

ANNEX II

General Conditions applicable to an ICMPD-financed grant contract

CONTENTS

The term "Coordinator" refers to the Beneficiary identified as the Coordinator in the Special Conditions. The term "Beneficiary(ies)" refers collectively to all Beneficiaries, including the Coordinator of the Action. When there is only one Beneficiary of the Action, the terms Beneficiary(ies) and Coordinator should both be understood as referring to the only Beneficiary of the Action. The term "parties" to this Contract" refers to the party signatory of this Contract (i.e. the Beneficiary(ies) and the Contracting Authority).

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

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GENERAL AND ADMINISTRATIVE PROVISIONS

1. ARTICLE 1 - GENERAL PROVISIONS

General principles

- 1.1. The Beneficiary(ies) and the Contracting Authority are the only parties to this Contract.
- 1.2. This Contract and the payments attached to it may not be assigned to a third party in any manner whatsoever without a prior amendment to the contract.

Data protection

- 1.3. Any personal data will be processed solely for the purposes of the performance, management and monitoring of this Contract by the Contracting Authority and may also be passed to the bodies charged with monitoring or inspection tasks under European Union law.
- 1.4. The Beneficiary(ies) shall limit access and use of personal data to that strictly necessary for the performance, management and monitoring of this Contract and shall adopt all appropriate technical and organisational security measures necessary to preserve the strictest confidentiality and limit access to this data.

Role of the Beneficiary(ies)

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

Role of the Coordinator

- 1.6. The Coordinator shall:
 - a) monitor that the Action is implemented in accordance with this Contract and ensure coordination with all Beneficiary(ies) in the implementation of the Action;

- b) be the intermediary for all communications between the Beneficiary(ies) and the Contracting Authority;
- c) be responsible for supplying all documents and information to the Contracting Authority which may be required under this Contract, in particular in relation to the requests for payment. Where information from the Beneficiary(ies) is required, the Coordinator shall be responsible for obtaining, verifying and consolidating this information before passing it on to the Contracting Authority. Any information given, as well as any request made by the Coordinator to the Contracting Authority, shall be deemed to have been given in agreement with all Beneficiary(ies);
- d) inform the Contracting Authority of any event likely to affect or delay the implementation of the Action;
- e) inform the Contracting Authority of any change in the legal, financial, technical, organisational or ownership situation of any of the Beneficiary(ies), as well as, of any change in the name, address or legal representative of any of the Beneficiary(ies);
- f) be responsible in the event of audits, checks, monitoring or evaluations, as described in Article 16, for providing all the necessary documents, including the accounts of the Beneficiary(ies), copies of the most relevant supporting documents and signed copies of any contract concluded according to Article 10;
- g) have full financial responsibility for ensuring that the Action is implemented in accordance with this Contract;
- h) make the appropriate arrangements for providing the financial guarantee, when requested, under the provisions of Article 7 of the Special Conditions;
- i) establish the payment requests in accordance with the Contract;
- j) be the sole recipient, on behalf of all of the Beneficiary(ies), of the payments of the Contracting Authority. The Coordinator shall ensure that the appropriate payments are then made to the Beneficiary(ies) without unjustified delay;
- k) not delegate any, or parts of, these tasks to the Beneficiary(ies) or other entities.

2. ARTICLE 2 - OBLIGATION TO PROVIDE FINANCIAL AND NARRATIVE REPORTS

- 2.1. The Beneficiary(ies) shall provide the Contracting Authority with all required information on the implementation of the Action. The Coordinator shall collect all the necessary information and draw up consolidated interim and final reports. These reports shall:
 - a) cover the Action as a whole, regardless of which part of it is financed by the Contracting Authority;
 - b) consist of a narrative and a financial report (drafted using the templates provided in Annex VI) or, if applicable under the provisions of Article 7 of the Special Conditions, a narrative report (drafted using the template provided in Annex VI) and a provisional financial report (drafted using the templates provided in Annex X);
 - c) provide a full account of all aspects of the Action's implementation for the period covered, including in case of simplified cost options the qualitative and quantitative information needed to demonstrate the fulfilment of the conditions for reimbursement established in the Special Conditions;

- d) be drafted in the currency and language of this Contract;
 - e) include any update on the Communication plan as provided by Article 6.2;
 - f) include any relevant reports, publications, press releases and updates related to the Action.
- 2.2. Additionally the final report shall:
- a) cover any period not covered by the previous reports;
 - b) include the proofs of the transfers of ownership referred to in Article 7.5.
- 2.3. The Special Conditions may set out additional reporting requirements.
- 2.4. The Contracting Authority may request additional information at any time. The Coordinator shall provide this information within 30 days of the request, in the language of the Contract.
- 2.5. Reports shall be submitted with the payment requests, according to Article 15. If the Coordinator fails to provide any report or fails to provide any additional information requested by the Contracting Authority within the set deadline without an acceptable and written explanation of the reasons, the Contracting Authority may terminate this Contract according to Article 12(2)a and f.

