

# FRAMEWORK PARTNERSHIP AGREEMENT\*

FRAMEWORK AGREEMENT NUMBER [...] <sup>1</sup>

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), itself represented for the purposes of signature of this framework agreement by [forename, surname, function, DG/service] <sup>2</sup> of the one part,

and

[full official name]

[*official legal form*] <sup>3</sup>

[*official registration No*] <sup>4</sup>

[official address in full]

[*VAT number*],

("the partner"), [*represented for the purposes of signature of this agreement by [forename, surname and function]*]

of the other part,

HAVE AGREED

on the **Preamble**, the **Special Conditions**, the **General Conditions** and the **Annexes** that go to make up the present framework partnership agreement ("the framework agreement") <sup>5</sup>

The **Preamble** sets out the context of the partnership established between the parties in the field of [...].

The **Special Conditions** and the **General Conditions** indicate the subject and duration of the framework agreement and the operational arrangements for the partnership.

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\* The footnotes are internal instructions for the authorizing officers only and must be deleted before the framework agreement is sent out.

<sup>1</sup> [Plain text]: items to be filled in.

[*Text in italics*]: these items are optional and may be deleted depending on the context of the framework agreement.

<sup>2</sup> The person representing the Commission must be an authorizing officer (by delegation or sub-delegation) designated in accordance with document 60008 of 22/02/2001 '*Mise en place de la Charte des ordonnateurs*'.

<sup>3</sup> Delete if the partner is a natural person or a public-sector body or an entity without legal personality.

<sup>4</sup> Delete if the partner is a public-sector body or an entity without legal personality. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

<sup>5</sup> Authorizing officers may not make undue use of framework partnership agreements or use them in such a way that the purpose or effect is contrary to the principles of transparency or equal treatment of applicants [Article 163 of the Implementing Rules (IR) of the Financial Regulation (FR)].

The following documents are annexed to the framework agreement:

**Annex I**      Actions planned under the partnership

**Annex II**     Model specific grant agreement

**[Annex III**    *Technical implementation reports and financial statements to be submitted*]<sup>6</sup>

The terms of the Special Conditions, of which the Preamble forms an integral part, shall take precedence over those in the other parts of the framework agreement. The terms of the General Conditions shall take precedence over those in the Annexes.

Through his signature, the partner accepts the terms of the framework agreement and their application to any specific grant agreements subsequently concluded between the parties.

In the articles of the framework agreement, the generic term "action" shall refer both to a one-off action by the partner for which a grant for an action may be awarded and to a work programme carried out by the partner for which an operating grant may be awarded, except where an explicit distinction is made.

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<sup>6</sup> If necessary, a specific annex should be included setting out any special requirements (as regards content, form, etc.) for the technical implementation reports and the financial statements to be submitted to the Commission for approval. In certain cases, these instructions may already be set out in Annex I. This annex may also be included in each specific agreement, if the requirements are not common to all of them.

## PREAMBLE<sup>7</sup>

The Commission is responsible for implementing the Union policy [.....]<sup>8</sup>

For the purposes of implementing this Union policy, the Commission selects one or more partners engaged in the area of activity concerned ("the partner(s)"), with whom it shares common general objectives and wishes to establish a relationship of lasting cooperation.

The general objectives which it shares with [...] <sup>9</sup> in the above-mentioned area of activity and which justify the establishment of a partnership are the following:

[...]

[...]

[...]

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<sup>7</sup> A simple format for the preamble is proposed here for completion. Authorizing officers may, however, develop the preamble in another format more suited to the context of their partnership. The items that must be included are: the Union policy concerned and the general objectives shared with the partner in that area which justifies establishment of the partnership and the nature of the actions envisaged.

<sup>8</sup> Mention the area of activity, the specific programme concerned and the reference of the relevant legal basis.

<sup>9</sup> Mention the name of the partner signatory to the framework agreement.

## **I - SPECIAL CONDITIONS**

### **ARTICLE I.1 - PURPOSE**

- I.1.1 The framework agreement is concluded as part of an ongoing, formalised relationship of co-operation between the Commission and the partner ("the partnership") on the basis of Union objectives and an action plan set out in Annex I, in order to contribute to the objectives of the Union policy referred to in the Preamble.
- I.1.2 The purpose of the framework agreement is to define the respective roles and responsibilities of the Commission and the partner in implementing their partnership. The specific grant agreements that may be signed under the framework agreement shall relate to *[grants for an action] [and] [operating grants]*.
- [I.1.3 In the context of the action plan and under the conditions laid down in Annex I, the partner shall each year submit a work programme which shall be jointly agreed by the parties and shall serve as a basis for the award of any grants during the year in question.] [The annual work programme shall be submitted before the start of the partner's corresponding financial year.]*

### **ARTICLE I.2 – AWARD OF GRANTS**

#### **I.2.1 Option 1<sup>10</sup>**

*The Commission may consult its partner in order to obtain a proposal for action in line with the action plan set out in Annex I. Such consultation shall take place on the basis of [a call for proposals open to all the partners for whom this type of activity is included in the jointly agreed action plan set out in Annex I] [a call for proposals open to all applicants meeting the announced criteria] [an invitation to submit proposals].<sup>11</sup> The Commission shall to that end stipulate the technical and financial criteria that the actions must satisfy, if they are to qualify for a Union grant. The partner shall be free to submit a proposal for action to the Commission in response to the consultation carried out.*

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<sup>10</sup> Normal procedure: consultation at the Commission's initiative.

<sup>11</sup> This option is reserved either for monopoly situations or for cases where work is carried out in a network with pre-determined beneficiaries under the conditions laid down in the basic acts.

