

ANNEX II

General Conditions applicable to European Community contribution agreements with international organisations

General and administrative provisions

Article 1 – General obligations.....	2
Article 2 – Obligations regarding information and financial..... and narrative reports	3
Article 3 – Liability	5
Article 4 – Conflict of interests	5
Article 5 – Confidentiality	5
Article 6 – Visibility	5
Article 7 – Ownership/use of results and equipment.....	6
Article 8 – Evaluation of the Action.....	7
Article 9 – Amendment of the Agreement.....	7
Article 10 – Contracting and Procurement	7
Article 11 – Implementation period of the Agreement, suspension,	7
<i>force majeure</i>	8
Article 12 – Termination of the Agreement.....	9
Article 13 – Settlement of disputes.....	9

Financial provisions

Article 14 – Eligible costs	11
Article 15 – Payments.....	12
Article 16 – Accounts and technical and financial checks	14
Article 17 – Final amount of financing by the Contracting Authority	14
Article 18 – Recovery.....	15

GENERAL AND ADMINISTRATIVE PROVISIONS

ARTICLE 1 – GENERAL OBLIGATIONS

- 1.1. The Organisation shall ensure that the Action is carried out in accordance with the Description of the Action contained in Annex 1 and is responsible for achieving the objectives set out therein. The Organisation shall report on the indicators of achievement specified in the Description of the Action.
- 1.2. The Organisation shall implement the Action with the requisite degree of care, efficiency, transparency and diligence, as required by best practice in the field concerned, and in compliance with this Agreement.

The Organisation shall make every effort to mobilise all the financial, human and material resources required for full implementation of the Action, as specified in the Description of the Action.

- 1.3. The Organisation may act either alone or in partnership with one or more organisations mentioned in the Description of the Action. It may also contract parts of the Action, in accordance with the provisions of article 10 hereof.

Partners participate in implementing the Action, and the costs they incur are eligible under the same conditions as those incurred by the Organisation.

The Organisation is fully responsible for the co-ordination and execution of all contracted activities. The Contracting Authority recognises no contractual link between itself and the Organisation's partner(s) or between itself and a contractor.

- 1.4. The Organisation undertakes to ensure that the conditions imposed upon it under Articles 1, 3, 4, 5, 6, 7, 14, 16 and 17 of this Agreement also apply to all partners and contractors involved.
- 1.5. The Organisation shall take appropriate measures to prevent irregularities, fraud, corruption or any other illegal activity in the management of the Action. All suspected and actual cases of irregularity, fraud and corruption related to this Agreement as well as measures related thereto taken by the Organisation must be reported to the Contracting Authority without delay.

Where appropriate the Organisation shall terminate contracts with partners, contractors or agents involved in fraudulent behaviour or corrupt practices in connection with this or any other actions implemented by the Organisation and financed by the European Community or the Contracting Authority, and take all reasonable measures to recover funds unduly paid.

- 1.6. Without prejudice to Articles 1.3 and 10, the Agreement and the payments attached to it may not be transferred or assigned to a third party in any manner whatsoever without the prior written consent of the Contracting Authority.
- 1.7. Where the performance of the Action requires the pooling of resources from a number of donors, and where it is not reasonably possible or appropriate to assign the share contributed by each donor to each type of expenditure, the provisions regarding "Multi-donor Actions" in these General Conditions will apply. In addition, Article 3(2) of the Special Conditions will not show the percentage of estimated total eligible cost, to which the Contracting Authority contributes, where the final funding of the Action is not known at the time of signing the Agreement.

- 1.8. Where the European Community is not the Contracting Authority, it shall not be a party to this Agreement, which shall only confer on it rights and obligations where explicitly stated. It will nevertheless endorse the Agreement to ensure that the Contracting Authority's contribution is eventually paid by the European Community budget¹, and the provisions on visibility in this Agreement will apply accordingly.