3. ARTICLE 3 - LIABILITY

- 3.1. The Contracting Authority cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Beneficiary(ies) and/or to partners or other third parties to the contract while the Action is being carried out or as a consequence of the Action. The Contracting Authority cannot, therefore, accept any claim for compensation or increases in payment in connection with such damage or injury.
- 3.2. The Beneficiary(ies) shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them while the Action is being carried out or as a consequence of the Action. The Beneficiary(ies) shall discharge the Contracting Authority of all liability arising from any claim or action brought as a result of an infringement of rules or regulations by the Beneficiary(ies) or the Beneficiary(ies)'s employees or individuals for whom those employees are responsible, or as a result of violation of a third party's rights. For the purpose of this article 3 employees of the Beneficiary(ies) shall be considered third parties.

4. ARTICLE 4 - CONFLICT OF INTERESTS

- 4.1. The Beneficiary(ies) shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of this Contract. Such conflict of interests may arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.
- 4.2. Any conflict of interests which may arise during performance of this Contract must be notified in writing to the Contracting Authority without delay. In the event of such conflict, the Coordinator shall immediately take all necessary steps to resolve it.
- 4.3. The Contracting Authority reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken if necessary.
- 4.4. The Beneficiary(ies) shall ensure that the staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under

this Contract, the Beneficiary(ies) shall replace, immediately and without compensation from the Contracting Authority, any member of its staff in such a situation.

5. ARTICLE 5 - CONFIDENTIALITY

- 5.1. Subject to Article 16, the Contracting Authority and the Beneficiary(ies) undertake to preserve the confidentiality of any information, notwithstanding its form, disclosed in writing or orally in relation to the implementation of this Contract and identified in writing as confidential until at least 5 years after the payment of the balance.
- 5.2. The Beneficiary(ies) shall not use confidential information for any aim other than fulfilling their obligations under this Contract unless otherwise agreed with the Contracting Authority.

6. ARTICLE 6 - VISIBILITY

- 6.1. Unless the Contracting Authority agrees or requests otherwise, the Beneficiary(ies) shall take all necessary steps to publicise the fact that the Contracting Authority and the European Union has financed or co-financed the Action. Such measures shall comply with the Communication and Visibility Manual for Union External Actions laid down and published by the European Commission, that can be found at: http://ec.europa.eu/europeaid/work/visibility/documents/communication_and_visibility_manual_en.pdf and should also insure the necessary visibility of the contracting authority.
- 6.2. The Coordinator shall submit a communication plan for the approval of the Contracting Authority and report on its implementation in accordance with Article 2.
- 6.3. In particular, the Beneficiary(ies) shall mention the title of the Action and the Contracting Authority as well as the European Union's financial contribution in information given to the final recipients of the Action, in its internal and annual reports, and in any dealings with the media. It shall display the Contracting Authority and European Union logo wherever appropriate.
- 6.4. Any notice or publication by the Beneficiary(ies) concerning the Action, including those given at conferences or seminars, shall specify that the Action has received European Union and ICMPD funding. Any publication by the Beneficiary(ies), in whatever form and by whatever medium, including the internet, shall include the following statement: 'This document has been produced with the financial assistance of the European Union and ICMPD. The contents of this document are the sole responsibility of <name of the beneficiary(ies)> and can under no circumstances be regarded as reflecting the position of the European Union and the one of ICMPD'.
- 6.5. The Beneficiary(ies) authorises the Contracting Authority and the European Commission to publish its name and address, nationality, the purpose of the grant, duration and location as well as the maximum amount of the grant and the rate of funding of the Action's costs, as laid down in Article 3 of the Special Conditions. Derogation from publication of this information may be granted if it could endanger the Beneficiary(ies) or harm their interests.

7. ARTICLE 7 - OWNERSHIP/USE OF RESULTS AND ASSETS

- 7.1. Unless otherwise stipulated in the Special Conditions, ownership of, and title and intellectual and industrial property rights to, the Action's results, reports and other documents relating to it will be vested in the Beneficiary(ies).
- 7.2. Without prejudice to Article 7.1, the Beneficiary(ies) grants the Contracting Authority (and the European Commission) the right to use freely and as it sees fit, and in particular to store, modify, translate, display, reproduce by any technical procedure, publish or communicate by any

medium, all documents deriving from the Action whatever their form, provided it does not thereby breach existing industrial and intellectual property rights.

- 7.3. The Beneficiary(ies) shall ensure that it has all rights to use any pre-existing intellectual property rights necessary to implement this Contract.
- 7.4. In case natural, recognisable persons are depicted in a photograph or film, the Coordinator shall, in the final report to the Contracting Authority, submit a statement of these persons giving their permissions for the described use of their images. The above does not refer to photographs taken or films shot in public places where random members of the public are identifiable only hypothetically and to public persons acting in their public activities.
- 7.5. Where the Beneficiary(ies) does not have its headquarters in the country where the Action is implemented and unless otherwise specified in the Special Conditions, the equipment, vehicles and supplies paid for by the Budget for the Action shall be transferred to a local Beneficiary(ies) and affiliated entity and/or the final beneficiaries of the Action, at the latest when submitting the final report. Copies of the proofs of transfer of any equipment and vehicles for which the purchase cost was more than EUR 5.000 per item shall be attached to the final report. Such proofs shall be kept by the Beneficiary(ies) for control in all other cases.