## Option 2<sup>12</sup>

*The partner may submit a proposal for action to the Commission on the basis of the jointly agreed action plan set out in Annex I [or the annual work programme jointly agreed between the parties] and the technical and financial criteria stipulated by the Commission that the actions must satisfy if they are to qualify for a grant.*

- I.2.2 Where the Commission decides to accept a proposal for action, it shall send the partner a specific grant agreement ("specific agreement") in accordance with the model in Annex II. The specific agreement is governed by the terms of the framework agreement and must be signed by the authorized representatives of the parties under the same conditions as the framework agreement.
- I.2.3 By signing the specific agreement, the partner undertakes to carry out the action under his own responsibility on the terms laid down in the specific agreement and the annexes thereto and in compliance with the undertakings entered into under the framework agreement.
- I.2.4 Signature of the framework agreement by the parties shall not give rise to any obligation on the Commission to award a grant. It shall be without prejudice to the partner's participation in other calls for proposals with a view to the award of grants outside the action plan set out in Annex I.

## ARTICLE I.3 - DURATION

- I.3.1 The framework agreement shall enter into force on the date when the last of the two parties signs.<sup>13</sup>
- I.3.2 It shall be concluded for a period of [...] <sup>14</sup> years starting from the date of its entry into force.
- I.3.3 Specific agreements must be signed before the date when the framework agreement expires. Where the actions are carried out after the above-mentioned date, the terms of the framework agreement shall continue to apply to the implementation of the corresponding specific agreements.

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<sup>12</sup> Exceptional procedure: this option is reserved for cases where no call for proposals is made, as provided for by Article 168(1) of the Implementing Rules (as revised in 2007), namely:

- humanitarian aid or aid for crisis situations;
- emergencies (where appropriate in relation to a predetermined triggering event);
- the partner is a body with a *de jure or de facto* monopoly (duly substantiated in the award decision) for the type of action envisaged;
- partners identified by a basic act as beneficiaries of a grant;
- in the case of research and technological development, to bodies identified in the annual work programme referred to in Article 110 of the Financial Regulation, where the basic act expressly provides for that possibility, and on condition that the project does not fall under the scope of a call for proposals;
- for actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals.

<sup>13</sup> The recommended practice is for the Commission to sign last (memo No 62239, dated 12/09/2001, from DG Budget/Financial Control).

<sup>14</sup> Not more than four years, except in duly justified exceptional cases (Article 163 IR).

## ARTICLE I.4 - FINANCING THE ACTIONS

I.4.1. Co-financing amounting to not less than [...] % of the estimated total *[eligible]* cost of the action shall be required for each action for which a Commission grant is awarded.

[The partner must provide proof of the amount of co-financing provided.]<sup>15</sup> The co-financing may be provided either from the partner's own resources and/or from other sources of external finance.

*[If considered necessary and appropriate, contributions in kind from third parties may be accepted as co-financing provided that the value calculated for such contributions does not exceed:*

- *the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the partner free of charge but bear the costs;*
- *the costs generally accepted on the market in question for the type of contribution concerned when no costs are booked to the third parties' accounts.*

*Contributions involving real estate shall be excluded from the calculation of the amount of co-financing.]*

I.4.2 The provisions relating to the submission of the reports and other documents relating to the action *[and the arrangements for payment of the grant]* are set out in the specific agreement.

## ***[ARTICLE I.5 – ADJUSTMENT OF THE ESTIMATED BUDGET]***<sup>16</sup>

## ***[ARTICLE I.[.] – PAYMENT ARRANGEMENTS]***<sup>17</sup>

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<sup>15</sup> Depending on his risk assessment, the authorizing officer responsible may waive the obligation to provide evidence for co-financing for grants with a total value of less than or equal to EUR 25 000. Where a single partner is awarded several grants in a financial year, the threshold applies to the total of those grants.

<sup>16</sup> This article may be inserted in the framework agreement at the authorizing officer's discretion: in that case, Article 4 of the corresponding specific agreement (for an action or an operating grant, according to the nature of the grants awarded) should be used.

<sup>17</sup> This article may be inserted in the framework agreement at the authorizing officer's discretion, where the payment arrangements are identical for all the grants awarded under the framework partnership agreement. In that case, Article 5 of the corresponding specific agreement (for an action or an operating grant, according to the nature of the grants awarded) should be used; if the pre-financing option is chosen, delete references to pre-financing expressed in value terms so as to leave only references to pre-financing expressed as a percentage of the maximum grant amount awarded.

## **[ARTICLE I.[.] – BANK ACCOUNT<sup>18</sup>**

**I.[.].1** *Payments shall be made to the partner's bank account or sub-account denominated in euros,<sup>19</sup> as indicated below:<sup>20</sup>*

*Name of bank: [...]*

*Address of branch: [...]*

*Precise denomination of the account holder: [...]*

*Full account number (including bank codes): [...]*

*[IBAN account code: [...]]<sup>21</sup>*

**I.[.].2** *This account or sub-account [must identify the payments made by the Commission] [must be reserved exclusively for EU funds paid for carrying out the actions for which the grants are awarded pursuant to the framework agreement]. [Moreover, the funds paid to this account or sub-account shall yield interest or equivalent benefits under the law of the State on whose territory the account or sub-account is opened. Such interest or benefits shall, if they are generated by pre-financing, be deducted from the payment of the balance or recovered by the Commission as specified in Article II.17.4.]<sup>22</sup> ]*

## **ARTICLE I.[.] - GENERAL ADMINISTRATIVE PROVISIONS**

**I.[.].1** Any communication addressed to the Commission in connection with the framework agreement or a specific agreement shall be in writing, indicating the number of the agreement concerned, and shall be sent to the following addresses:

*[Requests for payment and other financial information must be sent to:]*

European Commission  
Directorate-General [...]  
Directorate [...]  
Unit [...]  
[Post code, town and country]  
E-mail address: [...][@ec.europa.eu](mailto:[...]@ec.europa.eu)

*[The technical reports and all other correspondence must be sent to:]*

European Commission  
Directorate-General [...]  
Directorate [...]  
Unit [...]  
[Post code, town and country]  
E-mail address: [...][@ec.europa.eu](mailto:[...]@ec.europa.eu)

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<sup>18</sup> This article may also be inserted only at the specific agreement stage, *inter alia* in cases where a separate account is requested for each action.

<sup>19</sup> This proceeds except in the case of bank accounts in countries that do not accept euro transactions.

<sup>20</sup> As shown by the account identification document issued or certified by the bank concerned.

<sup>21</sup> BIC code for countries where the IBAN code does not apply.