ARTICLE 2 – OBLIGATIONS REGARDING INFORMATION AND FINANCIAL AND NARRATIVE REPORTS

- 2.1. The Organisation shall provide the Contracting Authority with full information on the implementation of the Action during the implementation period. To that end, the Organisation shall provide before signature of this Agreement a work plan for the first period of implementation as specified in the Description of the Action. The Organisation shall also draw up progress reports and a final report. These reports shall consist of a narrative part and a financial part. Reporting, narrative as well as financial, shall cover the whole of the Action, regardless of whether this Action is wholly financed or co-financed by the Contracting Authority.
- 2.2. The Contracting Authority may request additional information at any time, providing the reasons for the request. Such information shall be supplied within 30 days of the request.
- 2.3. The Organisation shall send the Contracting Authority progress reports in accordance with the provisions below. Every report shall provide a complete account of all aspects of implementation for the period covered.
- The report shall be laid out in such a way as to allow comparison of the objective(s), the means envisaged or employed (in particular all expenses actually incurred by the Organisation), the results expected and obtained and the budget details for the Action. The level of detail in any report should match that of the Description of the Action and of the Budget for the Action.
- 2.4. The narrative report shall directly relate to this Agreement and shall at least include:
- Summary and context of the Action;
 - Activities carried out during the reporting period (i.e. directly related to the Action description and activities foreseen in this Agreement);
 - Difficulties encountered and measures taken to overcome problems;
 - Changes introduced in implementation;
 - Achievements/results by using the indicators included in this Agreement;
 - Work plan for the following period including objectives and indicators of achievement. If the report is sent after the end of the period covered by the preceding work plan, a new work plan, albeit provisional, is always required before such date.
- 2.5. The final report shall contain the above information (excluding the last indent) covering the whole implementation period of this Agreement, information on the measures taken to identify the European Union as the source of financing and details on the transfers of assets mentioned in article 7.3 if relevant, plus a full summary of the Action's income and expenditure and payments received.

¹ Where the contribution is financed out of the European Development Fund, mentions of European Community financing must be read as referring to European Development Fund financing.

- 2.6. The reports shall be presented in the same language as the Agreement. They shall be submitted at the following intervals:

if payments follow option 1 in Article 15.1:

- a progress report shall be forwarded to the Contracting Authority at the end of every twelve-month period, where the implementation period of this Agreement is longer;
- a final report shall be forwarded to the Contracting Authority within six months of the end of the implementation period of this Agreement as defined in Article 2 of the Special Conditions;

if payments follow option 2 in Article 15.1:

- a progress report shall accompany every request for further instalment of prefinancing;
- the final report shall be forwarded to the Contracting Authority within six months of the end of the implementation period of this Agreement as defined in Article 2 of the Special Conditions.

- 2.7. Reports will be submitted in Euro, and may be drawn from financial statements denominated in other currencies as per the Organisation's legislative requirements. Where necessary, actual expenditure will be converted into Euro using the rate of exchange at which the Contracting Authority's contribution was recorded in the Organisation's accounts, unless otherwise specified in article 4(3) of the Special Conditions.

- 2.8. Any additional reporting requirement will be set out in the Special Conditions.

- 2.9. If the Organisation fails to supply a final report by the final report deadline laid down in Article 2.6, and fails to furnish an acceptable written explanation of the reasons why it is unable to comply with this obligation, the Contracting Authority may refuse to pay any outstanding amount and recover any amounts unduly paid.

Furthermore, where the Organisation fails to present a progress report and where relevant a request for payment by the end of each twelve-month period following the date laid down in Article 2(2) of the Special Conditions, the Organisation shall inform the Contracting Authority of the reasons why it is unable to do so, and shall provide a summary of the state of progress of the Action. If the Organisation fails to comply with this obligation, the Contracting Authority may terminate the Agreement in accordance with the first indent of Article 12.2, refuse to pay any outstanding amount and recover any amounts unduly paid.