8. ARTICLE 8 - EVALUATION/MONITORING OF THE ACTION

- 8.1. If the Contracting Authority carries out an interim or ex post evaluation or a monitoring mission, the Coordinator shall undertake to provide it and/or the persons authorised by it with any document or information which will assist with the evaluation or monitoring mission, and grant them the access rights described in Article 16.
- 8.2. If either the Beneficiary(ies) or the Contracting Authority carries out or commissions an evaluation in the course of the Action, it shall provide the other with a copy of the evaluation report.

9. ARTICLE 9 - AMENDMENT OF THE CONTRACT

- 9.1. Any amendment to this Contract, including the annexes thereto, shall be set out in writing. This Contract can be modified only during its execution period.
- 9.2. The amendment may not have the purpose or the effect of making changes to this Contract that would call into question the grant award decision or be contrary to the equal treatment of applicants. The maximum grant referred to in Article 3.2 of the Special Conditions may not be increased.
- 9.3. If an amendment is requested the by Beneficiary(ies), the coordinator shall submit a duly justified request to the Contracting Authority thirty days before the date on which the amendment should enter into force, unless there are special circumstances duly substantiated and accepted by the Contracting Authority.
- 9.4. Where the amendment to the Budget or Description of the Action does not affect the basic purpose of the Action and the financial impact is limited to a transfer between items within the same main budget heading including the cancellation or introduction of an item, or a transfer between main budget headings involving a variation of 25% or less of the amount originally entered (or as modified by addendum) in relation to each concerned main heading for eligible costs, the Coordinator may amend the budget and inform in writing without delay the Contracting Authority accordingly. This method may not be used to amend the headings for indirect costs, for the contingency reserve, for in-kind contributions or the amounts or rates of simplified cost options.

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

10. ARTICLE 10 - IMPLEMENTATION

Implementation contracts

- 10.1. If the Beneficiary(ies) has to conclude implementation contracts with contractors in order to carry out the Action, these may only cover a limited portion of the Action and shall respect the contract-award procedures set out in Annex IV of this Contract.
- 10.2. The Beneficiary(ies) shall also ensure that contractors awarded an implementation contract comply with Articles 3, 4, 5, 6, 7, 8 and 16 of this Contract.
- 10.3. The Coordinator shall provide in its report to the Contracting Authority a full account on the award of any implementation contract awarded.

Financial support to third parties

- 10.4. In order to support the achievement of the objectives of the Action, and in particular where the implementation of the Action requires financial support to be given to third parties, the Beneficiary(ies) may award sub-grants if so provided by the Special Conditions.
- 10.5. The maximum amount of a sub-grant shall be limited to EUR 60.000 per each third party, except where the main purpose of the Action is to redistribute the grant.
- 10.6. The Description of the Action, in conformity with the relevant instructions given in this regard by the Contracting Authority, shall define the types of entities eligible for financial support and include a fixed list with the types of activities which may be eligible for financial support. The criteria for the selection of third party recipients of this financial support, including the criteria for determining its exact amount, shall also be specified.
- 10.7. The Coordinator shall provide in its report to the Contracting Authority a comprehensive and detailed report on the award and on the implementation of any implementation and sub-grants contract awarded. These reports should provide, inter alia, information on the award procedures, on the identities of the sub-grantees, the amount granted, the results to be expected, the activities carried out, the problems encountered and solutions found and a provisional timetable of the activities which still need to be carried out.
- 10.8. The Beneficiary(ies) shall also ensure that third parties awarded a sub-grant contract comply with Articles 3, 4, 5, 6, 7, 8, 14 and 16 of this Contract.

11. ARTICLE 11 - EXTENSION AND SUSPENSION

Extension

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

Suspension by the Coordinator

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

Suspension by the Contracting Authority

- 11.4. The Contracting Authority may request the Beneficiary(ies) to suspend implementation of the Action, or any part thereof, if exceptional circumstances, notably of force majeure, make its implementation excessively difficult or dangerous. To this purpose, the Contracting Authority shall inform the Coordinator stating the nature and probable duration of the suspension.
- 11.5. The Coordinator or the Contracting Authority may then terminate this Contract in accordance with Article 12.1. If the Contract is not terminated, the Beneficiary(ies) shall endeavour to minimise the time of the suspension and any possible damage and shall resume implementation once circumstances allow and after having obtained the approval of the Contracting Authority.
- 11.6. The Contracting Authority may also suspend the implementation of the Action, when, or, if necessary to verify, that:
- a) the grant award procedure or the implementation of the Action have been subject to substantial errors, irregularities or fraud;
 - b) the Beneficiary(ies) has breached any substantial obligation under this Contract.
- 11.7. The Coordinator shall provide any requested information, clarification or document within 30 days of receipt of any request sent by the Contracting authority. If, notwithstanding the information, clarification or documents provided by the Coordinator, the award procedure or the implementation of the grant prove to have been subject to substantial errors, irregularities, fraud, or breach of obligations, then the Contracting Authority may terminate this Contract according to Article 12(2)h.