<sup>22</sup> This provision applies to all grant beneficiaries receiving pre-financing payment(s), apart from the exceptions allowed under Article 5a of the Financial Regulation and Article 3 of its Implementing Rules.

I.[.] .2 Ordinary mail shall be considered to have been received by the Commission on the date on which it is formally registered by the Commission unit responsible referred to above. *[E-mail shall be considered as received on the date it is received. However, if the partner receives a reply asking him to re-direct the e-mail, it shall not be considered as received until the correctly re-directed e-mail is received.]*

I.[.] .3 Any communication addressed to the partner in connection with the framework agreement or a specific agreement shall be in writing, indicating the number of the agreement, and shall be sent to the following address:

Mr/Ms [...]  
[Function]  
[Official denomination]  
[Full official address]  
E-mail address: [...]

I.[.] .4 Any change of address by the partner shall be communicated in writing to the Commission.

#### **ARTICLE I.[.] - LAW APPLICABLE AND COMPETENT COURT<sup>23</sup>**

Grants are governed by the terms of the framework agreement and specific agreements, the Union law applicable and, on a secondary level, by the law of [country of the seat of the authorizing officer responsible under the Internal Rules on the execution of the General Budget of the European Communities] relating to grants.

The partner may bring legal proceedings regarding decisions by the Commission concerning the application of the provisions of the above-mentioned agreements, and the arrangements for implementing them, before the General Court of the European Union and, in the event of appeal, the Court of Justice.

#### **ARTICLE I.[.] – DATA PROTECTION<sup>24</sup>**

All personal data contained in the framework agreement and specific agreements, or related to these agreements and their implementation, shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely in

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<sup>23</sup> If the partner resides outside the Union, making an enforceable recovery decision under Article 299 of the TFEU impossible, the following clause must be added at the end of the Article to allow the Commission to bring a pecuniary action before the national courts: “*The Commission may bring a pecuniary action before the competent national court either in the country in which the partner has his registered office or in the country where he has his main business establishments, without prejudice to the possibility of adopting an enforceable decision within the meaning of Article 299 of the Treaty on the functioning of the European Union formally establishing an amount as receivable, if the country where the registered office or the main business establishments are located recognises the enforceable nature of such a decision*”.

<sup>24</sup> Any questions on the application of Regulation (EC) No 45/2001 should be referred to the Data Protection Coordinator of your DG or to the Commission’s Data Protection Officer ([www.ec.europa.eu/dataprotectionofficer/](http://www.ec.europa.eu/dataprotectionofficer/)).

connection with the implementation and follow-up of the framework agreement and specific agreements by [name of the body responsible for checking data], without prejudice to the possibility of passing the data to internal audit services, to the Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Union.

Partners may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. Partners should address any questions regarding the processing of their personal data to [name of the body responsible for checking data]. Partners may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

***[ARTICLE I.[.] – OTHER SPECIAL CONDITIONS]***<sup>25</sup>

*[The following additional special conditions apply to this grant agreement:]*

*[I.[.].[.] Exchange rate applicable for the conversion of currencies into euro*<sup>26</sup>

*The partner shall submit the payment requests in accordance with article 5 of the specific agreement [or the equivalent article in the framework agreement], including the underlying financial statements, in euro. By way of derogation from Article II.17.1, any conversion of actual costs into euro shall be made by the partner at the [monthly accounting rate established by the Commission and published on its website] [average of the daily exchange rates established over a period [of/corresponding to ...] applicable on the day when the [payment request in accordance with Article 5 of the specific agreement [or the equivalent article in the framework agreement] is submitted] [cost was [incurred] [paid]].]*

*[I.10.[.] Implementation contracts*<sup>27</sup>

*Where the value of the procurement contract awarded in accordance with the provisions of Article II.10 of the General Conditions exceeds EUR [60,000], the partner shall, in addition to the provisions laid down in Article II.10, abide by [the rules on procurement contained in the Financial Regulation applicable to the general budget of the European Communities] [the following rules [...].]*

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<sup>25</sup> To be filled in if necessary by the responsible authorizing officer.

<sup>26</sup> Use this option where the conversion of local currencies is to be made by the partner. The Commission rate indicated is the InforEuro rate published on the BudgWeb. It is possible to foresee other officially established conversion rates provided that they are easily verifiable, as well as an average rate fixed for a given period, subject to possible updating with appropriate intervals.

<sup>27</sup> See footnote n° 28 to Article II.10 on award of contracts.

## **II -GENERAL CONDITIONS**

### **PART A: LEGAL AND ADMINISTRATIVE PROVISIONS**

#### **ARTICLE II.1 – UNDERTAKINGS BY THE PARTNER**

By signing the framework agreement, the partner undertakes to:

- respect the common general objectives that formed the basis for establishing the partnership, as mentioned in the Preamble;
- fulfil the undertakings entered into under the action plan set out in Annex I, where appropriate together with the annual work programmes jointly agreed between the parties;
- make every effort to achieve in practice the above-mentioned common general objectives in each action for which a Commission grant is awarded;
- maintain relations of mutual co-operation and regular exchanges of information with the Commission on matters of common interest to do with use of the framework agreement and on the follow-up to implementation of the action plan set out in Annex I;
- adopt a transparent attitude with regard to managing and keeping accounts on the actions for which a Commission grant is awarded and co-operate fully with annual or occasional checks on the implementation of the framework agreement and/or the specific agreements.

#### **ARTICLE II.2 – LIABILITY**

- II.2.1 The partner shall have sole responsibility for complying with any legal obligations incumbent on him.
- II.2.2 The Commission shall not, in any circumstances or on any grounds, be held liable in the event of a claim under specific agreements relating to any damage caused during the execution of an action. Consequently, the Commission will not entertain any request for indemnity or reimbursement accompanying any such claim.
- II.2.3 Except in cases of *force majeure*, the partner shall make good any damage sustained by the Commission as a result of the execution or faulty execution of an action.
- II.2.4 The partner shall assume sole liability towards third parties, including for damage of any kind sustained by them while the action is being carried out.

