update on the communication plan, if such a plan has been requested by the European Commission, as provided by Article 6.2;
  - g) include any relevant reports, publications, press releases and updates related to the action;
  - h) 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 before contract signature.
- 2.2. The report shall include a declaration on honour by the coordinator that the information is full, reliable and true and that the costs declared have been incurred and can be considered as eligible in accordance with this contract.
- 2.3. 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.
- 2.4. The special conditions may set out additional reporting requirements.

### **Rules for currency conversion**

- 2.5. 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 beneficiary(ies)'s 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 beneficiary(ies)'s 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 beneficiary(ies) (or by other donors), the conversion rate to be applied to this balance is the one set in the special condition according to the beneficiary(ies)'s 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.
- 2.6. Unless otherwise provided for in the special conditions, costs incurred in other currencies than the one used in the beneficiary(ies)'s 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.
- 2.7. If the costs were contracted, invoiced or paid directly in the currency set in the special conditions, the beneficiary(ies) declare them as such irrespective of the currency in which it keeps its accounts.

### **Contractual expenditure verification report and detailed breakdown of expenditure**

- 2.8. The coordinator must submit a contractual expenditure verification report and/or detailed breakdown of expenditure in accordance with the following provisions. This obligation does not apply to the part of the action supported by way of financing not linked to costs. For the purposes of application of the thresholds laid down in Articles 3.6 and 3.7, where the grant takes the form of reimbursement of costs and financing not linked to costs, the threshold is to

be applied to the part of the action taking the form of reimbursement of costs.

- 2.9. The coordinator must provide a contractual expenditure verification report as follows:
- a) together with the interim report(s) in case of grants of EUR 5 000 000 or more;
  - b) together with the final report in the case of a grant of more than EUR 100 000.

The contractual expenditure verification report shall conform to the model in Annex VII-A and shall be produced by a practitioner approved by the contracting authority. The practitioner shall meet the requirements set out in the terms of reference for the contractual expenditure verification in Annex VII-A.

The practitioner shall examine whether the costs declared by the beneficiary(ies) and the revenue of the action are real, accurately recorded and eligible under this contract. The contractual expenditure verification report shall cover all expenditure not covered by any previous contractual expenditure verification report.

Where the coordinator is a government department or a public body, the contracting authority may accept to substitute the contractual expenditure verification with a detailed breakdown of expenditure.

The contractual 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 European Commission or by a body authorised to do so on their behalf, according to Article of 5.2 of the special conditions.

The contracting authority may decide to perform the expenditure verification by its own means or by commissioning a third party. In such case this shall be indicated in Article 5 of the special conditions.

- 2.10. For grants of more than EUR 100 000 but less than EUR 5 000 000, a detailed breakdown of expenditure covering the preceding reporting periods not already covered, shall be provided with every report. The detailed breakdown of expenditure shall provide the following information for each cost heading in the financial report and for all underlying entries and transactions: amount of the entry or transaction, any conversion in the currency of the contract and exchange rate used, accounting reference (e.g. ledger, journal or other relevant reference) description of the entry or transaction (detailing the nature of the expenditure) and reference to underlying documents (e.g. invoice number, salary slip or other relevant reference), as well as to the budget line concerned, in line with Articles 16.2 and 16.3. It shall be provided in electronic form and spreadsheet format (excel).

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

### **Third party assessment on achievement of results**

- 2.11. Unless otherwise agreed in the special conditions, for the part of the action supported by way of financing not linked to costs, the coordinator must submit a third party assessment validating the achievement of results reported along with:
- a) the interim report(s) in case of grants of EUR 5 000 000 or more;
  - b) the final report in the case of a grant of more than EUR 100 000.

For the purposes of application of these thresholds, where the grant takes the form of reimbursement of costs and financing not linked to costs, the threshold is to be applied only to the part of the action taking the form of financing not linked to costs.

- 2.12. The third party assessment shall be contracted by the coordinator to validate the achievement of the results and corresponding pre-agreed indicators based on the specifications indicated in Annex I and III, and shall conform to the ad hoc model in Annex VII-B.

- 2.13. The contracting authority may decide to perform an assessment of the results by its own means or by commissioning a third party.

#### **Reporting period and deadline for submission of reports**

- 2.14. The reporting period is intended as a twelve-month period unless otherwise provided for in the special conditions. When the remaining period to the end of the action is up to 18 months, the reporting period shall cover it entirely.
- 2.15. Within 60 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. This is without prejudice to the possibility to submit a report earlier in accordance with the provisions laid down in Articles 15.1, 15.1bis and 15.1ter.
- 2.16. The coordinator shall submit the final report to the contracting authority no later than three months after the implementation period as defined in Article 2 of the special conditions. The deadline for submission of the final report is extended to six months where the coordinator does not have its headquarters in the country where the action is implemented.
- 2.17. 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 this contract.
- 2.18. If the coordinator fails to provide any report (including contractual expenditure verification, detailed breakdown of expenditure, and/or third party assessment) 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, the contracting authority may terminate this contract according to Article 12 2 (a) and (f).
- 2.19. The contracting authority shall approve the report within 60 days of receipt. However, approval shall be made within 90 days of receipt of the report by the contracting authority in any of the following cases:
- a) one beneficiary with affiliated entity(ies);
  - b) if more than one beneficiary is party to this contract;
  - c) if the European Commission is not the contracting authority;
  - d) for grants of EUR 5 000 000 or more;
  - e) for grants taking the form (partly or entirely) of financing not linked to costs as per Article 14bis.

The reports are deemed to be approved if there is no written reply by the contracting authority within the deadlines set above.

#### **ARTICLE 3 – LIABILITY**

- 3.1. The contracting authority cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the beneficiary(ies) while the action is being carried out or as a consequence of the action. The contracting authority cannot, therefore, accept any claim for compensation or increases in payment in connection with such damage or injury.
- 3.2. The beneficiary(ies) shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them while the action is being carried out or as a consequence of the action. The beneficiary(ies) 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 beneficiary(ies) or the beneficiary(ies)'s 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 beneficiary(ies) shall be considered third parties.