- 2.10. In addition to the above mentioned reports, the Organisation will ensure that progress and situation reports, publications, press releases and updates, relevant to this Agreement, are communicated to the Contracting Authority as and when they are issued.

The Organisation and the Contracting Authority (the "Parties") will further endeavour to promote close collaboration and exchange of information on the Action. The Organisation will invite the European Commission to join any donor committee which may be set up in connection with Multi-Donor Actions.

- 2.11. In any event the Organisation shall inform the Contracting Authority without delay of any circumstances likely to hamper or delay the implementation of the Action.

ARTICLE 3 – LIABILITY

- 3.1. The Organisation shall have sole responsibility for complying with any legal obligation incumbent on it.
- 3.2. 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 Organisation 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.
- 3.3. Subject to the rules governing the Organisation's privileges and immunities, the Organisation shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the Action. The Organisation shall discharge the Contracting Authority of all liability associated with any claim or action brought as a result of an infringement by the Organisation or the Organisation's employees or individuals for whom those employees are responsible of rules or regulations, or as a result of violation of a third party's rights.

ARTICLE 4 – CONFLICT OF INTERESTS

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

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

ARTICLE 5 – CONFIDENTIALITY

Subject to article 16, the Contracting Authority and the Organisation undertake to preserve the confidentiality of any document, information or other material directly related to the Agreement and duly classified as confidential, until at least five years after the end date as specified in article 12.5. Where the European Commission is not the Contracting Authority, it shall still have access to all documents communicated to the Contracting Authority, and will maintain the same confidentiality.

ARTICLE 6 – VISIBILITY

- 6.1. Unless the European Commission requests or agrees otherwise, the Organisation shall take all appropriate measures to publicise the fact that an Action has received funding from the European Union. Information given to the press, the beneficiaries of an Action, all related publicity material, official notices, reports and publications, shall acknowledge that the Action was carried out "with funding by the European Union" and shall display in an appropriate way the European logo (twelve yellow stars on a blue background).

It is understood that the Organisation's equipment and vehicles may routinely carry its emblem and other indications of ownership prominently displayed. In cases where equipment or vehicles and major supplies have been purchased using funds provided by the European Community, the Organisation shall include appropriate acknowledgement on such vehicles, equipment and major supplies (including display of the European logo (twelve yellow stars on

a blue background) provided that such actions do not jeopardise the Organisation's privileges and immunities and the safety and security of the Organisation's staff.

- 6.2. The size and prominence of the acknowledgement and European Union logo shall be clearly visible in a manner that will not create any confusion regarding the identification of the Action as an activity of the Organisation, the ownership of the equipment and supplies by the Organisation, and the application to the Action of the Organisation's privileges and immunities.
- 6.3. All publications by the Organisation pertaining to Actions that have received funding from the European Community, in whatever form and whatever medium, including the internet, shall carry the following or a similar disclaimer: "This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union."
- 6.4. If the equipment bought with a European Community contribution is not transferred to local partners of the Organisation or the final recipient of the Action at the end of the implementation period of this Agreement, the visibility requirements as regards this equipment (in particular display of the European logo) shall continue to apply between the end of the implementation period of this Agreement and the end of the overall Action, if the latter is longer.
- 6.5. Publicity pertaining to European Community contributions shall quote these contributions in Euro, in parenthesis if necessary. The Organisation's publications and reports prepared in response to, and in accordance with, its legislative directives are excluded from this provision.
- 6.6. The Organisation accepts that the Contracting Authority and the European Commission (where it is not the Contracting Authority) publish in any form and medium, including on their websites the name and address of the Organisation, the purpose of the contribution as well as the amount contributed and if relevant the percentage of cofinancing.

Upon a duly substantiated request by the Organisation, the European Commission may agree to forego such publicity if disclosure of the above information would risk threatening the Organisation's safety or harming its interests.