#### **ARTICLE II.3 – CONFLICTS OF INTEREST**

- II.3.1 The partner undertakes to take all the necessary measures to prevent any risk of conflict of interest which could affect the impartial and objective performance of the framework agreement and/or the specific agreements. Such conflict of interest could

arise in particular as a result of economic interests, political or national affinities, family or emotional ties or emotional reasons, or any other common interests.

II.3.2 Any situation constituting or likely to lead to a conflict of interest during the implementation of the framework agreement and/or the specific agreements must be brought to the attention of the Commission, in writing, without delay. The partner shall undertake to take whatever steps are necessary to rectify this situation without delay.

II.3.3 The Commission reserves the right to check that the measures taken are appropriate and may demand that the partner take additional measures, if necessary, within a certain time.

#### **ARTICLE II.4 - OWNERSHIP/USE OF THE RESULTS**

II.4.1 Unless stipulated otherwise in the specific agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it, shall be vested in the partner.

II.4.2 Without prejudice to paragraph 1, the partner grants the Commission the right to make free use of the results of an action as it deems fit, provided it does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights.

#### **ARTICLE II.5 – CONFIDENTIALITY**

The Commission and the partner undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the framework agreement or specific agreements that is duly classed as confidential, if disclosure could cause prejudice to the other party. The parties shall remain bound by this obligation beyond the expiry date of the framework agreement.

#### **ARTICLE II.6 - PUBLICITY**

II.6.1 Unless the Commission requests otherwise, any communication or publication by the partner about an action, including at a conference or seminar, shall indicate that the action has received funding from the Union.

Any communication or publication by the partner, in any form and medium, shall indicate that sole responsibility lies with the author and that the Commission is not responsible for any use that may be made of the information contained therein.

II.6.2 The partner authorizes the Commission to publish the following information in any form and medium, including via the Internet:

- the partner's name and address,
- the subject and purpose of the grants awarded,

- the amounts granted and the proportions of the actions' total cost covered by the funding.

Upon a reasoned and duly substantiated request by the partner, the Commission may agree to forgo such publicity, if disclosure of the information indicated above would risk compromising the partner's security or prejudicing his commercial interests.

## **ARTICLE II.7 - EVALUATION**

Whenever the Commission carries out an interim or final evaluation of an action's impact measured against the objectives of the Union programme concerned, the partner undertakes to make available to the Commission and/or persons authorized by it all such documents or information, including information in electronic format, as will allow the evaluation to be successfully completed and to give them the rights of access specified in Article II.20.

## **ARTICLE II.8 - SUSPENSION**

- II.8.1 The partner may suspend implementation of an action if exceptional circumstances make this impossible or excessively difficult, notably in the event of *force majeure*. He shall inform the Commission without delay, giving all the necessary reasons and details and the foreseeable date of resumption.
- II.8.2 If the Commission does not terminate the specific agreement under Article II.12.2, the partner shall resume implementation once circumstances allow and shall inform the Commission accordingly. The duration of the action shall be extended by a period equivalent to the length of the suspension.
- II.8.3 In accordance with Article II.14, a supplementary written agreement to the specific agreement shall be concluded to extend the duration of the action and to make any amendments that may be necessary to adapt the action to the new implementing conditions.

## **ARTICLE II.9 – FORCE MAJEURE**

- II.9.1 *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to *force majeure*), labour disputes, strikes or financial difficulties cannot be invoked as *force majeure* by the defaulting party.
- II.9.2 A party faced with *force majeure* shall inform the other party without delay by registered letter with acknowledgement of receipt or equivalent, stating the nature, probable duration and foreseeable effects.

II.9.3 Neither of the parties shall be held in breach of their obligations under the agreement if they are prevented from fulfilling them by *force majeure*. The parties shall make every effort to minimise any damage due to *force majeure*.

II.9.4 Actions under way may be suspended in accordance with Article II.8.

## **ARTICLE II.10 - AWARD OF CONTRACTS**

II.10.1 If the partner has to conclude contracts in order to carry out an action and they constitute costs under an item of eligible direct costs in the estimated budget for the action annexed to the specific agreement, he shall award the contract to the bid offering best value for money<sup>28</sup>; in doing so he shall take care to avoid any conflict of interests.

II.10.2 Contracts as referred to in paragraph 1 may be awarded only in the following cases:

- (a) they may only cover the execution of a limited part of the action;
- (b) recourse to the award of contracts must be justified having regard to the nature of the action and what is necessary for its implementation;
- (c) the tasks concerned must be set out in the annex to the specific agreement that describes the action and the corresponding estimated costs must be set out in detail in the estimated budget for the action;
- (d) any recourse to the award of contracts while the action is under way, if not provided for in the grant application, shall be subject to prior written authorisation by the Commission;
- (e) the partner shall have sole responsibility for executing the action and complying with the terms of the framework agreement and the corresponding specific agreement. The partner must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Commission under the framework agreement and/or specific agreement;
- (f) the partner must undertake to ensure that the conditions applicable to him under Articles II.2, II.3, II.4, II.5, II.6, II.7, II.11 and II.20 of the framework agreement are also applicable to the contractor.

## **ARTICLE II.11 - ASSIGNMENT**

II.11.1 Claims against the Commission may not be transferred.

II.11.2 In exceptional circumstances, where the situation warrants it, the Commission may authorize the assignment of the specific agreements, or part thereof, and any payments

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<sup>28</sup> Where the value of the contract exceeds EUR 60 000, departments may include provision, in the "Other Special Conditions", for specific rules of procedure to apply based on those contained in the FR with due regard to the estimated value of the contract, the relative size of the Union contribution and the management risk.

flowing from them to a third party, following a written request to that effect, giving reasons, from the partner. If the Commission agrees, it must make its agreement known in writing before the proposed assignment takes place. In the absence of the above authorization, or in the event of failure to observe the terms thereof, the assignment shall not be enforceable against and shall have no effect on the Commission.

II.11.3 In no circumstances shall such an assignment release the partner from his obligations to the Commission.