## ARTICLE 4 - CONFLICT OF INTERESTS AND CODE OF CONDUCT

### Conflict of interests

- 4.1. The beneficiary(ies) 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 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 beneficiary(ies) shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under this contract, the beneficiary(ies) shall replace, immediately and without compensation from the contracting authority, any member of its staff in such a situation.

### Code of conduct

- 4.5. The beneficiary(ies) 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 clear 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 beneficiary(ies) 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 beneficiary (ies) is aware of any violations (including any allegation) of the abovementioned standards, as well as any other violation of human rights (including any allegation), it shall report in writing within 30 days to the contracting authority.
- 4.7. The beneficiary(ies) (including for the avoidance of doubt, its/their staff) must commit to and ensure the respect of basic EU values, such as respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities.

They shall respect 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 beneficiary(ies) or any related person shall not abuse of its entrusted power for private gain. The beneficiary(ies) or any of its (sub)contractors, 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 this contract or for showing favour or disfavour to any person in relation to this contract. The beneficiary(ies) shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.
- 4.9. The payments to the beneficiary(ies) under this contract shall constitute the only income or benefit it may derive in connection with this contract, with the exception of revenue generating activities. The beneficiary(ies) and its/their staff must not exercise any activity or

receive any advantage inconsistent with their obligations under this contract.

- 4.10. The execution of this contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in this contract or not stemming from a properly concluded contract referring to this 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 this 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 this contract, without prejudice to the adoption of administrative measures, 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 before contract signature and any updates included in the reports.

#### **ARTICLE 5 - CONFIDENTIALITY**

- 5.1. Subject to Article 16, the contracting authority and the beneficiary(ies) 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 beneficiary(ies) 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. Where the European Commission is not the contracting authority it shall still have access to all documents communicated to the contracting authority and shall maintain the same level of confidentiality.

#### **ARTICLE 6 – VISIBILITY**

- 6.1. Unless the European Commission agrees or requests otherwise, the beneficiary(ies) shall take all necessary steps to publicise the fact that the European Union has financed or co-financed the action. Such measures shall comply with the latest Communication and Visibility requirements for EU-funded external action, laid down and published by the European Commission or with any other guidelines agreed between the European Commission and the beneficiary(ies).
- 6.2. Upon request of the European Commission, the coordinator shall submit a communication plan for the approval of the European Commission and report on its implementation in accordance with Article 2.
- 6.3. In particular, the beneficiary(ies) shall mention the action and the European Union's financial contribution in information given to the final recipients of the action, in its internal and annual reports, and in any dealings with the media. It shall display the European Union logo wherever appropriate.
- 6.4. Any communication, dissemination activity, notice or publication by the beneficiary(ies) concerning the action, including those given at conferences or seminars, in whatever form and by whatever medium including the internet, shall use factually accurate information,

specify that the action has received European Union funding and include the following statement (translated into local languages where appropriate): *'Funded by the European Union. Views and opinions expressed are those of the author(s) only and do not necessarily reflect those of the European Union or [name of the contracting authority]. Neither the European Union nor the contracting authority can be held responsible for them'*.

- 6.5. The beneficiary(ies) acknowledges that the contracting authority and the European Commission (where it is not the contracting authority) may publish: (i) whether the beneficiary(ies) is a natural or legal person; (ii) the full legal name in case of legal person and their VAT identification number or tax identification number where available or another unique identifier established at country level, the first and last name of the recipient in the case of a natural person; (iii) the locality of the beneficiary(ies), namely the address in case of legal persons or region on NUTS2 level or third country for natural persons; (iv) the amount of the grant (split per beneficiary); (v) the nature and purpose of the contract. This publication may be waived where disclosure would risk threatening the rights of the beneficiary(ies) or harming their commercial interests.
- 6.6. The Parties will consult immediately and endeavour to remedy any detected shortcomings in implementing the visibility and, if applicable, communication requirements set out in this Article and in the special conditions. Failure to perform the obligations set out in this Article and in the special conditions can constitute a breach of contractual obligations, and can lead to corresponding measures taken by the Contracting Authority, including suspension of payment as stated in Article 15.5 and/or a reduction of the final payment as stated in Article 17.2.

#### **ARTICLE 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 beneficiary(ies).
- 7.2. Without prejudice to Article 7.1, the beneficiary(ies) grant the contracting authority (and the European Commission or the Partner country where it is not 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 beneficiary(ies) shall ensure that it has all rights to use any pre-existing intellectual property rights necessary to implement this contract.
- 7.4. In case natural, recognisable persons are depicted in a photograph or film, 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 films shot 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 beneficiary(ies) may transfer these items to:

- a) local authorities;
- b) local beneficiary(ies);
- c) local affiliated entity(ies);

d) another action funded by the European Union;  
or, exceptionally, retain ownership of these items.

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 use, in due time and at the latest with the submission of the final report.

In no event may the end use jeopardise the sustainability of the action or result in a profit for the beneficiary(ies).

In every circumstance, the final owner shall use the equipment, vehicles and supplies paid for by the budget for the action in compliance with EU values referred to in Article 4.

- 7.6. Beneficiaries shall substantiate transfer of any equipment, vehicles and supplies through the form in Annex IX and in accordance with national law. The beneficiaries shall submit together with the final report part A of Annex IX for items with a purchase cost equal to or exceeding EUR 5 000. Part B of Annex IX listing items with a purchase cost below EUR 5 000 shall be kept by the beneficiary(ies) for control purposes in accordance with the record keeping obligations laid down in Article 16.