Force majeure

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

Extension of the implementation period following a suspension

- 11.10. In case of suspension according to Articles 11.2, 11.4 and 11.6, the implementation period of the Action shall be extended by a period equivalent to the length of the suspension, without prejudice to any amendment to the Contract that may be necessary to adapt the Action to the new implementing conditions. However for contractual reasons with the main donor, ICMPD can refuse such an extension in order to comply with the overall requirements of the programme financing the grant.

12. ARTICLE 12 - TERMINATION OF THE CONTRACT

Termination in case of force majeure

- 12.1. In the cases foreseen in Article 11.2 and 11.4, if the Coordinator or the Contracting Authority believe that this Contract can no longer be executed effectively or appropriately, either party shall duly consult the other. If the parties fail to agree on a solution, the Coordinator or the Contracting Authority may terminate this Contract by serving a two months written notice, without being required to pay compensation.

Termination by the Contracting Authority

- 12.2. Without prejudice to Article 12.1, in the following circumstances the Contracting Authority may, after having duly consulted the Coordinator, terminate this Contract or the participation of any Beneficiary(ies) in this Contract without any indemnity on its part when:

- a) the Beneficiary(ies) fails, without justification, to fulfil any substantial obligation incumbent on them individually or collectively by this Contract and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within 30 days of receipt of the letter;
- b) the Beneficiary(ies) is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- c) the Beneficiary(ies), or any related entity or person, has been found guilty of an offence concerning its professional conduct proven by any means;
- d) the Beneficiary(ies), or any related entity or person, has committed fraud, corruption, or is involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Contracting Authority financial interests;
- e) a change to the Beneficiary(ies)'s legal, financial, technical, organisational or ownership situation or the termination of the participation of one of the partners substantially affects the implementation of this Contract or calls into question the decision awarding the grant;
- f) the Beneficiary(ies), or any related entity or person, is guilty of misrepresentation in supplying the information required in the award procedure or in the implementation of the Action or fails to supply – or fails to supply within the deadlines set under this Contract - any information related to the Action required by the Contracting Authority;
- g) the Beneficiary(ies) has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;

h) the Contracting Authority has evidence that the Beneficiary(ies), or any related entity or person, has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Action;

i) the Beneficiary(ies) is subject to an administrative penalty as referred to in Article 12.8;

j) the Contracting Authority has evidence that the Beneficiary(ies) is subject to a conflict of interests;

k) the Contracting Authority has evidence that the Beneficiary(ies) or one of the partners has committed systemic or recurrent errors or irregularities, fraud, or serious breach of obligations under other grants financed by the Contracting Authority and awarded to that specific partner under similar conditions, provided that those errors, irregularities, fraud or serious breach of obligations have a material impact on this grant.

- 12.3. In the cases referred to in points 12(2)c, d, f, h and k, any related person means any physical person with powers of representation, decision-making or control in relation to the Beneficiary(ies).

Termination of a Partner participation by the Coordinator

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

End date

- 12.5. The payment obligations of the Contracting Authority under this Contract shall end 18 months after the implementation period laid down in Article 2 of the Special Conditions, unless this Contract is terminated according to Article 12. The Contracting Authority shall notify the Coordinator of any postponement of the end date.
- 12.6. This Contract will be terminated automatically if it has not given rise to any payment by the Contracting Authority within two years of its signature.

Effects of Termination

- 12.7. In the event of termination, the Beneficiary(ies) shall be entitled to payment only for the part of the Action carried out, excluding costs relating to current commitments that are not due to be executed until after termination.

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

In the cases of termination foreseen in Article 12.2)a, c, d, f, h and k, as well as if the Action is not implemented or is implemented poorly, partially or late, the Contracting Authority may, after having properly consulted the Coordinator and depending on the gravity of the failings, request full or partial repayment of amounts already paid for the Action. The Contracting Authority may also decide to reduce the grant initially provided in line with the actual implementation of the Action on the terms laid down in this Contract.

Administrative and Financial penalties

- 12.8. Without prejudice to the application of other remedies laid down in the Contract, a Beneficiary(ies) who has made false declarations, substantial errors, irregularities and fraud or was in serious breach of its contractual obligations may be excluded from all contracts and grants financed by ICMPD for a maximum of five years from the date on which the infringement is established. The period may be increased to ten years in the event of a repeated offence within five years of the first infringement.
- 12.9. In addition or in lieu of the administrative sanctions laid down in Article 12.8, a Beneficiary(ies) may also be subject to financial penalties representing 10% of the total value of this Contract. This rate may be increased to 20% in the event of a repeated offence within five years of the first infringement.
- 12.10. ICMPD shall formally notify the Beneficiary(ies) concerned of any decision to apply such penalties.