## **ARTICLE II.12 – TERMINATION OF THE FRAMEWORK AGREEMENT**

### **II.12.1 Termination by the partner**

The partner may terminate the framework agreement at any time by giving 60 days' written notice. Where he avails himself of that right, he must undertake to complete the implementation of any specific agreements which have entered into force before the date when termination of the framework agreement takes effect.

In duly justified cases, the partner may withdraw his request for a grant and terminate a specific agreement which is in the process of being implemented by giving 60 days' written notice stating the reasons, without being required to furnish any indemnity on this account.

If no reasons are given or if the Commission does not accept the reasons, the partner shall be deemed to have terminated the agreement improperly, with the consequences set out in the fourth subparagraph of paragraph 4.

### **II.12.2 Termination by the Commission**

The Commission may decide to terminate the framework agreement at any time, without any indemnity on its part, by giving 60 days' written notice. Where the Commission avails itself of that right, it must honour the obligations arising from the implementation of any specific agreements which have entered into force before the date when termination of the framework agreement takes effect, insofar as this implementation gives rise to expenditure foreseen in those specific agreements which is reasonable, except in the cases set out below.

The Commission may decide to terminate the framework agreement and the specific agreements in the process of being implemented, without any indemnity on its part, in the following circumstances:

- (a) in the event of a change to the partner's legal, financial, technical, organisational or ownership situation that is liable to affect the agreement substantially or to call into question the decision to award the grant;
- (b) if the partner fails to fulfil a substantial obligation incumbent on him under the terms of the agreement, including its annexes;

- (c) in the event of *force majeure*, notified in accordance with Article II.9 or if the action has been suspended as a result of exceptional circumstances, notified in accordance with Article II.8;
- (d) if the partner is declared bankrupt, is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of any other similar proceedings concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (e) where the Commission has evidence or seriously suspects the partner or any related entity or person, of professional misconduct;
- (f) if the partner 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;
- (g) where the Commission has evidence or seriously suspects the partner or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (h) where the Commission has evidence or seriously suspects the partner or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the grant;
- (i) if the partner has made false declarations or submits reports inconsistent with reality to obtain the grant provided for in the agreement.

In the cases referred to in points (e), (g) and (h) above, any related person shall mean any physical person with powers of representation, decision-making or control in relation to the partner. Any related entity shall mean in particular any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive n° 83/349/EEC of 13 June 1983.

### **II.12.3 Termination procedure**

The procedure is initiated by registered letter with acknowledgement of receipt or equivalent.

In the cases referred to in points (a), (b), (d), (e), (g) and (h) above, the partner shall have 30 days to submit his observations and take any measures necessary to ensure continued fulfilment of his obligations under the agreement. If the Commission fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the procedure shall continue to run.

Where notice is given, termination shall take effect at the end of the period of notice, which shall start to run from the date when the termination decision is received.

If notice is not given in the cases referred to in points (c), (f) and (i) above, termination shall take effect from the day following the date when the termination decision is received.

#### **II.12.4 Effects of termination**

In the event of termination of a specific agreement, payments by the Commission shall be limited to the eligible costs actually incurred by the partner up to the date when termination takes effect, in accordance with Article II.18. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

The partner shall have 60 days from the date when termination of the specific agreement takes effect, as notified by the Commission, to produce a request for final payment in accordance with Article II.16.4. If no request for final payment is received within this time limit, the Commission shall not reimburse the expenditure incurred by the partner up to the date of termination and it shall recover any amount, if its use is not substantiated by the technical implementation reports and financial statements approved by the Commission.

By way of exception, at the end of the period of notice referred to in paragraph 3, where the Commission is terminating a specific agreement on the grounds that the partner has failed to produce the final technical implementation report and financial statement as stipulated in the agreement and has still not complied with this obligation within two months following the written reminder sent by the Commission by registered letter with acknowledgement of receipt or equivalent, the Commission shall not reimburse the expenditure incurred by the partner up to the date on which the action ended and it shall recover any amount, if its use is not substantiated by the technical implementation reports and financial statements approved by the Commission.

By way of exception, in the event of improper termination by the partner or termination by the Commission on the grounds set out in points (a), (e), (g), (h) or (i) above, the Commission may require the partial or total repayment of sums already paid under a specific agreement on the basis of technical implementation reports and financial statements approved by the Commission, in proportion to the gravity of the failings in question and after allowing the partner to submit his observations.

#### **ARTICLE II.13 - FINANCIAL PENALTIES**

II.13.1 By virtue of the Financial Regulation applicable to the General Budget of the European Communities, any partner declared to be in grave breach of his contractual obligations shall be liable to financial penalties of between 2% and 10% of the value of the grant in question.

II.13.2 This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the establishment of the first.

II.13.3 The partner shall be notified in writing of any decision by the Commission to apply such financial penalties.

## **ARTICLE II.14 – SUPPLEMENTARY AGREEMENTS**

- II.14.1 Any amendment to the framework agreement or a specific agreement must be the subject of a written supplementary agreement. No oral agreement may bind the parties to this effect.
- II.14.2 The supplementary agreement may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the framework agreement or a grant or result in unequal treatment of applicants for framework agreements or grants.
- II.14.3 If the request for amendment is made by the partner, he must send it to the Commission in good time before it is due to take effect and, as far as specific agreements are concerned, one month before the closing date of the action, except in cases duly substantiated by the partner and accepted by the Commission.

## **PART B - FINANCIAL PROVISIONS**

### **ARTICLE II.15 – ELIGIBLE COSTS**

II.15.1 Eligible costs of the action or work programme are costs actually incurred by the partner, which meet the following criteria:

- they are incurred during the duration of the action or of the work programme as specified in the specific agreement, with the exception of costs relating to final reports and certificates on the financial statements and underlying accounts;
- they are connected with the subject of the specific agreement and they are indicated in the estimated overall budget of the action or work programme annexed to it;
- they are necessary for the implementation of the action or of the work programme which is the subject of the specific agreement;
- they are identifiable and verifiable, in particular being recorded in the accounting records of the partner and determined according to the applicable accounting standards of the country where the partner is established and according to the usual cost-accounting practices of the partner;
- they comply with the requirements of applicable tax and social legislation;
- they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The partner's accounting and internal auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents.