## **ARTICLE 8 - MONITORING AND EVALUATION OF THE ACTION**

- 8.1. The beneficiary(ies) shall execute the planned activities regarding monitoring and evaluation as described in the description of the action in Annex I. Representatives of the European Commission shall be invited to participate in the main monitoring and in the evaluation exercises relating to the performance of the action performed by the beneficiary(ies). The European Commission 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.
- 8.2. If the European Commission carries out an interim or ex post evaluation, a monitoring exercise, or a third-party assessment of the results achieved, the coordinator shall undertake to provide it and/or the persons authorised by it with the documents or information necessary for the evaluation, monitoring exercise, or third-party assessment.
- 8.3. If either the beneficiary(ies) or the European Commission carries out or commissions an evaluation or monitoring exercise in the course of the action, including a third-party assessment of the results achieved, it shall provide the other party 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 European Commission with the final narrative report (Annex VI).

## **ARTICLE 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 before the final payment.
- 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 applicants. The maximum grant referred to in Article 3.2 of the special conditions shall not be increased.
- 9.3. If an amendment is requested by the beneficiary(ies), 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 and must inform the contracting authority accordingly, in writing as soon as possible and at the latest in the next report. This method may not be used to amend any of the following: (i) the amounts for indirect costs, contingency reserve, in-kind contributions, or volunteers' work; (ii) the amounts or rates of simplified cost options; (iii) the amounts of financing not linked to costs defined in this contract.

Subject to the subparagraph below, changes in the description of the action and the logical framework in Annex I that affect the expected results (impact, outcomes, outputs), or in the budget regarding the global amount for financial support to third parties (within the limit laid down in Article 10.6) shall be agreed in writing with the contracting authority before the modification takes place. Approved changes must be explained in the next report.

Where the grant takes the form of financing not linked to costs, changes in expected results (impact, outcomes, outputs), indicators and targets related to the financing not linked to costs component as reflected in Annex III shall be made pursuant to Article 9.3.

Changes of address or practitioner for the contractual expenditure verification or the entity or person commissioned to carry out the assessment of results referred to in Article 2 may simply be notified by the coordinator. However, in duly substantiated circumstances, the contracting authority may oppose the coordinator's choice of the practitioner or third party for the assessment of results.

Changes of the bank account require an amendment pursuant to Article 9.3.

- 9.5. The contracting authority reserves the right to require that the practitioner for the contractual expenditure verification or the third party for the assessment of results referred to in Article 5 of the special conditions will be replaced if considerations which were unknown when this contract was signed cast doubt on their independence or professional standards.
- 9.6. 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 this contract.

## **ARTICLE 10 - IMPLEMENTATION**

### **Implementation contracts**

- 10.1. If the implementation of the action requires the beneficiary(ies) to procure goods, works or services, it shall respect the contract-award rules and rules of nationality and origin set out in Annex IV of this contract.
- 10.2. To the extent relevant, the beneficiary(ies) 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 narrative 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. Beneficiary(ies) may subcontract tasks forming part of the action. In that case, beneficiary(ies) shall ensure that, in addition to the conditions specified in Article 10.1 to

10.3, the following conditions are also complied with:

- a) subcontracting does not cover core tasks of the action;
- b) recourse to subcontracting is justified because of the nature of the action and what is necessary for its implementation;
- c) the estimated costs of the subcontracting are clearly identifiable in the estimated budget set out in Annex III;
- d) any recourse to subcontracting, if not provided for in Annex I, is communicated by the beneficiary and approved in advance by the contracting authority.

#### **Financial support to third parties**

- 10.5. In order to support the achievement of the objectives of the action, and in particular where the implementation of the action requires financial support to be given to third parties, the beneficiary(ies) may award financial support if so provided by the special conditions.
- 10.6. The maximum amount of financial support shall be limited to EUR 60 000 per each third party, unless otherwise stated in the special conditions, because achieving the objectives of the actions would otherwise be impossible or overly difficult.
- 10.7. The beneficiary(ies) shall provide this financial support in accordance with the modalities laid down in the description of the action in Annex I, namely: (i) the persons or categories of persons which may receive financial support; (ii) the criteria for the selection of the third parties recipient of this financial support; (iii) the fixed list of types of activities which may receive financial support; (iv) criteria for determining the exact amount of financial support.
- 10.8. The coordinator shall provide in its narrative report to the contracting authority a comprehensive and detailed description of the award and implementation of any financial support given, including: (i) the selection procedure, (ii) the recipients (categories of recipients in case of natural persons, or full legal name of recipients in case of legal persons); (iii) the results achieved; (iv) the problems encountered and solutions found; (v) the activities carried out as well as a timetable of the activities which still need to be carried out. The coordinator shall also provide in its financial report the information required in the templates provided in Annex VI.
- 10.9. To the extent relevant, the beneficiary(ies) shall ensure that the conditions applicable to them under Articles 3, 4 (except for 4.5, 4.9, 4.10), 6 and 16 of these general conditions are also applicable to third parties awarded financial support.

### **ARTICLE 11 - EXTENSION AND SUSPENSION**

#### **Extension**

- 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 as referred to in Article 11.8, 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 this contract is not terminated, the beneficiary(ies) shall endeavour to minimise the time of its 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 beneficiary(ies) to suspend implementation of the action, or any part thereof, if exceptional circumstances as referred to in Article 11.8, 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.

The contracting authority may suspend this contract or the participation of a beneficiary(ies) in this contract in application of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

- 11.5. The coordinator or the contracting authority may then terminate this contract in accordance with Article 12.1. If this contract is not terminated, the beneficiary(ies) shall endeavour to minimise the time of its 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 beneficiary(ies) 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 beneficiary(ies) 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.

#### **Exceptional circumstances**

- 11.8. The term exceptional circumstances, as used herein covers any unforeseeable events and exceptional situation or event beyond the parties control which prevents either of them from fulfilling any of their obligations under this contract, which may not be attributed to error or negligence on either part and which could not have been avoided by the exercise of due diligence, 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. Defects in equipment or material or delays in making them available cannot be invoked unless they stem directly from an exceptional circumstance. Financial problems of the beneficiary(ies) cannot be invoked either. A decision of the European Union to suspend the cooperation with the partner country or a change of EU policy in case of a crisis situation are considered to be an exceptional circumstance when it implies suspending funding under this contract.
- 11.9. The parties shall not be held in breach of their contractual obligations if it is 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 this contract that may be necessary to adapt the action to the new implementing conditions. This Article 11.10 does not apply in case of an operating grant.