13. ARTICLE 13 - APPLICABLE LAW AND DISPUTE SETTLEMENT

- 13.1. The parties to this Contract shall do everything possible to settle amicably any dispute arising between them during the implementation of this Contract. To that end, they shall communicate their positions and any solution that they consider possible in writing, and meet each other at either's request. The Beneficiary(ies) and the Contracting Authority shall reply to a request sent for an amicable settlement within 30 days. Once this period has expired, or if the attempt to reach an amicable settlement has not produced an agreement within 120 days of the first request, the Beneficiary(ies) or the Contracting Authority may notify the other part that it considers the procedure to have failed.
- 13.2. In the event of failure to reach an amicable agreement, the dispute may, by common agreement of the Coordinator and the Contracting Authority, be submitted for conciliation. Any dispute from this agreement shall be settled amicably by negotiation. If no settlement is possible, the matter shall be referred to arbitration under the UNCITRAL arbitration rules.

FINANCIAL PROVISIONS

14. ARTICLE 14 - ELIGIBLE COSTS

Cost eligibility criteria

- 14.1. Eligible costs are actual costs incurred by the Beneficiary(ies) which meet all the following criteria:
- a) they are incurred during the implementation of the Action as specified in Article 2 of the Special Conditions. In particular:
- (i) Costs relating to services and works shall relate to activities performed during the implementation period. Costs relating to supplies shall relate to delivery and installation of items during the implementation period. Signature of a contract, placing of an order, or entering into any commitment for expenditure within the implementation period for future delivery of services, works or supplies after expiry of the implementation period do not meet this requirement;

- (ii) Costs incurred should be paid before the submission of the final reports. They may be paid afterwards, provided they are listed in the final report together with the estimated date of payment;
 - (iii) An exception is made for costs relating to final reports, including expenditure verification, audit and final evaluation of the Action, which may be incurred after the implementation period of the Action;
 - (iv) Procedures to award contracts, as referred to in Article 10, may have been initiated and contracts may be concluded by the Beneficiary(ies) before the start of the implementation period of the Action, provided the provisions of Annex IV have been respected.
- b) they are indicated in the overall budget for the Action;
- c) they are necessary for the implementation of the Action;
- d) they are identifiable and verifiable, in particular being recorded in the accounting records of the Beneficiary(ies) and determined according to the applicable accounting standards of the country where the Beneficiary(ies) is established and according to the usual cost accounting practices of the Beneficiary(ies);
- e) they comply with the requirements of applicable tax and social legislation;
- f) they are reasonable, justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

Eligible direct costs

- 14.2. Subject to Article 14.1 and, where relevant, to the provisions of Annex IV the following direct costs of the Beneficiary(ies) shall be eligible:
- a) the cost of staff assigned to the Action, corresponding to actual gross salaries including social security charges and other remuneration-related costs; salaries and costs shall not exceed those normally borne by the Beneficiary(ies), unless it is justified by showing that it is essential to carry out the Action;
 - b) travel and subsistence costs for staff and other persons taking part in the Action, provided they do not exceed those normally borne by the Beneficiary(ies) nor the rates published by the European Commission at the time of such missions;
 - c) purchase costs for equipment and supplies (new or used) specifically for the purpose of the Action, provided that ownership is transferred at the end of the Action when required in Article 7.5;
 - d) costs of consumables;
 - e) costs entailed by contracts awarded by the Beneficiary(ies) for the purposes of the Action referred to in Article 10;
 - f) costs deriving directly from the requirements of the Contract (dissemination of information, evaluation specific to the Action, audits, translation, reproduction, insurance, etc.) including financial service costs (in particular the cost of transfers and financial guarantees where required according to the Contract);

g) duties, taxes and charges, including VAT, paid and not recoverable by the Beneficiary(ies), unless otherwise provided in the Special Conditions.

Simplified cost options

14.3. In accordance with the detailed provisions in Annex III, eligible costs may also be constituted by any or a combination of the following cost options:

- a) unit costs;
- b) lump sums;
- c) flat-rate financing.

14.4. The methods used by the Beneficiary(ies) to determine unit costs, lump sums or flat-rates shall be clearly described and substantiated in Annex III and shall ensure compliance with the no-profit rule and shall avoid double funding of costs. The information used can be based on the Beneficiary(ies)'s historical and/or actual accounting and cost accounting data or on external information where available and appropriate.

Costs declared under simplified cost options shall satisfy the eligibility criteria set out in Article 14.1 and 14.2. They do not need to be backed by accounting or supporting documents, save those necessary to demonstrate the fulfillment of the conditions for reimbursement established in Annex I and III.

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

The amounts or rates of unit costs, lump sums or flat-rates set out in Annex III may not be amended unilaterally and may not be challenged by ex post verifications.

14.5. The total amount of financing on the basis of simplified cost options may not exceed EUR 60.000, unless otherwise provided for in the Special Conditions.