II.15.2 In the case of an operating grant, the following operating costs are eligible provided that they satisfy the criteria set out in the previous paragraph:

- the cost of staff, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the partner's usual policy on remuneration;

The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken;

- travel and subsistence allowances for staff, provided that they are in line with the partner's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the partner and generally accepted for items of the same kind. Only the portion of the equipment's

depreciation corresponding to the period of eligibility for Union funding covered by the agreement may be taken into account by the Commission, except where its nature and/or use justifies different treatment by the Commission;

- costs of consumables and supplies;
- costs entailed by other contracts awarded by the partner for the purposes of implementing the work programme, provided that the conditions laid down in Article II.10 are met;
- costs arising directly from requirements imposed by the agreement (in particular, audit costs), including the costs of any financial services (especially the cost of financial guarantees);
- overheads.

II.15.3 In the case of a grant for an action, the eligible costs consist of direct costs and indirect costs.

The eligible direct costs for an action are those costs which, with due regard for the conditions of eligibility set out in paragraph 1, are identifiable as specific costs directly linked to the implementation of the action and which can therefore be booked to it direct. In particular, the following direct costs are eligible provided that they satisfy the criteria set out in paragraph 1:

- the cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the partner's usual policy on remuneration;
- travel and subsistence allowances for staff taking part in the action, provided that they are in line with the partner's usual practices on travel costs or do not exceed the scales approved annually by the Commission;
- the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the partner and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account by the Commission, except where the nature and/or the context of its use justifies different treatment by the Commission;
- costs of consumables and supplies, provided that they are identifiable and assigned to the action;
- costs entailed by other contracts awarded by the partner for the purposes of carrying out the action, provided that the conditions laid down in Article II.10 are met;
- costs arising directly from requirements imposed by the framework agreement or the specific agreement (dissemination of information, specific evaluation of the action,

audits, translations, reproduction, etc.), including the costs of any financial services (especially the cost of financial guarantees);

The eligible indirect costs for an action are those costs which, with due regard for the conditions of eligibility set out in paragraph 1, are not identifiable as specific costs directly linked to implementation of the action which can be booked to it direct, but which can be identified and justified by the partner using his accounting system as having been incurred in connection with the eligible direct costs for the action. They may not include any eligible direct costs.

By way of derogation from paragraph 1, the indirect costs incurred in carrying out an action may be eligible for flat-rate funding fixed at not more than 7% of the total eligible direct costs.<sup>29</sup> If provision is made in the specific agreement for flat-rate funding in respect of indirect costs, they need not be supported by accounting documents.

II.15.4 The following costs shall not be considered eligible:

- return on capital;
- debt and debt service charges;
- provisions for losses or potential future liabilities;
- interest owed;
- doubtful debts;
- exchange losses;
- VAT, unless the partner can show that he is unable to recover it according to the applicable national legislation;
- costs declared by the partner and covered by another action or work programme receiving a Union grant;
- excessive or reckless expenditure.

II.15.5 Contributions in kind shall not constitute eligible costs. However, the Commission can accept, if considered necessary or appropriate, that the co-financing referred to in Article I.4 should be made entirely or in part of contributions in kind. In this case, the value calculated for such contributions must not exceed:

- the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the partner free of charge but bear the corresponding costs;
- the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne.

Contributions involving buildings shall not be covered by this possibility.

In the case of co-financing in kind, a financial value shall be placed on the contributions and the same amount will be included in the costs of the action as ineligible costs and in receipts from the action as co-financing in kind. The partner shall undertake to obtain these contributions as provided for in the specific agreement.

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<sup>29</sup> The 7% ceiling may be exceeded by a reasoned Commission decision (where appropriate, provision for this should be included in the “Other Special Conditions” and the specific agreement).

II.15.6 By way of derogation from paragraph 3, indirect costs shall not be eligible under a grant for an action awarded to a partner who already receives an operating grant from the Commission during the period in question.

## **ARTICLE II.16 - REQUESTS FOR PAYMENT**

### **II.16.1 Pre-financing**

Pre-financing is intended to provide the partner with a float.

Where required by the paragraph on pre-financing in Article 5 of the specific agreement or the equivalent article in the framework agreement, the partner shall provide a financial guarantee from a bank or an approved financial institution established in one of the Member States of the Union.<sup>30</sup>

The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the partner).

The financial guarantee shall remain in force until final payments by the Commission match the proportion of the total grant accounted for by pre-financing. The Commission undertakes to release the guarantee within 30 days following that date.

### **II.16.2 Further pre-financing payments**

Where pre-financing is divided into several instalments, the partner may request a further pre-financing payment once he has used up the percentage of the previous payment specified in the paragraph on further pre-financing payments in Article 5 of the specific agreement or the equivalent article in the framework agreement. The request shall be accompanied by the following documents:

- a detailed statement of the eligible costs actually incurred;
- where required by the abovementioned provisions of Article 5 or the equivalent, a financial guarantee in accordance with paragraph 1;
- where required by the abovementioned provisions of Article 5 or the equivalent, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor, or in case of public bodies, by a competent and independent public officer;
- any other documents that may be required by the specific agreement in support of the request for further pre-financing payments.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions of the framework agreement and the specific agreement, including where appropriate the annexes thereto.

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<sup>30</sup> When the partner is established in a third country, the authorizing officer responsible may agree that a bank or a financial institution established in that third country may provide the guarantee, if he considers that the bank or financial institution offers equivalent security and characteristics as those offered by a bank or a financial institution established in a Member State. In exceptional cases, the guarantee may be replaced by a personal joint security provided by a third party. Where appropriate, provision for this should be included in the "Other Special Conditions" and the specific agreement.

### **II.16.3 Interim payments**

Interim payments are intended to reimburse the partner for expenditure on the basis of a detailed statement of the costs incurred, once the action has reached a certain level of completion. It may clear all or part of any pre-financing.