## **ARTICLE 12 - TERMINATION OF THIS CONTRACT**

### **Termination in case of exceptional circumstances**

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(ies) in this contract without any indemnity on its part when:

- a) a beneficiary(ies) 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) a beneficiary(ies) or any person that assumes unlimited liability for the debts of the beneficiary(ies) 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(ies);
- c) a beneficiary(ies), 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 the beneficiary(ies) 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 a beneficiary(ies)'s legal, financial, technical, organisational or ownership situation or the termination of the participation of a beneficiary(ies) substantially affects the implementation of this contract or calls into question the decision awarding the grant;
- f) a beneficiary(ies) 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) a beneficiary(ies) 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 a beneficiary(ies) has resisted an investigation, check or audit or has evidence that a beneficiary(ies), 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) a beneficiary(ies) is subject to an administrative measure referred to in Article 12.8;
- j) the contracting authority has evidence that a beneficiary(ies) is subject to a conflict of interests;
- k) the European Commission has evidence that a beneficiary(ies) has committed systemic or recurrent errors or irregularities, fraud, or serious breach of obligations under other grants financed by the European Union and awarded to that specific beneficiary(ies) under similar conditions, provided that those errors, irregularities, fraud or serious breach of obligations have a material impact on this grant;
- l) in application of Regulation (EU, Euratom) No 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget;
- m) where the coordinator fails to provide an acceptable financial guarantee when requested in the special conditions or to replace it under Article 15.

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(ies) and/or to persons having powers of representation, decision or control with regard to the beneficiary(ies).

- 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(ies). 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 a beneficiary(ies) participation by the coordinator**

- 12.4. In duly justified cases, the participation of a beneficiary(ies) 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(ies) 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 this change does not call into question the grant award decision or be contrary to the equal treatment of applicants, and the contracting authority agrees, this contract shall be amended accordingly in conformity with Article 9.

#### **End date**

- 12.5. The payment obligations of the contracting authority or of the European Commission 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. For actions comprising reimbursement of costs and financing not linked to costs, where the special conditions lay down two implementation periods, and one is longer than the other, the longest one shall be taken into consideration for the purpose of determining the end date.

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 beneficiary(ies) shall be entitled to payment only for the part of the action carried out or for the part of the results achieved in case of financing not linked to costs, excluding costs relating to current commitments that are due to be executed after termination.

To this purpose, the coordinator shall submit to the contracting authority a final report (including contractual expenditure verification report, expenditure verification report, third party assessment as applicable) together with the payment request, within the time limit set by Article 2.16 starting from the date of termination.

In the event of termination according to Article 12.1, and only for grants based on reimbursement of costs, 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 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 measures**

- 12.8. Without prejudice to the application of other remedies laid down in this contract, a decision on exclusion from all contracts and grants financed by the EU, may be adopted, after an adversarial procedure in line with the applicable Financial Regulation, upon the beneficiary(ies) 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 this contract or has been circumventing fiscal, social or any other applicable legal obligations (including those related to working rights, employment and labour conditions), 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 or has resisted an investigation, check or audit. 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 decision of exclusion, the beneficiary(ies) may 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 beneficiary(ies) or call on the appropriate guarantee.

- 12.11. The decision to impose these administrative measures may be published on a dedicated internet site, explicitly naming the beneficiary(ies).

## **ARTICLE 13 - APPLICABLE LAW AND DISPUTE SETTLEMENT**

- 13.1. This contract shall be governed by the law of the country of the contracting authority or, where the contracting authority is the European Commission, by the applicable European Union law complemented where necessary by the law of Belgium.
- 13.2. The parties to this contract shall do everything possible to settle amicably 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 reach 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, the dispute may by common agreement of the coordinator and the contracting authority be submitted for conciliation by the European Commission if it is not the contracting authority. If no settlement is reached within 120 days of the opening of the conciliation procedure, each party may notify the other that it considers the procedure to have failed.
- 13.4. In the event of failure of the above procedures, each party to this contract may submit the dispute to the courts of the country of the contracting authority, or to the Brussels courts where the contracting authority is the European Commission.

## **FINANCIAL PROVISIONS**

### **ARTICLE 14 - GRANT IN THE FORM OF REIMBURSEMENT OF COSTS**

#### **General cost eligibility criteria**

- 14.1. In order to be eligible, costs must meet the eligibility conditions laid down in Article 14.2 and 14.3.
- 14.2. Actual costs are eligible if:
- a) they are actually incurred -as per the definition below- by the beneficiary(ies) as defined in b);
  - b) 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 shall relate to activities performed and accepted during the implementation period. Costs relating to supplies and works shall relate to delivery and installation of items during the implementation period confirmed by provisional acceptance. Signature of a contract, placing of an order, making an advance payment 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 beneficiary(ies) and/or affiliated entity(ies) 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 contractual expenditure verification, third party assessment, audit and final evaluation of the action, which may be incurred and paid after the implementation period of the action;
  - (iv) procedures to award contracts, as referred to in Article 10, may have been initiated and contracts may be concluded by the beneficiary(ies) before the start of the implementation period of the action, provided the provisions of Annex IV have been respected.
- c) they are indicated in the estimated overall budget for the action;
  - d) they are necessary for the implementation of the action;
  - e) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary(ies) and determined according to the applicable accounting standards and the usual cost accounting practices applicable to the beneficiary(ies);
  - f) they comply with the requirements of applicable tax and social legislation;
  - g) they are reasonable, justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

14.3. Costs declared under simplified cost options shall satisfy the following criteria:

- a) they are indicated in the estimated overall budget for the action and for the same value;
- b) the activities must be properly implemented in accordance with the description of the action in Annex I;
- c) in case of lump sums, the work must be properly implemented by the beneficiary(ies) in accordance with the description of the action in Annex I and results/outputs must be achieved during the implementation of the action as specified in Article 2 of the special conditions;
- d) in case of unit costs, units shall be necessary for the implementation of the action and the number of units must be identifiable and verifiable, in particular supported by records and documentation;
- e) in case of flat rates, the costs to which the flat-rate is applied must be eligible and relate to the implementation period of the action as specified in Article 2 of the special conditions (except for costs related to final reports, including contractual expenditure verification, third party assessment, audit and final evaluation of the action, which may be incurred and paid after the implementation period of the action).