ARTICLE 7 – OWNERSHIP/USE OF RESULTS AND EQUIPMENT

- 7.1. Ownership, title and industrial and intellectual property rights in the results of the Action and the reports and other documents relating to it shall vest in the Organisation, as the case may be together with third parties or as may otherwise be agreed by the Organisation.
- 7.2. Notwithstanding the provisions of the first paragraph and subject to Article 5, the Organisation grants the Contracting Authority (and the European Commission where it is not the Contracting Authority) the right to use free of charge and as it sees fit all documents deriving from the Action, whatever their form, provided it does not thereby breach existing industrial and intellectual property rights.
- 7.3. Unless otherwise specified in the Special Conditions, the equipment, vehicles and supplies paid for by the Contracting Authority's funding shall be transferred to local authorities or partners (excluding commercial contractors) of the Organisation or to the final recipients of the Action by the end of the Action. The documentary proof of those transfers shall be kept for verification along with the documents mentioned in article 16.3.

ARTICLE 8 – EVALUATION OF THE ACTION

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

ARTICLE 9 – AMENDMENT OF THE AGREEMENT

- 9.1. Any modification of the Agreement, including the annexes thereto, shall be set out in writing in an amendment.

If the request for an amendment comes from the Organisation, the latter shall submit that request to the Contracting Authority one month before the amendment is intended to enter into force, unless there are special circumstances duly substantiated by the Organisation and accepted by the Contracting Authority. A request to extend the implementation period of this Agreement must be duly justified and submitted no later than one month before the end of it.

- 9.2. Where a modification to the Description of the Action and/or the Budget does not affect the basic purpose of the Action and the financial impact is limited to a transfer within a single budget heading, or a transfer between budget headings involving a variation (as the case may be in cumulative terms) of 15 % or less of the amount originally entered (or as modified by a formal amendment) under each relevant heading for eligible costs, the Organisation may apply the modification and shall inform the Contracting Authority accordingly in writing. This method may not be used to amend headings for administrative costs or the contingency reserve.

Changes of address and changes of bank account may simply be notified in writing to the Contracting Authority. Changes of bank account must be specified in the request for payment, using the financial identification form attached as Annex IV.

ARTICLE 10 – CONTRACTING AND PROCUREMENT

- 10.1. If parts of the Action are contracted, the contracting arrangements will be as specified in the Description of the Action. If they are not specified therein, the Organisation will present them to the Contracting Authority as soon as they are available. The Organisation will also inform the Contracting Authority, with as much prior notice as possible, of changes in these arrangements. The Organisation will provide detailed information on contracting arrangements in the final report.
- 10.2. Unless otherwise agreed by the Parties in writing, the procurement of any goods, works or services by the Organisation and its partners in the context of the Action shall be carried out in accordance with the applicable rules and procedures adopted by the Organisation.

This is based on the understanding that the Organisation's rules and procedures conform to internationally accepted standards, including the award of contract to the tender offering best

value for money, in compliance with the principles of transparency and equal treatment for potential contractors, care being taken to avoid any conflict of interests.

- 10.3. In Multi-donor Actions and if allowed by the applicable regulatory provisions of the European Community, the origin of the goods and the nationality of the organisations, companies and experts selected for carrying out activities in the Action shall be determined in accordance with the Organisation's relevant rules. In any event goods, organisations, companies and experts eligible under the applicable regulatory provisions of the European Community shall be eligible.

In all other cases the partners, contractors, experts and goods, the cost of which are financed out of the Contracting Authority's contribution, shall originate in the European Community or the country or countries eligible under the programme of which the Action is part. Any departure from the rules of origin set out above is subject to prior written approval from the Contracting Authority, which shall deal expeditiously with any request accompanied with proper justification.

- 10.4. In the event of failure to comply with the above provisions the relevant costs shall not be eligible for funding by the Contracting Authority.