By the appropriate deadline indicated in the Article on Submission of reports and other documents in the specific agreement, the partner shall submit a request for interim payment accompanied by the following documents:

- an interim report on implementation of the action;
- an interim financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- where required by the paragraph on interim payments in Article 5 of the specific agreement or the equivalent article in the framework agreement, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor, or in case of public bodies, by a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Commission, that the costs declared by the partner in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the framework agreement and the specific agreement.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions of the framework agreement and the specific agreement, including any annexes. The partner shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the framework agreement and the specific agreement, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, the Commission shall have the period specified in the paragraph on interim payments in Article 5 of the specific agreement or the equivalent article in the framework agreement in order to:

- approve the interim report on implementation of the action;
- ask the partner for supporting documents or any additional information it deems necessary to allow the approval of the report;
- reject the report and ask for the submission of a new report.

Failing a written reply from the Commission within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Requests for additional information or a new report shall be notified to the partner in writing.

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The partner shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The

partner shall have the period laid down in the abovementioned provisions of Article 5 or the equivalent to submit the information or new documents requested.

Extension of the delay for approval of the report may delay the payment by the equivalent time.

Where a report is rejected and a new report requested, the approval procedure described in this Article shall apply.

In the event of renewed rejection, the Commission reserves the right to terminate the agreement by invoking Article II.12.2 (b).

#### **II.16.4 Payment of the balance**

Payment of the balance, which may not be repeated, is made after the end of the action on the basis of the costs actually incurred by the partner in carrying out the action. It may take the form of a recovery order where the total amount of earlier payments is greater than the amount of the final grant determined in accordance with Article II.18.

By the appropriate deadline indicated in the Article on Submission of reports and other documents in the specific agreement, the partner shall submit a request for payment of the balance accompanied by the following documents:

- a final report on the implementation of the action;
- a final financial statement of the eligible costs actually incurred, following the structure of the estimated budget;
- a full summary statement of the receipts and expenditure of the action;
- where required by the paragraph on payment of the balance in Article 5 of the specific agreement or the equivalent article in the framework agreement, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or, in case of public bodies, a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Commission, that the costs declared by the partner in the financial statements on which the request of payment is based are real, accurately recorded and eligible and that all receipts have been declared, in accordance with the framework agreement and the specific agreement.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions of the framework agreement and the specific agreement, including where appropriate the annexes thereto. The partner shall certify that the information provided in his request for payment is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the framework agreement and the specific agreement, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, the Commission shall have the period specified in the paragraph on payment of the balance in Article 5 of the specific agreement or the equivalent article in the framework agreement in order to:

- approve the final report on implementation of the action;

- ask the partner for supporting documents or any additional information it deems necessary to allow the approval of the report;
- reject the report and ask for the submission of a new report.

Failing a written reply from the Commission within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of the regularity or the authenticity, completeness and correctness of the declarations and information it contains.

Requests for additional information or a new report shall be notified to the partner in writing.

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The partner shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The partner shall have the period laid down in the abovementioned provisions of Article 5 or the equivalent to submit the information or new documents requested.

Extension of the delay for approval of the report may delay the payment by the equivalent time.

Where a report is rejected and a new report requested, the approval procedure described in this Article shall apply.

In the event of renewed rejection, the Commission reserves the right to terminate the specific agreement by invoking Article II.12.2 (b).

## **ARTICLE II.17 - GENERAL PROVISIONS ON PAYMENTS**

II.17.1 Payments shall be made by the Commission in euro. Any conversion of actual costs into euro shall be made at the daily rate published in the Official Journal of the European Union or, failing that, at the monthly accounting rate established by the Commission and published on its website applicable on the day when the payment order is issued by the Commission, unless specific provisions are laid down for the purpose in the Special Conditions of the framework agreement or in the specific agreement.

Payments by the Commission shall be deemed to be effected on the date when they are debited to the Commission's account.

II.17.2 The Commission may suspend the period for payment laid down in Article 5 of the specific agreement or the equivalent article in the framework agreement at any time for the purposes of additional checks by notifying the partner that his request for payment cannot be met, either because it does not comply with the provisions of the agreement, or because appropriate supporting documents must be produced or because there is a suspicion that some of the expenses in the financial statement are not eligible.

The Commission may suspend its payments at any time if the partner is found or presumed to have infringed the provisions of the framework agreement or the specific

agreement, in particular in the wake of the audits and checks provided for in Article II.20.

The Commission may also suspend its payments:

- if there is a suspicion of irregularity committed by the partner in the implementation of the grant agreement;
- if there is a suspected or established irregularity committed by the partner in the implementation of another grant agreement or grant decision funded by the General Budget of the Union or by any other budget managed by it. In such cases, suspension of the payments will only proceed where the suspected or established irregularity can affect the implementation of the current grant agreement.

The Commission shall inform the partner as soon as possible of any such suspension by registered letter with acknowledgement of receipt or equivalent, setting out the reasons for suspension.

Suspension shall take effect on the date when notice is sent by the Commission. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the Commission.

II.17.3 On expiry of the period for payment specified in Article 5 of the specific agreement or the equivalent article in the framework agreement, and without prejudice to paragraph 2 of this Article, the partner is entitled to interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euros, plus three and a half points; the reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union. This provision shall not apply to recipients of a grant which are public authorities of the Member States of the Union.

Interest on late payment shall cover the period from the final date for payment, exclusive, up to the date of payment as defined in paragraph 1, inclusive. The interest shall not be treated as a receipt for the purposes of determining the final grant within the meaning of Article II.18.4. The suspension of payment by the Commission may not be considered as late payment.

By way of exception, when the interest calculated in accordance with the provisions of the first and second subparagraphs is lower than or equal to EUR 200, it shall be paid to the partner only upon demand submitted within two months of receiving late payment.

II.17.4 The Commission shall deduct the interest yielded by pre-financing which exceeds EUR 50 000<sup>31</sup>, as provided for in *Article I. [...] "payment arrangements"*, from the

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<sup>31</sup> For external actions, the corresponding ceiling is set at EUR 250 000. For crisis management and humanitarian aid operations, the interest shall be recovered if the pre-financing exceeds per agreement EUR 750 000 at the end of each financial year and is for a duration of more than 12 months.

payment of the balance of the amount due to the partner. The interest shall not be treated as a receipt, within the meaning of Article II.18.4.