#### **Specific eligibility criteria for direct costs**

14.4. In addition to the general eligibility conditions, and, where relevant, to the provisions of Annex IV being respected, the following direct costs of the beneficiary(ies) 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 beneficiary(ies), unless it is justified by showing that it is essential to carry out the action;
- 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 beneficiary(ies) according to its rules and regulations. In addition, the 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 when required in Article 7.5;

- 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 beneficiary(ies) 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 this contract (dissemination of information, evaluation specific to the action, contractual expenditure verification, third party assessment of results, translation, reproduction, insurance, etc.) including financial service costs (in particular the cost of transfers and financial guarantees where required according to this contract);
- h) duties, taxes and charges, including VAT, related to the purposes of the action, paid and not recoverable by the beneficiary(ies), unless otherwise provided in the special conditions;
- i) overheads, in the case of an operating grant;
- j) costs for providing support to third parties in accordance with Article 10;
- k) 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:
  - (i) the need for setting up or using a project office is recognised by the contracting authority in the special conditions;
  - (ii) the description of the project office, including the services or resources dedicated to its general maintenance, its overall capacity and (where applicable) the distribution key are provided in the description of the action in Annex I and the budget;
  - (iii) (where applicable) the distribution key reasonably reflects the portion of the resources or services needed by and actually used for the action, is fair and not fluctuant;
  - (iv) the costs concerned comply with the cost eligibility criteria referred to in Article 14.1;
  - (v) they fall within one of the following categories:
    - costs of ancillary staff directly assigned to the general maintenance of the project office (e.g. cleaning, IT maintenance);
    - depreciation costs, rental costs or lease of building, equipment and assets;
    - costs of maintenance and repair contracts;
    - costs of consumables and supplies specifically dedicated to the action;
    - costs of IT and telecommunication services;
    - costs of facility management contracts including security fees and insurance costs;
    - duties, taxes and charges, including VAT, related to the purposes of the action, paid and not recoverable by the beneficiary(ies), unless otherwise provided in the special conditions.

### **Contingency reserve**

14.5. If the budget in Annex III contains a reserve for contingencies and/or possible fluctuations in exchange rates it can only be used with the prior written authorisation of the contracting authority, upon duly justified request by the coordinator for adjustments necessary in the light of unforeseeable changes of circumstances on the ground. This reserve may not exceed 5% of the direct eligible costs.

### **Indirect costs**

- 14.6. 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 general conditions of eligibility laid down in Article 14. However, they are incurred by the beneficiary(ies) in connection with the eligible direct costs for the action.

They may not include ineligible costs as referred to in Article 14.9 or costs already declared under another costs item or heading of the budget of this contract.

To the extent that it would not generate a profit within the framework of the action, a fixed percentage of the total amount of direct eligible costs of the action (except the value of volunteers' work and project office costs) 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.

Article 14.6 does not apply in the case of an operating grant. If any of the beneficiary(ies) is in receipt of an operating grant financed by the EU, it may not claim indirect costs on its incurred costs within the budget for the action.

### **In kind contributions**

- 14.7. Any contributions in kind, which shall be listed separately in the budget in Annex III, do not represent actual expenditure and are not eligible costs. Unless otherwise specified in the special conditions, contributions in kind may not be treated as co-financing by the beneficiary(ies).

If contributions in kind are accepted as co-financing, the beneficiary(ies) shall ensure they comply with national tax and social security rules.

Notwithstanding the above, if the description of the action in Annex I provides for contributions in kind, such contributions have to be provided.

### **Volunteers' work**

- 14.8. The work of volunteers for the action (i.e. persons who freely work for an organisation, on a non-compulsory basis and without being paid by the beneficiary(ies)) may be declared as costs of staff, if and as declared eligible in the award procedure, if they fulfil the general eligibility conditions and are calculated as unit costs approved by the European Commission. In all cases, work of volunteers:

- a) may not exceed the maximum amount for volunteers for the action (which corresponds to 50% of the estimated eligible costs other than the costs for volunteers' work); and
- b) may not make the maximum EU contribution to costs higher than the total eligible costs without volunteers.

This type of costs must be presented separately from other eligible costs in the budget. The value of the volunteers' work must always be excluded from the calculation of indirect costs.

### **Non-eligible costs**

- 14.9. Costs that do not comply with the conditions set out above are not eligible. In addition, 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 beneficiary(ies) and financed by another action or work programme receiving a European Union grant (including through the European Development Fund);
- 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 (except for volunteers' work);
- h) salary costs of the personnel of national administrations, unless otherwise specified in the special conditions and only to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the action were not undertaken;
- i) bonuses included in costs of staff;
- j) negative interest charged by banks or other financial institutions.

#### **ARTICLE 14 BIS - GRANT IN THE FORM OF FINANCING NOT LINKED TO COSTS**

- 14bis.1 Where the grant takes the form, entirely or partly, of financing not linked to costs, the grant is subject to the achievement of results measured by reference to previously set milestones or through performance indicators.
- 14bis.2 Results must be achieved during the implementation period of the action. The relevant results and the means to measure their achievement are laid down in the description of the action in Annex I. The EU contribution shall be paid in accordance with the achieved result set out in the budget in Annex III.
- 14bis.3 The part of the action that takes the form of financing not linked to costs is not subject to Article 14. The beneficiary(ies) do not have to report on costs incurred linked to the achievement of results. However, the beneficiary(ies) shall submit any necessary supporting documents, including where relevant accounting documents, to prove that the results triggering the payment as defined in the description of the action in Annex I and the budget in Annex III have been achieved.