Contingency reserve

14.6. A reserve for contingencies and/or possible variations in exchange rates, not exceeding 5 % of the direct eligible costs, may be included in the budget for the Action. It can be used only with the prior written authorisation of the Contracting Authority.

Indirect costs

14.7. The indirect costs for the action are those eligible costs which may not be identified as specific costs directly linked to the implementation of the action and may not be booked to it directly according to the conditions of eligibility in Article 14.1. However, they are incurred by the Beneficiary(ies) in connection with the eligible direct costs for the action. They may not include ineligible costs as referred to in Article 14.9 or costs already declared under another costs item or heading of the budget of this Contract.

A fixed percentage of the total amount of direct eligible costs of the Action not exceeding the percentage laid down in Article 3 of the Special Conditions may be claimed to cover indirect costs for the Action. Flat-rate funding in respect of indirect costs does not need to be supported by accounting documents. This amount shall not be taken into account with regard to the maximum amount of simplified cost options.

In kind contributions

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

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

Notwithstanding the above, if the Description of the Action provides for contributions in kind, such contributions have to be provided.

Non-eligible costs

- 14.9. The following costs shall not be considered eligible:

- a) debts and debt service charges (interest);
- b) provisions for losses or potential future liabilities;
- c) costs declared by the Beneficiary(ies) and financed by another action or work programme receiving a an ICMPD grant or European Union grant (including through EDF);
- d) purchases of land or buildings, except where necessary for the direct implementation of the Action, in which case ownership shall be transferred to the final beneficiaries and/or a local Beneficiary(ies), at the latest at the end of the Action, in accordance with Article 7.5;
- e) currency exchange losses;
- f) credits to third parties, unless otherwise specified in the Special Conditions.

15. ARTICLE 15 – PAYMENT REQUEST PROCEDURE

Payment procedures

- 15.1. The payments schedule, as set out in Article 4 of the Special Conditions shall be in accordance with the following:
- (i) an initial pre-financing payment of the part of the Action financed by the Contracting Authority based on the budget forecast for the first reporting period defined in Article 4.1 of the Special Conditions (excluding contingencies) according to the pre-financing rate set out in Article 4.3 of the Special Conditions;
 - (ii) if applicable, any further pre-financing payments of the part of the Action financed by the Contracting Authority based on the budget forecast for the next reporting period (excluding non-authorised contingencies) according to the pre-financing rate set out in Article 4.3 of the Special Conditions:
 - the reporting period is defined in Article 4.1 of the Special Conditions;
 - within 60 days following the end of any reporting period, the Coordinator shall present an interim narrative and financial report in accordance with Article 2 or, if unable to do so, it shall inform the Contracting Authority of the reasons and provide a summary of progress of the Action;

- if at the end of the reporting period the part of the expenditure actually incurred which is financed by the Contracting Authority is less than 70% of the previous payment (and 100% of any previous payments), the further pre-financing payment shall be reduced by the amount corresponding to the difference between the 70% of the previous pre-financing payment and the part of the expenditure actually incurred which is financed by the Contracting Authority;
- the Coordinator may submit a request for further pre-financing payment before the end of the reporting period, when the part of the expenditure actually incurred which is financed by the Contracting Authority is more than 70% of the previous payment (and 100% of any previous payments). In this case, the following reporting period starts anew from the end date of the period covered by this payment request;

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

Submission of final reports

- 15.2. The Coordinator shall submit the final report to the Contracting Authority no later than **three months** after the end of the implementation period as defined in Article 2 of the Special Conditions unless otherwise provided for in the Special Conditions.

Payment request

- 15.3. Any payment request shall be drafted using the model in Annex V and shall be accompanied by:
- a) a narrative and financial report in line with Article 2;
 - b) a forecast budget for the following reporting period in case of a request for further pre-financing based on Annex VI or, if applicable under the provisions of Article 7 of the Special Conditions, Annex X, and;
 - c) for every twelve months of implementation, an expenditure verification report covering the past twelve months of implementation period.

For the purposes of the initial pre-financing payment, the signed contract serves as a payment request. A financial guarantee shall be attached if required in Article 7 of the Special Conditions.

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

Payment deadlines

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

Further pre-financing payments and payments of the balance shall be made within 60 days of receipt of the payment request by the Contracting Authority.

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

Suspension of the period for payments

- 15.5. Without prejudice to Article 12, the Contracting Authority may suspend the time-limits for payments by notifying the Coordinator that:
- a) the amount indicated in its request of payments is not due, or;
 - b) proper supporting documents have not been supplied, or;
 - c) the Contracting Authority needs to request clarifications, modifications or additional information to the narrative or financial reports, or;
 - d) the Contracting Authority needs to carry out additional checks, including on-the-spot checks to make sure that the expenditure is eligible, or;
 - e) it is necessary to verify whether presumed substantial errors, irregularities, and/or fraud have occurred in the grant award procedure or the implementation of the Action, or;
 - f) it is necessary to verify whether the Beneficiary(ies) has breached any substantial obligations under this Contract.