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

- 11.1. Irrespective of the starting date and implementation period of the Action, the implementation period of this Agreement shall be as set out in Article 2 of the Special Conditions
- 11.2. The Organisation may suspend implementation of all or part of the Action if circumstances (chiefly *force majeure*) make it too difficult or dangerous to continue. It shall inform the Contracting Authority without delay and provide all the necessary details. This Agreement may be terminated in accordance with Article 12.1. If the Agreement is not terminated, the Organisation shall endeavour to minimise the duration of the suspension and may resume implementation of the Action once the conditions allow, and shall inform the Contracting Authority accordingly.
- 11.3. The Contracting Authority may request the Organisation to suspend implementation of all or part of the Action if circumstances (chiefly *force majeure*) make it impossible or too difficult or dangerous to continue. This Agreement may be terminated in accordance with Article 12.1. If the Agreement is not terminated, the Organisation shall endeavour to minimise the duration of the suspension and shall resume implementation of the Action once the conditions allow, with the prior written approval of the Contracting Authority.
- 11.4. The implementation period of this Agreement is automatically extended by an amount of time equivalent to the duration of the suspension. This is without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions.
- 11.5. *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of their obligations under this Agreement, was not attributable to error or negligence on their part (or of their partners, contractors, agents or employees), and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as *force majeure* by the defaulting party. Neither of the Parties shall be held liable for breach of its obligations under the Agreement if it is prevented from fulfilling them by *force majeure*. Without prejudice to Articles 11.2 and 11.3 above, the Party invoking *force majeure* shall notify the other without

delay, stating the nature, likely duration and foreseeable effect, and take any measure to minimise possible damage.

ARTICLE 12 – TERMINATION OF THE AGREEMENT

- 12.1. If, at any time, either Party believes that the purposes of this Agreement can no longer be effectively or appropriately carried out, it shall consult the other Party. Failing agreement on a solution, either Party may terminate this Agreement by serving two months' written notice. In this event, the Organisation shall be entitled to payment of the contribution only for the part of the Action carried out, and to reimbursement of commitments entered into by the Organisation for the implementation of the Action, which the Organisation cannot reasonably terminate on legal grounds.
- 12.2. Where the Organisation:
- fails, without justification, to fulfil any of the obligations incumbent on it and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within 30 days of sending of the letter;
 - fails to comply with articles 1.5, 1.6 or 4;
 - makes false or incomplete statements to obtain the contribution provided for in the Agreement or provides reports that do not reflect reality;
 - commits financial irregularities or is guilty of grave professional misconduct;
 - undergoes legal, financial, technical or organisational change that is liable to affect this Agreement substantially or to call the award decision into question;

the Contracting Authority will enter into discussions with the Organisation and, failing a proper solution within one month, may terminate this Agreement, without prior notice and without paying compensation of any kind. In that event the Contracting Authority may demand full or partial repayment of any amounts unduly paid, after allowing the Organisation to submit its observations.

- 12.3. Prior to or instead of terminating the Agreement as provided for in Article 12.2, the Contracting Authority may suspend payments or (exceptionally) the eligibility of expenses as a precautionary measure, informing the Organisation immediately.
- 12.4. This Agreement shall be automatically terminated if it has not given rise to a payment by the Contracting Authority (including prefinancing) within three years of its signature.
- 12.5. Unless this Agreement is earlier terminated pursuant to this Article 12, the payment obligations of the European Community hereunder shall cease at the "end date", which shall occur 18 months after the end of the implementation period as defined in Article 2 of the Special Conditions.

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

ARTICLE 13 – SETTLEMENT OF DISPUTES

- 13.1. The Parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or fulfilment of this Agreement, including its existence, validity or

termination. In default of amicable settlement, any Party may refer the matter to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of this Agreement.

- 13.2. The language to be used in the arbitral proceedings shall be English. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either Party. The Arbitrator's decision shall be binding on all Parties and there shall be no appeal.
- 13.3. Nothing in this Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party hereto by its constituent documents or international law.