#### **ARTICLE 15 - PAYMENT AND INTEREST ON LATE PAYMENT**

##### **Payment procedures**

- 15.1 For actions where the grant only takes the form of reimbursement of costs, the grant shall be paid to the coordinator following one of the payment procedures below, as set out in Article 4 of the special conditions.

##### **Option 1: Actions with an implementation period of 12 months or less or grant of EUR 100 000 or less:**

- (i) an initial pre-financing payment of 80 % of the maximum amount referred to in Article 3.2 of the special conditions (excluding the reserve for contingencies);
- (ii) the balance of the final amount of the grant.

Option 2: Actions with an implementation period of more than 12 months and grant of more than EUR 100 000:

- (i) an initial pre-financing payment of 100 % of the part of the estimated budget financed by the contracting authority for the first reporting period (excluding the reserve for contingencies). 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) one or more further pre-financing payments which in no event shall, in total, exceed 90 % of the amount referred to in Article 3.2 of the special conditions, excluding the reserve for contingencies. The further pre-financing for the following reporting period as defined in Article 2.14 shall be calculated as follows:
  - if at the end of the reporting period the part financed by the contracting authority composed of **(i) the expenditure actually incurred for actual costs, or incurred for simplified cost options and, (ii) for financial support to third parties, legal commitments** entered into between the coordinator (or its co-beneficiaries and affiliated entities) and third parties, is equal to or more than 70 % of the previous payment (and 100 % of any previous payments), the pre-financing shall amount to 100 % of the part of the estimated budget financed by the contracting authority (excluding the reserve for contingencies).
  - if at the end of the reporting period the part of the expenditure financed by the contracting authority composed of **(i) the expenditure actually incurred for actual costs, or incurred for simplified cost options, and, (ii) for financial support to third parties, legal commitments** entered into between the coordinator (or its co-beneficiaries and affiliated entities) and third parties, is less than 70 % of the previous payment (and 100 % of any previous payments), the maximum pre-financing (100 % of the part of the estimated budget financed by the contracting authority excluding the reserve for contingencies) shall be reduced by the amount corresponding to the difference between 70% of the previous pre-financing payment and the part of expenditure as described above which is financed by the contracting authority.

The coordinator may submit a payment request for further pre-financing before the end of the reporting period as soon as the part of the expenditure financed by the contracting authority and composed of the expenditure actually incurred for actual costs, or incurred for simplified cost options (thus excluding advance payments), and, for financial support to third parties, also including legal commitments, 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.

In addition, for grants of EUR 5 000 000 or more, a further pre-financing payment may be made only if the amount of the eligible expenditure incurred and approved by the contracting authority is at least equal to the total amount of all the previous payments excluding the last one;

- (iii) the balance of the final amount of the grant.

Option 3: All actions:

- (i) the final amount of the grant.

15.1bis For actions where the grant only takes the form of financing not linked to costs, the grant shall be paid to the coordinator following the payment procedures below:

Option 1: Actions with an implementation period of 12 months or less or grant of EUR 100 000 or less:

- (i) an initial pre-financing payment of 80 % of the maximum amount referred to in Article 3.1 of the special conditions;
- (ii) the balance of the final amount of the grant.

Option 2: Actions with an implementation period of more than 12 months and grant of more than EUR 100 000:

- (i) an initial pre-financing payment of 100% of the value of the indicators planned to be achieved during the first reporting period in accordance with the values set in the description of the action in Annex I and budget in Annex III.
- (ii) one or more further pre-financing payments which in no event shall, in total, exceed 90 % of the amount referred to in Article 3.1 of the special conditions. The further pre-financing for the following reporting period as defined in Article 2.14 shall be calculated as follows:
  - if at the end of the reporting period the value of the indicators achieved is equal to or more than 70 % of the previous payment (and 100 % of any previous payments), the pre-financing shall amount to 100 % of the value of the indicators planned to be achieved during the following reporting period in accordance with the values set in the description of the action in Annex I and budget in Annex III;
  - if at the end of the reporting period the value of the of the indicators achieved is less than 70 % of the previous payment (and 100 % of any previous payments), the maximum pre-financing (100 % of the of value of the indicators planned to be achieved during the following reporting period) shall be reduced by the amount corresponding to the difference between 70% of the previous pre-financing payment and the part of the value of the indicators achieved.

The coordinator may submit a payment request for further pre-financing before the end of the reporting period, as soon as the value of the indicators achieved 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.

In addition, for grants of EUR 5 000 000 or more, a further pre-financing payment may be made only if the amount of the value of the results achieved approved by the contracting authority is at least equal to the total amount of all the previous payments excluding the last one.

- (iii) the balance of the final amount of the grant.

Option 3: All actions

- (i) the final amount of the grant.

15.1ter For actions where the grant takes the form of financing not linked to costs and reimbursement of costs, the grant shall be paid to the coordinator following the payment procedures below:

Option 1: Actions with an implementation period of 12 months or less or grant of EUR 100 00 or less:

- (i) an initial pre-financing payment of 80% of the maximum amounts referred to in second subparagraph of Article 3.2 (excluding the reserve for contingencies) and Article 3.3 of the special conditions;
- (ii) the balance of the final amount of the grant calculated for each part of the action.