The suspension of the time-limits for payments starts when the above notification is sent by the Contracting Authority to the Coordinator. The time-limit starts running again on the date on which a correctly formulated request for payment is recorded. The Coordinator shall provide any requested information, clarification or document within 30 days of the request unless otherwise provide in Article 7 of the Special Conditions.

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

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

Expenditure verification report

- 15.6. The Coordinator must provide an expenditure verification report for:

- a) any 12 months implementation period;
- b) any final report.

The expenditure verification report shall conform to the model in Annex VII and shall be produced by an auditor approved or chosen by the Contracting Authority. The auditor shall meet the requirements set out in the Terms of Reference for Expenditure Verification in Annex VII.

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

Where the Coordinator is a government agency, the Contracting Authority may accept to substitute the expenditure verification with a detailed breakdown of expenditure. This shall also apply for grants below EUR 30.000.

The detailed breakdown of expenditure shall provide the following information for each cost heading in the financial report and for all underlying entries and transactions: amount of the entry or transaction, accounting reference (e.g. ledger, journal or other relevant reference) description of the entry or transaction (detailing the nature of the expenditure) and reference to underlying documents (e.g. invoice number, salary slip or other relevant reference), in line with Article 16.1. It shall be provided in electronic form and spread sheet format (excel) whenever possible.

The detailed breakdown as well as the expenditure verification report shall include the costs of all the project partners.

The detailed breakdown of expenditure shall be supported by a declaration of honour by the Coordinator that the information in the payment request is full, reliable and true and that the costs declared have been incurred and can be considered as eligible in accordance with this Contract.

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

The Contracting Authority reserves the right to conduct desk reviews and to carry out on the-spot-checks of all accounting documents and any other document relevant to the financing of the Action.

Financial guarantee

- 15.7. If the grant exceeds EUR 30.000 the Contracting Authority may request a financial guarantee for the amount of the initial pre-financing payment.

The guarantee shall be denominated in euro, conforming to the model in Annex VIII and, unless the Contracting Authority agrees otherwise, provided by an approved bank or financial institution established in one of the Member States of the European Union. This guarantee shall remain in force until its release by the Contracting Authority when the payment of the balance is made.

This provision shall not apply if the Coordinator is a pillar-assessed organisation or a government agency, unless otherwise stipulated in Article 7 of the Special Conditions. In case a financial bank guarantee cannot be provided, the Contracting Authority may specify additional requirements in Article 7 of the Special Conditions.

Rules for currency conversion

- 15.8. The Contracting Authority shall make payments to the Coordinator on the bank account referred to in the financial identification form in Annex V, which allows the identification of the funds paid by the Contracting Authority. The Contracting Authority shall make payments in euro and reports shall be submitted in euro.

Costs incurred in other currencies than euro shall be converted using the official European Commission monthly exchange rate, Inforeuro, by using the date of invoice, unless otherwise stipulated in the Special Conditions.

In the event of an exceptional exchange-rate fluctuation, the parties shall consult each other with a view to amending the Action in order to lessen the impact of such a fluctuation. Where necessary, the Contracting Authority may take additional measures such as terminating the Contract.

16. ARTICLE 16 - ACCOUNTS AND TECHNICAL AND FINANCIAL CHECKS

Accounts

- 16.1. The Beneficiary(ies) shall keep accurate and regular accounts of the implementation of the Action using an appropriate accounting and double-entry bookkeeping system.

The accounts:

- a) may be an integrated part of or an adjunct to the Beneficiary(ies)'s regular system;
 - b) shall comply with the accounting and bookkeeping policies and rules that apply in the country concerned;
 - c) shall enable income and expenditure relating to the Action to be easily traced, identified and verified.
- 16.2. The Coordinator shall ensure that any financial report as required under Article 2 can be properly and easily reconciled to the accounting and bookkeeping system and to the underlying accounting and other relevant records. For this purpose the Beneficiary(ies) shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification including the costs afforded by the partners to the Action.

Right of access

- 16.3. The Beneficiary(ies) shall allow verifications to be carried out by the Contracting Authority, the European Anti-Fraud Office, the European Court of Auditors and any external auditor authorised by the Contracting Authority. The Beneficiary(ies) has to take all steps necessary to facilitate their work.
- 16.4. The Beneficiary(ies) shall allow the above entities to:
- a) access the sites and locations at which the Action is implemented;
 - b) examine its accounting and information systems, documents and databases concerning the technical and financial management of the Action;
 - c) take copies of documents;
 - d) carry out on the-spot-checks;
 - e) conduct a full audit on the basis of all accounting documents and any other document relevant to the financing of the Action.
- 16.5. Additionally the European Anti-Fraud Office shall be allowed to carry out on-the-spot checks and inspections in accordance with the procedures laid down by the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.

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

- 16.6. Access given to agents of ICMPD, European Anti-Fraud Office and the European Court of Auditors and any external auditor authorised by the Contracting Authority carrying out verifications as provided for by this Article as well as by Article 15.6 shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject.

Record keeping

- 16.7. The Beneficiary(ies) shall keep all records, accounting and supporting documents related to this Contract for seven years following the payment of the balance and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim has been disposed of.