Where the pre-financing payments exceed EUR 750 000 per agreement at the end of each financial year, the interest shall be recovered for each reporting period. Taking account of the risks associated with the management environment and the nature of actions financed, the Commission may recover the interest generated by pre-financing lower than EUR 750 000 at least once a year.

Where the interest yielded exceeds the balance of the amount due to the partner, or is generated by pre-financing referred to in the previous subparagraph, the Commission shall recover it in accordance with Article II.19.

Interest yielded by pre-financing paid to Member States is not due to the Commission.

II.17.5 The partner shall have two months from the date of notification by the Commission of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article II.18 or, failing that, of the date on which the payment of the balance was received, to request information in writing on the determination of the final grant, giving reasons for any disagreement. After this time such requests shall no longer be considered. The Commission undertakes to reply in writing within two months following the date on which the request for information is received, giving reasons for its reply.

This procedure is without prejudice to the partner's right to appeal against the Commission's decision pursuant to the Article on Law applicable and competent court. Under the terms of Union law in this matter, such appeals must be lodged within two months following the notification of the decision to the applicant or, failing that, following the date on which the applicant learned of the decision.

## **ARTICLE II.18 - DETERMINING THE FINAL GRANT**

II.18.1 Without prejudice to information obtained subsequently pursuant to Article II.20, the Commission shall adopt the amount of the final payment to be granted to the partner on the basis of the documents referred to in Article II.16.4 which it has approved.

II.18.2 The total amount paid to the partner by the Commission may not in any circumstances exceed the maximum amount of the grant laid down in Article 3 of the specific agreement, even if the total actual eligible costs exceed the estimated total eligible costs specified in the estimated budget annexed to the specific agreement.

II.18.3 If the actual eligible costs when the action ends are lower than the estimated total eligible costs, the Commission's contribution shall be limited to the amount obtained by applying the Union grant percentage specified in Article 3 of the specific agreement to the actual eligible costs approved by the Commission.

II.18.4 The partner hereby agrees that the grant shall be limited to the amount necessary to balance the receipts and expenditure of the action, in the case of a grant for an action, or of the operating budget which allows the work programme to be implemented, in

the case of an operating grant, and that it may not in any circumstances produce a profit for him.

In the case of a grant for an action, profit shall mean any surplus of all actual receipts attributable to the action over the total actual costs of the action. In the case of an operating grant, profit shall mean any surplus of the partner's total actual operating receipts over his total actual operating costs.

The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the partner for financing other than the Union grant, to which shall be added the amount of the grant determined by applying the principles laid down in paragraphs 2 and 3 of this Article. For the purposes of this Article, only actual costs of the action or the operating budget falling within the categories set out in the estimated budget annexed to the specific agreement shall be taken into account; non-eligible costs shall always be covered by non-Union resources.

Any surplus determined in this way shall result in a corresponding reduction in the amount of the grant.<sup>32</sup>

II.18.5 Without prejudice to the right to terminate the specific agreement under Article II.12, and without prejudice to the right of the Commission to apply the penalties referred to in Article II.13, if the action is not implemented or is implemented poorly, partially or late, the Commission may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in the specific agreement.

II.18.6 On the basis of the amount of the final grant determined in this way and of the aggregate amount of the payments already made under the terms of the agreement, the Commission shall set the amount of the payment of the balance as being the amount still owing to the partner. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Commission shall issue a recovery order for the surplus.

## **ARTICLE II.19 – RECOVERY**

II.19.1 If any amount is unduly paid to the partner or if recovery is justified under the terms of the framework agreement or a specific agreement, the partner undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.

II.19.2 If the partner fails to pay by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article II.17.3. Interest on late payment shall cover the

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<sup>32</sup> By virtue of Article 165 § 3 IR, in the case of operating grants to bodies that pursue an aim of general European interest, the Commission is entitled to recover the percentage of the annual profit corresponding to the Union contribution to the operating budget of the bodies concerned where these bodies are also funded by public authorities which are themselves required to recover the percentage of the annual profit corresponding to their contribution. For the purpose of calculating the amount to be recovered, the percentage corresponding to the contributions in kind to the operating budget shall not be taken into account.

period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

II.19.3 If payment has not been made by the due date, sums owed to the Commission may be recovered by offsetting them against any sums owed to the partner, after informing him accordingly by registered letter with acknowledgement of receipt or equivalent, or by calling in the financial guarantee provided in accordance with Article II.16.1. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Union, the Commission may recover by offsetting before the due date of the payment. The partner's prior consent shall not be required.

II.19.4 Bank charges occasioned by the recovery of the sums owed to the Commission shall be borne solely by the partner.

II.19.5 The partner understands that, under Article 299 of the Treaty on the functioning of the European Union, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States. An action may be brought against such decision before the General Court of the European Union.

## **ARTICLE II.20 - CHECKS AND AUDITS**

II.20.1 The partner undertakes to provide any detailed information, including information in electronic format, requested by the Commission or by any other outside body authorised by the Commission to check that the actions and the provisions of the framework agreement and/or specific agreements are being properly implemented.

II.20.2 The partner shall keep at the Commission's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to each specific agreement for a period of five years from the date of payment of the balance for the corresponding action.

II.20.3 The partner agrees that the Commission may have an audit of the use made of the grants awarded carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the specific agreements until their balances are paid and for a period of five years from the date of payment of the balance for the corresponding actions. Where appropriate, the audit findings may lead to recovery decisions by the Commission.

II.20.4 The partner undertakes to allow Commission staff and outside personnel authorised by the Commission the appropriate right of access to sites and premises where the actions are carried out and to all the information, including information in electronic format, needed in order to conduct such audits.

II.20.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and the Council, the European Anti-Fraud

Office (OLAF) may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Commission.

II.20.6 The Court of Auditors shall have the same rights as the Commission, notably right of access, as regards checks and audits.

## SIGNATURES

For the partner

[forename / surname / *function*]

[signature]

Done at [place], [date]

In duplicate in English

For the Commission

[forename /surname]

[signature]

Done at [place], [date]

**ANNEX I - ACTIONS PLANNED UNDER THE PARTNERSHIP**