Option 2: Actions with an implementation period of more than 12 months and grant of more than EUR 100 000:

- (i) an initial pre-financing payment covering:
  - for the part of the action taking the form of reimbursement of costs: 100 % of the part of the estimated budget financed by the contracting authority for the first reporting period (excluding the reserve for contingencies). The part of the budget financed by the contracting authority is calculated by applying the percentage set out in third subparagraph of Article 3.2 of the special conditions;
  - for the part of the action taking the form of financing not linked to costs: 100% of the value of the indicators planned to be achieved during the first reporting period in accordance with the values set in the description of the action in Annex I and budget in Annex III.
- (ii) one or more further pre-financing payments which in no event shall, in total, exceed 90 % of the amounts referred to in second subparagraph of Article 3.2 (excluding the reserve for contingencies) and Article 3.3 of the special conditions. The further pre-financing for the following reporting period as defined in Article 2.14 shall be calculated as follows:
  - if at the end of the reporting period the addition of the value of the indicators achieved (for the part of the action taking the form of financing not linked to costs) and the part financed by the contracting authority composed of (i) the expenditure actually incurred for actual costs, or incurred for simplified cost options, and, (ii) for financial support to third parties, legal commitments entered into between the coordinator (or its co-beneficiaries and affiliated entities) and third parties (for the part of the action taking the form of reimbursement of costs) is equal to or more than 70 % of the previous payment (and 100 % of any previous payments), the pre-financing shall amount to 100 % of the value of the indicators planned to be achieved during the following reporting period in accordance with the values set in the description of the action in Annex I and budget in Annex III (for the part of the action taking the form of financing not linked to costs) and 100% of the part of the estimated budget financed by the contracting authority (excluding the reserve for contingencies) (for the part of the action taking the form of reimbursement of costs);
  - if at the end of the reporting period the addition of the value of the indicators achieved (for the part of the action taking the form of financing not linked to costs) and the part of the expenditure (actually) incurred financed by the contracting authority (for the part of the action taking the form of reimbursement of costs) is less than 70 % of the previous payment (and 100 % of any previous payments), the maximum pre-financing (as described in previous indent) shall be reduced by the amount corresponding to the difference between 70% of the previous pre-

financing payment and the addition of the part of the value of the indicators achieved (for the part of the action taking the form of financing not linked to costs) and the part of expenditure (actually) incurred which is financed by the contracting authority (for the part of the action taking the form of reimbursement of costs).

The coordinator may submit a payment request for further pre-financing before the end of the reporting period, as soon as the addition of the value of the indicators achieved (for the part of the action taking the form of financing not linked to costs) and the part financed by the contracting authority composed of (i) the expenditure actually incurred for actual costs, or incurred for simplified cost options and, (ii) for financial support to third parties, legal commitments entered into between the coordinator (or its co-beneficiaries and affiliated entities) and third parties (for the part of the action taking the form of reimbursement of costs) 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.

In addition, for grants of EUR 5 000 000 or more, a further pre-financing payment may be made only if the amount resulting from the addition of the value of the results achieved approved by the contracting authority (for the part of the action taking the form of financing not linked to costs) and of the eligible expenditure incurred and approved by the contracting authority is at least equal to the total amount of all the previous payments excluding the last one.

- (iii) the balance of the final amount of the grant calculated for each part of the action.

#### Option 3: All actions

- (i) the final amount of the grant calculated for each part of the action.

#### **Payment request**

- 15.2. The payment request shall be drafted using the model in Annex V and shall be accompanied by:
- a) a narrative 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) in case of grants taking the form of reimbursement of costs, a contractual expenditure verification report and/or a detailed breakdown of expenditure if required in line with Article 2;
  - d) in case of financing not linked to costs, a third-party assessment of the achievement of the results, unless otherwise provided in the special conditions and in line with Article 2.

For the purposes of the initial pre-financing payment, the signed contract serves as payment request. If so required by the special conditions, a financial guarantee shall be submitted by the coordinator prior to the payment of the initial pre-financing in accordance with Article 15.7.

#### **Bank account, currency of payments and payment deadlines**

- 15.3. Payments shall be made to the coordinator to the bank account referred to in the special conditions, which shall allow the identification of the funds paid by the contracting authority. Payment shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information provided. The contracting authority shall make payments in the currency set in the special conditions.

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 60 days of receipt of the payment request by the contracting authority.

However, further pre-financing payments and payments of the balance shall be made within 90 days of receipt of the payment request by the contracting authority in any of the following cases:

- a) one beneficiary with affiliated entity(ies);
- b) if more than one beneficiary is party to this contract;
- c) if the European Commission is not the contracting authority;
- d) for grants of EUR 5 000 000 or more;
- e) for grants taking the form (partly or entirely) of financing not linked to costs as per Article 14bis.

The payment request is deemed accepted if there is no written reply by the contracting authority within the deadlines set above.

#### **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 provided, or;
- c) the financial guarantee where required by the special conditions has not been submitted or the coordinator fails to replace it when requested by the contracting authority;
- d) clarifications, modifications or additional information to the narrative or financial reports are needed, or;
- e) in case of actions financed by way of reimbursement of eligible costs, 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; in case of actions financed by way of financing not linked to costs, there are doubts on the achievement of the results and it is necessary to carry out additional checks, including a third party assessment or;
- f) it is necessary to verify, including through an OLAF or EPPO investigation, whether presumed breach of obligations, irregularities or fraud have occurred in the grant award procedure or the implementation of the action, or;
- g) it is necessary to verify whether the beneficiary(ies) have breached any substantial obligations under this contract, or;
- h) the visibility and, if applicable, communication obligations set out in Article 6 or in the special conditions are not complied with, or;
- i) in application of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

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 coordinator is paid after the time limit, it shall be entitled to default interest calculated 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 this contract.

### **Financial guarantee**

- 15.7. If the grant exceeds EUR 60 000 the contracting authority may request an original financial guarantee for the amount of the initial pre-financing payment.

The guarantee shall be denominated in euro or in the currency of the contracting authority, conforming to the model in Annex VIII. 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.