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

- 16.8. All the supporting documents shall be available in the original form, including in electronic form.

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

a) Accounting records (computerised or manual) from the Beneficiary(ies)'s accounting system such as general ledger, sub-ledgers and payroll accounts, fixed assets registers and other relevant accounting information;

b) Proof of procurement procedures such as tendering documents, bids from tenderers and evaluation reports;

c) Proof of commitments such as contracts and order forms;

d) Proof of delivery of services such as approved reports, time sheets, transport tickets, proof of attending seminars, conferences and training courses (including relevant documentation and material obtained, certificates) etc.;

e) Proof of receipt of goods such as delivery slips from suppliers;

f) Proof of completion of works, such as acceptance certificates;

g) Proof of purchase such as invoices and receipts;

h) Proof of payment such as bank statements, debit notices, proof of settlement by the contractor;

i) Proof that taxes and/or VAT that have been paid cannot actually be reclaimed;

j) For fuel and oil expenses, a summary list of the distance covered, the average consumption of the vehicles used, fuel costs and maintenance costs;

k) Staff and payroll records such as contracts, salary statements and time sheets. For local staff recruited on fixed-term contracts, details of remuneration paid, duly substantiated by the person in charge locally, broken down into gross salary, social security charges, insurance and net salary. For expatriate and/or European-based staff (if the Action is implemented in Europe) analyses and breakdowns of expenditure per month of actual work, assessed on the basis of unit prices per verifiable block of time worked and broken down into gross salary, social security charges, insurance and net salary.

17. ARTICLE 17 - FINAL AMOUNT OF THE GRANT

Final amount

- 17.1. The grant may not exceed the maximum ceiling in Article 3.2 of the Special Conditions either in terms of the absolute value or the percentage stated therein.
- 17.2. If the eligible costs of the Action at the end of the Action are less than the estimated eligible costs as referred to in Article 3.1 of the Special Conditions, the grant shall be limited to the amount obtained by applying the percentage laid down in Article 3.2 of the Special Conditions to the eligible costs of the Action approved by the Contracting Authority.

No profit

- 17.3. The grant may not produce a profit for the Beneficiary(ies) or for the partners, unless specified otherwise in Article 7 of the Special Conditions. Profit is defined as a surplus of the receipts over the eligible costs approved by the Contracting Authority when the request for payment of the balance is made.
- 17.4. The receipts to be taken into account are the consolidated receipts on the date on which the payment request for the balance is made by the Coordinator that fall within one of the two following categories:
- a) income generated by the action, unless otherwise specified in the Special conditions;
 - b) financial contributions specifically assigned by the donors to the financing of the same eligible costs financed by this Contract. Any financial contribution that may be used by the Beneficiary(ies) to cover costs other than those eligible under this contract or that are not due to the donor where unused at the end of the action are not to be considered as a receipt to be taken into account for the purpose of verifying whether the grant produces a profit for the Beneficiary(ies).
- 17.5. Where the final amount of the grant determined in accordance with the Contract would result in a profit, it shall be reduced by the percentage of the profit corresponding to the final contribution to the eligible costs approved by the Contracting Authority.
- 17.6. The provisions in Article 17.3 shall not apply to:
- a) actions of which the objective is the reinforcement of the financial capacity of a Beneficiary(ies), if specified in Article 7 of the Special Conditions;
 - b) other direct support paid to natural persons most in need, such as unemployed persons and refugees, if specified in Article 7 of the Special Conditions.

18. ARTICLE 18 - RECOVERY

Recovery

- 18.1. If any amount is unduly paid to the Coordinator, or if recovery is justified under the terms of this Contract, the Coordinator undertakes to repay the Contracting Authority these amounts.
- 18.2. In particular, payments made do not preclude the possibility for the Contracting Authority to issue a recovery order following an expenditure verification report, an audit or further verification of the payment request.
- 18.3. If a verification reveals that the methods used by the Beneficiary(ies) to determine unit costs, lump sums or flat-rates are not compliant with the conditions established in this Contract and that therefore an undue payment has been made, the Contracting Authority shall be entitled to recover proportionately up to the amount of the unit costs, lump sums or flat rate financing.
- 18.4. The Coordinator undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority within 45 days of the issuing of the debit note, the latter being the letter by which the Contracting Authority requests the amount owed by the Coordinator.

Interest on late payments

- 18.5. Should the Coordinator fail to make repayment within the deadline set by the Contracting Authority, the Contracting Authority may increase the amounts due by adding interest at the rate

applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the Contracting Authority and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.

Offsetting

- 18.6. Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Coordinator. This shall not affect the parties' right to agree on payment in instalments.

Other provisions

- 18.7. Bank charges incurred by the repayment of amounts due to the Contracting Authority shall be borne entirely by the Coordinator.
- 18.8. The guarantee securing the pre-financing may be invoked in order to repay any amount owed by the Beneficiary(ies), and the guarantor shall not delay payment nor raise objections for any reason whatsoever.