The coordinator shall replace the guarantee if during the execution of the contract, the entity providing the guarantee (i) is not able or willing to abide by its commitments; (ii) is not authorised to issue guarantees to contracting authorities; (iii) appears not to be financially reliable, or if the financial guarantee ceases to be valid. If the coordinator fails to do so, the contracting authority shall apply a deduction equal to the amount of the guarantee from future payments due to the coordinator under this contract. It shall also 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 this contract.

## **ARTICLE 16 – RECORD KEEPING AND CHECKS**

### **Keeping records and supporting documents**

- 16.1. Beneficiary(ies) must, for at least five years following the payment of the balance or, in the absence of such payment, the transaction, and for three years in case of grants not exceeding

EUR 60 000, and in any case until any on-going audit, check, verification, assessment, appeal, litigation or pursuit of claim has been disposed of, keep records and other supporting documents to prove the proper implementation of the action in line with the accepted standards in the respective field (if any).

16.2. In addition, beneficiary(ies) must, for the same period, keep the following to justify the amounts declared:

- a) for actual costs: adequate records and supporting documents to prove the costs declared (see Article 16.3). In addition, the beneficiaries' usual accounting and internal control procedures must enable direct reconciliation between the amounts declared in the financial reports, the amounts recorded in their accounts and the amounts stated in the supporting documents;
- b) for the following simplified costs options: the beneficiary(ies) do not need to keep specific records on the actual costs incurred, but must keep:
  - (i) for unit costs: adequate records and supporting documents to prove the number of units declared;
  - (ii) for lump sum costs: adequate records and supporting documents to prove proper implementation of the action as described in the description of the action in Annex I;
- c) for simplified cost options in the form of flat rates: adequate records and supporting documents to prove the eligibility of the costs to which the flat-rate is applied;
- d) for financing not linked to costs: adequate records and supporting documents to prove the achievement of the results as described in the description of the action in Annex I and budget in Annex III.

16.3. Moreover, for actions financed by way of reimbursement of actual costs, the following is needed:

- a) accounting records (computerised or manual) from the beneficiary(ies)'s 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) for staff costs: as contracts, payroll records and salary statements. Time worked for the beneficiary under the action must be supported by declarations signed monthly by the person and their supervisor, unless another reliable time-record system is in place; the contracting authority may accept alternative evidence supporting the time worked for the action declared, if it considers that it offers an adequate level of assurance. 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.
- 16.4. The records and supporting documents shall be easily accessible and filed so as to facilitate their examination and the coordinator shall inform the contracting authority of their precise location.
- 16.5. All the supporting documents shall be available either in the original form, including in electronic form, or as a copy. Digital and digitalised documents are considered originals if they are authorised by the applicable national law.

**Right of access**

- 16.6. The beneficiary(ies) shall allow verifications to be carried out by the European Commission, the European Anti-Fraud Office, the European Public Prosecutor's Office, the European Court of Auditors and any external auditor, including a third party commissioned to perform an assessment of the results achieved or a contractual expenditure verification, authorised by the contracting authority. The beneficiary(ies) have to take all steps to facilitate their work.
- 16.7. The beneficiary(ies) 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, including of a technical nature, relevant to the financing of the action;
  - f) conduct an assessment on the results achieved.
- 16.8. Additionally, the European Anti-Fraud Office and the European Public Prosecutor's Office shall be allowed 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 European Commission.
- 16.9. Access given to agents of the European Commission, European Anti-Fraud Office, the European Public Prosecutor's Office and the European Court of Auditors and to any external auditor, including a third party commissioned to perform an assessment to perform an assessment of the results achieved or a contractual expenditure verification, 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.

### **Consequences of non-compliance**

- 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 this contract, payments or the time-limit for a payment, terminate this contract and/or reduce the grant.

## **ARTICLE 17 - FINAL AMOUNT OF THE GRANT**

### **Final amount**

- 17.1. In case of actions by way of reimbursement of costs, 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 3.1 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 case of financing not linked to costs, the grant may not exceed the maximum ceiling in Article 3 of the special conditions expressed as an absolute value for part of the action reimbursed by way of the financing not linked to costs.
- 17.3. 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 beneficiary(ies) to submit its 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 and, if applicable, communication obligations set out in Article 6 and in the special conditions. 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.

### **No-profit**

- 17.4. The grant may not produce a profit for the beneficiary(ies) except for the cases referred to in Article 17.8. Profit is defined as a surplus of the receipts over the eligible costs approved by the contracting authority (actual and simplified costs options) when the request for payment of the balance is made.
- 17.5. 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 (revenue) generated by the action or work programme.

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 this contract would result in a profit, it shall be reduced by the percentage of the profit corresponding to the final EU contribution to the eligible costs incurred approved by the contracting authority.

- 17.7. The provisions in Article 17.4 and 17.6 shall not apply, if so specified in Article 7 of the special conditions, to the following cases:
- a) actions the objective of which is the reinforcement of the financial capacity of a beneficiary;
  - b) actions which generate an income to ensure their continuity beyond the end of this contract;
  - c) actions implemented by non-profit organisations;
  - d) study, research or training scholarships paid to natural persons;
  - e) other direct support paid to natural persons in most need, such as unemployed persons and refugees;
  - f) grants of EUR 60 000 or less;
  - g) grants, or part thereof, in the form of financing not linked to costs. Where an action takes the form of financing not linked to costs and reimbursement of costs, this exception only applies to the part of the action reimbursed by way of financing not linked to costs, without prejudice to the application of other exceptions to the part of the action that takes the form of reimbursement of costs.

## **ARTICLE 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 a contractual expenditure verification report, an audit, a third party assessment of the results achieved in case of financing not linked to costs, or further verification of the payment request.
- 18.2. If a verification reveals that the methods used by the beneficiary(ies) to determine simplified cost options are not compliant with the conditions established in this contract or that the results are not achieved, the contracting authority shall be entitled to reduce the final amount of the grant proportionately up to the amount of the simplified cost options, or financing not linked to costs.
- 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 18.5 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 beneficiary(ies), 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.

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